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

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2022–BT–STD–0023]

RIN 1904–AF44

Energy Conservation Program: Energy Conservation Standards for Metal Halide Lamp Fixtures

AGENCY: Office of Critical Minerals and Energy Innovation, Department of Energy.

ACTION: Final determination.

SUMMARY: The Energy Policy and Conservation Act, as amended (“EPCA”), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including metal halide lamp fixtures (“MHLFs”). EPCA also requires the U.S. Department of Energy (“DOE”) to periodically review its existing standards to determine whether more-stringent standards would be technologically feasible and economically justified and would result in significant energy savings. In this final determination, DOE has determined that more-stringent energy conservation standards for MHLFs would not be cost effective and, therefore, DOE does not need to amend its energy conservation standards for MHLFs.

DATES: The effective date of this final determination is March 16, 2026.

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

The docket web page can be found at www.regulations.gov/docket/EERE-2022-BT-STD-0023. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: ApplianceStandardsQuestions@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Domm, U.S. Department of Energy, Office of Critical Minerals and Energy Innovation, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 994–8232. Email: ApplianceStandardsQuestions@ee.doe.gov.

Ms. Kristin Koernig, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–4798. Email: Kristin.koernig@hq.doe.gov.

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VI. Approval of the Office of the Secretary

I. Synopsis of the Final Determination

EPCA, Public Law 94–163, as amended,¹ authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part B of EPCA² established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include MHLFs, the subject of this final determination. (42 U.S.C. 6292(a)(19))

Pursuant to EPCA, DOE is required to review its existing energy conservation standards for covered consumer products no later than 3 years after a determination that standards for the product do not need to be amended. (42 U.S.C. 6295(m)(3)(B)) Pursuant to that statutory provision, DOE must publish either a notice of the determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (“NOPR”) including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (*Id.*) DOE has conducted this review of the energy conservation standards for MHLFs under EPCA’s 3-year-lookback authority in EPCA following a determination that standards need not be amended.

For this final determination, DOE analyzed MHLFs subject to energy conservation standards specified in the Code of Federal Regulations (“CFR”) at 10 CFR 431.322. DOE first analyzed the technological feasibility of more energy-efficient MHLFs. For those MHLFs for which DOE determined higher standards to be technologically feasible, DOE evaluated whether higher standards would be cost effective. Based on that evaluation, DOE has determined that the market and technology characteristics of MHLFs are largely similar to those analyzed in the previous energy conservations standards rulemaking for MHLFs, which concluded with the publication of a final rule determining not to amend

¹ All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

² For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

standards. See 86 FR 58763 (October 25, 2021) (“October 2021 Final Determination”). DOE has determined that the conclusions reached in the October 2021 Final Determination regarding the benefits and burdens of more stringent standards for MHLFs are still relevant to the MHLF market today. Hence, DOE has determined that the amended standards for MHLFs would not be cost effective.

Based on the results of the analyses, summarized in section III of this document, DOE has determined that current standards for MHLFs do not need to be amended and is issuing this final determination accordingly.

II. Introduction

The following sections briefly discuss the statutory authority underlying this final determination, as well as some of the historical background relevant to the establishment of energy conservation standards for MHLFs.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part B of EPCA³ established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include MHLFs, the subject of this document. (42 U.S.C. 6292(a)(19))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant

waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6297(d))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their product complies with the applicable energy conservation standards and as the basis for any representations regarding the energy use or energy efficiency of the product. (42 U.S.C. 6295(s) and 42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to evaluate whether a basic model complies with the applicable energy conservation standard(s). (42 U.S.C. 6295(s)) The DOE test procedures for MHLFs appear at 10 CFR 431.324.

EPCA prescribed energy conservation standards for MHLFs (42 U.S.C. 6295(hh)(1)) and directed DOE to conduct future rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(hh)(2)(A) and (3)(A)) Not later than 3 years after the issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR proposing amended energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which a notice of determination or NOPR is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2))

A determination that amended standards are not needed must be based on consideration of whether amended standards will result in significant conservation of energy, are technologically feasible, and are cost effective. (42 U.S.C. 6295(m)(1)(A); 42 U.S.C. 6295(n)(2)) Under 42 U.S.C. 6295(o)(2)(B)(i)(II), an evaluation of cost effectiveness requires DOE to consider savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to

result from the standard. (42 U.S.C. 6295(n)(2); 42 U.S.C. 6295(o)(2)(B)(i)(II))

Finally, pursuant to the amendments to EPCA contained in the Energy Independence and Security Act of 2007, Pub. L. 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE’s current test procedures for MHLFs address standby mode energy use.⁴ However, DOE has yet to identify a MHLF on the market that uses energy in standby mode. Therefore, in the analysis for this final determination, DOE considered only active mode energy consumption, as standby and off mode energy use are not applicable to MHLFs at this time.

DOE is publishing this final determination pursuant to the 3-year-lookback review requirement in EPCA following a determination that standards need not be amended.

B. Background

1. Current Standards

Current standards for MHLFs manufactured on or after February 10, 2017, are set forth in DOE’s regulations at 10 CFR 431.326 and are specified in Table II.1. 10 CFR 431.326(c). Additionally, it is specified at 10 CFR 431.326 that MHLFs manufactured on or after February 10, 2017, that operate lamps with rated wattage >500 watts (“W”) to ≤1,000 W must not contain a probe-start metal halide ballast. 10 CFR 431.326(d). The following MHLFs are not subject to these regulations: (1) MHLFs with regulated-lag ballasts; (2) MHLFs that use electronic ballasts that operate at 480 volts; and (3) MHLFs that use high-frequency electronic ballasts. 10 CFR 431.326(e).

⁴ DOE determined that it is not possible for MHLFs to meet off mode criteria because there is no condition in which the components of an MHLF are connected to the main power source and are not already in a mode accounted for in either active mode or standby mode.

³ As noted previously, for editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

TABLE II.1—FEDERAL ENERGY CONSERVATION STANDARDS FOR MHLFS

Designed to be operated with lamps of the following rated lamp wattage	Tested input voltage *	Minimum standard equation * %
≥50 W and ≤100 W	480 V	$(1/(1 + 1.24 \times P^{(-0.351)})) - 0.020$.**
≥50 W and ≤100 W	All others	$1/(1 + 1.24 \times P^{(-0.351)})$.
>100 W and <150 W †	480 V	$(1/(1 + 1.24 \times P^{(-0.351)})) - 0.020$.
>100 W and <150 W †	All others	$1/(1 + 1.24 \times P^{(-0.351)})$.
≥150 W ‡ and ≤250 W	480 V	0.880.
≥150 W ‡ and ≤250 W	All others	For ≥150 W and ≤200 W: 0.880.
		For >200 W and ≤250 W: $1/(1 + 0.876 \times P^{(-0.351)})$.
>250 W and ≤500 W	480 V	For >250 W and <265 W: 0.880.
		For ≥265 W and ≤500 W: $(1/(1 + 0.876 \times P^{(-0.351)})) - 0.010$.
>250 W and ≤500 W	All others	$1/(1 + 0.876 \times P^{(-0.351)})$.
>500 W and ≤1,000 W	480 V	>500 W and ≤750 W: 0.900.
		>750 W and ≤1,000 W: $0.000104 \times P + 0.822$.
		For >500W and ≤1,000W: may not utilize a probe-start ballast.
		For >500 W and ≤750W: 0.910.
		For >750 W and ≤1,000 W: $0.000104 \times P + 0.832$.
		For >500 W and ≤1,000 W: may not utilize a probe-start ballast.
>500 W and ≤1,000 W	All others	

* Tested input voltage is specified in 10 CFR 431.324.

** P is defined as the rated wattage of the lamp the fixture is designed to operate.

† Includes 150W fixtures specified in paragraph (b)(3) of 10 CFR 431.326, that are fixtures rated only for 150W lamps; rated for use in wet locations, as specified by the National Fire Protection Association ("NFPA") 70, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by Underwriters Laboratory ("UL") 1029.

‡ Excludes 150W fixtures specified in paragraph (b)(3) of 10 CFR 431.326, that are fixtures rated only for 150W lamps; rated for use in wet locations, as specified by the NFPA 70, section 410.4(A); and containing a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by UL 1029.

2. Current Rulemaking History

As noted in section II.A of this document, EPCA directed DOE to conduct two rulemaking cycles to determine whether to amend standards for MHLFs established by EPCA. (42 U.S.C. 6295(hh)(2)(A) and (3)(A)) Accordingly, DOE published a final rule amending the standards for MHLFs on February 10, 2014 ("February 2014 Final Rule"). 79 FR 7746. These current standards are set forth in DOE's regulations at 10 CFR 431.326 and are specified in Table II.1. DOE completed the second rulemaking by publishing the October 2021 Final Determination.

In support of the present review of the MHLF energy conservation standards, on October 6, 2022, DOE published a

request for information ("RFI"), which identified various issues on which DOE sought comment to inform its determination of whether the standards need to be amended. 87 FR 60555. After considering comments in response to the RFI, DOE published a notice of proposed determination ("NOPD") on October 3, 2023 ("October 2023 NOPD"), which proposed not to amend energy conservation standards for MHLFs as amended standards would not be cost effective. 88 FR 67989.

In the October 2023 NOPD, DOE tentatively determined that, since the October 2021 Final Determination analysis, there has been no substantial change in (1) product offerings of MHLFs to warrant a change in scope of analysis or equipment classes, (2)

technologies or design options that could improve the energy efficiency of MHLFs, (3) manufacturers and industry structure, (4) shipments, (5) operating hours, and (6) market and industry trends. *Id.* at 88 FR 67992. Additionally, DOE noted that it did not receive any comments in response to the RFI indicating technological or market changes for MHLFs. *Id.* As such, DOE tentatively determined that the analysis conducted for the October 2021 Final Determination and its conclusion that amended energy conservation standards for MHLFs would not be cost effective remained valid. *Id.*

DOE received two comments in response to the October 2023 NOPD from the interested parties listed in Table II.2.

TABLE II.2—COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE OCTOBER 2023 NOPD

Commenter(s)	Reference in this NOPD	Comment No. in the docket	Commenter type
National Electrical Manufacturers Association ("NEMA")	NEMA	5	Trade Association.
Anonymous	Anonymous	6	Anonymous.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.⁵

⁵ The parenthetical reference provides a reference for information located in the docket. (Docket No. EERE-2022-BT-STD-0023, which is maintained at www.regulations.gov). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

III. Rationale of Analysis and Discussion of Related Comments

DOE developed this final determination after a review of the MHLF market and comments in response to the October 2023 NOPD. In this analysis for this final determination, DOE relied on the statutory and regulatory definition for "MHLF," which is defined as a light

fixture for general lighting application designed to be operated with a metal halide lamp and a ballast for a metal halide lamp. (42 U.S.C. 6291(64)); 10 CFR 431.322. Any equipment meeting the definition of MHLF is included in DOE's scope of coverage, though not all products within the scope of coverage are subject to standards.

In the October 2023 NOPD, DOE requested comment on its proposed

determination that the existing energy conservation standards for MHLFs do not need to be amended. 88 FR 67989, 67992.

In response to the October 2023 NOPD, NEMA commented that since no substantive changes have occurred in MHLF technology or in the market, the analysis conducted for the October 2021 Final Determination and the conclusion in the October 2021 Final Determination that amended standards for MHLFs would not be cost effective remain valid. NEMA stated that DOE should again determine that more stringent amended standards for MHLFs cannot satisfy the relevant statutory requirements because such standards would not be cost effective, as required under EPCA. (NEMA, No. 5 at p. 1)

In response to the October 2023 NOPD, a private citizen stated DOE should adopt a policy in which products that have declined by more than 50 to 70 percent from peak shipment levels could, after notice and comment rulemaking, be classified as inactive for the purpose of efficiency rulemakings and not be subject to every 3-year review under EPCA. Additionally, the private citizen stated that if product shipments then increase to at least 50 percent of historical peak shipment levels, the product can be reinstated as active and DOE can resume review of efficiency standards. The private citizen stated that, without such a policy, DOE and stakeholders will be wasting time and resources on these reviews every 3 years. (Anonymous, No. 6 at p. 1)

In response, DOE notes that it does not have discretion to set its review schedule as DOE is required to review its existing energy conservation standards for covered consumer products no later than 3 years after a determination that standards for the product do not need to be amended under EPCA. (42 U.S.C. 6295(m)(3)(B)) Pursuant to this statutory provision, DOE is publishing this final determination regarding whether to amend the existing energy conservation standards for MHLFs.

DOE did not receive any other comments in response to the October 2023 NOPD. Based on DOE's analysis and the comments received in response to the October 2023 NOPD, in this final determination, DOE maintains the approach in the October 2023 NOPD and finds that the analysis conducted for the October 2021 Final Determination and its conclusion that amending energy conservation standards for MHLFs are not cost effective remains valid.

IV. Final Determination

After carefully considering the comments on the October 2023 NOPD and the available data and information, DOE has determined that the energy conservation standards for MHLFs do not need to be amended, for the reasons explained below.

As required by EPCA, this final determination analyzes whether amended standards for MHLFs would result in significant conservation of energy, be technologically feasible, and be cost effective. (42 U.S.C. 6295(m)(1)(A); 42 U.S.C. 6295(n)(2)) The criteria considered under 42 U.S.C. 6295(m)(1)(A) and the additional analysis are discussed below. Because an analysis of potential cost effectiveness and energy savings first requires an evaluation of the relevant technology, DOE first discusses the technological feasibility of amended standards. DOE then addresses the cost effectiveness and energy savings associated with potential amended standards for MHLFs.

A. Technological Feasibility

As discussed previously, EPCA mandates that DOE consider whether amended energy conservation standards for MHLFs would be technologically feasible. (42 U.S.C. 6295(m)(1)(A); 42 U.S.C. 6295(n)(2)(B)) In the October 2021 Final Determination, DOE concluded that there are technology options that would improve the efficiency of MHLFs. Further, DOE concluded that these technology options are being used in commercially available MHLFs and therefore are technologically feasible. 86 FR 58763, 58791. In the October 2023 NOPD, DOE tentatively determined that its conclusions regarding technological feasibility from that analysis remain valid because there have been no substantive changes in the MHLF market since the October 2021 Final Determination analysis. 88 FR 67989, 67992. DOE received no comments or information to rebut that tentative determination. Hence, DOE has determined that amended energy conservation standards for MHLFs are technologically feasible.

B. Cost Effectiveness

EPCA requires DOE to consider whether energy conservation standards for MHLFs would be cost effective through an evaluation of the savings in operating costs throughout the estimated average life of the covered product compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered

product which is likely to result from the imposition of an amended standard. (42 U.S.C. 6295(m)(1)(A); 42 U.S.C. 6295(n)(2)(C); 42 U.S.C. 6295(o)(2)(B)(i)(II))

In the October 2021 Final Determination, DOE determined that the average customer purchasing a representative MHLF would experience an increase in life-cycle cost ("LCC") at each evaluated standards case as compared to the no-new-standards case. 86 FR 58763, 58785–58788. The simple payback period ("PBP") for the average MHLF customer at most efficiency levels ("ELs") was projected to be generally longer than the mean lifetime of the equipment, which further indicated that the increase in installed cost for more efficient MHLFs is not recouped by their associated operating cost savings. *Id.* at 86 FR 58788. The analysis determined that the net present value ("NPV") benefits at the trial standard levels ("TSLs") were also negative across all equipment classes at 3-percent and 7-percent discount rates. *Id.* at 86 FR 58790–58791. Hence, in the October 2021 Final Determination, DOE determined that more stringent amended energy conservation standards for MHLFs cannot satisfy the relevant statutory requirements because such standards would not be cost effective as required under EPCA. *Id.* at 86 FR 58791. (See 42 U.S.C. 6295(n)(2); 42 U.S.C. 6295(o)(2)(B)(II))

In the October 2023 NOPD, DOE stated that because there have been no substantive changes in the MHLF market that would affect the conclusions of the October 2021 Final Determination analysis, DOE tentatively determined that its conclusions regarding the cost effectiveness of more stringent amended energy conservation standards for MHLFs remain valid. 88 FR 67989, 67995. DOE received no comments or information in response to the October 2023 NOPD to show any substantive changes to the MHLF market to alter the LCC, PBP, and NPV analyses from the October 2021 Final Determination. Therefore, DOE has determined that more stringent amended energy conservation standards for MHLFs cannot satisfy the relevant statutory requirements because such standards would not be cost effective as required under EPCA.

C. Significant Conservation of Energy

EPCA also mandates that DOE consider whether amended energy conservation standards for MHLFs would result in significant conservation of energy. (42 U.S.C. 6295(m)(1)(A); 42 U.S.C. 6295(n)(2)(A))

In the October 2021 Final Determination, having determined that amended energy conservation standards for MHLFs would not be cost effective, DOE did not further evaluate the significance of the amount of energy conservation under the considered amended standards, because it had determined that the potential standards would not be cost effective as required under EPCA. 86 FR 58763, 58791. (See 42 U.S.C. 6295(m)(1)(A); 42 U.S.C. 6295(n)(2); 42 U.S.C. 6295(o)(2)(B)).

In the October 2023 NOPD, DOE tentatively determined that amended standards would still not be cost effective and did not evaluate the significance of the projected energy savings from an amended standard. 88 FR 67989, 67995.

In examining the current market, DOE has found that there have been no substantive changes in the MHLF market that would affect the tentative determination in the October 2023 NOPD that amended standards would still not be cost effective, so an evaluation of significance of project energy savings is not necessary.

D. Summary

In this final determination, DOE has determined that energy conservation standards for MHLFs do not need to be amended because amended standards would not be cost effective.

V. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the

desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit “significant regulatory actions” to the Office of Information and Regulatory Affairs (“OIRA”) in the Office of Management and Budget for review. OIRA has determined that this final regulatory action does not constitute a “significant regulatory action” under section 3(f)(1) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis and a final regulatory flexibility analysis (“FRFA”) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website (www.energy.gov/gc/office-general-counsel).

DOE reviewed this final determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Because DOE is not amending standards for MHLFs, the final determination will not amend any energy conservation standards. On the basis of the foregoing, DOE certifies that the final determination will have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an FRFA for this final determination. DOE has transmitted this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This final determination, which concludes that no amended energy

conservation standards for MHLFs are needed, imposes no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

In the October 2023 NOPD, DOE analyzed the proposed determination in accordance with the National Environmental Policy Act of 1969 (“NEPA”) and DOE’s NEPA implementing regulations (10 CFR part 1021) in effect at the time of the October 2023 NOPD’s publication. In the October 2023 NOPD, DOE anticipated that the October 2023 NOPD qualified for a categorical exclusion under appendix A4 to subpart D of part 1021 because the NOPD was an interpretation or ruling with respect to an existing regulation and otherwise met the requirements for application of a categorical exclusion. 88 FR 67989, 67995. In July 2025, DOE revised part 1021 to remove appendix A and, concurrently, DOE issued Implementing Procedures.⁶ The actions formally identified in appendix A of subpart D to part 1021 now represent administrative and routine actions that are excepted from NEPA based on the definition of “major Federal action” in section 111(10) of NEPA. DOE’s determination that current standards for MHLFs do not need to be amended is administrative and routine; therefore, it is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and no further environmental review is needed.

E. Review Under Executive Order 13132

E.O. 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental

⁶ DOE NEPA Implementing Procedures June 30, 2025, <https://www.energy.gov/sites/default/files/2025-06/2025-06-30-DOE-NEPA-Procedures.pdf>.

consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final determination and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final determination. States can petition DOE for exemption from such preemption to the extent, and based on criteria set forth in EPCA. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) Therefore, no further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform," imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA") requires each Federal agency to assess the effects of Federal regulatory actions on State,

local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause 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 (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.

DOE examined this final determination according to UMRA and its statement of policy and determined that the final determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of \$100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final determination would not have any financial impact on families nor any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (Mar. 15, 1988), DOE has determined that this final determination would not result in any takings that might require compensation

under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines, which are available at <https://www.energy.gov/cio/departments-energy-information-quality-guidelines>. DOE has reviewed this final determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under E.O. 12866, or any successor E.O.; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This final determination, which does not amend energy conservation standards for MHLFs, is not a significant regulatory action under E.O. 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy, issued its Final Information Quality Bulletin for Peer Review (“the Bulletin”). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government’s scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are “influential scientific information,” which the Bulletin defines as “scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.” *Id.* at 70 FR 2667.

In response to OMB’s Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a peer review report pertaining to the energy conservation standards rulemaking analyses.⁷ Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE’s analytical methodologies to ascertain whether modifications are needed to improve the Department’s analyses. DOE is in the process of evaluating the resulting report.⁸

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this final determination prior to its effective date. The report will state that it has been determined that the final

determination is not a “major rule” as defined by 5 U.S.C. 804(2).

N. Review Under Additional Executive Orders and Presidential Memoranda

DOE has examined this final determination and has determined that it is consistent with the policies and directives outlined in E.O. 14154 “Unleashing American Energy,” E.O. 14192, “Unleashing Prosperity Through Deregulation,” and Presidential Memorandum, “Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis.” DOE has determined that more stringent MHLFs standards would not be cost-effective, and that standards for MHLFs should not be amended. DOE’s final determination effectively preserves consumer choice. DOE’s determination also provides manufacturers with regulatory certainty, which may allow for market innovations and a reduction in consumer costs. Accordingly, this final determination is considered an E.O. 14192 deregulatory action.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of final determination.

Signing Authority

This document of the Department of Energy was signed on February 5, 2026, by Audrey Robertson, Assistant Secretary (EERE) for Critical Minerals and Energy Innovation, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 11, 2026.

Treena V. Garrett,

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

[FR Doc. 2026–02935 Filed 2–12–26; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2022–BT–STD–0014]

RIN 1904–AF39

Energy Conservation Program: Energy Conservation Standards for Small Electric Motors

AGENCY: Office of Critical Minerals and Energy Innovation, Department of Energy.

ACTION: Final determination.

SUMMARY: The Energy Policy and Conservation Act, as amended (“EPCA”), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including small electric motors (“SEMs”). EPCA also requires the U.S. Department of Energy (“DOE”) to periodically determine whether more-stringent standards would be technologically feasible and economically justified, and would result in significant conservation of energy. In this final determination, DOE has determined that more-stringent energy conservation standards for SEMs would not be cost-effective and, therefore, DOE has determined that energy conservation standards for SEMs should not be amended.

DATES: The effective date of this final determination is March 16, 2026.

ADDRESSES: *Docket:* The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at www.regulations.gov/docket/EERE-2022-BT-STD-0014. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: ApplianceStandardsQuestions@ee.doe.gov.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Critical Minerals and Energy Innovation, Building

⁷ “Energy Conservation Standards Rulemaking Peer Review Report.” 2007. Available at www.energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0 (last accessed Nov. 7, 2022).

⁸ The December 2021 NAS report is available at www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.

Technologies Office, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 994-8232. Email: ApplianceStandardsQuestions@ee.doe.gov.

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I. Synopsis of the Final Determination

The Energy Policy and Conservation Act, Public Law 94-163, as amended (“EPCA”),¹ authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C of EPCA²

established the Energy Conservation Program for Certain Industrial Equipment. (42 U.S.C. 6311–6317) Such equipment includes small electric motors (“SEMs”), the subject of this final determination.

DOE is issuing this final determination pursuant to the EPCA requirement that not later than 3 years after a determination that standards for the equipment do not need to be amended, DOE must publish either a notification of determination that standards for the equipment do not need to be amended, or a notice of proposed rulemaking (“NOPR”) including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(3)(B)).

For this final determination, DOE analyzed small electric motors subject to standards specified in 10 CFR 431.446. DOE first analyzed the technological feasibility of more energy-efficient SEMs. For those SEMs for which DOE determined higher standards to be technologically feasible, DOE evaluated whether higher standards would be cost-effective by conducting life-cycle cost (“LCC”) and payback period (“PBP”) analyses.

Based on the results of the analyses, summarized in section VII of this document, DOE has determined that current standards for SEMs do not need to be amended and is issuing this final determination accordingly.

II. Introduction

The following section briefly discusses the statutory authority underlying this final determination, as well as some of the historical background relevant to the establishment of standards for SEMs.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part C of EPCA (42 U.S.C. 6311–6317, as codified), added by Public Law 95-619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes SEMs, the subject of this document. (42 U.S.C. 6311(13)(G)) EPCA directed DOE to prescribe initial test procedures and standards for this equipment. (42 U.S.C. 6317(b))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy

conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296(a), (b), and (d)).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy use or efficiency of covered equipment. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297(b)–(c)) DOE may, however, grant waivers of Federal preemption in limited instances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6316(a), applying the preemption waiver provisions of 42 U.S.C. 6297(d))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered equipment. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(3)(A) and 6295(r)) Manufacturers of covered equipment must use the Federal test procedures as the basis for certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)) and when making representations about the energy consumption of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)) The DOE test procedures for SEMs appear at 10 CFR 431.444.

EPCA requires that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the equipment do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)) EPCA further provides that, not later than 3 years after the issuance of a final determination not to amend standards, DOE must publish either a notification of determination that standards for the equipment do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C.

¹ All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116-260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A-1 of EPCA.

² For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A-1.

6316(a); 42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(2))

A determination that amended standards are not needed must be based on consideration of whether amended standards will result in significant conservation of energy, are technologically feasible, and are cost-effective. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2))

Under 42 U.S.C. 6295(o)(2)(B)(i)(II), an evaluation of cost-effectiveness requires DOE to consider savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered equipment that are likely to result from the standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(n)(2) and 42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE is publishing this final determination in satisfaction

of the 3-year review requirement in EPCA.

B. Background

1. Current Standards

In a final rule published on March 9, 2010, DOE prescribed the current energy conservation standards for SEMs. 75 FR 10873 (“March 2010 Final Rule”). These standards are set forth in DOE’s regulations at 10 CFR 431.446 and are shown in Table II–1 and Table II–2. These standards are expressed in terms of average full-load efficiency.

TABLE II–1—FEDERAL ENERGY CONSERVATION STANDARDS FOR POLYPHASE SMALL ELECTRIC MOTORS MANUFACTURED ON OR AFTER MARCH 9, 2015

Motor horsepower/standard kilowatt equivalent	Average full-load efficiency		
	Open motors (number of poles)		
	6	4	2
0.25/0.18	67.5	69.5	65.6
0.33/0.25	71.4	73.4	69.5
0.5/0.37	75.3	78.2	73.4
0.75/0.55	81.7	81.1	76.8
1/0.75	82.5	83.5	77.0
1.5/1.1	83.8	86.5	84.0
2/1.5	N/A	86.5	85.5
3/2.2	N/A	86.9	85.5

Note: In the case of a SEM which requires listing or certification by a nationally recognized safety-testing laboratory, the compliance date is March 9, 2017.

TABLE II–2—FEDERAL ENERGY CONSERVATION STANDARDS FOR CAPACITOR-START INDUCTION-RUN AND CAPACITOR-START CAPACITOR-RUN SMALL ELECTRIC MOTORS MANUFACTURED ON OR AFTER MARCH 9, 2015

Motor horsepower/standard kilowatt equivalent	Average full-load efficiency		
	Open motors (number of poles)		
	6	4	2
0.25/0.18	62.2	68.5	66.6
0.33/0.25	66.6	72.4	70.5
0.5/0.37	76.2	76.2	72.4
0.75/0.55	80.2	81.8	76.2
1/0.75	81.1	82.6	80.4
1.5/1.1	N/A	83.8	81.5
2/1.5	N/A	84.5	82.9
3/2.2	N/A	N/A	84.1

Note: In the case of a SEM which requires listing or certification by a nationally recognized safety-testing laboratory, the compliance date is March 9, 2017.

2. History of Standards Rulemakings for Small Electric Motors

On March 9, 2010, DOE established the current energy conservation standards for small electric motors. 75 FR 10874 (“March 2010 Final Rule”). On January 19, 2021, DOE published a notice of final determination for small electric motors that these standards need not be amended (“January 2021 Final Determination”). 86 FR 4885. In the January 2021 Final Determination, while DOE determined that more stringent standards would be technologically feasible, DOE also

determined that more stringent energy conservation standards would not be cost-effective. 86 FR 4885, 4906. Therefore, DOE determined that the current standards for SEMs did not need to be amended. *Id.*

In support of the present review of the SEM energy conservation standards, DOE published a request for information, which identified various issues on which DOE sought comment to inform its determination of whether the standards need to be amended. 87 FR 23471; April 20, 2022 (“April 2022 RFI”). On May 11, 2022, DOE published

a notice that extended the comment period for the April 2022 RFI to no later than June 20, 2022. 87 FR 28782. On February 6, 2023, DOE published a notice of proposed determination (“February 2023 NOPD”) with the tentative determination that energy conservation standards for SEMs do not need to be amended. 88 FR 7629. The comment period for this notice closed on April 7, 2023.

On March 15, 2023, DOE held a public meeting to solicit feedback from stakeholders concerning the February 2023 NOPD.

DOE received three comments from interested parties in response to the February 2023 NOPD. These comments are listed in Table II–3.

TABLE II–3—FEBRUARY 2023 NOPD WRITTEN COMMENTS

Commenter/organization(s)	Reference in this NOPD	Organization type
Air-Conditioning, Heating, and Refrigeration Institute and Association of Home Appliance Manufacturers	AHRI and AHAM.	Trade Associations.
California Investor-Owned Utilities—Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison.	CA IOUs	Utilities.
National Electrical Manufacturers Association	NEMA	Trade Association.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.³ To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the March 15, 2023, public meeting, DOE cites the written comments throughout this final determination. There were no oral comments provided during the public meeting that were not substantively addressed by written comments.

III. Rationale of Analysis and Discussion of Related Comments

DOE developed this final determination after considering oral and written comments, data, and other information submitted by interested parties. This final determination addresses the relevant issues raised in those comments.

This final determination covers SEMs as defined by EPCA and codified by DOE at 10 CFR 431.442. “Small electric motor” is defined as a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1–1987, including IEC metric equivalent motors. 10 CFR 431.442. (See also 42 U.S.C. 6311(13)(G)) Therefore, the scope of this determination does not include any non-induction electric motors or any other electric motors that do not meet the SEM definition. As a result, comments regarding or implicating electric motors outside the scope of the SEMs definition, were deemed outside the scope of this final determination.⁴

³ The parenthetical reference provides a reference for information located in the docket. (Docket No. EERE–2022–BT–STD–0014, which is maintained at www.regulations.gov). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

⁴ DOE received one comment related to expanded scope electric motors (ESEMs) which were the subject of a separate DOE rulemaking (Docket EERE–2020–BT–STD–0007).

A. General Comments

In response to the February 2023 NOPD, DOE received several general comments from interested parties regarding support of DOE’s final determination.

The CA IOUs commented that they concurred with DOE’s proposed determination that more stringent energy conservation standards would not be cost-effective and, therefore, that the current standards for SEMs do not need to be amended. (CA IOUs, No. 18 at p. 1)

AHAM and AHRI commented in support of the notice of proposed determination and agreed with DOE’s proposal to maintain the scope of the current energy conservation standards (and test procedure) for SEMs. AHAM and AHRI reiterated their prior comments submitted in response to the April 2022 RFI⁵ emphasizing that efficient small electric motors destined for finished products already play a major part of the energy equation when original equipment manufacturers consider what design options to apply to meet new standards. AHAM and AHRI commented that applying separate standards and test procedures to these products adds costs, reduces choice, and does little, if anything, to further energy savings goals. As such, AHAM and AHRI recommended that DOE finalize its proposed determination not to amend standards for SEMs and maintain its decision not to expand the SEM test procedure or coverage to special and definite purpose motors. (AHAM and AHRI, No. 19 at pp. 1–2)

NEMA stated that they agree with the Department of energy’s conclusions and

⁵ See AHAM and AHRI Comments on DOE’s notice of proposed rulemaking on Test Procedures for Electric Motors, Docket No. EERE–2020–BT–TP–0011 (filed Feb. 28, 2022); Joint Comments on Electric Motor Preliminary Technical Support Document (NEMA, AHAM, AHRI, MITA, OPEI, HVI, PTI), Docket No. EERE–2020–BT–STD–0007–0011, RIN 1904–AE63 (filed May 2, 2022); AHAM and AHRI Comments on DOE’s Energy Conservation Standards for Electric Motors, Availability of the Preliminary Technical Support Document, Docket No. EERE–2020–BT–STD–0007–0011, RIN 1904–AE63 (filed May 2, 2022).

that there have been no significant advancements that would justify updating energy conservation standards. (NEMA, No. 20 at p. 1) In addition, NEMA commented that increasing efficiency levels would have substantial downstream market impacts on utility as motors would need to become significantly larger while several essential operating characteristics (e.g., starting torque) would be compromised, resulting in little (and sometimes negative) energy savings in the end-product. (NEMA, No. 20 at p. 2)

In this final determination, DOE maintains that the current standards for SEMs do not need to be amended.

B. Technological Feasibility

Pursuant to 42 U.S.C. 6316(a), 6295(m)(1)(A), and 6295(n)(2), DOE’s determination regarding amended standards must consider whether such standards are technologically feasible, are cost effective as described in subsection 6295(o)(2)(B)(i)(II) and will result in significant conservation of energy.

In the February 2023 NOPD, DOE evaluated technological feasibility by reviewing the current SEM market, available motor technologies, and the engineering analysis presented in the January 2021 Final Determination. As discussed in that NOPD, DOE tentatively concluded that both the technology options identified and the incremental cost relationships established in the January 2021 analysis remain applicable (88 FR 7629, 7635–7638).

NEMA reaffirmed its agreement with DOE’s conclusion that the results of that engineering analysis continue to be valid. (NEMA, No. 20 at p. 2)

DOE also found no significant advancements in induction motor technology that would enable higher efficiency or lower-cost designs relative to those analyzed in the January 2021 Final Determination. As a result, the standards for Capacitor-Star-Induction-Run (“CSIR”) motors already reflect the maximum technologically feasible efficiency and no new viable design

options could be identified for this topology. Consistent with the January 2021 Final Determination, DOE was only able to identify technologically feasible options for increasing efficiency for capacitor-start capacitor-run (“CSCR”) motors. 88 FR 7629, 7637. In this final determination, DOE maintains that the technology options identified in February 2023 NOPD. (88 FR 7629, 7635–7638)

C. Cost-Effectiveness

A determination that amended standards are not needed must also be based on consideration of whether amended standards would be cost-effective, among other factors. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)) In evaluating cost-effectiveness, EPCA requires DOE to consider savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered equipment that are likely to result from the standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(n)(2) and 42 U.S.C. 6295(o)(2)(B)(i)(II)) To evaluate cost-effectiveness, in the February 2023 NOPD, DOE conducted a review of the inputs to the LCC and PBP analyses (which also included a review of the inputs to the markups and energy use analyses). 88 FR 7629, 7639–7644. In the February 2023 NOPD, DOE tentatively concluded that the inputs for each of these analyses were comparable to the estimates developed for the January 2021 Final Determination. *Id.* Therefore, in determining cost-effectiveness of amending standards for SEMs, DOE relied on the life-cycle cost (“LCC”) and payback period (“PBP”) analyses conducted for the January 2021 Final Determination that estimate the costs and benefits to users from potential standards. 88 FR 7629, 7645–7646

For this final determination, DOE conducted an updated review of inputs to the markups analysis, energy use analysis, LCC and PBP analyses. Specifically, DOE further assessed the impact of updated energy price and discount rate estimates. For energy prices, DOE performed the same comparison as in the February 2023 NOPD, but with an updated starting year,⁶ and used 2023 EEI Typical Bills

and Average Rates reports and *AEO2023* energy price trends.⁷ DOE has determined that, similar to its conclusion in the February 2023 NOPD, the energy prices have not changed significantly from those estimated in the January 2021 Final Determination. To estimate updated average residential, commercial, and industrial discount rates, DOE relied on updated data sources^{8,9} and the same methodology as described in the February 2023 NOPD (See 88 FR 7629, 7643). In line with the February 2023 NOPD, DOE determined that the more recent (2024) residential, commercial and industrial discount rates have not changed significantly from those in the January 2021 Final Determination and these minor changes would have no significant impact on the LCC results.

In response to the February 2023 NOPD, NEMA commented that it agreed with DOE’s conclusion that the revised market shares by distribution channel and revised markups and sales taxes would still result in SEM consumer costs and LCC savings that are comparable to the estimates developed for the January 2021 Final Determination. NEMA also agreed with DOE’s conclusion that the average energy use results for small electric motors are the same as the estimates developed for the January 2021 Final Determination and that SEMs are not typically repaired. NEMA further commented that it supported DOE’s conclusion that lifetimes have remained the same as estimated in the January 2021 Final Determination (NEMA, No. 20 at p. 2) Additionally, NEMA agreed with DOE’s conclusion to rely on the same no-new-standards case efficiency distributions as in the January 2021 Final Determination. (*Id.* at p. 3)

In response to the February 2023 NOPD, NEMA commented that increasing efficiency generally increases installation costs (an input to the LCC calculation). For existing end-user product lines, NEMA commented that the enclosure often needs to increase in size and/or components need to be moved to accommodate a larger motor. NEMA stated that for repair of end

products, higher-efficiency motors often will not fit in the existing application or will require significant rework. (NEMA, No. 20 at p. 2)

For space-constrained applications, DOE assumed that the higher levels of efficiency would be reached based on technology options that would not significantly increase the physical footprint of the motor and would not increase the installation costs. 88 FR 7629, 7638. Therefore, DOE maintains its conclusion that installation costs are not impacted by increased efficiency levels. In addition, any increase in installation costs would further substantiate the determination that amended standards would not satisfy the cost-effectiveness criterion as required by EPCA because it would increase the total installed costs of higher efficiency SEMs and, therefore, lower any LCC savings.

In response to the February 2023 NOPD, NEMA commented that the electric motor industry had experienced higher-than-average levels of inflation compared to the overall U.S. economy, which led to smaller discounts and, therefore, higher end prices. (NEMA, No. 20 at p. 3) DOE clarifies that the consumer discount rates applied in the LCC analysis are used to compute the present value of future energy savings accrued by the consumer through purchase of a higher-efficiency model. The consumer discount rates do not relate to the specific conditions of the electric motor manufacturing industry (*i.e.*, it is not a price discount offered by motor manufacturers or sellers, nor is it a reflection of the electric motor manufacturer’s present value of future savings). In addition, DOE notes that higher end prices would further substantiate the determination that amended standards would not satisfy the cost-effectiveness criterion as required by EPCA because it would increase the total installed costs of higher efficiency SEMs and, therefore, lower any LCC savings.

DOE did not receive any other comments specific to these inputs and concluded that the inputs to the markups analysis, energy use analysis, LCC and PBP analyses have not changed significantly. Accordingly in this final determination, DOE maintains that energy prices, discounts rates, and other inputs to the markups analysis, energy use analysis, LCC and PBP analyses have not significantly changed as described in the 2023 NOPD.

In assessing cost effectiveness, DOE also reviewed changes in manufacturer selling prices (MSPs) since the January 2021 Final Determination. DOE determined that manufacturer selling

⁷ U.S. Department of Energy-Energy Information Administration, *Annual Energy Outlook 2023 with Projections to 2050*, available at www.eia.gov/outlooks/aeo/ (last accessed June 20, 2023).

⁸ U.S. Board of Governors of the Federal Reserve System. *Survey of Consumer Finances (SCF)*. 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, 2019, and 2022. (Last accessed June 1, 2024.) www.federalreserve.gov/econresdata/scf/scfindex.htm.

⁹ Damodaran, A. *Data Page: Historical Returns on Stocks, Bonds and Bills-United States*. (Last accessed June 1, 2024.) www.stern.nyu.edu/~adamodar/pc/datasets/histretSP.xls.

⁶ For purposes of its final determination analysis, DOE estimated that any amended standards would apply to small electric motors manufactured 5 years after the date on which the amended standard is published. DOE estimated publication of a final rule in the second half of 2025. Therefore, for purposes of its analysis, DOE used 2031 as the year of compliance.

prices (MSPs) for SEMs are likely to increase due to higher component costs; however, such increases would apply uniformly across all efficiency levels. As a result, incremental costs between efficiency levels are not expected to change materially. Any increase in MSPs without corresponding efficiency improvements would further support DOE's determination that amended standards would not be cost-effective.

In line with the tentative conclusions of the February 2023 NOPD, DOE has determined that the inputs used in the markups, energy use, LCC and PBP calculations have not changed significantly since the January 2021 Final Determination.

IV. Final Determination

As required by EPCA, this final determination analyzes whether amended standards for SEMs would result in significant conservation of energy, be technologically feasible, and be cost-effective. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)) The criteria considered under 42 U.S.C. 6295(m)(1)(A) and the additional analysis are discussed in the following sections. Because an analysis of potential cost-effectiveness and energy savings first requires an evaluation of the relevant technology, DOE first discusses the technological feasibility of amended standards. DOE then addresses the cost-effectiveness and energy savings associated with potential amended standards.

A. Technological Feasibility

EPCA requires DOE to determine whether amended energy conservation standards for SEMs would be technologically feasible. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)(B)) DOE identified several technology options capable of improving the efficiency of polyphase and CSCR SEMs. These technology options are currently implemented in commercially available SEMs and are, therefore, technologically feasible.

Consistent with the conclusions presented in the January 2021 Final Determination, DOE did not consider a CSIR motor as a representative unit. 86 FR 4885, 4895. The minimum energy conservation standards established in the March 2010 Final Rule (which are established in 10 CFR 431.446(a)) reflect the maximum technologically feasible efficiency for CSIR motors, and DOE was unable to identify any additional design options meeting the screening criteria that would indicate a higher efficiency level for CSIR motors is both technologically feasible and commercially viable. *Id.*

B. Cost-Effectiveness

EPCA requires DOE to consider whether energy conservation standards for SEMs would be cost-effective through an evaluation of the savings in operating costs throughout the estimated average life of the covered equipment compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered equipment which are likely to result from the imposition of an amended standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)(A), 42 U.S.C. 6295(n)(2)(C), and 42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducted an LCC analysis in the January 2021 Final Determination to estimate the net costs/benefits to users from increased efficiency in the considered equipment. As described previously, DOE has determined that the results of the LCC analysis in the January 2021 Final Determination are still valid. These results show that the average LCC savings from higher energy conservation standards at the considered ELs would be negative for all equipment classes. 86 FR 4885, 4904–4906 Based on the results from the January 2021 Final Determination, which DOE has concluded are still valid, DOE has determined that none of the considered efficiency levels would be cost-effective.

C. Significant Conservation of Energy

EPCA also mandates that DOE consider whether amended energy conservation standards for SEMs would result in significant conservation of energy. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)(A)) However, as discussed in the previous section, DOE has determined that amended standards would not satisfy the cost-effectiveness criterion as required by EPCA when determining whether to amend its standards for a given covered product or equipment. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)(A) and 42 U.S.C. 6295(n)(2)(C)) for the purpose of 42 U.S.C. 6295(n)(2). Therefore, DOE concludes that quantification of energy savings from potential amended standards is not necessary in the case of this final determination.

D. Conclusion

In this final determination, based on the determination that amended standards would not be cost-effective, DOE has determined that energy conservation standards for SEMs do not need to be amended.

V. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. The Office of Information and Regulatory Affairs (“OIRA”) in the Office of Management and Budget (“OMB”), in its guidance, has emphasized that agencies use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible, and identify changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in this preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit “significant regulatory actions” to OIRA for review. OIRA has determined that this final regulatory action does not constitute a “significant regulatory action” under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (“IRFA”) and a final regulatory flexibility analysis (“FRFA”) for any rule that by law must be proposed for public comment, unless the agency

certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel’s website (www.energy.gov/gc/office-general-counsel).

DOE reviewed this final determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. Because DOE is not amending standards for SEMs, the determination will not amend any energy conservation standards. On the basis of the foregoing, DOE certifies that the final determination will have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an FRFA for this final determination. DOE has transmitted this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This final determination, which concludes that no amended energy conservation standards for SEMs are needed, imposes no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act of 1969

In the February 2023 NOPD, DOE analyzed the proposed determination in accordance with the National Environmental Policy Act of 1969 (“NEPA”) and DOE’s NEPA implementing regulations (10 CFR part 1021) in effect at the time of the February 2023 NOPD’s publication. In the February 2023 NOPD, DOE anticipated that the February 2023 NOPD qualified for a categorical exclusion under appendix A4 to subpart D of part 1021 because the NOPD was an interpretation or ruling with respect to an existing regulation and otherwise met the requirements for application of a categorical exclusion. 88 FR 67989, 67995. In July 2025, DOE revised part 1021 to remove appendix A and, concurrently, DOE issued Implementing

Procedures.¹⁰ The actions formally identified in appendix A of subpart D to part 1021 now represent administrative and routine actions that are excepted from NEPA based on the definition of “major Federal action” in section 111(10) of NEPA. DOE’s determination that current standards for SEMs do not need to be amended is administrative and routine under category A4 of the Implementing Procedures; therefore, it is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and no further environmental review is needed.

E. Review Under Executive Order 13132

E.O. 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735 DOE has examined this final determination and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria set forth in EPCA. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) Therefore, no further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, “Civil Justice Reform,” imposes on Federal agencies the general duty to

adhere to the following requirements:

(1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (“UMRA”) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any 1 year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for

¹⁰ DOE NEPA Implementing Procedures June 30, 2025, <https://www.energy.gov/sites/default/files/2025-06/2025-06-30-DOE-NEPA-Procedures.pdf>.

intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.

DOE examined this final determination according to UMRA and its statement of policy and determined that the final determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of \$100 million or more in any 1 year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (Mar. 15, 1988), DOE has determined that this final determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M-19-15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines, which are available at www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf. DOE has reviewed

this final determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs ("OIRA") at OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under E.O. 12866, or any successor E.O.; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This final determination, which does not amend energy conservation standards for SEMs, is not a significant regulatory action under E.O. 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Additional Executive Orders and Presidential Memoranda

DOE has examined this final determination and has determined that it is consistent with the policies and directives outlined in E.O. 14154 "Unleashing American Energy," E.O. 14192, "Unleashing Prosperity Through Deregulation," and Presidential Memorandum, "Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis." DOE has determined that more stringent SEMs standards would not be cost-effective, and that standards for SEMs should not be amended. DOE's final determination effectively preserves consumer choice, and provides manufacturers with regulatory certainty, which may allow for more market innovations as well as a reduction in consumer costs. Accordingly, DOE considers this final determination to be an E.O. 14192 deregulatory action.

M. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy ("OSTP"), issued its Final Information Quality Bulletin for Peer Review ("the Bulletin"). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are "influential scientific information," which the Bulletin defines as "scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions." *Id.* at 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a Peer Review report pertaining to the energy conservation standards rulemaking analyses.¹¹ Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve DOE's analyses. DOE is in the process of evaluating the resulting report.¹²

N. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this final determination prior to its effective date. The report will state that it has been determined that this final

¹¹ "Energy Conservation Standards Rulemaking Peer Review Report." 2007. Available at energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0 (last accessed Nov. 7, 2022).

¹² The December 2021 NAS report is available at www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.

determination is not a “major rule” as defined by 5 U.S.C. 804(2).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of final determination.

Signing Authority

This document of the Department of Energy was signed on February 5, 2026, by Audrey Robertson, Assistant Secretary (EERE) for Critical Minerals and Energy Innovation, U.S. Department of Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 11, 2026.

Treena V. Garrett,

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

[FR Doc. 2026–02936 Filed 2–12–26; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2025–1183; Airspace Docket No. 25–ASO–12]

RIN 2120–AA66

Amendment of Class D and E Airspace; Miami, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace and Class E2 airspace extending upward from the surface to 2,500 feet MSL, within a 4.3-mile radius of Miami Executive Airport, Miami, FL. It also amends Class E5 airspace from 700 feet above the surface and 7 miles around Miami Executive Airport, Miami, FL, and within 2.4 miles each side of the 267° bearing from the LAYDN IAF extending from the 7-mile radius to 7 miles west of the IAF. This

action also makes administrative updates to the coordinates for LAYDN IAF, Pompano Beach Airpark, and North Perry Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Effective 0901 UTC, July 9, 2026. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the notice of proposed rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours a day, 365 days a year. An electronic copy of this document may also be downloaded from www.federalregister.gov.

FAA Order JO 7400.11K, Airspace Designations and Reporting Points, as well as subsequent amendments, can be viewed online at www.faa.gov/air_traffic/publications/. For further information, you can contact the Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; Telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Rachel Cruz, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5571.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D and Class E airspace for Miami Executive Airport, Miami, FL.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2025–1183 in the **Federal Register** (90 FR 57015; December 9, 2025), proposing to amend Class D and Class E airspace for Miami Executive Airport, Miami, FL. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class D and Class E airspace designations are published in paragraphs 5000, 6002, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September 15, 2025. These amendments will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Rule

This amendment to 14 CFR part 71 modifies Class D and Class E2 airspace from the surface of the Earth up to and including 2,500 feet MSL within a 4.3-mile radius of the Miami Executive Airport, Miami, FL, and within 1.2 miles each side of the 267° bearing from the airport reference point extending from the 4.3-mile radius to 5.9 miles west of the airport reference point, excluding that airspace within the Miami, FL, Class B airspace area. Also, this action amends the Miami Class E5 airspace, by updating QEZZY Initial Approach Fix (IAF) to LAYDN IAF, extending from the 7-mile radius to 7 miles west of the IAF, and within a 6.5-mile radius of Fort Lauderdale Executive Airport, Pompano Beach Airpark, and North Perry Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

Differences From the NPRM

The FAA published a notice of proposed rulemaking for Docket No. 2025–1183 in the **Federal Register** (90 FR 57015; December 9, 2025), proposing to amend Class D, E2, and E5 airspace for Miami Executive Airport, in Miami, FL. Subsequent to publication of the NPRM, FAA determined that it needed to include an administrative update to the legal description of the Miami E5

Airspace to incorporate routine coordinate adjustments. This amendment updates the coordinates of LAYDN IAF, Miami, FL, to lat. 25°38'22" N, long. 80°31'28" W; the coordinates of Pompano Beach Airpark, Pompano Beach, FL, to lat. 26°14'50" N, long. 80°06'40" W; and the coordinates of North Perry Airport, Hollywood, FL, to lat. 26°00'05" N, long. 80°14'26" W. The adjustments to the coordinates are nominal and do not result in regulatorily significant changes to airspace boundaries. These changes also impose no additional requirements on users of the airspace. Accordingly, as these are administrative changes only, the FAA finds good cause that recirculating the NPRM for public notice and comment is unnecessary.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1G, *FAA National Environmental Policy Act Implementing Procedures*, paragraph B-2.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant the preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order JO 7400.11K, *Airspace Designations and Reporting Points*, dated August 4, 2025, and effective September 15, 2025, is amended as follows:

* * * * *

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Miami, FL [Amended]

Miami Executive Airport, FL
(Lat. 25°38'51" N, long. 80°26'00" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of the Miami Executive Airport, and within 1.2 miles each side of the 267° bearing from the airport reference point extending from the 4.3-mile radius to 5.9 miles west of the airport reference point, excluding that airspace within the Miami, FL, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ASO FL E2 Miami, FL [Amended]

Miami Executive Airport, FL
(Lat. 25°38'51" N, long. 80°26'00" W)

Within a 5-mile radius of Miami Executive Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

ASO FL E5 Miami, FL [Amended]

Miami International Airport, FL
(Lat. 25°47'43" N, long. 80°17'24" W)
Homestead ARB

(Lat. 25°29'19" N, long. 80°23'01" W)

Miami Opa-Locka Executive Airport

(Lat. 25°54'27" N, long. 80°16'42" W)

Fort Lauderdale-Hollywood International Airport

(Lat. 26°04'18" N, long. 80°08'59" W)

Miami Executive Airport

(Lat. 25°38'51" N, long. 80°26'00" W)

LAYDN IAF

(Lat. 25°38'22" N, long. 80°31'28" W)

Fort Lauderdale Executive Airport

(Lat. 26°11'50" N, long. 80°10'15" W)

Pompano Pompano Beach Airpark

(Lat. 26°14'50" N, long. 80°06'40" W)

North North Perry Airport

(Lat. 26°00'05" N, long. 80°14'26" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Miami International Airport, Homestead ARB, Miami Opa-Locka Executive Airport, Fort Lauderdale-Hollywood International Airport, and Miami Executive Airport, and within 2.4 miles each side of the 267° bearing from the LAYDN IAF extending from the 7-mile radius to 7 miles west of the IAF, and within a 6.5-mile radius of Fort Lauderdale Executive Airport, Pompano Beach Airpark and North Perry Airport.

* * * * *

Issued in College Park, Georgia, on
February 10, 2026

Patrick Young,

*Manager, Airspace & Procedures Team North,
Eastern Service Center, Air Traffic
Organization.*

[FR Doc. 2026–02919 Filed 2–12–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 75

[Docket No. FR–6085–N–05]

Section 3 Project Threshold Updates for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses

AGENCY: Office of the Assistant Deputy Secretary for Field Policy and Management, HUD.

ACTION: Notification of Section 3 Project Funding Threshold Updates.

SUMMARY: The Section 3 rule “Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses” published in the **Federal Register** on September 29, 2020, includes a requirement that the HUD Secretary update Section 3 project thresholds “not less than once every 5 years based on a national construction cost inflation factor through **Federal Register** notice not subject to public comment.” This notice serves as an update of the 2020 version of the final rule, discusses the establishment of a national construction cost inflation factor for Section 3 projects, and

establishes new Section 3 project thresholds.

DATES: *Effective Date:* March 16, 2026.

FOR FURTHER INFORMATION CONTACT:

Ashley E. Mendoza, Director of Strategic Initiatives, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street SW, Room 7118–21, Washington, DC 20410; telephone 202–372–8530 (this is not a toll-free number). General email inquiries regarding Section 3 may be sent to:

OfficeofFieldPolicyandManagement@hud.gov. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3) contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. HUD is statutorily charged with the authority and responsibility to implement and enforce Section 3 through regulation, which HUD has done through the final rule titled “Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses,” published on September 29, 2020 in the **Federal Register** at 85 FR 61524 (“Section 3 final rule”), which amended, among others, 24 CFR part 75.

Applicability is covered in 24 CFR 75.3, where the regulation establishes that Section 3 requirements apply to “public housing financial assistance and Section 3 projects.” Public housing does not have a threshold for financial assistance and any dollar amount of public housing financial assistance provided to grantees will trigger Section 3 compliance requirements. Therefore, this notice does not apply to public housing financial assistance, which is subsequently defined at 24 CFR 75.3(a)(1).

A “Section 3 project” on the other hand is a unique term that is subject to financial assistance thresholds and is defined in 24 CFR 75.3(a)(2)(i) to mean . . . *housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of \$200,000. The threshold is \$100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 or 1701z–2), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.); and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 et seq.). The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.*

HUD’s Section 3 final rule requires at 24 CFR 75.3(a)(2)(ii) that “[t]he Secretary must update the thresholds provided in paragraph (a)(2)(i) not less than once every 5 years based on a national construction cost inflation factor through **Federal Register** notice not subject to public comment.”

II. Research and Methodology

The final rule indicates that updates to the established financial assistance thresholds for Section 3 projects must be based on a “national construction cost inflation factor.” The determination of how to calculate the national construction cost inflation factor is left to the discretion of HUD as the term is undefined in the final rule and comments.

The current definition of Section 3 projects requires Section 3 compliance if a housing rehabilitation, housing construction, or other public construction project receives more than \$200,000 of HUD housing and community development financial assistance or receives more than \$100,000 from Lead Hazard Control and Healthy Homes programs. This means that the thresholds that need to be adjusted for construction cost inflation are \$200,000 and \$100,000 respectively.

The first step in establishing this “national construction cost inflation factor” (hereafter Construction Inflation Factor) is defining “construction.” “Construction” is left undefined in the Section 3 regulations, so analysis requires additional sources. The original drafters of 24 CFR part 75 considered Bureau of Labor Statistics (BLS)

publications when first determining the threshold levels for housing and community development projects, so it makes sense to look to the BLS for additional guidance around this analysis.

The North American Industry Classification System (NAICS), originally developed by the Office of Management and Budget (OMB), is the standard used by Federal statistical agencies, including BLS, in classifying businesses for collecting, analyzing, and publishing statistical data related to U.S. businesses. The NAICS uses two- to six-digit codes to classify different sectors and subsectors of the U.S. business economy, and NAICS 23 broadly covers the construction sector. The NAICS defines Sector 23—Construction as comprising “establishments primarily engaged in the construction of buildings or engineering projects.” It also establishes that “Construction work done may include new work, additions, alterations, or maintenance and repairs.” As Section 3 projects are defined as “housing rehabilitation, housing construction, and other public construction projects,”¹ NAICS 23 clearly encompasses the type of work that is performed on Section 3 projects.

With “construction” defined for purposes of this analysis, the next step is to evaluate and determine what data elements should be considered in developing the “Factor.” When initially determining the threshold, HUD looked at BLS data on labor share for construction projects as part of the calculations. While this analysis does not seek to recreate the same formula that was used in that initial determination of the threshold, which also analyzed CDBG, HOME, and lead hazard grant amounts, it will continue the precedent of using BLS data to estimate cost shares as part of the formula.²

The BLS Office of Productivity and Technology (OPT) defines five different cost shares that represent a portion of and aggregate to the total cost of construction:

1. Capital Share
2. Labor share
3. Energy share*
4. Materials share*
5. Services share*

Each of these shares are defined by OPT as “the proportion of current-dollar

¹ 24 CFR 75.3(a)(2).

² When the original threshold calculations were made, HUD used 2017 BLS data as it was most recent available data. Thus, this analysis will use 2017 data as the baseline for the calculation of the construction cost increase and new thresholds. At the time of writing, the most recent available data for cost shares is 2023 data.

output attributed to the use of [the applicable factor].”³ The final three shares are identified with an asterisk because the BLS also publishes data on “intermediate inputs,” which is an aggregate data point for all energy, materials, and services that are used in the production of other goods and services for final consumption. So, the data related to energy, materials, and services can be combined and represented in the aggregate as “intermediate inputs,” but, for the purposes of this analysis, these three categories will be discussed independently to illustrate the methodology more clearly. This also allows for a more granular investigation

of the changes in construction costs over time. Additionally, OPT publishes their cost shares as fractional shares represented by a decimal to the thousandth place (three decimal places). The published shares are displayed as a percentage to the tenth place (one decimal place) for simplicity, and calculated percentages will be displayed the same way for the sake of consistency.⁴

Table 1 below shows the cost shares (as a percentage of the total construction cost) for each of the components in 2017 and 2023 with the percentage changes over that time period indicated. The percentage change for each category is calculated by finding the difference

between the 2023 share and the 2017 share and then dividing that difference by the baseline 2017 value. A decrease in a category’s share is reflected as a negative percentage change. As illustrated by the data, these five cost share percentages have either increased or decreased by different amounts over the identified period of time, so this analysis will need to consider these changes in calculating the new threshold levels. If these changes in cost shares are not considered, the new thresholds may over- or undervalue certain categories of construction projects and yield a less representative calculation.

TABLE 1

	% of construction cost (2017)	% of construction cost (2023)	% Change
Capital Share	10.4	12.8	23.1
Labor Share	42.8	39.4	– 7.9
Energy Share	2.4	2.1	– 12.5
Materials Share	35.3	35.2	– 0.3
Services Share	9.1	10.5	15.4

Subdividing into those same five categories, BLS also publishes data on construction cost per component of construction:

1. Capital costs
2. Labor costs
3. Energy costs*
4. Materials costs*
5. Services costs*

Each of these costs is defined by OPT as “the payments to purchase [applicable factor] for use in the production of goods and services.”⁵ Again, like with component shares, BLS aggregates energy, materials, and services costs into “intermediate input” cost, but this analysis will use each of the individual component costs.

Table 2 below shows the BLS data on costs for each component of construction from both 2017 and 2023 with the percentage changes included for each. The percentage change for each cost category is calculated by finding the difference between the 2023 cost and the 2017 cost and then dividing that difference by the baseline 2017 cost.⁶

TABLE 2

	2017 Cost in billions (2017)	Cost in billions (2023)	% Change
Capital Cost	\$163.653	\$298.578	82.4
Labor Cost	674.710	919.092	36.2
Energy Cost	37.992	49.116	29.3
Materials Cost	556.730	821.047	47.5
Services Cost	142.764	244.623	71.3

In order to determine how much the overall cost of construction has increased over the identified time period (2017–2023), calculation is first required to find how much each category individually has contributed to the overall cost change. This can be done by multiplying the category’s current cost share percentage by the

percentage change in construction which will result in the fractional (or percentage) contribution of that category’s cost changes to the overall change in total construction cost.

Variables:

If:

- S_x = the share of total construction cost at a given time for a single

category of construction with the subscript X serving as a placeholder (expressed as a decimal)

- ΔC_x = the percentage change in cost for a single category of construction with the subscript X serving as a placeholder (expressed as a decimal)

³ BLS Productivity Glossary (<https://www.bls.gov/productivity/glossary.htm>).

⁴ All calculated values are displayed to the tenth place to match BLS data, but the calculated values

themselves were not rounded in the process of the calculations.

⁵ BLS Productivity Glossary (<https://www.bls.gov/productivity/glossary.htm>).

⁶ The calculated change is displayed as a percentage to the tenth place (one decimal) to match the display of published BLS data. These values were not rounded during the process of the calculation.

Then the calculation can be written as,

$$\bullet S_x \times \Delta C_x$$

The result of this formula tells us how much the total construction cost has changed due to the change in a single category's cost, as a percentage of the overall cost (expressed as a decimal). Stated differently, it is the fractional (or percentage) impact on total construction cost due to a single category's cost change. The final equation for impact (represented by I_x) of the construction category can therefore be written as:

$$I_x = S_x \times \Delta C_x$$

Single Category Example

To more clearly illustrate this concept, one can plug values into the formula. This example will use the category of labor simply because it is the largest cost share of the five. Calculations for the other categories will follow later in this analysis.

For this example, the subscript X will be replaced with subscript L to represent labor, and thus the equation can be rewritten as . . .

$$\bullet I_L = S_L \times \Delta C_L$$

Where:

- S_L = Labor Share
- ΔC_L = the percentage change in Labor Cost over time

- I_L = Impact of labor costs on the overall construction cost change

This calculation will give us the fractional (or percentage) impact on total construction cost due to labor cost changes over the given time frame (in this case 2017–2023).

Using the percentages (expressed as decimals) provided in Tables 1 and 2 respectively, the formula becomes:

$$\bullet 0.394 \times 0.362 = 0.143$$

This means that the overall cost of a construction project went up by 14.3% from 2017 to 2023 as a result of the increase in labor costs over the same period.

Total Cost Increase Formula

As noted, the formula derived above only gives the percentage contribution of a single category to the overall change in total construction cost. To determine the overall percentage increase in total construction cost over time, the contribution of each category's cost increase must be calculated and then combined. This formula will follow the same logic and naming convention as demonstrated in the single category example with labor share.

- S_C = Capital Share
- S_L = Labor Share
- S_E = Energy Share
- S_M = Materials Share
- S_S = Services Share
- ΔC_C = the percentage change in Capital Cost over time

- ΔC_L = the percentage change in Labor Cost over time
- ΔC_E = the percentage change in Energy Cost over time
- ΔC_M = the percentage change in Materials Cost over time
- ΔC_S = the percentage change in Services Cost over time
- I_C = Impact of capital costs on the overall construction cost change
- I_L = Impact of labor costs on the overall construction cost change
- I_E = Impact of energy costs on the overall construction cost change
- I_M = Impact of materials costs on the overall construction cost change
- I_S = Impact of services on the overall construction cost change

This calculation can be expressed as five individual formulas (one for the impact of each category), as demonstrated in the labor example above, added together. Thus, the construction inflation factor (CIF) referenced in 24 CFR 75.3(a)(2)(ii) is defined as the total percentage increase in construction cost over a given time period, which can be expressed as:

$$CIF = I_C + I_L + I_E + I_M + I_S$$

Or, if the respective equations for impact on overall construction cost are inserted, the equation can be rewritten:

$$CIF = (S_C \times \Delta C_C) + (S_L \times \Delta C_L) + (S_E \times \Delta C_E) + (S_M \times \Delta C_M) + (S_S \times \Delta C_S)$$

Substituting percentages given in Tables 1 and 2 (expressed as decimals) results in the following calculation:

$$\bullet (0.128 \times 0.824) + (0.394 \times 0.362) + (0.021 \times 0.293) + (0.352 \times 0.475) + (0.105 \times 0.713)$$

After solving for each category's contribution to the overall change in construction cost, the formula can be simplified and then solved:

$$\bullet 0.106 + 0.143 + 0.006 + 0.167 + 0.075 = 0.496$$

This means that, accounting for the contribution of each of the five

categories, total construction cost increased by 49.6% from 2017 to 2023.⁷

Application to Section 3 Thresholds

With the national construction cost inflation factor defined, the formula can be applied to the existing Section 3 project funding thresholds. To determine the change (in dollars) to the threshold, first multiply the construction inflation factor times the current project threshold. In the formula, the construction inflation factor will be represented by CIF and the current threshold will be represented by T_C :

$$\bullet CIF \times T_C$$

However, this result only shows the change in the threshold. In order to find the new threshold, the current threshold total must be added to the above formula, resulting in the equation for the new threshold (represented as T_N):

$$T_N = T_C + (CIF \times T_C)$$

This equation can also be combined with the above CIF equation to give a single equation to determine the new Section 3 thresholds:

$$T_N = T_C + ((I_C + I_L + I_E + I_M + I_S) \times T_C)$$

⁷ Individual category contributions: Capital = 10.6%; Labor = 14.3%; Energy = 0.6%; Materials = 16.7%; Services = 7.5%

Or, if each of the individual equations is substituted for impact on total

construction cost, the equation can be rewritten:

$$T_N = T_C + (((S_C \times \Delta C_C) + (S_L \times \Delta C_L) + (S_E \times \Delta C_E) + (S_M \times \Delta C_M) + (S_S \times \Delta C_S)) \times T_C)$$

III. Threshold Update

The final step is to plug in the numbers and find the new Section 3 funding thresholds. As was determined in the previous section, the CIF equation showed that the cost of construction increased by 49.6%⁸ from 2017–2023. Using the current thresholds, one can then solve for T_N . There are currently different thresholds for general Housing and Community Development projects and Lead Hazard Control and Healthy Homes projects; therefore, we will solve for both. Housing and Community Development Threshold:⁹

- $T_N = 200,000 + (0.496 \times 200,000)$
- $T_N = \$299,200$

Lead Hazard Control and Healthy Homes Threshold¹⁰

- $T_N = 100,000 + (0.496 \times 100,000)$
- $T_N = \$149,600$

New Section 3 Thresholds

This analysis determines that the Section 3 project thresholds for Housing and Community Development projects and Lead Hazard Control and Healthy Homes projects should be about \$299,200 and \$149,600 respectively. These numbers were computed using the original threshold amounts of \$200,000 and \$100,000 and then using the newly defined national construction cost inflation factor to account for the nationwide increases in construction cost from 2017–2023.

However, it is not practical for compliance efforts to use such exact numbers. Therefore, HUD has decided to round these numbers to *\$300,000 for Section 3 Projects that receive Housing and Community Development financial assistance and \$150,000 where the*

assistance is from Lead Hazard Control and Healthy Homes programs for ease of both external compliance and internal administration and monitoring. The proximity of the raw calculation results to these rounded numbers makes the decision to round very sensible, but it should not serve as a precedent for future calculations as HUD cannot anticipate the adjustments that may later be needed to best administer Section 3.

Joseph DeFelice,

Assistant Deputy Secretary for Field Policy and Management.

[FR Doc. 2026–03002 Filed 2–12–26; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 594

[Docket No. FR–6576–F–01]

Removal of Regulations for the John Heinz Neighborhood Development Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule removes HUD's John Heinz Neighborhood Development Program regulations because the program has not been funded since 1998 and all grants have been closed out.

DATES: *Effective Date:* March 16, 2026.

FOR FURTHER INFORMATION CONTACT:

Wesley Armstrong, Department of Housing and Urban Development, 451 7th Street SW, Room 7200, Washington, DC 20410; telephone number 202–402–2107 (this is not a toll-free number); email Wesley.R.Armstrong@hud.gov. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:

I. Background

Section 832 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 Stat. 3852, codified at 42 U.S.C. 5318a) established the John Heinz Neighborhood Development Program as a permanent program of the Department. Previously, the program had been authorized and operated as a demonstration program, pursuant to section 123 of the Housing and Urban Rural Recovery Act of 1983 (42 U.S.C. 5318 note). The program's purpose was to assist communities to become more viable, by providing incentive funds to carry out neighborhood development activities that benefit low- and moderate-income families. The program funded eligible neighborhood development activities conducted by neighborhood development organizations, including, among others, creating permanent jobs, establishing or expanding businesses, improvements to housing stock, and promoting delivery mechanisms for essential services. The incentive funds were provided as matching funds with a particular emphasis on collaboration with private neighborhood development funding organizations and were available to neighborhood development organizations operating in neighborhoods that meet requirements under 42 U.S.C. 5318, were in enterprise zones under Federal or state law, or were considered qualified distressed communities under 12 U.S.C. 1834(b)(1). HUD published regulations implementing the program on March 29, 1995 (60 FR 16359).

II. This Final Rule

This rule is removing the John Heinz Neighborhood Development Program regulations from title 24 of the Code of Federal Regulations. HUD is removing these regulations because the John Heinz Neighborhood Development Program has run its course. The program was last funded in 1998 and all of its grants have been closed out as of 2025. As a result, all regulations in part 594 are no longer necessary. Removing these regulations would update HUD's regulations and provide clarity to grantees on what programs are actively being funded.

⁸ This number is expressed as a percentage rounded to the tenth place for simplicity in the narrative, but it is not recommended to be rounded during the calculation. Rounding should only take place at the end of the entire calculation process to maintain accuracy.

⁹ The total of \$299,200 is found if the result of the equation for the CIF is rounded to three decimal places, 0.496 in this case. If the results are left unrounded throughout the equation, which is recommended, the total comes to a more accurate \$299,284.11 (rounded to two decimals).

¹⁰ The total of \$149,600 is found if the result of the equation for the CIF is rounded to three decimal places, 0.496 in this case. If the results are left unrounded throughout the equation, which is recommended, the total comes to a more accurate \$149,642.05 (rounded to two decimals).

III. Justification for Final Rulemaking

In accordance with regulations at 24 CFR part 10, it is the practice of the Department to offer interested parties an opportunity to comment on proposed regulations. 24 CFR part 10 provides narrow exceptions to the notice and comment requirements if the Department finds good cause to omit notice and public participation. The good cause requirement under 24 CFR 10.1 may be satisfied when notice and public comment are impracticable, unnecessary, or contrary to the public interest. To publish a rule prior to receiving and responding to public comments, the agency must find that at least one good cause exceptions is applicable.

HUD has determined that good cause exists to promulgate this final rule without prior notice and comment. Specifically, the Department has concluded that it is unnecessary to solicit and respond to public comments on this action because the John Heinz Neighborhood Development Program was last funded in 1998 and all of its grants have been closed out as of 2025. Furthermore, while the statutory authority for the program continues to exist, HUD concludes that regulations are no longer necessary. Accordingly, HUD has concluded there is good cause to publish this rule prior to receiving and responding to public comments.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Executive Order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule eliminates language in 24 CFR part 594 relating to a program which has not been funded since 1998 and which has no open projects or grants. Accordingly, this rule has been determined not to be

a “significant regulatory action” as defined in section 3(f) of Executive Order 12866.

Regulatory Costs—Executive Order 14192

Executive Order 14192, entitled “Unleashing Prosperity Through Deregulation,” was issued on January 31, 2025. Section 3(c) of Executive Order 14192 requires that any 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. OMB has determined that this final rule does not impose any regulatory costs as the regulations relate to a program which has not been funded since 1998 and which has no open projects or grants and is a repeal of a regulation for purposes of Executive Order 14192.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD has determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (ii) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the

Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local, or Tribal governments or the private sector within the meaning of the UMRA.

List of Subjects in 24 CFR Part 594

Community development, Grant programs—housing and community development, Reporting and recordkeeping requirements, Urban renewal.

Accordingly, for the reasons discussed in the preamble, and pursuant to the Secretary’s authority under 42 U.S.C. 3535(d), HUD removes 24 CFR part 594.

Ronald Kurtz,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2026–02915 Filed 2–12–26; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 01–2026]

Privacy Act of 1974; Implementation

AGENCY: Executive Office for Immigration Review, United States Department of Justice.

ACTION: Final rule.

SUMMARY: The Executive Office for Immigration Review (EOIR), a component within the United States Department of Justice (DOJ or Department), is finalizing without changes its Privacy Act exemption regulations for the system of records titled, Adjudication and Appeal Records of the Office of the Chief Immigration Judge and Board of Immigration Appeals, JUSTICE/EOIR–001, which were published as a Notice of Proposed Rulemaking (NPRM) on August 29, 2025. Specifically, the Department’s regulations will exempt the records maintained in JUSTICE/EOIR–001 from one or more provisions of the Privacy

Act. The exemptions are necessary to protect properly classified information and law enforcement sensitive materials maintained in the system. The Department received one anonymous comment in support of this rulemaking in response to the NPRM.

DATES: This final rule is effective March 16, 2026.

FOR FURTHER INFORMATION CONTACT:

Justine Fuga, Senior Component Official for Privacy, Office of the General Counsel; Executive Office for Immigration Review, 900 Market Street, Suite 504 Annex, Philadelphia, PA 19107; Justine.Fuga@usdoj.gov; EOIR.Privacy.Intake@usdoj.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under delegated authority from the Attorney General, EOIR interprets and administers federal immigration laws by conducting immigration court proceedings, appellate reviews, and administrative hearings. Two of EOIR's adjudicating components include the Office of the Chief Immigration Judge (OCIJ) and the Board of Immigration Appeals (BIA or Board). OCIJ oversees the administration of the immigration courts nationwide. 8 CFR 1003.9. Immigration judges are responsible for conducting immigration court proceedings. 8 CFR 1003.10. Decisions of immigration judges are subject to review by the BIA in any case in which the BIA has jurisdiction. 8 CFR 1003.10(c). The BIA is the highest administrative body for interpreting and applying immigration laws. 8 CFR 1003.1. The BIA and its appellate immigration judges have nationwide jurisdiction to review certain decisions rendered by immigration judges, Adjudicating Officials in attorney discipline cases, and district directors of the Department of Homeland Security (DHS). 8 CFR 1003.1(b).

Parties to immigration proceedings may file documents with the immigration court or the BIA by mail, hand delivery, or electronically. 8 CFR 1003.2(g), 1003.3(g), 1003.31. The official file containing the documents relating to an individual's immigration case is the Record of Proceeding (ROP), which may be paper or electronic. ROPs generally contain the Notice to Appear (Form I-862), hearing notices, a practitioner of record's entry of appearance form (Forms EOIR-27 or EOIR-28) (if any), any change of address forms (Form EOIR-33), applications for immigration relief, evidence, exhibits, motions, briefs, and all written orders and decisions of the immigration judge or appellate immigration judge(s). See 8

CFR 1240.9. When relevant to the immigration relief sought, parties may also file documents and materials pertaining to an individual's criminal history or terroristic activities, and such materials are incorporated into the ROP. See 8 U.S.C. 1182 (describing grounds for inadmissibility to include criminal- and security-related grounds). Such information may be classified or law enforcement sensitive, filed under seal or per a request for an *in camera* hearing. Immigration hearings are digitally recorded, and hearings may be transcribed. 8 CFR 1240.9. Transcripts of hearings may also be included in the ROP. 8 CFR 1240.9.

EOIR maintains a system of records used by OCIJ and the BIA to process, track, and adjudicate immigration proceedings. EOIR is modifying the system of records, Adjudication and Appeal Records of the Office of the Chief Immigration Judge and Board of Immigration Appeals, JUSTICE/EOIR-001, to account for changes in the scope, character and format, and routine uses of records in this system that have occurred since EOIR last published a complete system of records notice on May 11, 2004. See Records and Information Management System, JUSTICE/EOIR-001, 68 FR 26179 (May 11, 2004). EOIR is modifying the system of records in the following ways. First, EOIR is expanding the scope of this system of records by consolidating it with another system of records, Decisions of the Board of Immigration Appeals, JUSTICE/BIA-001, 48 FR 5331 (Feb. 4, 1983). The records in both systems serve the same purposes, are authorized by the same legal authorities, and have similar routine uses. EOIR will rename JUSTICE/EOIR-001 from "Records and Management Information System" to "Adjudication and Appeal Records of the Office of the Chief Immigration Judge and Board of Immigration Appeals." Second, EOIR is modifying this system of records to encompass electronic records used by OCIJ and the BIA to adjudicate immigration proceedings. OCIJ and the BIA have incorporated digital processes producing electronic records that are not currently captured in EOIR's systems of records notices. Third, EOIR is updating some of the routine uses of this system of records to clarify EOIR's current information sharing practices. Because the system of records is being modified, EOIR is updating the Privacy Act exemptions claimed for the system.

II. Privacy Act Exemptions

The Privacy Act allows Federal agencies to exempt eligible records in a system of records from certain

provisions of the Act, including those that provide individuals with a right to request access to and amendment of records about the individual, by means of a rulemaking proceeding pursuant to 5 U.S.C. 553(b)(1)–(3), (c), and (e).

The Department is modifying 28 CFR part 16 to amend the Privacy Act exemptions for the modified system of records, Adjudication and Appeal Records of the Office of the Chief Immigration Judge and Board of Immigration Appeals, JUSTICE/EOIR-001. The regulations at 28 CFR 16.83 codify the exemption of EOIR's Adjudication and Appeal Records of the Office of the Chief Immigration Judge and Board of Immigration Appeals, JUSTICE/EOIR-001, from 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1), and from 5 U.S.C. 552a(d)(2), (3), and (4) pursuant to 5 U.S.C. 552a(k)(2). The regulations at 28 CFR 16.84 codify the exemption of the Board of Immigration Appeals system of records, JUSTICE/BIA-001, from 5 U.S.C. 552a(d)(2), (3), and (4) pursuant to 5 U.S.C. 552a(k).

EOIR is consolidating these two systems of records. As such, the Department proposes to remove and reserve 28 CFR 16.84 and to rename the system as it appears in 28 CFR 16.83 to "Adjudication and Appeal Records of the Office of the Chief Immigration Judge and the Board of Immigration Appeals." The Department is not proposing any other changes to 28 CFR 16.83 as the exemptions from 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1), and from 5 U.S.C. 552a(d)(2), (3), and (4) pursuant to 5 U.S.C. 552a(k)(2), continue to apply to this consolidated system of records for the reasons provided in the regulations and restated here:

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) The Executive Office for Immigration Review's Records and Management Information System (JUSTICE/EOIR-001).

This exemption applies only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a(k)(1) and (2).

(b) Exemption from the subsections set forth below is justified for the following reasons:

(1) From subsection (d) because access to information which has been properly classified pursuant to an Executive Order could have an adverse effect on the national security. In addition, from subsection (d) because unauthorized access to certain investigatory material could compromise ongoing or potential investigations; reveal the identity of confidential informants; or constitute

unwarranted invasions of the personal privacy of third parties.

(2) From subsection (d) (2), (3), and (4) because the record of proceeding constitutes an official record which includes transcripts of quasi-judicial administrative proceedings, investigatory materials, evidentiary materials such as exhibits, decisional memoranda, and other case-related papers. Administrative due process could not be achieved by the ex parte “correction” of such materials by the individual who is the subject thereof.

28 CFR 16.83. The language in 28 CFR 16.84 with respect to the exemption from 5 U.S.C. 552a(d)(2), (3), and (4) is duplicative of 28 CFR 16.83(b)(2), obviating the need for any modifications to the regulations to account for the consolidation of the two systems.

These exemptions apply only to the extent that records in this system of records are subject to the exemptions in 5 U.S.C. 552a(k)(1) and (k)(2). To the extent that a record pertaining to an individual does not relate to national defense or foreign policy, official Federal investigations, and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law or regulatory enforcement process, the applicable exemption may be waived by EOIR.

The Department received one supportive comment from an anonymous submitter in response to the NPRM for JUSTICE/EOIR–001 (90 FR 42148 (Aug. 29, 2025)) and now finalizes this rule without changes.

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review” section 1(b), Principles of Regulation, and Executive Order 13563 “Improving Regulation and Regulatory Review” section 1(b), General Principles of Regulation. The Department of Justice has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Information and Regulatory Affairs within the Office of Management and Budget pursuant to Executive Order 12866.

Regulatory Flexibility Act

This regulation will only impact Privacy Act-protected records, which are personal and generally do not apply to an individual’s entrepreneurial capacity, subject to limited exceptions. Accordingly, the Chief Privacy and Civil

Liberties Officer, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

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

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 801 *et seq.*, requires the Department to comply with small entity requests for information and advice about compliance with statutes and regulations within the Department’s jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT** paragraph, above. Persons can obtain further information regarding SBREFA on the Small Business Administration’s web page at <https://www.sba.gov/advocacy>. This proposed rule is not a major rule as defined by 5 U.S.C. 804 of the Congressional Review Act.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This regulation will have no implications for Indian Tribal governments. More specifically, it does not have substantial direct effects 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. Therefore, the consultation

requirements of Executive Order 13175 do not apply.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000, as adjusted for inflation, or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires the Department to consider the impact of paperwork and other information collection burdens imposed on the public. This system of records encompasses the official records of proceedings (ROPs) in immigration cases before EOIR, which are comprised in part by EOIR and DHS forms subject to the Paperwork Reduction Act. A list of active EOIR forms and their OMB Control Numbers can be found on the EOIR website at <https://www.justice.gov/eoir/eoir-forms>. A list of active DHS forms and their OMB Control Numbers can be found on the DHS website at <https://www.dhs.gov/find-dhs-forms>.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated by Attorney General Order 2940–2008, the Department of Justice amends 28 CFR part 16 as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

- 1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717; 42 U.S.C. 405.

Subpart E—Exemption of Records Systems Under the Privacy Act

- 2. Amend § 16.83 by revising and republishing paragraph (a) to read as follows:

§ 16.83 Exemption of the Executive Office for Immigration Review System—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) The Executive Office for Immigration Review's Adjudication and Appeal Records of the Office of the Chief Immigration Judge and Board of Immigration Appeals (JUSTICE/EOIR-001).

(2) These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a(k)(1) and (k)(2).

* * * * *

§ 16.84 [Removed and Reserved]

■ 3. Remove and reserve § 16.84

Dated: February 10, 2026.

Peter Winn,

Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.

[FR Doc. 2026-02882 Filed 2-12-26; 8:45 am]

BILLING CODE 4410-30-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA-2019-0001]

RIN 1218-AC93

Hazard Communication Standard; Corrections

Correction

§ 1910.1200 Hazard communication. [Corrected]

■ In rule document 2026-00147, appearing on pages 562 through 598 in the issue of Thursday, January 8, 2026, make the following correction:

On page 572, below Table B.5.1, “* * * * *” should read:

(1) *The critical temperature is the temperature above which a pure gas cannot be liquefied, regardless of the degree of compression.*

Note: Aerosols and chemicals under pressure should not be classified as gases under pressure. See Appendix B.3 of this section.

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[FR Doc. C1-2026-00147 Filed 2-12-26; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT-037-FOR; Docket ID: OSM-2021-0006; S1D1S SS08011000 SX064A000 212S180110; S2D2S SS08011000 SX064A000 21XS501520]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) approves an amendment to the Montana regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposed an addition to the Montana Code Annotated (MCA), which would revise and add regulations in the Administrative Rules of Montana (ARM) pertaining to ownership and control. These changes were required by an October 2, 2009, letter from OSM to Montana and in response, Senate bill 92, was approved by the 2013 Montana Legislature. Montana also proposed other ARM revisions unrelated to ownership and control.

DATES: The effective date is March 16, 2026.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Division Chief, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Casper, Wyoming 82602. Telephone: (307) 204-4397, Email: jfleischman@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the Montana Program
- II. Submission of the Amendment
- III. OSM's Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Statutory and Executive Order Reviews

I. Background on the Montana Program

Subject to OSM's oversight, section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the

Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning the Montana program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Submission of the Amendment

By letter dated July 28, 2021 (FDMS Document ID No. OSM-2021-0006-0001), Montana sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) that proposed revisions to existing ARM that would satisfy the statutory changes in the MCA, including revisions to 17.24.301 (Definitions), 17.24.302 (Format, Data Collection, and Supplemental Information), 17.24.303 (Legal, Financial, Compliance, and Related Information), 17.24.416 (Permit Renewal), and 17.24.418 (Transfer of Permits). New provisions in the ARM proposed by Montana that would satisfy the statutory changes in the MCA include 17.24.1229 (Criminal Penalties and Civil Actions), 17.24.1264 (Montana Department of Environmental Quality Obligations Regarding the Applicant Violator System), 17.24.1265 (Montana Department of Environmental Quality Eligibility Review), 17.24.1266 (Questions About and Challenges to Ownership or Control Findings), and 17.24.1267 (Information Requirements for Permittees). Montana also proposed minor revisions to the existing ARM that are unrelated to Senate bill 92, at 17.24.304 (Baseline Information: Environmental Resources), 17.24.308 (Operations Plan), 17.24.313 (Reclamation Plan), 17.24.314 (Plan for Protection of the Hydrologic Balance), 17.24.401 (Filing of Application and Notice), 17.24.403 (Informal Conference), 17.24.425 (Administrative Review), and 17.24.1201 (Frequency and Methods of Inspections) that are unrelated to ownership and control.

Montana's submission of Senate bill 92 and proposed changes to the ARM will allow Montana to fulfill the requirements of a letter OSM sent to Montana on October 2, 2009 (hereinafter 732 letter) under the authority of 30 CFR 732.17(d), by promulgating counterpart rules that are no less effective than Federal counterpart regulations. The 732 letter required Montana to submit a State program amendment that pertained to the Applicant Violator System and ownership and control provisions. The Applicant Violator System and challenges to listings in the Applicant Violator System are found in

SMCRA's implementing regulations, at 30 CFR 773.25, 773.26, and 773.28.

We announced receipt of the proposed amendment in the January 11, 2022, **Federal Register** (87 FR 1372). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. No public hearing was held because no request for a public hearing was received. We received two public comments about the program amendment, and the public comment period ended on February 10, 2022. During our review of the amendment, we identified five concerns with the program amendment as submitted. Our concerns included (1) typographical and grammatical errors, (2) requiring Taxpayer Identification Numbers for the applicant and operator of the pending permit application, (3) requiring "Partner" and "Member" of the applicant and operator to submit information as required by Federal counterpart rules, (4) applying a willful or knowing standard for liability regarding characterizing criminal penalties and civil actions consistent with Federal counterpart rules, and (5) including clarifying language similar to Federal counterpart rules. We notified Montana of these concerns by letter dated March 30, 2023 (Docket ID: OSM-2021-0006-0004). We delayed final rulemaking to afford Montana the opportunity to submit new material to address the deficiencies. Montana responded in a letter dated May 3, 2023, and provided us with a revised program amendment proposal, which addressed all of the concerns identified in our March 30, 2023, letter (Docket ID: OSM-2021-0006-0004). On August 7, 2023, OSM announced receipt of the revised program amendment proposal in the **Federal Register** (88 FR 52082) (Docket ID: OSM-2021-0006-0005). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. No public hearing was held because no request for a public hearing was received. No comments were received. The public comment period ended August 22, 2023. Because Montana addressed all our concerns with the initial program amendment submission and we had no additional concerns with the revised program amendment submission, we are proceeding with the final rule notice of approval.

III. OSM's Findings

SMCRA sections 503 and 505, and the Federal regulations at 30 CFR 730.5,

establish the criteria for approval of State SMCRA programs. A State program must set forth requirements that satisfy the Federal minimum standards and must include provisions that are no less stringent than SMCRA and no less effective than the Federal regulations.

The following is a summary of the proposed statutory and rule changes submitted by Montana, as well as OSM's findings concerning Montana's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. For the reasons discussed below, we are approving the amendment.

A. MCA 82-4-222—Permit Application—Application Revisions

Senate bill 92, passed in the 2013 Montana legislature and as submitted as part of this formal program amendment, contained some provisions that were already reviewed and approved by OSM (84 FR 56689). Those provisions include the changes proposed by Montana in their formal program amendment submittal SATS No. MT-035-FOR and include the changes in MCA 82-4-222(1)(k), MCA 82-4-222 (1)(l), MCA 82-4-222 (1)(r)(2), MCA 82-4-222 (1)(r)(2)(l), MCA 82-4-222 (1)(r)(2)(m), MCA 82-4-222 (1)(r)(2)(n), and MCA 82-4-222 (1)(r)(8).

B. MCA 82-4-226—Prospecting Permit

Senate bill 92, passed in the 2013 Montana legislature and as submitted as part of this formal program amendment, contained provisions that were already reviewed and approved by OSM (84 FR 56689). Those provisions include the changes proposed by Montana in their formal program amendment submittal SATS No. MT-035-FOR and include the changes in MCA 82-4-226(2), (7), MCA 82-4-226 (7)(b)(i), and MCA 82-4-226 (7)(b)(ii).

C. MCA 82-4-227—Refusal of Permit—Applicant Violator System

Senate bill 92, passed in the 2013 Montana legislature and as submitted as part of this formal program amendment, contained provisions that were already reviewed and approved by OSM (84 FR 56689). Those provisions include the changes proposed by Montana in their formal program amendment submittal SATS No. MT-035-FOR and include the changes in MCA 82-4-227(8). Our findings related to the remaining changes in Senate bill 92 follow.

Montana proposes to add language to the MCA 82-4-227 under the Montana Strip and Underground Mine Reclamation Act (MSUMRA). New language in subsection (14) of MCA 82-

4-227 allows a person listed in the Applicant Violator System as owning or controlling a strip-mining or underground mining operation to challenge the ownership or control listing. This subsection also outlines the responsibilities of the Montana Department of Environmental Quality (MDEQ), which is the State regulatory authority in Montana, pertaining to a challenge to ownership or control listings as well as hearing rights of the person listed in the Applicant Violator System once receiving a response from the MDEQ on that challenge.

During our review of this provision in Montana's July 28, 2021 amendment submittal, we found that Montana would need to include clarifying language in this proposed statute similar to language found in 30 CFR 773.26(b), which clarifies that the provisions of this section apply only to challenges to ownership or control listings or findings and that these provisions may not be used to challenge liability or responsibility under any other provision of the Act or its implementing regulations. On May 3, 2023, Montana made this required change in their resubmittal of the formal program amendment with this clarifying language.

This provision of Montana's amendment (as submitted on July 28, 2021, and as revised on May 3, 2023) summarizes the Federal counterpart rules which address how to challenge ownership and control findings and listings in the Applicant Violator System, requirements of the applicant and regulatory authority, and clarifying language similar to 30 CFR 773.26(b), and we find these provisions to be no less effective than counterpart Federal regulations. This statutory provision is therefore in accordance with SMCRA and consistent with the Federal regulations, and we are therefore approving the incorporation of MCA § 82-4-227, subsection 14, into the Montana program.

D. Minor Revisions to the ARM

In its program amendment submission, Montana proposes recodifications and other minor wording, editorial, punctuation, grammatical, citation, and cross-reference changes in ARM 17.24.301, which will define terms related to the Applicant Violator System and to also clarify and streamline existing definitions. No substantive changes to the text of these rules were proposed. Because these changes are minor, and, as explained in more detail below, OSM finds that the proposed changes are no less stringent than SMCRA and no less

effective than the counterpart Federal regulations. Therefore, we are approving the following proposed rule changes.

- ARM 17.24.301 (13); added new “applicant violator system” definition. ARM 17.24.301 (13) to ARM 17.24.301 (14); recodification and deletion of “approximate original contour” definition; refer reader to definition of “approximate original contour” in MCA 82–4–203. ARM 17.24.301 (14) to ARM 17.24.301 (15); recodify “aquifer” definition. ARM 17.24.301 (15) to ARM 17.24.301 (16); recodify “area of land affected” definition. ARM 17.24.301 (16) to ARM 17.24.301 (17); recodify “arid and semiarid area” definition. ARM 17.24.301 (17) to ARM 17.24.301 (18); recodify “auger mining” definition. ARM 17.24.301 (18) to ARM 17.24.301 (19); recodify “bench” definition. ARM 17.24.301 (19) to ARM 17.24.301 (20); recodify “best technology currently available or BTCA” definition. ARM 17.24.301 (20) to ARM 17.24.301 (21); recodify “cemetery” definition. ARM 17.24.301 (21) to ARM 17.24.301 (22); recodify “coal conservation plan” definition. ARM 17.24.301 (22) to ARM 17.24.301 (23); recodify “coal preparation and coal preparation plant” definition. ARM 17.24.301(23) to ARM 17.24.301 (24); recodify “coal processing waste” definition. ARM 17.24.301(24) to ARM 17.24.301 (25); recodify “collateral bond” definition. ARM 17.24.301(25) to ARM 17.24.301 (26); recodify “combustible material” definition. ARM 17.24.301(26) to ARM 17.24.301 (27); recodify “community or institutional building” definition. ARM 17.24.301(27) to ARM 17.24.301 (28); recodify “contour strip mining” definition. ARM 17.24.307(28) to 17.24.301 (29); added new definition of “control or controller”. ARM 17.24.301 (30); recodify “cover” definition. ARM 17.24.301 (29) to ARM 17.24.301 (31); recodify “cultural resources” definition. ARM 17.24.301 (30) to ARM 17.24.301 (32); recodify “cumulative hydrologic impacts” definition. ARM 17.24.301 (31) to ARM 17.24.301 (33); recodify “cumulative hydrologic impact area” definition. ARM 17.24.301 (32) to ARM 17.24.301 (34); recodify “disturbed area” definition. ARM 17.24.301 (33) to ARM 17.24.301 (35); recodify “diversion” definition. ARM 17.24.301 (34) to ARM 17.24.301 (36); recodify “domestic water supply” definition. ARM 17.24.301 (35) to ARM 17.24.301 (37); recodify “downslope” definition. ARM 17.24.301 (36) to ARM 17.24.301 (38); recodify “dwelling” definition. ARM 17.24.301 (37) to ARM 17.24.301 (39); recodify “embankment” definition. ARM 17.24.301 (38) to ARM 17.24.301

(40); recodify “ephemeral drainageway” definition. ARM 17.24.301 (39) to ARM 17.24.301 (41); recodify “essential hydrologic functions” definition. ARM 17.24.301 (40) to ARM 17.24.301 (42); recodify “excess spoil” definition. ARM 17.24.301 (41) to ARM 17.24.301 (43); recodify “farm” definition. ARM 17.24.301 (42) to ARM 17.24.301 (44); recodify “federal coal regulatory authority” definition. ARM 17.24.301 (43) to ARM 17.24.301 (45); recodify “flood irrigation” definition. ARM 17.24.301 (44) to ARM 17.24.301 (46); recodify “fragile lands” definition. ARM 17.24.301 (45) to ARM 17.24.301 (47); recodify “fugitive dust” definition. ARM 17.24.301 (46) to ARM 17.24.301 (48); recodify “good ecological integrity” definition. ARM 17.24.301 (47) to ARM 17.24.301 (49); recodify “ground water” definition. ARM 17.24.301 (48) to ARM 17.24.301 (50); recodify “habitat or characteristic pattern” definition. ARM 17.24.301 (49) to ARM 17.24.301 (51); recodify “head-of-hollow fill” definition. ARM 17.24.301 (50) to ARM 17.24.301 (52); recodify “higher or better uses” definition. ARM 17.24.301 (51) to ARM 17.24.301 (53); recodify “highwall” definition. ARM 17.24.301 (52) to ARM 17.24.301 (54); recodify “historic lands” definition. ARM 17.24.301 (53) to ARM 17.24.301 (55); recodify “historically used for cropland” definition. ARM 17.24.301 (54) to ARM 17.24.301 (56); recodify and delete “hydrologic balance” definition; refer reader to definition of “hydrologic balance” in MCA 82–4–203. ARM 17.24.301 (55) to ARM 17.24.301 (57); recodify “hydrologic regime” definition. ARM 17.24.301 (56) to ARM 17.24.301 (58); recodify “imminent danger to the health and safety of the public” definition. ARM 17.24.301 (57) to ARM 17.24.301 (59); recodify “impoundment” definition. ARM 17.24.301 (58) to ARM 17.24.301 (60); recodify “inactive mining operation” definition. ARM 17.24.301 (59) to ARM 17.24.301 (61); recodify “incidental boundary revision” definition. ARM 17.24.301 (60) to ARM 17.24.301 (62); recodify “intermittent stream” definition. ARM 17.24.301 (61) to ARM 17.24.301 (63); recodify “in situ processing” definition. ARM 17.24.301 (62) to ARM 17.24.301 (64); recodify “irreparable damage to the environment” definition. ARM 17.24.301 (63) to ARM 17.24.301 (65); recodify “knowingly” definition; remove “an individual” in the definition and replace with “a person”. ARM 17.24.301 (64) to ARM 17.24.301 (66); recodify “land use” definition. ARM 17.24.301 (65) to ARM 17.24.301

(67); recodify “major revision” definition. ARM 17.24.301 (66) to ARM 17.24.301 (68); recodify “material damage” definition as it relates to the ARM subchapter 9 rules (Strip and Underground Mine Reclamation Act: Underground Coal and Uranium Mining). ARM 17.24.301 (67) to ARM 17.24.301 (69); recodify “material damage” definition as defined in MCA 82–4–203. ARM 17.24.301 (68) to ARM 17.24.301 (70); recodify “materially damage the quantity or quality of water” definition. ARM 17.24.301 (69) to ARM 17.24.301 (71); recodify “mine plan area” definition. ARM 17.24.301 (70) to ARM 17.24.301 (72); recodify “mineral” definition. ARM 17.24.301 (71) to ARM 17.24.301 (73); recodify “minor revision” definition. ARM 17.24.301 (72) to ARM 17.24.301 (74); recodify “mulch” definition. ARM 17.24.301 (73) to ARM 17.24.301 (75); recodify “natural hazard lands” definition. ARM 17.24.301 (74) to ARM 17.24.301 (76); recodify “non-commercial building” definition. ARM 17.24.301 (75) to ARM 17.24.301 (77); recodify “noxious plants” definition. ARM 17.24.301 (76) to ARM 17.24.301 (78); recodify “occupied residential dwelling and structures related thereto” definition. ARM 17.24.301 (77) to ARM 17.24.301 (79); recodify “operation” definition. ARM 17.24.301 (78) to ARM 17.24.301 (80); recodify “operator” definition. ARM 17.24.301 (79) to ARM 17.24.301 (81); recodify “other treatment facilities” definition. ARM 17.24.301 (80) to ARM 17.24.301 (82); recodify “outslope” definition. ARM 17.24.301 (81) to ARM 17.24.301 (83); recodify “overburden” definition. ARM 17.24.301 (82) to ARM 17.24.301 (84); reword the definition of “owned, controlled and owns or controls by removing “owned”, “controlled”, and “owns or controls”, and adding “own, owner or ownership”; recodify new “own, owner, or ownership” definition. ARM 17.24.301 (83) to ARM 17.24.301 (85); recodify “perennial stream” definition. ARM 17.24.301 (84) to ARM 17.24.301 (86); recodify “permanent diversion” definition. ARM 17.24.301 (85) to ARM 17.24.301 (87); recodify “permanent impoundment” definition. ARM 17.24.301 (86) to ARM 17.24.301 (88); recodify “permit area” definition. ARM 17.24.301 (87) to ARM 17.24.301 (89); recodify “person having an interest which is or may be adversely affected or person with a valid legal interest” definition. ARM 17.24.301 (88) to ARM 17.24.301 (90); recodify “precipitation event” definition. ARM 17.24.301 (89) to ARM 17.24.301 (91); recodify “previously mined area” definition.

ARM 17.24.301 (90) to ARM 17.24.301 (92); recodify “prime farmland” definition. ARM 17.24.301 (91) to ARM 17.24.301 (93); recodify “principal shareholder” definition. ARM 17.24.301 (92) to ARM 17.24.301 (94); recodify “probable hydrologic consequences” definition. ARM 17.24.301 (93) to ARM 17.24.301 (95); recodify “productivity” definition. ARM 17.24.301 (94) to ARM 17.24.301 (96); recodify “prospecting” definition. ARM 17.24.301 (95) to ARM 17.24.301 (97); recodify “public building” definition. ARM 17.24.301 (96) to ARM 17.24.301 (98); recodify “public office” definition. ARM 17.24.301 (97) to ARM 17.24.301 (99); recodify “public park” definition. ARM 17.24.301 (98) to ARM 17.24.301 (100); recodify “railroad loop” definition. ARM 17.24.301 (99) to ARM 17.24.301 (101) recodify “rangeland” definition. ARM 17.24.301 (100) to ARM 17.24.301 (102); recodify “recharge capacity” definition. ARM 17.24.301 (101) to ARM 17.24.301 (103); recodify “reclamation” definition. ARM 17.24.301 (102) to ARM 17.24.301 (104); recodify “recurrence interval” definition. ARM 17.24.301 (103) to ARM 17.24.301 (105); recodify “reference area” definition. ARM 17.24.301 (104) to ARM 17.24.301 (106); recodify “remining” definition. ARM 17.24.301 (105) to ARM 17.24.301 (107); recodify “renewable resource lands” definition. ARM 17.24.301 (106) to ARM 17.24.301 (108); recodify “replace adversely affected domestic water supply” definition. ARM 17.24.301 (107) to ARM 17.24.301 (109); recodify “road” definition and add “subcategories of roads are as follows:” clarifying language to the definition. ARM 17.24.301 (108) to ARM 17.24.301 (110); recodify “safety factor” definition. ARM 17.24.301 (109) to ARM 17.24.301 (111); recodify “sediment” definition. ARM 17.24.301 (110) to ARM 17.24.301 (112); recodify “sedimentation pond” definition. ARM 17.24.301 (111) to ARM 17.24.301 (113); recodify “significant, imminent environmental harm to land, air or water resources” definition. ARM 17.24.301 (112) to ARM 17.24.301 (114); recodify “soil” definition. ARM 17.24.301 (113) to ARM 17.24.301 (115); recodify “soil horizon” definition. ARM 17.24.301 (114) to ARM 17.24.301 (116); recodify “soil survey” definition. ARM 17.24.301 (115) to ARM 17.24.301 (117); recodify “spoil” definition. ARM 17.24.301 (116) to ARM 17.24.301 (118); recodify “stabilize” definition. ARM 17.24.301 (117) to ARM 17.24.301 (119); recodify “subirrigation” definition. ARM 17.24.301 (118) to ARM 17.24.301 (120); recodify “subsidence” definition.

ARM 17.24.301 (119) to ARM 17.24.301 (121); recodify “substantial legal and financial commitments” definition. ARM 17.24.301 (120) to ARM 17.24.301 (122); recodify and add “of uranium prospecting holes” and “Drilling of coal prospecting holes and installation and use of associated disposal pits or installation of ground water monitoring wells does not constitute substantial disturbance” to the definition of “substantially disturb”. Montana’s proposal to add language to this definition in relation to prospecting permits conforms to the changes reviewed and approved by OSM in the **Federal Register** (84 FR 56689). ARM 17.24.301 (121) to ARM 17.24.301 (123); recodify “successor in interest” definition. ARM 17.24.301 (122) to ARM 17.24.301 (124); recodify “surety bond” definition. ARM 17.24.301 (123) to ARM 17.24.301 (125); recodify “surface water” definition. ARM 17.24.301 (124) to ARM 17.24.301 (126); recodify “suspended solids or nonfilterable residue” definition. ARM 17.24.301 (125) to ARM 17.24.301 (127); recodify “temporary diversion” definition. ARM 17.24.301 (126) to ARM 17.24.301 (128); recodify “temporary impoundment” definition. ARM 17.24.301 (127) to ARM 17.24.301 (129); recodify “test pit” definition. ARM 17.24.301 (128) to ARM 17.24.301 (130); recodify “toxic-forming materials” definition. ARM 17.24.301 (129) to ARM 17.24.301 (131); recodify “toxic mine drainage” definition. ARM 17.24.301 (130) to ARM 17.24.301 (132); recodify and remove “in ownership or other effective control over the right to conduct strip or underground mining operations under a permit issued by the department” and add “of a permittee” to “transfer, assignment, or sale of permit rights” definition. ARM 17.24.301 (131) to ARM 17.24.301 (133); recodify “unconsolidated streamlaid deposits holding streams” definition. ARM 17.24.301 (132) to ARM 17.24.301 (134); recodify “underground development waste” definition. ARM 17.24.301 (133) to ARM 17.24.301 (135); recodify “undeveloped rangeland” definition. ARM 17.24.301 (134) to ARM 17.24.301 (136); recodify “unwarranted failure to comply” definition. ARM 17.24.301 (135) to ARM 17.24.301 (137); recodify “upland areas” definition. ARM 17.24.301 (136) to ARM 17.24.301 (138); recodify “valley fill” definition. ARM 17.24.301 (137) to ARM 17.24.301 (139); recodify “valid existing rights” definition. ARM 17.24.301 (138) to ARM 17.24.301 (140); recodify “violation notice” definition. ARM 17.24.301 (140) to ARM 17.24.301 (142); recodify “waste” definition. ARM 17.24.301

(141) to ARM 17.24.301 (143); recodify “waste disposal structure” definition. ARM 17.24.301 (142) to ARM 17.24.301 (144); recodify “water table” definition. ARM 17.24.301 (143) to ARM 17.24.301 (145); recodify “wildlife habitat enhancement feature” definition. ARM 17.24.301 (144) to ARM 17.24.301 (146); recodify “willful violation” definition. ARM 17.24.301 (145) to ARM 17.24.301 (147); recodify “willfully definition; strike the words “an individual” and add the word “person” to the definition. These changes are no less stringent than SMCRA and no less effective than the requirements found in the counterpart Federal regulations.

- ARM 17.24.302(1)—Montana proposed to add the language “submitted in a format acceptable to the department”. This change is no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR 777.11(a)(3).

- ARM 17.24.304(1)(f)(iv)(i) to ARM 17.24.304(1)(g); recodification. ARM 17.24.304(1)(f)(iv)(i)(A) to ARM 17.24.304(1)(g)(i); recodification. ARM 17.24.304(1)(f)(iv)(i)(B) to ARM 17.24.304(1)(g)(ii); recodification. ARM 17.24.304(1)(f)(iv)(i)(C) to ARM 17.24.304(1)(g)(iii); recodification. ARM 17.24.304(1)(f)(iv)(i)(D) to ARM 17.24.304(1)(g)(iv); recodification and rule references from (6) to (1)(f), (7)(a)(ii) and (iii) to (1)(g)(ii) and (iii). ARM 17.24.304(1)(f)(iv)(i)(E) to ARM 17.24.304(1)(g)(v); recodification and punctuation revisions (semi-colon struck and period added). ARM 17.24.304(1)(f)(iv)(ii); recodification to an additional sentence in ARM 17.24.304(1)(g)(v); remove the words “in this regard” and add “conducted under (g)”. ARM 17.24.304(1)(j)(iv); minor grammatical changes; remove “through (h)” and add “and (g)”. These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR part 779.

- ARM 17.24.308(1)(b)(vii); minor grammatical changes; addition of the word “or”. These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR part 780.

- ARM 17.24.313(1)(h)(x); addition of the language “pursuant to ARM 17.24.724 and 17.24.726”. ARM 17.24.313(1)(j); minor grammatical changes; remove “(2)” and add “(1)(b)”. These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR part 780.

- ARM 17.24.314(1)(c); minor grammatical changes; remove “(5)” and add “(1)(e)”; remove “(6)” and add “(f)”. ARM 17.24.314(2)(d); minor grammatical changes; remove “(5)” and add “(1)(e)”; remove “(6)” and add “(f)”; and add a comma after “17.24.645”. These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR part 780.

- ARM 17.24.401(3)(b)(ii); minor grammatical changes; add the word “and”. ARM 17.24.401(3)(b)(iii); remove “state the names of the US geological survey 7.5 or 15 minute quadrangle maps that contain the area shown or described, if available; and”. ARM 17.24.401(3)(b)(iv); recodification to ARM 17.24.401(3)(b)(iii). These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR 779.24 and 30 CFR 779.25.

- ARM 17.24.403(2)(c); remove “mine plan” and add the language “proposed mining”. These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR 773.6.

- ARM 17.24.416(4)(a) to ARM 17.24.416(4); recodification. ARM 17.24.416(4)(a)(i) to ARM 17.24.416(4)(a); recodification. ARM 17.24.416(4)(a)(ii) to ARM 17.24.416(4)(b); recodification. ARM 17.24.416(4)(a)(iii) to ARM 17.24.416(4)(c); recodification. ARM 17.24.416(4)(a)(iv) to ARM 17.24.416(4)(d); recodification. ARM 17.24.416(4)(a)(iv)(A) to ARM 17.24.416(4)(d)(i); recodification. ARM 17.24.416(4)(a)(iv)(B) to ARM 17.24.416(4)(d)(ii); recodification. ARM 17.24.416(4)(a)(v) to ARM 17.24.416(4)(e); recodification. ARM 17.24.416(4)(a)(vi) to ARM 17.24.416(4)(f); recodification. ARM 17.24.416(4)(a)(vii) to ARM 17.24.416(4)(g); recodification. ARM 17.24.416(4)(a)(viii) to ARM 17.24.416(4)(h); recodification. ARM 17.24.416(4)(i); add the language “the department determines following an eligibility review and determination as described in ARM 17.24.1265, that the owner or operator is not eligible for a permit,”. ARM 17.24.416(4)(b) to ARM 17.24.416(5); recodification. ARM 17.24.416(4)(c) to ARM 17.24.416(6); recodification. ARM 17.24.416(4)(d) to ARM 17.24.416(7); recodification. ARM 17.24.416(5) to ARM 17.24.416(8); recodification. These changes are no less stringent than SMCRA and no less effective than the requirements found in

counterpart Federal regulations at 30 CFR 774.15.

- ARM 17.24.418(1); minor grammatical changes; add “,”, remove “or”, and add “, or sale”. ARM 17.24.418(2); minor grammatical changes; add “,”, remove “or”, add “, or sale”, and add “rights”. ARM 17.24.418(2)(b)(iii); minor grammatical changes; remove “subchapter 3” and add “ARM 17.24.303”. ARM 17.24.418(4); minor grammatical changes; add “assignment, or” and remove “, or assignment”. These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR 774.17.

- ARM 17.24.425(1); minor grammatical changes; remove “sale, or” and add “, or sale” and “permit”. Minor grammatical changes; ARM 17.24.425(3); remove “department” and add “board”. ARM 17.24.425(6); minor grammatical changes; remove “department”, add “board”, remove “department”, and add “board”. These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR 775.11.

- ARM 17.24.1201(2); add “Any potential violation observed during an aerial inspection shall be investigated on site within three days, provided that any indication of a violation, condition, or practice that creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant and imminent environmental harm to land, air, or water resources shall be investigated immediately. On-site investigations of potential violations observed during an aerial inspection may not be considered to be an additional partial or complete inspection for the purposes of ARM 17.24.1201.” These changes are no less stringent than SMCRA and no less effective than the requirements found in counterpart Federal regulations at 30 CFR 840.11(d)(2).

E. Substantive Revisions to the ARM

1. ARM 17.24.301 Definitions

ARM 17.24.301(139) to ARM 17.24.301(141); in addition to the recodification of the definition of “violation,” “failure,” or “refusal”, at ARM 17.24.301(139), to ARM 17.24.301(141), Montana proposed to add reference to ARM 17.24.1265 (proposed rule pertaining to the Applicant Violator System and permit eligibility determinations) in their current definition of violation, failure, or refusal.

Montana’s proposed change to the definition of violation, failure, or refusal would be for the purposes of ARM 17.24.1217 (individual civil penalties) and their proposed Applicant Violator System rules, at ARM 17.24.1265. The Federal definition of violation, failure, or refusal is for the purposes of individual civil penalties only and not for the Federal rules that pertain to the Applicant Violator System. As proposed, Montana’s changes to the definition of violation, failure, or refusal would comply with the Federal program in terms of the definition of violation, failure, or refusal for the purposes of individual civil penalties. The addition of the language that would make the definition of violation, failure, or refusal also apply to the proposed regulation at ARM 17.24.1265 would not render the Montana program less stringent than SMCRA or less effective than the Federal regulations. Montana’s current definition of violation, although not as verbose as the Federal definition of violation, still remains all-encompassing and, therefore, at least as effective as the Federal regulations.

Montana’s proposed additions to the ARM, at 17.24.301(1)(a) requiring information of the applicant, applicant’s resident agent (*i.e.*, the person who is designated for accepting service of process), and the applicant’s operator, if any, are consistent with and as effective as Federal regulations at 30 CFR 778.11. We approve this change. Montana’s deletion of the words “the person who will pay the abandoned mine reclamation fee pursuant to 30 U.S.C. 1232;” in ARM 17.24.301(1)(a) does not render their program less stringent than SMCRA or less effective than the Federal regulations at 30 CFR 778.11, and we approve this deletion. However, as proposed, ARM 17.24.303(1)(a) still does not require the applicant, applicant’s resident agent and applicant’s operator taxpayer identification numbers for the pending permit application. ARM 17.24.303(1)(a) requires employer identification numbers of the applicant, applicant’s resident agent, and applicant’s operator, but not taxpayer identification numbers. To be consistent with and as effective as Federal regulations at 30 CFR 778.11(a)(2), Montana would need to require taxpayer identification numbers for the applicant and operator in ARM 17.24.303(1)(a). We notified Montana of this concern by letter dated March 30, 2023 (Docket ID: OSM–2021–0006–0004). Montana responded in a letter dated May 3, 2023, and provided us with a follow-up formal program amendment with these required changes

(Docket ID: OSM–2021–0006–0007). Because Montana has submitted changes that would require taxpayer identification numbers for the applicant and operator in ARM 17.24.303(1)(a), we find that these proposed changes with revisions would be no less stringent than SMCRA and no less effective as the Federal regulations at 30 CFR 778.11(a)(2) and approve these changes.

2. ARM 17.24.303 Legal, Financial, Compliance, and Related Information

ARM 17.24.303(1)(e)—Montana proposed to delete the language in ARM 17.24.303(1)(e), which required “the names and addresses of any persons who are engaged in strip or underground mining on behalf of the applicant and any person who will conduct such operations should the permit be granted;”. This language is no longer needed as these requirements are now in ARM 17.24.303(1)(a). This proposed deletion of ARM 17.24.303(1)(e) would not render their program less stringent than SMCRA or less effective than the Federal regulations at 30 CFR 778.11, and we approve this deletion. Montana also recodified ARM 17.24.303(1)(f) to ARM 17.24.303(1)(e) and added the requirement that in addition to the applicant, the operator also provide business entity information. We approve this recodification.

In new ARM 17.24.303(1)(f), Montana has proposed adding “each business entity in the applicant’s an/or operator’s organizational structure, up to and including the ultimate parent entity of the applicant and operator, for every such business entity, the applicant must also provide the required information for every president, chief executive officer, and director (or persons in similar positions), and every person who owns, or records, 10 percent or more of the entity;”. This language is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.11, specifically 30 CFR 778.11(c). The terms “partner” and “member” were omitted from the rule that Montana as initially proposed. The Federal regulations at 30 CFR 778.11(c) include these terms, and so Montana would need to include these terms in their proposed rule for their rule to be consistent with the Federal regulations. We notified Montana of this concern by letter dated March 30, 2023 (Docket ID: OSM–2021–0006–0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with these required changes (Docket ID: OSM–2021–0006–0007). Because Montana has now submitted

changes that would also require partners and members to provide the required information, we find that these proposed changes with revisions to be no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.11(c), and we approve these changes.

In new ARM 17.24.303(1)(g), Montana proposed to add certain language, but the language initially submitted had numerous typos and grammatical errors that were pointed out by OSM in our concern letter to Montana dated March 30, 2023 (Docket ID: OSM–2021–0006–0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with corrections (Docket ID: OSM–2021–0006–0007). As revised, this rule states: “a list of all names under which the applicant, operator, partners or principal shareholders, and operator’s partners or principal shareholders who operate or previously operated a surface coal mine operation in the United States within the five-year period preceding the date of submission of the application.” Because the revised language is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.11, we approve these changes.

In ARM 17.24.303(1)(g)(i)–(iv), Montana proposed minor changes to these rules. As submitted, the changes in ARM 17.24.303(1)(g)(i) contained a minor typographical error. We notified Montana of the typo by letter dated March 30, 2023 (Docket ID: OSM–2021–0006–0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with the necessary correction (Docket ID: OSM–2021–0006–0007). In addition, Montana’s revised program amendment also proposed to add the requirement that the person’s phone number be included, along with other information for each name on the permit application. These changes are no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.11, and we approve both.

Montana also proposed, and we approve, the following changes:

- deletion of the requirement that the persons named in the application provide the control relationship to the applicant in ARM 17.24.303(1)(g)(ii),
- addition of language in ARM 17.24.303(1)(g)(iv) requiring the applicant to submit information related to the regulatory authority with jurisdiction over the permit,
- deletion of the unneeded owner or controller or previously owned or

controlled language in ARM 17.24.303(1)(g)(iv), and;

- addition of the requirement at ARM 17.24.303(1)(h) that persons on the application provide additional information for persons who operate or previously operated coal mining and reclamation operations in the United States within the five years preceding the date of the application.

We approve these proposed additions and deletions as they are no less stringent than SMCRA and no less effective than the Federal regulations, including 30 CFR 778.12.

Montana’s proposed recodification, from ARM 17.24.303(1)(i) to ARM 17.24.303(1)(j), has no substantive effect and is in accordance with SMCRA and consistent with the Federal regulations at 30 CFR 778.11 and 30 CFR 778.13. Thus, we approve these changes.

Montana proposed to recodify ARM 17.24.303(1)(j) to ARM 17.24.303(1)(k), and to keep permit application information confidential, including interests or the holding of lands that share a common border with the permit. We approve these changes as they are no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.13.

Montana’s proposed recodification from ARM 17.24.303(1)(k) to ARM 17.24.303(1)(l) has no substantive effect and would not render their program less stringent than SMCRA or less effective than the Federal regulations at 30 CFR 778.11 and 30 CFR 778.13. We approve these changes.

Montana also proposed to recodify ARM 17.24.303(1)(l) to ARM 17.24.303(1)(m) and proposed new language at ARM 17.24.303(1)(m) to require information from the permit applicant related to permit suspensions, revocations, or performance bond forfeiture for a five-year period preceding the date of the application. The facts involved in each case must also be submitted. Montana also proposed new language in ARM 17.24.303(1)(m)(i), which describes what specific information is required to be submitted if a permit suspension, revocation, or performance bond forfeiture has occurred. Finally, Montana proposed to delete the requirement that the permit issuance date be included with the specific information to be submitted in the event a permit suspension, revocation, or performance bond forfeiture had occurred. Montana’s recodification and proposed additions and minor deletion to the ARM, at 17.24.303(1)(m), are no less stringent than SMCRA and no less effective than the Federal regulations at

30 CFR 778.14. We approve these changes.

Montana proposed to recodify ARM 17.24.303(1)(m) to ARM 17.24.303(1)(n) and to add new language at ARM 17.24.303(1)(n) to require information pertaining to violation notices the applicant or operator has received during the three-year period preceding the date of the permit application as well as current unabated or uncorrected violation notices. Montana has added the requirement that the applicant or operator provide identification numbers of the violation notices mentioned above and removed the requirement that the Mine Safety and Health Administration number of the violation also be included (ARM 17.24.303(1)(n)(i)). Montana has also added the requirement that if applicable, current violation abatement information be included. Montana's recodification and proposed additions and minor deletions to the ARM, at 17.24.303(1)(n), are no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.14. We approve these changes.

Montana's recodifications to the ARM at 17.24.303(1)(o), ARM 17.24.303(1)(p), and ARM 17.24.303(1)(q) have no effect and would not render their program less stringent than SMCRA or less effective than the Federal regulations at 30 CFR 778.14. We approve these changes.

Montana proposed minor changes to the ARM, at 17.24.303(1)(r), about mining within 100 feet of a public road and specifying that the requirements of ARM 17.24.1134, ARM 17.24.1135, and ARM 17.24.1136 would apply. Montana's recodification and proposed additions and deletions to the ARM at 17.24.303(1)(r) are no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.16. In addition, the cross-references in the ARM at 17.24.303(1)(r) are no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.16, which references 30 CFR 761.14 and 761.15. We approve these changes.

Montana proposed to recodify ARM 17.24.303(1)(r) to ARM 17.24.303(1)(s); ARM 17.24.303(1)(s) to ARM 17.24.303(1)(t); ARM 17.24.303(1)(t) to ARM 17.24.303(1)(u); ARM 17.24.303(1)(u) to ARM 17.24.303(1)(v); ARM 17.24.303(1)(v) to ARM 17.24.303(1)(w); ARM 17.24.303(1)(w) to ARM 17.24.303(1)(x); ARM 17.24.303(1)(x) to ARM 17.24.303(1)(y); and ARM 17.24.303(1)(y) to ARM 17.24.303(1)(z). These recodifications have no substantive effect and would be in accordance with SMCRA and consistent with the Federal regulations

at 30 CFR part 778. We approve these changes.

3. ARM 17.24.1229 Criminal Penalties and Civil Actions

Montana is proposing to add a new provision at ARM 17.24.1229(1) that would add alternative enforcement provisions to their existing rules. ARM 17.24.1229(1) directs MDEQ to update the Applicant Violator System when a court enters a judgment against or convicts a person under the MCA for a civil penalty resulting from a violation under Part 1 (82–4–141), permit suspension (82–4–251), or civil penalty resulting from a violation under Part 2 (82–4–254). Montana's proposed new language at ARM 17.24.1229(1) is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 847.2(a). We approve these changes.

Montana's proposed new rule at ARM 17.24.1229(2) that specifies that the existence of a performance bond or bond forfeiture could not be the only reason for deciding against using alternative enforcement, is also no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 847.2(b). We approve these changes.

Montana's proposed new rule at ARM 17.24.1229(3) provides that this rule would not preclude the use of other State of Montana or Federal laws about other enforcement or procedures and is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 847.2(d). We approve these changes.

Montana's proposed new rule at ARM, at 17.24.1229(4) states that "MDEQ may request a criminal justice agency to pursue criminal penalties pursuant to 82–4–141(3) or 82–4–251(6) or (7) MCA." The MCA, at 82–4–141(3), pertains to persons that purposely or knowingly violate any of the provisions of MCA 82–4–141 or order adopted under the same regulation that has become final. The MCA, at 82–4–251(6), pertains to notices (violations) or orders (cessation orders). The MCA, at 82–4–251(7), pertains to attorney fees. The Federal regulations at 30 CFR 847.11 apply a willful or knowing standard before pursuing criminal penalties. The ARM, at 17.24.1229(4), citing MCA 82–4–251(6) does not appear to use the willful or knowing standard before pursuing criminal penalties. To the extent that the willful or knowing standard is not necessary before pursuing criminal penalties in Montana, this provision would be more stringent than SMCRA, and it would be no less

effective than the Federal regulations at 30 CFR 847.11.

As proposed, Montana's new language at ARM 17.24.1229(4) appears to cite incorrect references to the MCA. The referenced section, MCA 82–4–251(7), in the proposed rule at ARM 17.24.1229(4) pertains to attorney fees. We notified Montana of this typo by letter dated March 30, 2023 (Docket ID: OSM–2021–0006–0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with the citation corrected (Docket ID: OSM–2021–0006–0007). Montana proposes to now cite MCA 82–4–254(6) or (7) in the ARM 17.24.1229(4) instead of MCA 82–4–251(6) or (7). This correction is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 847.11(c), and we approve this change.

Montana proposed new language at ARM 17.24.1229(5), when applied in conjunction with the referenced MCA provisions at 82.4.254(3)(c) and (4), is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 847.11 and 30 CFR 847.16. We therefore approve these changes.

4. ARM 17.24.1264 MDEQ's Obligations Regarding the Applicant Violator System

Montana's proposed new rule at ARM 17.24.1264 outlines the requirements of Montana about data entry into the Applicant Violator System, including permit applicant and operator information, permit history information, unabated or uncorrected violation information, and other information identified in the review of the permit application. Timelines for data entry, preliminary findings of ownership or control, and timeframes for owner or controller challenges to a finding by Montana are also included. Finally, Montana included requirements to include information regarding judgments or convictions, as well as permanent permit ineligibility into the Applicant Violator System. Montana's proposed new language at ARM 17.24.1264 is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.8 and 30 CFR 774.11(c) through (h). In addition, when ARM 17.24.1264 is applied with Montana's new statute, MCA 82–4–227(14), which corresponds to section 510(c) of SMCRA and 30 CFR 774.11(c) through (e) pertaining to permanent permit ineligibility, it is no less stringent than SMCRA and no less effective than the Federal regulations. We, therefore, approve these changes.

5. ARM 17.24.1265 MDEQ's Eligibility Review

Montana has proposed a new rule, at ARM 17.24.1265(1)(a)–(d), which outlines Montana's requirements in making permit eligibility determinations and the information used in making such determinations. The new rule references permit information requirements in ARM 17.24.303, the Applicant Violator System, and other information available to Montana including ownership and control information, permit history, previous mining experience, compliance history with SMCRA and MSUMRA, permits, and air or water quality laws. This new rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.9, 30 CFR 773.10, 30 CFR 773.11, and 30 CFR 773.12. Therefore, we approve these changes.

Montana has proposed new language at ARM 17.24.1265(2) giving Montana the authority to conduct additional reviews for an applicant and operator that have no previous mining experience in determining permit eligibility. This provision is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.10. We approve this rule.

Montana has proposed new language at ARM 17.24.1265(3)(a)–(c), which relates to permanent permit ineligibility and the reasons for making a permanent permit ineligibility decision. The new rule references MCA 82–4–227(12), ARM 17.24.405(6)(h), and generally references SMCRA and MSUMRA. After review of this proposed new rule, we notified Montana of two typos by letter dated March 30, 2023 (Docket ID: OSM–2021–0006–0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with these corrections. (Docket ID: OSM–2021–0006–0007). This revised proposed new rule is now no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.12, which references section 510(c) of SMCRA, and 30 CFR 773.9, 773.10, 773.11, 773.13, 773.14, 774.11(c), 773.15, 778.9(d), and 773.19, as well as the general appeal rights in 30 CFR part 775 and 43 CFR 4.1360 through 4.1369. We approve these changes.

Montana has proposed new language at ARM 17.24.1265(4)(a)–(b), which provides for an additional review after permit approval but before permit issuance. This review relies on permit information requirements found in the ARM, at 17.24.303(1)(a), (c), (d), (g), (h), (i), (k), Montana's new Applicant

Violator System rules at ARM 17.24.1264(1), and compliance history from the Applicant Violator System. The review must also be conducted within five business days before permit issuance under ARM 17.24.405. After review of this new rule, we notified Montana of one typo by letter dated March 30, 2023 (Docket ID: OSM–2021–0006–0004). Montana responded in a letter dated May 3, 2023, and Montana resubmitted a revised program amendment with this correction. (Docket ID: OSM–2021–0006–0007). This revised proposed new rule is now no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.9(d), which also references 30 CFR 778.11 through 30 CFR 778.14. We approve these changes.

Montana has proposed new rule at ARM 17.24.1265(5)(a)–(b) that outlines steps to be taken by Montana and the applicant when MDEQ makes a finding that the applicant is ineligible for a permit. When such a finding is made under the proposed new rule, Montana must provide written notification of the decision to the applicant with appeal rights and procedures. The applicant can also challenge a permit ineligibility finding under this new rule as outlined in ARM 17.24.1266(12). This proposed new rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 778.9(b) and 30 CFR 773.25, and we approve these changes.

6. ARM 17.24.1266 Questions About and Challenges to Ownership or Control Findings

Montana has proposed a new rule, at ARM 17.24.1266(1), that provides procedures for inquiries about owner or controller listings in the Applicant Violator System. This proposed new rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.26(e), and we approve this change.

Montana has proposed new language at ARM 17.24.1266(2)(a)–(b) that outlines procedures for challenging owner or controller findings in the Applicant Violator System, as well as the tribunal that would hear such a challenge. This rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.25, and we approve this change.

Montana has proposed new language at ARM 17.24.1266(3)(a)–(b) that provides procedures for challenges to ownership or control listing in the Applicant Violator System that fall under Montana jurisdiction. This new rule is no less stringent than SMCRA

and no less effective than the Federal regulations at 30 CFR 773.26, and we approve this change.

Montana has proposed new language at ARM 17.24.1266(4) that outlines the requirements for challenging ownership and control designations made by another regulatory authority. This rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.26, and we approve this change.

Montana has proposed new language at ARM 17.24.1266(5)(a)–(b) that lists the requirements that must be met to challenge Montana's finding or a listing of ownership and control. This rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.27.

Montana has proposed new language at ARM 17.24.1266(6) that further defines the burden of proof requirements for a person who challenges Montana's finding or listing of ownership and control. This addition is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.27.

Montana has proposed new language at ARM 17.24.1266(7)(a)–(d) that further explains the burden of proof needed in challenges to Montana's finding or listing of ownership and control. After review of this new rule, we notified Montana of one typo by letter dated March 30, 2023 (Docket ID: OSM–2021–0006–0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with this correction. (Docket ID: OSM–2021–0006–0007).

With this correction, we have determined that this proposed new rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.27, and we approve these changes.

Montana has proposed new language at ARM 17.24.1266(8) that outlines what Montana does when it receives a written challenge to an ownership or control listing. This provision is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.28. We approve this change.

Montana has proposed new language at ARM 17.24.1266(9) that allows MDEQ to consult with other regulatory authorities about challenges to ownership or control listings where a violation is in a different jurisdiction. After review of this new rule, we notified Montana of one typo by letter dated March 30, 2023 (Docket ID: OSM–2021–0006–0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with this correction.

(Docket ID: OSM–2021–0006–0007). As revised, this proposed new rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.26(c). We approve these changes.

Montana has proposed new language at ARM 17.24.1266(10) that requires Montana to provide all decisions made under this rule to the Applicant Violator System. After review of this new rule, we notified Montana of one suggested edit by letter dated March 30, 2023 (Docket ID: OSM–2021–0006–0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with our suggested edit incorporated into this new rule (Docket ID: OSM–2021–0006–0007). With this revision, this proposed new rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.28(d). We approve these changes.

Montana has proposed new language at ARM 17.24.1266(11) that requires Montana, upon completion of a written decision under this rule, to review the information in the Applicant Violator System for accuracy. This new language is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.28(f), and we approve this change.

Montana has proposed new language at ARM 17.24.1266(12) that extends hearing rights to applicants, permittees, or persons that may be adversely affected by a decision from Montana under this new rule. After review of this initial program amendment submission, we notified Montana of two typos by letter dated March 30, 2023 (Docket ID: OSM–2021–0006–0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program amendment with corrections (Docket ID: OSM–2021–0006–0007). As revised, this proposed new rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.28(e). We approve these changes.

We note, however, that even with proposed ARM 17.24.1266, additional language similar to 30 CFR 773.26(b), which specifies that applicants can only use the procedures set forth in 30 CFR 773.26 through 773.28 to challenge ownership and control findings and not for any challenge to liability or responsibility under any other provision of the Act or its implementing regulations, should be considered for inclusion in Montana's rule. We notified Montana of this deficiency in a letter dated March 30, 2023 (Docket ID: OSM–2021–0006–0004). Montana responded in a letter dated May 3, 2023, and resubmitted a revised program

amendment with the addition of ARM 17.24.1266(13), which states: “The provisions of this section apply only to challenges to ownership or control listings or findings. These provisions may not be used to challenge liability or responsibility under any other provision of MSUMRA or its implementing regulations.” (Docket ID: OSM–2021–0006–0007). As revised, this rule is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 773.26(b). We approve this addition.

7. ARM 17.24.1267 Information Requirements for Permittees

Montana has proposed new language at ARM 17.24.1267(1)(a)–(g) that would require permittees to update applicant or operator information in the Applicant Violator System after receiving a cessation order. This revision is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 774.12, which require updates to information required under 30 CFR 778.11. Information requirements under 30 CFR 778.11 are found in State counterpart rules at ARM 17.24.303. We approve these changes.

Montana has proposed new language at ARM 17.24.1267(2) that would not require the permittee to provide the updated information required of the ARM 17.24.1267(1) (a)–(g) if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect. This proposal is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 774.12(b). We approve this change.

Montana has proposed new language at ARM 17.24.1267(3)(a)–(b) that requires the permittee to update information within 60 days of any addition, departure, or change of any person identified in the ARM 17.24.1267(1)(e). This proposal is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 774.12(c). We approve this change.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment and received two general comments about the mining industry and regulation in Montana. These comments do not require a response.

Federal Agency Comments

On August 5, 2021, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the

proposed amendment from various Federal agencies with an actual or potential interest in the Montana program (Administrative Record No. MT–37–06). On August 6, 2021, the U.S. Department of Energy responded that it did not have any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Montana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on August 5, 2021, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the proposed amendment (Administrative Record No. MT–37–06). On August 5, 2021, the EPA responded that it did not have any comments.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on proposed amendments that may have an effect on historic properties. On August 5, 2021, we requested comments on the proposed Montana amendment from the SHPO and the ACHP (Administrative Record Numbers MT–37–04 and MT–37–05, respectively). On August 16, 2021, the SHPO responded with no comments.

V. OSM's Decision

Based on the above findings, we are approving the submittal that Montana sent to us on July 28, 2021 (Administrative Record No. MT–037–01) as revised by the re-submittal that Montana sent to us on May 3, 2023.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not affect a taking of private property or otherwise have taking implications that would result in private property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on

an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB memorandum M-94-3, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior reviewed this rule as required by section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of section 3 of Executive Order 12988, which is intended to ensure that the agency reviews its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction.

Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive order did not extend to the language of the State regulatory program or amendment that Montana drafted.

Executive Order 13132—Federalism

This rule has potential federalism implications as defined under section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to “grant the States the maximum administrative discretion possible” with respect to Federal statutes and regulations administered by the States.

Montana, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the State level. This rule approves an amendment to the Montana program submitted and drafted by the State and, thus, is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their Tribal right to self-governance and sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175.

We have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal Government and Tribes. Therefore, consultation under the Department's Tribal consultation policy is not required. The basis for this determination is that our decision is on the Montana State program that does not include the regulation of Indian lands or regulation of activities on Indian lands as that term is defined in 30 U.S.C. 1291(9).

Indian lands are regulated independently under the applicable, approved Federal Indian lands program, with the exception of the Crow Tribe's “Ceded Strip” in Montana. The Ceded Strip is a unique and special situation because, under the terms of the memorandum of understanding, the Department of the Interior and State of Montana agreed to coordinate the administration of applicable surface mining requirements in the Strip. Even though we are approving the amendment and revisions to the original amendment, our action will not have any significant effects on the regulation of surface coal mining operations within the Crow Ceded Strip.

The Departmental Manual, part 512, chapter 4 (“Department of the Interior Policy on Consultation with Indian Tribes”) also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to identify and engage appropriate Tribal stakeholders to devise a constructive approach for consulting on these amendments. Our approval of the amendment and revisions to the original amendment is an action without Tribal implications under section 4.3B of 512 Departmental Manual 4.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a statement of energy effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a statement of energy effects is not required.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect “on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or

local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal

governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Marcelo Calle,

Acting Regional Director, Western Region.

For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

PART 926—MONTANA

■ 1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 926.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
July 28, 2021	2/13/2026	Mont. Code Ann. 82–4–227—Refusal of Permit—Applicant Violator System. Rulemaking ARM 17.24.301 Definitions, ARM 17.24.302 Format, Data Collection, and Supplemental Information, ARM 17.24.303 Legal, Financial, Compliance, and Related Information, ARM 17.24.416 Permit Renewal, ARM 17.24.418 Transfer of Permits. ARM 17.24.1229 Criminal Penalties and Civil Actions, ARM 17.24.1264 The Department’s Obligations Regarding the Applicant Violator System, ARM 17.24.1265 Department Eligibility Review, ARM 17.24.1266 Questions About and Challenges to Ownership or Control Findings, ARM 17.24.1267 Information Requirements for Permittees, ARM 17.24.304 Baseline Information: Environmental Resources, ARM 17.24.308 Operations Plan, ARM 17.24.313 Reclamation Plan, ARM 17.24.314 Plan for Protection of the Hydrologic Balance, ARM 17.24.401 Filing of Application and Notice, ARM 17.24.403 Informal Conference, ARM 17.24.425 Administrative Review, and ARM 17.24.1201 Frequency and Methods of Inspections.

[FR Doc. 2026–02981 Filed 2–12–26; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS No. ND–056–FOR; Docket No. OSM–2022–0010; S1D1S SS08011000 SX064A000 256S180110; S2D2S SS08011000 SX064A000 25XS501520]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.
ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the North Dakota regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposed amendments to its program based on

changes to the North Dakota Century Code made by the State legislature that resulted in changes to the North Dakota Administrative Code for surface coal mining and reclamation operations. The changes added a perfected lien or security interest in real property to the definition of collateral bond. The changes also added conditions that must be met for real property pledged as collateral bond.

DATES: The effective date is March 16, 2026.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Fleischman, Denver Field Division Chief, Office of Surface Mining Reclamation and Enforcement, Casper Area Office, P.O. Box 11018, 100 East B Street, Casper, Wyoming 82601–1018. Telephone: (307) 240–4397. Email: jfleischman@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the North Dakota Program
- II. Submission of the Amendment
- III. OSM’s Findings
- IV. Summary and Disposition of Comments
- V. OSM’s Decision
- VI. Statutory and Executive Order Reviews

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7).

On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary’s findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning the North Dakota program and program amendments at 30 CFR 934.15 and 934.30.

II. Submission of the Amendment

By letter dated December 9, 2022 (Administrative Record No. ND-056-01), North Dakota sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment at its own initiative to include changes made to both the North Dakota Century Code (NDCC) and the North Dakota Administrative Code (NDAC). Changes to the NDCC were made by the 67th legislative assembly in response to senate bill no. 2317, which was introduced by the Department of Trust Lands. The new law created chapter 15-72 of the NDCC and established a coal mine reclamation trust. The reclamation trust uses private assets pledged as collateral to fulfill performance bond obligations. The resulting rule changes to the NDAC added a perfected lien or security interest in real property to the definition of collateral bond to NDAC 69-05.2-01-02. The changes also added conditions required for real property to be pledged as collateral bond to NDAC 69-05.2-12-04.

We announced receipt of the proposed amendment in the May 19, 2023, **Federal Register** (88 FR 32165). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because none was requested. One comment was received on the amendment. The public comment period ended on June 19, 2023.

III. OSM's Findings

The following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

This amendment adds a perfected lien or security interest in real property to the definition of collateral bond in NDAC 60-05.2-01-02. It also adds the conditions that must be met for real property pledged as collateral bond to NDAC 69-05.2-12-04.

A. NDAC 60-05.2-01-02

"Collateral bond" in NDAC 69-05.2-01-02(13) is defined as "an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee and which is supported by the deposit with the commission of cash, negotiable bonds of the United States or of North Dakota, or negotiable certificate of deposit of any bank authorized to do business in North

Dakota or an irrevocable standby letter of credit issued by a federally insured or equivalently protected bank authorized to do business in the United States, payable only to the commission upon presentation, or perfected, first-lien security interest in real property in favor of the commission."

This amendment adds "or perfected, first-lien security interest in real property in favor of the commission" to the definition of collateral bond found in NDAC 69-05.2-01-02. The Federal regulations include similar language under 30 CFR 800.5(b)(5), which permits a perfected first-lien security interest in real property in favor of the regulatory authority to be used as a supporting factor for an indemnity agreement executed by the permittee as principal. This proposed change, thus, updates State rules to better match its Federal counterpart. Thus, North Dakota's proposed changes to NDAC 69-05.2-01-02 are consistent with and no less effective than the Federal program.

B. NDAC 69-05.2-12-04(3)(a)-(c)

At NDAC 69-05.2-12-04(3)(a)-(c), North Dakota proposes to add three conditions that must be met for real property to be pledged as collateral bond. Those conditions include the following: the first condition at NDAC 69-05.2-12-04(3)(a) provides that "[t]he applicant shall grant the commission first mortgage, first deed of trust or perfected first-lien security interest in real property with the right to sell or otherwise dispose of the property in the event of foreclosure." The second condition states that "the applicant shall submit a schedule of the real property to be mortgaged or pledged to secure the obligations under the indemnity agreement, with a list to include: a description of the property, the fair market value of the property, as determined by an independent appraisal conducted by a certified appraiser, and proof of possession and title to the real property." NDAC 69-05.2-12-04(3)(b). The third condition provides that "[t]he real property to be pledged as collateral may include land with is part of a permit area: however, land pledged as collateral for a bond under this section may not be disturbed under any permit while the land is serving as security under this section." NDAC 69-05.2-12-04(3)(c).

The conditions added to NDAC 69-05.2-12-04(3)(a)(c) mirror the conditions required for real property to be posted as collateral bond described in Federal regulations at 30 CFR 800.21(c).

The changes proposed by this amendment update North Dakota's rules to better match the Federal counterpart regulations. The proposed changes are thus consistent with and no less effective than the Federal regulations.

C. Conclusion

We are approving North Dakota's proposed changes to its coal regulatory program. As discussed above, North Dakota's proposed changes are nearly identical to the Federal regulations, and, in the case of NDAC 69-05.2-12-04(3)(a)-(c), the changes make the North Dakota program consistent with the Federal regulations. Thus, North Dakota's proposed changes to NDAC 60-05.2-01-02 and 69-05.2-12-04(3)(a)-(c) are consistent with SMCRA and no less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment and received a single anonymous comment, suggesting taxpayer dollars should go towards only reclamation work, and any fees collected from fossil fuel industry should go towards environmental cleanup after natural disasters. This comment is outside the scope of this amendment, and we will not respond to it here. We appreciate the commenter's engagement with the rulemaking process.

Federal Agency Comments

On December 12, 2022, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the North Dakota program (Administrative Record No. ND-056-03, and ND-056-04). We did not receive any comments from Federal agencies.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that North Dakota proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on December 12, 2022, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record

No. ND-056-03). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from SHPO and ACHP on amendments that may have an effect on historic properties. On December 12, 2022, we requested comments on North Dakota amendment (Administrative Record No. ND-056-03). We did not receive comments from SHPO or ACHP.

V. OSM's Decision

Based on the above findings, we are approving North Dakota's proposed amendment ND-056-FOR sent to us on December 9, 2022 (Administrative Record No. ND-056-01).

To implement this decision, we are amending the Federal regulations, at 30 CFR part 934, that codify decisions concerning the North Dakota program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not result in a taking of private property or otherwise have taking implications that would result in private property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993 (OMB Memo M-94-3), the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior (Department) has reviewed this rule as required by section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of section 3 of Executive Order 12988. Section 3 is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction.

Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive order did not extend to the language of the State regulatory program or to the program amendment that North Dakota drafted.

Executive Order 13132—Federalism

This rule has potential federalism implications as defined under section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to "grant the States the maximum administrative discretion possible" with respect to Federal statutes and regulations administered by the States. North Dakota, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the State level. This rule approves an amendment to the North Dakota program submitted and drafted by the State and thus is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes.

Therefore, consultation under the Department's Tribal consultation policy is not required. The basis for this determination is that our decision is on the North Dakota State program that does not include the regulation of Indian lands or regulation of activities on Indian lands as that term is defined in 30 U.S.C. 1291(9). Indian lands are regulated independently under the applicable, approved Federal Indian lands program. 512 Departmental Manual 4 (Department of the Interior Policy on Consultation with Indian Tribes) also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to identify and engage appropriate Tribal stakeholders to devise a constructive approach for consulting on these amendments. Our approval of the amendment and revisions to the original amendment is an action without Tribal implications under section 4.3B of 512 Departmental Manual 4.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a statement of energy effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not a significant energy action under the definition in Executive Order 13211, a statement of energy effects is not required.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the Department of the Interior's Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork

Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million;

(b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information

required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Marcelo Calle,

Acting Regional Director, Unified Interior Regions 5, 7–11.

For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

PART 934—NORTH DAKOTA

■ 1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 934.15 is amended in the table by adding a new entry in chronological order by “Date of final publication” to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendment.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* December 9, 2022	* 2/13/2026	* NDAC 60–05.2–01–02/Updates the definition of collateral bond. NDAC 60–05.2–01–04/Adds the conditions that must be met for real property pledged as collateral bond.

[FR Doc. 2026–02982 Filed 2–12–26; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2026–0026]

Special Local Regulations; Recurring Marine Events, Sector St. Petersburg

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation for the Bradenton Area River Regatta on February 21, 2026, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events for Sector St. Petersburg identifies the regulated area for this event in Bradenton, FL. During the enforcement period, no person or vessel may enter, transit through, anchor in, or

remain within the regulated area unless authorized by the Coast Guard Patrol Commander or a designated representative.

DATES: The regulations in 33 CFR 100.703 will be enforced for the regulated area listed in Item No. 2 in Table 1 to § 100.703 from 10 a.m. through 5 p.m. on February 21, 2026.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Ryan McNaughton, Sector St. Petersburg Prevention Department, U.S. Coast Guard; telephone 813–918–7270, email ryan.a.mcnaughton@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation in 33 CFR 100.703 for the Bradenton Area River Regatta regulated area identified in Table 1 to § 100.703, item No. 2, from 10 a.m. until 5 p.m. on February 21, 2026. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events, Sector St. Petersburg § 100.703, Item No. 2, specifies the location for the regulated

area for the Bradenton Area River Regatta, which encompasses portions of the Manatee River located in Bradenton, FL. Under the provision of § 100.703 all persons and vessels are prohibited from entering the regulated area, except those persons and vessels participating in the event, unless they receive permission to do so from the Coast Guard Patrol Commander, or designated representative.

Spectator vessels may safely transit outside the regulated area, but may not anchor, block, loiter in, impede the transit of festival participants or official patrol vessels or enter the regulated area without approval from the Coast Guard Patrol Commander or a designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation. In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notice of the regulated area via Local Notice to Mariners, Marine Safety Information Bulletins, Broadcast Notice to Mariners,

and on-scene designated representatives.

Courtney A. Sergeant,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.

[FR Doc. 2026–02921 Filed 2–12–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 71

[Docket No. VA–2020–VHA–0014]

RIN 2900–AQ96

Home Visits in Program of Comprehensive Assistance for Family Caregivers During COVID–19 National Emergency

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; rescission.

SUMMARY: The Department of Veterans Affairs (VA) is removing a regulation that was adopted to provide temporary flexibility under VA’s Program of Comprehensive Assistance for Family Caregivers (PCAFC) but is no longer applicable. The regulation relaxed PCAFC requirements for in-person home visits during the national emergency related to Coronavirus Disease-2019 (COVID–19). The removal of this regulation is appropriate because the national emergency related to COVID–19 (COVID–19 National Emergency) has ended and the regulation has no effect.

DATES: This rule is effective February 13, 2026.

FOR FURTHER INFORMATION CONTACT:

Colleen Richardson, Executive Director, Caregiver Support Program, Patient Care Services, Veterans Health Administration, (202) 461–5649.

SUPPLEMENTARY INFORMATION:

Background

Interim Final Rule

In an interim final rule (IFR) published in the **Federal Register** (FR) on June 5, 2020, VA amended its regulations to relax the PCAFC requirement for in-person home visits during the COVID–19 National Emergency. 85 FR 34522 (June 5, 2020). The IFR added § 71.60 to part 71 of title 38 of the Code of Federal Regulations (CFR), to provide flexibility in the modality by which VA conducted PCAFC home visits for the duration of the COVID–19 National Emergency declared by the President on March 13, 2020. Under § 71.60, VA could conduct

home visits through means other than in-person visits, including by videoconference or other available telehealth modalities. 85 FR 34523 (June 5, 2020). This change was intended to help reduce the risk of exposure to and transmission of COVID–19 for individuals involved in PCAFC, as well as members of their households and others with whom they came into contact. Id. VA considered the goal of reducing the risk of exposure to and transmission of COVID–19 especially important given the vulnerable population of veterans served by PCAFC. Id.

End of the COVID–19 National Emergency

When VA adopted § 71.60, VA was focused on the COVID–19 National Emergency and explicitly tied the relaxation of PCAFC in-person home visit requirements to the COVID–19 National Emergency declared by the President on March 13, 2020. However, neither the text of the regulation nor the preamble discussion in the IFR specified whether the declaration referred to Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak (85 FR 15337 (March 18, 2020)), or the President’s determination, dated March 13, 2020, pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) (42 U.S.C. 5121–5207), that an emergency exists nationwide. See Letter from President Donald J. Trump on Emergency Determination Under the Stafford Act, available at <https://trumpwhitehouse.archives.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/> (last accessed September 16, 2025). Regardless, both national emergencies have ended.¹

¹ See Public Law 118–3, dated April 10, 2023, stating that pursuant to section 202 of the National Emergencies Act (50 U.S.C. 1622), the national emergency declared by the finding of the President on Mar. 13, 2020, in Proclamation 9994 (85 FR 15337) was terminated; Congressional Research Service, Closing the Incident Period for the Stafford Act Declaration for the COVID–19 Pandemic, February 10, 2023, available at <https://crsreports.congress.gov/product/pdf/IN/IN12106> (last accessed September 16, 2025) (explaining that “Stafford Act declarations do not have pre-set terms, and generally, federal officials do not unilaterally terminate Stafford Act declarations” but that “[i]nstead, [the Federal Emergency Management Agency (FEMA)] initiates the closeout of an individual declaration only after the closeout of all related individual projects and programs. . . .”); U.S. Department of Homeland Security, FEMA, Following Unprecedented Response to Pandemic, FEMA Announces the

Because the COVID–19 National Emergency has ended, the relaxation of in-person home visits that was adopted under the IFR, and valid only during the COVID–19 National Emergency is no longer applicable. Thus, in this final rule, VA is removing the regulation that was adopted under the IFR at 38 CFR 71.60.

VA provided a 30-day comment period in response to the IFR, which ended on July 6, 2020. VA received twelve comments on the IFR and VA has considered and will address the relevant comments as part of this final rule, as discussed in detail below. Notably, the commenters responded to the IFR to identify concerns with or support for § 71.60. Comments were not solicited to determine whether or when to remove § 71.60 from the regulations and none of the commenters addressed the expiration of the COVID–19 National Emergency.

Proposed Rule for Home Visits and Emergency Declarations

On December 6, 2024, VA published a proposed rule primarily impacting PCAFC that, among other changes, proposed to add a new § 71.55 to part 71 that would, if adopted in a final rule, provide flexibility to VA to complete home visits under part 71 through telehealth for the duration of and in the locations covered by an emergency declaration. 89 FR 97404, at 97449–50 (December 6, 2024). As proposed, § 71.55 would define “telehealth” by reference to another regulation and explain the meaning of “emergency declaration” for purposes of § 71.55. While related, those proposed changes are outside of the scope of this final rule, which is specific to § 71.60 and the COVID–19 National Emergency, and are not otherwise addressed in this final rule.

Comments

VA reviewed and considered all twelve comments received in response to the IFR. VA determined that six of the twelve comments received were outside the scope of the rulemaking, and VA does not address those comments in this final rule or make changes to § 71.60 based on them. However, some of these

Agency Will Close All COVID–19 Disaster Declaration Incident Periods on May 11, available at <https://www.fema.gov/press-release/20230209/following-unprecedented-response-pandemic-fema-announces-agency-will-close> (last accessed September 16, 2025); and 88 FR 8884 (February 10, 2023) (**Federal Register** Notice by the U.S. Department of Homeland Security and FEMA, providing a 90-day advance notice to government partners and stakeholders regarding the end of eligibility of work and costs reimbursable through public assistance funding on May 11, 2023).

commenters raised individual matters (for example, struggles they were having) and, to the extent these individuals provided their personal information, VA did attempt to reach out to the commenters to address their individual matters unrelated to this rulemaking.

Of the remaining six comments within the scope of this rulemaking, one commenter was supportive of virtual home visits by their regular care teams and noted that health and safety is first and foremost. As such, VA does not further address this comment in this final rule and makes no changes based on it.

The remaining comments contained concerns or recommendations relating to the IFR and are addressed below. Certain comments are no longer relevant because § 71.60 is not and cannot be applied after the COVID-19 National Emergency ended.

Concerns Regarding VA Conducting Home Visits by Modalities Other Than In-Person

Three commenters raised concerns with VA conducting home visits by modalities other than in-person. One commenter stated that certain aspects of evaluation and care of the veteran cannot be best served via telehealth and suggested that VA consider any valid concerns that the caregiver may bring to light and respond accordingly, so that there is no harm to the veteran's wellbeing and plan for care. Similarly, another commenter stated that in-home visits allow the interviewer to detect stressors, to visualize the living conditions of the veteran, and to check on the caregiver, which can assist the veteran, caregiver, and VA caregiver coordinator. Another commenter disagreed that relaxing the requirement for in-person home visits during the COVID-19 National Emergency was a valid solution to the issue because in-person home visits make the caregiver's and eligible veteran's needs clear. In addition, this commenter asserted that eliminating in-person home visits could lead to falsified records and they alleged that VA staff added a note (presumably in the eligible veteran's health record) regarding a contact or conversation that never took place.

VA agrees that in-person home visits are generally preferable to videoconferences or other available telehealth modalities because in-person home visits allow VA to fully assess the eligible veteran's situation and the needs of the eligible veteran and caregiver. However, VA believes the risks of relaxing the in-person home visit requirements during the COVID-19

National Emergency were outweighed by the need to reduce the risk of exposure to and transmission of COVID-19 to eligible veterans, the eligible veterans' caregivers and family members, and PCAFC staff.

While there are benefits to performing in-person home visits, videoconferences and other telehealth modalities provide an alternative means to assess an eligible veteran's safety and functional needs when in-person visits are not possible or are unsafe. During the COVID-19 National Emergency, VA had to balance what would be gained by conducting in-person home visits versus the risk of spreading an illness that could be particularly harmful and even deadly in vulnerable populations. Because the risk of and harm associated with spreading COVID-19 was so great, VA authorized videoconferencing and other telehealth modalities through the IFR as appropriate means for conducting PCAFC home visits to support the needs of veterans and caregivers applying for or participating in PCAFC while helping to protect their health and that of VA employees.

During the COVID-19 National Emergency, VA continued to assess the situation and needs of eligible veterans and family caregivers during regular monitoring and wellness contacts under § 71.40(b)(2), even when they were not conducted through in-person home visits. During the COVID-19 National Emergency, the IFR provided VA with flexibility to complete monitoring and wellness contacts through videoconference or other available telehealth modalities. See 38 CFR 71.40(b)(2) (2020) and (2021); 38 CFR 71.60.

As currently set forth in 38 CFR 71.40(b)(2), each wellness contact consists of a review of the eligible veteran's well-being, adequacy of personal care services being provided by the family caregiver(s), and the well-being of the family caregiver(s). These wellness contacts provide eligible veterans and family caregivers participating in PCAFC an opportunity to share concerns with VA staff and provide VA staff with an opportunity to see how eligible veterans and family caregivers are managing at home. Wellness contacts help VA determine whether any additional instruction, preparation, training, and/or technical support is needed for the eligible veteran's needs to be met by the family caregiver. As a result, facility Caregiver Support Program (CSP) staff may provide instruction or training or ensure appropriate referrals are in place for the family caregiver to obtain this support. In this way, wellness contacts reduce

the risk that significant changes in the safety or well-being of PCAFC participants would go undetected.

Further, throughout the COVID-19 National Emergency, VA continued to encourage caregivers and eligible veterans to promptly notify VA staff of any concerns so that appropriate and necessary actions, including in-person home visits, when necessary, could be taken by VA to address such concerns. VA also encouraged and continues to encourage family caregivers and eligible veterans alike to reach out specifically to CSP staff and the Caregiver Support Line as needed, as both resources can assist in mitigating concerns, provide opportunities to raise questions, identify and address stressors, and assess the needs of the family caregiver as well as the needs of the eligible veteran. If CSP staff determined an in-person home visit was necessary during the COVID-19 National Emergency, they were supported in conducting the in-person home visit.

VA disagrees with one commenter's assertion that VA was eliminating in-person home visits and doing so could lead to more falsified records. First, the IFR provided additional flexibility to VA to complete home visits through videoconference or other available telehealth modalities, but it did not eliminate the in-person home visit requirements. The regulation adopted under the IFR states that during the COVID-19 National Emergency, VA may complete visits to the eligible veteran's home under part 71 through videoconference or other available telehealth modalities. Under § 71.60, VA was not prohibited from completing in-person home visits during the COVID-19 National Emergency.

Second, VA does not believe § 71.60 affected the likelihood of records being falsified. Errors or mistakes in records could result from a provider writing inaccurate notes or the veteran or family caregiver providing inaccurate information, but neither of these was likely to increase because of the flexibility provided under § 71.60. Falsified records due to staff error are already minimal, and if identified, there are processes in place for corrections to be made to such records. Additionally, a veteran can review their health record and report anything they believe to be inaccurate. This applies to any information within the record, including but not limited to documentation resulting from both in-person and virtual visits for purposes of PCAFC. VA has resumed in-person home visits and has not identified evidence to suggest the relaxation of in-

person home visits under the IFR led to falsification of records.

Suggestion To Provide Options for Remote Home Visits

One commenter applauded VA for exercising flexibility in conducting home visits during the COVID-19 National Emergency, but urged VA to provide necessary education, training, and resources to facilitate remote home visits. In particular, the commenter suggested VA provide education and resources for accessing equipment and internet infrastructure, or the option to use telephones for families lacking reliable internet connectivity and web technologies.

Throughout the COVID-19 National Emergency, VA provided education, training, and resources to assist eligible veterans and their family caregivers with accessing VA services and supports for which they may be eligible, and continues to do so today. For example, CSP staff are trained on how to enter a Digital Divide Consult to assist in connecting eligible veterans and their family caregivers to VA staff who can determine eligibility for VA-provided connected devices, along with the training needed to use such equipment.

Comment Regarding Consistency in Conducting Remote Visits and Establishing Standards and Training for VA Staff

That same commenter further urged VA to establish consistency across VA medical facilities in conducting remote visits to safeguard the health of veterans and caregivers, and further encouraged VA to establish standards and training to help VA continue to provide effective support and assessment during remote visits, particularly in instances where individuals may not feel comfortable disclosing abuse virtually or via phone.

VA provides robust and standardized training to CSP staff across the country, including training on the completion of home visits. Following publication of the IFR, this included training related to the relaxation of in-person home visits during the COVID-19 National Emergency. During trainings, VA reiterates that part of the benefit of the home visit is to provide an opportunity to identify additional needs of and/or supports for individuals applying for or participating in PCAFC, whether the visit is in-person or virtual.

VA acknowledges that disclosure of abuse in any circumstance may be difficult. VA conducts wellness contacts and eligibility assessments using standardized processes to enhance consistency in the administration of

PCAFC. Whether in-person or virtual, these processes include providing one-on-one opportunities for caregivers and eligible veterans to individually disclose abuse to a VA provider. Additionally, CSP collaborates extensively with the Veterans Health Administration's Intimate Partner Violence Assistance Program to provide staff with consultation, training, and resources on assessing for safety during in-person and virtual visits, including how to recognize non-verbal signs and symptoms of abuse in situations where individuals do not verbally disclose abuse.

Recommendation for Permanent Relaxation of In-Person Home Visits

One commenter recommended that the relaxation of requirements for in-person home visits become permanent because they are unnecessary, intrusive, and costly. The commenter further stated that the in-person home visit requirement makes veterans residing overseas and in some U.S. territories ineligible for PCAFC. This commenter also stated that they previously asked that telehealth and related technology be utilized for all visit or follow-up requirements for PCAFC.

To the extent that this commenter is asserting that PCAFC should be available to individuals living overseas, VA considers that part of the comment outside the scope of this rulemaking. Pursuant to § 71.10(b), benefits under part 71 are provided only to individuals residing in a State as that term is defined in 38 U.S.C. 101(20). Section 101(20) defines the term State, in part, as each of the several States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. VA discusses this requirement in more detail in the proposed rule published on March 6, 2020 (see 85 FR 13356, at 13358 (March 6, 2020)) and in the final rule published on July 31, 2020 (see 85 FR 46226, at 46226–27 (July 31, 2020)).

Regarding the commenter's suggestion that telehealth and related technology should be utilized for all PCAFC visits and follow ups, VA disagrees. As VA explained in the IFR and previously in this final rule, during the COVID-19 National Emergency, VA believed the risks of exposure to and transmission of COVID-19 necessitated the flexibility allowed by 38 CFR 71.60. See 85 FR 34523 (June 5, 2020). However, VA does not intend to permanently eliminate the requirement for in-person home visits because there are numerous benefits to performing home visits in person when it is safe to do so. In-person home visits are beneficial for assessing and

reassessing eligibility for PCAFC and conducting wellness contacts, particularly as eligibility for PCAFC is conditioned upon the eligible veteran receiving care at home. See § 71.20(a)(6). Conducting visits in the eligible veteran's home provides VA with a better opportunity than virtual visits to assess and reassess the eligible veteran's level of need and the caregiver's ability to perform personal care services. To assess the ability of the caregiver to perform personal care services in the eligible veteran's home, it is most ideal for the assessor to be present in the environment in which the care is being performed. While a virtual visit may be appropriate in certain instances, current technology does not allow the assessor full environmental awareness of factors or conditions which may also be present yet not viewable through virtual modalities available today. Further, in-person home visits provide a unique opportunity for VA to conduct more comprehensive and holistic assessments that virtual visits may not afford. In-person home visits also provide a better opportunity than virtual visits for PCAFC participants and VA staff to develop personal and on-going relationships in which eligible veterans and caregivers are comfortable discussing the eligible veteran's needs and health status with VA staff, which may be utilized by VA to provide additional supports and services. Additionally, information about an individual's safety and environment is more easily assessed in person.

In-person home visits are an important component of participation in PCAFC. Pursuant to 38 U.S.C. 1720G(a)(9), VA has an obligation to monitor the well-being of each eligible veteran receiving personal care services under PCAFC, document findings pertinent to the appropriate delivery of personal care services to the eligible veteran under PCAFC, and establish procedures to ensure appropriate follow-up regarding those findings, which may include visiting the eligible veteran's home to review directly the quality of personal care services provided to the eligible veteran. Given their importance, VA budgeted for the expenses associated with conducting in-person home visits as part of the overall operational costs associated with PCAFC.

Thus, VA does not agree with the commenter that the relaxation of in-person home visits should become permanent. As previously explained in this rulemaking, in-person home visits are critically important and are an integral part of PCAFC. In-person home visits provide significant benefits to

veterans and caregivers when they can be conducted safely and when the benefits outweigh any risks.

Lack of Timely Information From VA

One commenter indicated they became aware of the IFR on the last day to provide comments and expressed concern that many caregivers do not receive timely emails, phone calls, or information from VA. VA provided a 30-day public comment period in response to the IFR, which was available for public viewing at www.regulations.gov. While VA considers this comment outside the scope of this final rule, VA is confirming that CSP does communicate news and updates about PCAFC, including matters related to rulemakings, through a variety of platforms, including, but not limited to, press releases, website updates, and messages via listserv.

VA makes no changes to the final rule in response to the public comments received in response to the IFR. However, as noted earlier in this discussion, VA is removing 38 CFR 71.60 now because the COVID-19 National Emergency is over, and § 71.60 is no longer operable.

Administrative Procedure Act

VA has considered all relevant input and information contained in the comments submitted in response to the IFR. 85 FR 34522 (June 5, 2020). However, § 71.60, as added by the IFR, was only effective for the duration of the COVID-19 National Emergency, which has ended. VA has decided to remove § 71.60 from VA regulations because it no longer applies.

Although this final rule differs from the IFR, the change is a logical outgrowth of the IFR. Section 71.60 is inherently and explicitly limited to the duration of the COVID-19 National Emergency, such that the duration of its effect was clear. The public could have reasonably anticipated that the IFR would no longer be effective after the COVID-19 National Emergency, and that it would no longer be relevant or needed in part 71 after the COVID-19 National Emergency. Therefore, removing § 71.60 from part 71 is a logical outgrowth of the IFR and does not require further notice and public procedure under 5 U.S.C. 553(b).

Additionally, VA finds there is good cause to publish this final rule with an immediate effective date and forego the 30-day delayed effective date generally required by 5 U.S.C. 553(d). This is because a delayed effective date for this final rule is unnecessary, as it removes a regulatory provision already rendered inoperable due to the end of the

COVID-19 National Emergency. As this rule results in no change to existing practice and would have no effect, the Secretary of Veterans Affairs finds that there is good cause under 5 U.S.C. 553(d)(3) to forego the 30-day delay requirement.

Executive Orders 12866, 13563, and 14094

VA examined the impact of this rulemaking as required by Executive Orders 12866 (Sept. 30, 1993) and 13563 (Jan. 18, 2011), which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. This final rule is a deregulatory action under Executive Order 14192 because it removes a regulation that no longer has effect.

Economic Impact: There are no transfers, costs, or cost savings associated with this rulemaking.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This certification is based on the fact that this final rule pertains only to how VA previously conducted PCAFC home visits during the COVID-19 National Emergency and has no current or future impact on small businesses. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

This final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

List of Subjects in 38 CFR Part 71

Administrative practice and procedure, Claims, Health care, Health facilities, Health professions, Mental health programs, Public assistance

programs, Travel and transportation expenses, Veterans.

Signing Authority

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on 2/10/2026 and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Nicole R. Cherry,

*Alternate Federal Register Liaison Officer,
Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 71 as set forth below:

PART 71—CAREGIVERS BENEFITS AND CERTAIN MEDICAL BENEFITS OFFERED TO FAMILY MEMBERS OF VETERANS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 38 U.S.C. 501, 1720G, unless otherwise noted.

§ 71.60 [Removed]

■ 2. Remove § 71.60.

[FR Doc. 2026–02978 Filed 2–12–26; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2023–0485; FRL–13167–01–OCSPP]

Sulfonic Acids, C14-16-Alkane Hydroxy and C14-16-Alkene, Sodium Salts in Pesticide Formulations; Exemption From the Requirement for a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts (CAS Reg. No. 68439–57–6) when used as an inert ingredient (surfactant) in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils under 40 CFR 180.940(a), at a maximum concentration of 1% in pesticide formulations. Ramboll US Consulting Inc., on behalf of Ecolab Inc., submitted a petition to EPA under the Federal

Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts, when used in accordance with the terms of those exemptions.

DATES: This regulation is effective February 13, 2026. Objections and requests for hearings must be received on or before April 14, 2026 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-2023-0485, is available online at <https://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: Charles Smith, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (202) 566-1030; email address: RDfRNNotices@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).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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-2023-0485 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 April 14, 2026.

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 October 26, 2023 (88 FR 73571, FRL-10579-09-OCSPP), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 1N-11753) by Ramboll US Consulting Inc., on behalf of Ecolab Inc., 1 Ecolab Place, St. Paul, MN 55102. The petition requested that 40 CFR be amended by establishing an exemption from the requirement of a tolerance for residues of sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts (also known as sodium C14-C16 alpha olefin or sodium C14-C16 AOS; CAS Reg. No. 68439-57-6) when used as an inert ingredient (surfactant) in antimicrobial formulations (food-contact surface sanitizing solutions) applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils under 40 CFR 180.940(a), at a maximum concentration of 1% in pesticide formulations. That document referenced a summary of the petition prepared by

Ramboll US Consulting Inc., on behalf of Ecolab Inc., the petitioner, which is available in the docket (EPA-HQ-OPP-2023-0485). There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term “inert” is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Final Tolerance Actions

A. Aggregate Risk Assessment and Determination of Safety

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for sulfonic acids,

C14-16-alkane hydroxy and C14-16-alkene, sodium salts, including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts follows.

B. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Sodium C14-C16 AOS exhibits low levels of acute toxicity via the oral, dermal, and inhalation routes of exposure. It is moderately irritating to the eyes and skin at concentrations $\leq 40\%$ but it is not a skin sensitizer.

The repeated-dose toxicity for sodium C14-C16 AOS is low. No adverse effects were reported in subchronic toxicity studies in rats up to the highest dose tested (1000 mg/kg/day) and concern for developmental or reproductive toxicity is low, based on the rapid metabolism and excretion, and lack of accumulation of the chemical. Furthermore, concern for carcinogenicity is low, based on negative results in mutagenicity studies, and the lack of treatment-related effects in an available chronic/carcinogenicity study.

C. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (NOAEL) and the lowest dose at which adverse effects of concern are identified (LOAEL). Uncertainty/safety

factors are used in conjunction with the POD to calculate a safe exposure level, generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD), and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see EPA's website at <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program>.

The hazard profile of sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts is adequately defined. Overall, sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts are of low acute, subchronic, and developmental toxicity. No systemic toxicity is observed up to 1,000 mg/kg/day, the highest dose tested. Therefore, the highest dose tested was identified as the NOAEL and a LOAEL was not established. Since signs of toxicity were not observed, no toxicological endpoints of concern or PODs were identified. Therefore, a qualitative risk assessment for sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts can be performed.

D. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts in food as follows.

Dietary exposure (food and drinking water) to sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts may occur following ingestion of foods with residues from their use in accordance with this exemption. However, a quantitative dietary exposure assessment was not conducted since a toxicological endpoint for risk assessment was not identified.

2. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts may result in residential exposures as they can be present in pesticide and non-pesticide products that may be used in and around the home. However, a quantitative residential exposure assessment was not conducted since a toxicological endpoint for risk assessment was not identified.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider “available information” concerning the cumulative effects of a particular pesticide’s residues and “other substances that have a common mechanism of toxicity.”

Based on the lack of toxicity in the available database, EPA has not found sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts to share a common mechanism of toxicity with any other substances, and sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts do not have a common mechanism of toxicity with other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA’s website at <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides>.

E. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines, based on reliable data, that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Based on an assessment of sulfonic acids, C14-16-alkane hydroxy and C14-

16-alkene, sodium salts, EPA has concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children, due to the low toxicity in the available studies. Because there are no threshold effects associated with sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts, EPA conducted a qualitative assessment. As part of that qualitative assessment, the Agency did not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children.

F. Aggregate Risks and Determination of Safety

Because no toxicological endpoints of concern were identified, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts residues.

G. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts in or on any food commodities. EPA is establishing a limitation on the amount of sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts that may be used in pesticide formulations applied. This limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for food use that exceeds 1% sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts in the final pesticide formulation.

H. Conclusions

Therefore, an exemption from the requirement of a tolerance is established for residues of sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts (CAS Reg. No. 68439–57–6) when used as an inert ingredient (surfactant) in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils under 40 CFR 180.940(a) at a maximum concentration of 1% of the pesticide formulation.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/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.

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 (See Unit V.A.), 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 registration 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 the Congress and to the Comptroller General of the United States. This action does not meet the criteria set forth in 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: February 9, 2026.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

For the reasons stated in the preamble, the EPA amends 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. In § 180.940, amend table 1 to paragraph (a) by adding, in alphabetical order, an entry for "Sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts" to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Pesticide chemical	CAS Reg. No.	Limits
* * *	* * *	* * *
Sulfonic acids, C14-16-alkane hydroxy and C14-16-alkene, sodium salts.	68439–57–6	When ready for use, the end-use concentration is not to exceed 1%.
* * *	* * *	* * *

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[FR Doc. 2026–02922 Filed 2–12–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2024–0322; FRL–13116–01–OCSPP]

Hexythiazox; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the insecticide hexythiazox and its metabolites in or on lemon/lime, subgroup 10–10B at 0.6

parts per million (ppm). This regulation also establishes separate regional tolerances for grapefruit, subgroup 10–10C (CA, AZ, TX only) at 0.5 ppm and orange, subgroup 10–10A (CA, AZ, TX only) at 0.5 ppm. Under the Federal Food, Drug, and Cosmetic Act (FFDCA), Gowan Company submitted a petition to EPA requesting that EPA establish a maximum permissible level for residues of this pesticide.

DATES: This rule is effective on February 13, 2026. Objections and requests for hearings must be received on or before April 14, 2026 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–2024–0322, is

available online at <https://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:

Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: RDfRNotices@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 might apply to them:

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

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." FFDCA section 408(b)(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. FFDCA section 408(b)(2)(C) 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 . . ."

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-2024-0322 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 April 14, 2026.

The 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 the EPA's regulations require submission via U.S. Mail or hand delivery, the EPA intends to treat submissions filed via electronic means as properly filed submissions; therefore, the 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 Tolerance

In the **Federal Register** of September 5, 2025 (90 FR 42897) (FRL-12474-06-OCSP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F9135) by Gowan Company, LLC, P.O. Box 5569, Yuma, AZ 85366-5569. The pesticide petition requested that 40 CFR 180.448 be amended by converting the existing regional tolerance for residues of the insecticide hexythiazox and its metabolites in or on the raw agricultural commodities of citrus crop group 10-10

at 0.6 parts per million (ppm) to include a national tolerance for crop subgroup 10-10B lemon/lime at 0.6 ppm, while establishing separate, remaining regional tolerances for grapefruit, subgroup 10-10C (CA, AZ, TX only) at 0.5 ppm and orange, subgroup 10-10A (CA, AZ, TX only) at 0.5 ppm. That document referenced a summary of the petition that was prepared by the petitioner and has been included in the docket. There was one (1) non-substantive comment received on October 6, 2025, in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with FFDCA section 408(b)(2)(D), and the factors specified therein, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for hexythiazox including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with hexythiazox follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemakings for the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings, and EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published tolerance rulemakings for hexythiazox in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to hexythiazox and established tolerances for residues of the chemical. EPA is not reprinting previously published sections from these rulemakings as described further in this rulemaking, as they remain unchanged.

Toxicological profile. For a detailed discussion of the toxicological profile of hexythiazox, see Unit III. of the hexythiazox tolerance rulemaking published in the **Federal Register** of July 20, 2020 (85 FR 43697) (FRL-10008-84).

Toxicological points of departure/levels of concern. All points of departure (POD), toxicity endpoints, and levels of concern (LOC) for hexythiazox remain unchanged from the

previous human health risk assessment (July 8, 2020) which can be found in docket ID EPA-HQ-OPP-20224-0200 at <https://www.regulations.gov>. In addition, the hazard characterization also remains unchanged. For a summary of the toxicological points of departure/levels of concern for hexythiazox used for human health risk assessment, see Tables 4.1.1. and 4.1.2. of the document entitled "Hexythiazox: Human Health Risk Assessment for the Section 3 Registration of Hexythiazox on Citrus, Fruit, Subgroup 10-10B (Lemon/Lime)." (Human Health Risk Assessment), dated December 17, 2025, in docket ID EPA-HQ-OPP-2024-0322 at <https://www.regulations.gov>.

Exposure assessment. An aggregate dietary (food + drinking water) exposure and risk assessment was conducted using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database Version 4.02. This software uses 2005–2010 food consumption data from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America. An acute dietary exposure assessment is not required since no endpoint attributable to a single oral exposure was identified from the available toxicity database. The chronic dietary risk assessment was conducted using tolerance level residues, modeled drinking water estimates, assumed 100% crop treated and used the EPA's default processing factors. The chronic dietary exposure estimate for the most highly exposed population subgroup, children 1–2 years old, was 86% of the chronic population adjusted dose (cPAD).

Drinking water and non-occupational exposures. The most recent estimated drinking water concentrations from the previous human health risk assessment (July 8, 2020) can be found in docket ID EPA-HQ-OPP-2024-0200 at <https://www.regulations.gov>. This new action would not exceed those calculated in the last hexythiazox drinking water assessment.

There are no new residential uses of hexythiazox at this time; however, all previously registered hexythiazox product labels with residential use sites require that handlers wear specific clothing (e.g., long-sleeved shirt and long pants) and/or use Personal Protective Equipment (PPE) (e.g., gloves). Therefore, EPA has made the assumption that these products are not for homeowner use and has not conducted a quantitative residential handler assessment.

Cumulative exposure. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish,

modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to hexythiazox and any other substances, and hexythiazox does not appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that hexythiazox has a common mechanism of toxicity with other substances.

Safety factor for infants and children. EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor for hexythiazox from 10X to 1X since there is no evidence of increased susceptibility to *in utero* and/or postnatal exposure to hexythiazox. See Unit III. of the July 20, 2020, rulemaking for a discussion of EPA's rationale for that determination.

Aggregate risks and determination of safety. EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing dietary (food + drinking water) exposure estimates to the acute population-adjusted dose (aPAD) and chronic population-adjusted dose (cPAD). Short- and intermediate-term risks are evaluated by comparing the estimated total food, water, and residential exposure to the appropriate points of departure to ensure that an adequate margin of exposure (MOE) exists. There are no new residential uses of hexythiazox proposed at this time, therefore, a residential assessment is not required. However, residential exposures are anticipated from the registered use of hexythiazox and worst-case residential exposures have been carried forward from the 2020 Hexythiazox Human Health Risk Assessment for purpose of aggregate assessment. The short-term and intermediate-term aggregate assessment resulted in no risk estimates of concern when aggregating residential post-application exposures with the updated chronic dietary exposures. MOEs were 1,200 and 1,400 for the short- and intermediate-term aggregate assessments, respectively (LOC = 100).

Hexythiazox is classified as "Likely to be Carcinogenic to Humans" based upon increased incidences of malignant and combined benign/malignant liver tumors in female mice, and benign mammary gland tumors observed in male rats. The evidence was not strong

enough to warrant the use of a linear low dose extrapolation model applied to the animal data (Q1*) for a quantitative estimation of human risk. The findings demonstrate that the chronic reference dose (RfD) is protective of the tumors observed at 163 mg/kg/day. EPA concludes that quantification of risk using a non-linear approach; *i.e.*, the chronic RfD, for hexythiazox will adequately account for all chronic toxicity, including carcinogenicity from exposure to hexythiazox. Therefore, a separate cancer assessment was not conducted, and the chronic exposure assessment is considered protective of any cancer exposures.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the U.S. general population, or to infants and children, from aggregate exposure to hexythiazox residues. More detailed information on this action can be found in the Human Health Risk Assessment.

IV. Other Considerations

A. Analytical Enforcement Methodology

Samples were analyzed for residues of hexythiazox and its metabolite PT-1-3 using a common moiety high-performance liquid chromatography method with tandem mass spectrometry detection, Morse Laboratories Method No. Meth-220. The method provides for conversion of residues determined as PT-1-3 to hexythiazox equivalents using a molecular weight conversion factor of 1.55. The limit of quantitation, determined as the lowest level of method validation, was 0.02 ppm for hexythiazox in/on lemon. Therefore, adequate enforcement methodology is available to enforce the tolerance expressions for hexythiazox in/on lemon.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRL) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA

may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are Codex MRLs established for residues of hexythiazox in or on citrus fruit (group) at 0.5 ppm. The additional field trial data on lemon, and an updated OECD tolerance calculation supports a national tolerance for hexythiazox on lemon/lime, subgroup 10–10B at 0.6 ppm. Therefore, EPA is establishing a national tolerance for hexythiazox on lemon/lime, subgroup 10–10B at 0.6 ppm and is not harmonizing with Codex.

A regional tolerance (CA, AZ, TX only) will remain for the raw agricultural commodities of orange, subgroup 10–10A and grapefruit, subgroup 10–10C to harmonize with the Codex MRL for Fruit, citrus, group 10–10. The OECD calculations for orange, subgroup 10–10A and grapefruit, subgroup 10–10C were 0.2 ppm and 0.15 ppm and are below the Codex MRL of 0.5 ppm for citrus; therefore, EPA is recommending removing the currently established fruit, citrus, group 10–10 tolerance of 0.6 ppm and establishing regional tolerances for orange, subgroup 10–10A and grapefruit, subgroup 10–10C at 0.5 ppm to harmonize with Codex.

C. Effective and Expiration Date(s)

In general, a tolerance action is effective on the date of publication of the final rule in the **Federal Register**. For actions in the final rule that lower or revoke existing tolerances, EPA will set an expiration date for the existing tolerance of six months after the date of publication of the final rule in the **Federal Register**, in order to allow a reasonable interval for producers in exporting members of the World Trade Organization's (WTO's) Sanitary and Phytosanitary (SPS) Measures Agreement to adapt to the requirements.

D. Revisions to Petitioned-For Tolerances

To harmonize with Codex, the Agency is establishing regional tolerances for orange, subgroup 10–10A (CA, AZ, TX only) at 0.5 ppm and grapefruit, subgroup 10–10C (CA, AZ, TX only) at 0.5 ppm. In addition, to reflect the updates to the existing regulations from this pesticide petition, the regional tolerance for fruit, citrus group 10–10 (CA, AZ, TX only) will be removed from the table in Paragraph (c) of 40 CFR 180.448.

V. Conclusion

Therefore, a tolerance is established for residues of the ovicide/miticide hexythiazox and its metabolites in or on lemon/lime, subgroup 10–10B at 0.6 ppm. Regional tolerances are established for orange, subgroup 10–10A (CA, AZ, TX only) at 0.5 ppm and grapefruit, subgroup 10–10C (CA, AZ, TX only) at 0.5 ppm. The existing regional tolerance for residues of hexythiazox in or on fruit, citrus group 10–10 (CA, AZ, TX only) will be removed from the table in Paragraph (c) of 40 CFR 180.448.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/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)

Since tolerance actions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the RFA, 5 U.S.C. 601 *et seq.*, do not apply to this action.

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 on 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 tolerance actions like this one are exempt from review under Executive Order 12866. 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 summarized in Unit III.

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 the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: February 10, 2026.

Charles Smith,

Director, Registration Division, 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. Amend § 180.448 by:

■ a. In paragraph (a)

■ i. Adding to the table the table heading “Table 1 to Paragraph (a)”; and

■ ii. Adding in alphabetical order an entry for “Lemon/Lime, subgroup 10–10B”.

■ b In paragraph (c):

■ i. Adding to the table the table heading “Table 2 to Paragraph (c)”; and

■ ii. Removing the existing entry for “Fruit, citrus group 10–10 (CA, AZ, TX only)”; and

■ iii. Adding in alphabetical order entries for “Grapefruit, subgroup 10–10C (CA, AZ, TX only)” and “Orange, subgroup 10–10A (CA, AZ, TX only)”.

The additions and revisions read as follows:

§ 180.448 Hexythiazox; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * *	*
Lemon/Lime, subgroup 10–10B	0.6

TABLE 1 TO PARAGRAPH (a)—Continued

Commodity	Parts per million
* * * *	*
(c) * * *	*

TABLE 2 TO PARAGRAPH (c)

Commodity	Parts per million
* * * *	*
Grapefruit, subgroup 10–10C (CA, AZ, TX only)	0.5
* * * *	*
Orange, subgroup 10–10A (CA, AZ, TX only)	0.5
* * * *	*
* * * *	*

[FR Doc. 2026–02916 Filed 2–12–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2024–0509; FRL–13127–01–OCSPJ]

Afidopyropen; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the current tolerance for residues of the insecticide afidopyropen in or on the food and feed commodities of raw agricultural commodity of strawberry by increasing it from 0.15 parts per million (ppm) to 0.3 ppm and removes the established time-limited tolerance in or on strawberry at 0.3 ppm. Under the Federal Food, Drug, and Cosmetic Act (FFDCA), BASF Corporation submitted a petition to EPA requesting that EPA establish a maximum permissible level for residues of this pesticide in or on the identified commodity.

DATES: This rule is effective on February 13, 2026. *Objections and requests for hearings must be received on or before April 14, 2026 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.D. of this document).*

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2024–0509, is

available online at <https://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: Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460–0001; telephone number: (202) 566–1030; email address: RDfRNNotices@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 might apply to them:

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

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” FFDCA section 408(b)(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. FFDCA section 408(b)(2)(C) 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 . . .”

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-2024-0509 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 April 14, 2026.

The 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 the EPA's regulations require submission via U.S. Mail or hand delivery, the EPA intends to treat submissions filed via electronic means as properly filed submissions; therefore, the 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 Tolerance

In the **Federal Register** of December 9, 2024 (89 FR 97577) (FRL-11682-10-OCSP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F9153) by BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709-3528. The pesticide petition requested that 40 CFR 180.700 be amended by increasing the current tolerance for residues of the insecticide afidopyropen in or on the raw agricultural commodity of strawberry at 0.15 ppm to 0.3 ppm. That document referenced a summary of the petition that was prepared by the petitioner and has been included in the docket.

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

III. Final Tolerance Action

A. Aggregate Risk Assessment and Determination of Safety

Consistent with FFDCA section 408(b)(2)(D), and the factors specified therein, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for afidopyropen including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with afidopyropen is summarized in this unit.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemakings for the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings, and EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published tolerance rulemakings for afidopyropen in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to afidopyropen and established tolerances for residues of the chemical. Most recently, in the **Federal Register** of July

23, 2025 (90 FR 34602) (FRL-12842-01-OCSP). As a result, EPA is not incorporating previously published sections from these rulemakings as described further in this rulemaking, as they remain unchanged.

B. Toxicological Profile

For a detailed discussion of the toxicological profile of afidopyropen, see Section A.2. of the document entitled “Afidopyropen. Human Health Risk Assessment for the Petition for Amendment of Tolerances in/on Field Grown Strawberries.”, dated January 29, 2026, in docket ID EPA-HQ-OPP-2024-0509 at <https://www.regulations.gov>.

C. Toxicological Points of Departure/ Levels of Concern

All points of departure (POD), toxicity endpoints, and levels of concern (LOC) for afidopyropen remain unchanged from the previous human health risk assessment in support of the use of afidopyropen on leaf lettuce grown in greenhouses, dated June 24, 2025. In addition, the hazard characterization also remains unchanged. For a summary of the toxicological points of departure/ levels of concern for afidopyropen used for human health risk assessment, see Tables 4.5.4.1 and 4.5.4.2. of the document entitled “Afidopyropen. Human Health Risk Assessment for the Petition for Amendment of Tolerances in/on Field Grown Strawberries.”, dated January 29, 2026, in docket ID EPA-HQ-OPP-2024-0509 at <https://www.regulations.gov>.

D. Exposure Assessment

An aggregate dietary (food + drinking water) exposure and risk assessment was previously conducted using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database Version 4.02. This software uses 2005–2010 food consumption data from the U.S. Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America. An unrefined acute dietary assessment was conducted in support of the use of afidopyropen on leaf lettuce grown in greenhouses and included the current proposed tolerance of 0.3 ppm for strawberry. The assessment was based on tolerance-level residues and the recommended tolerance for leaf lettuce, 100% crop treated (PCT) assumptions, and default and empirical processing factors. At the 95th percentile of exposure, the estimated risk is 4.2% of the acute population-adjusted dose (aPAD) for females 13–49 years old. Since an acute toxicological endpoint was only identified for the population

subgroup females 13–49, an acute dietary exposure assessment was not conducted for any of the other population subgroups. In addition, an unrefined chronic dietary assessment was conducted in support of use of afidopyropen on leaf lettuce grown in greenhouses and included the current proposed tolerance of 0.3 ppm for strawberry. The assessment was based on tolerance-level residues and the recommended tolerance for leaf lettuce, 100 PCT assumptions, and default and empirical processing factors. The estimated risk is 2.7% of the chronic population-adjusted dose (cPAD) for the general U.S. population and the population subgroup with the highest estimated risk is children 1–2 years old at 6.3% of the cPAD.

Drinking water and non-occupational exposures. Strawberry is not a significant feed commodity, and the most recent EDWCs remain unchanged from the most recent risk assessment conducted in support of the use of afidopyropen on leaf lettuce grown in greenhouses, which accounted for afidopyropen residue levels in/on strawberry at 0.3 ppm. As such, these EDWCs remain current and protective of the proposed amended use on field-grown strawberries.

The proposed amended tolerance is not expected to result in residential exposure; therefore, a residential assessment was not conducted. There are existing residential ornamental uses that were assessed previously and were not found to be of concern. The residential risk estimates for use in the aggregate assessment for afidopyropen remain unchanged from the most recent risk assessment conducted in support of the use of afidopyropen on leaf lettuce grown in greenhouses, which can be found in docket ID EPA–HQ–OPP–2024–0020 at <https://www.regulations.gov>.

Cumulative exposure. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency considers “available information” concerning the cumulative effects of a particular pesticide’s residues and “other substances that have a common mechanism of toxicity.” Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to afidopyropen and any other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that afidopyropen has a common mechanism of toxicity with other substances. Afidopyropen and another

pesticide, aminocyclopyrachlor, both produce the common toxic metabolite cyclopropanecarboxylic acid (CPCA). Drinking water is the only expected exposure pathway for CPCA for either pesticide. The likelihood of having ground water residues of both afidopyropen and aminocyclopyrachlor at the EDWC predicted in the screening ground water modeling in the same location is miniscule for the following reasons: ground water modeling assumes application of a chemical at the maximum rate, and the maximum number of applications, every year for up to 100 years, and because lateral flow of chemicals away from the application site is relatively slow, both chemicals would have to be applied in approximately the same location every year at the maximum application rates and maximum numbers of applications for each, for the exposures to be additive. This is not a feasible scenario.

E. Safety Factor for Infants and Children

FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

EPA has determined that reliable data support the reduction of the Food Quality Protection Act (FQPA) safety factor for afidopyropen from 10X to 1X for all exposure scenarios since the toxicology database is complete and exposure analyses are unlikely to underestimate risk of exposure from afidopyropen. Although there is evidence of increased fetal and offspring susceptibility, the effects are well-characterized with clearly established no-observed-adverse-effect level (NOAEL) values and selected endpoints that are protective for the observed effects.

F. Aggregate Risks and Determination of Safety

In accordance with the FQPA, HED must consider and aggregate (add) pesticide exposures and risks from three major sources: food, drinking water, and residential exposures. In an aggregate

assessment, exposures from relevant sources are added together and compared to quantitative estimates of hazard (e.g., a NOAEL or PAD), or the risks themselves can be aggregated. When aggregating exposures and risks from various sources, EPA considers both the route and duration of exposure. The acute and chronic aggregate risk assessments include food and drinking water only. There are no acute or chronic aggregate risk estimates of concern for afidopyropen or CPCA. The short-term aggregate risk assessment applies only to residues of afidopyropen and combines residential exposures (contacting previously treated ornamentals) and average dietary (food and drinking water) exposures. The short-term aggregate assessment results in MOEs of 1,900 for adults and 2,100 for children (LOC = 100). There are no short-term aggregate risk estimates of concern for afidopyropen. CPCA is not a residue of concern for residential exposures.

Afidopyropen is classified as “*Suggestive Evidence of Carcinogenic Potential*.” Quantification of risk using a non-linear approach (i.e., a cPAD) will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to afidopyropen. As a result, a quantitative cancer dietary assessment was not performed.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the U.S. general population, or to infants and children, from aggregate exposure to afidopyropen residues. More detailed information on this action can be found in the document entitled “Afidopyropen. Human Health Risk Assessment for the Petition for Amendment of Tolerances in/on Field Grown Strawberries”, dated January 29, 2026, in docket ID EPA–HQ–OPP–2024–0509 at <https://www.regulations.gov>.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expressions.

Residues of afidopyropen can be measured in samples of strawberry using liquid chromatography-tandem mass spectrometry (LC/MS/MS), BASF Method No. D1103/01. This quick, easy, cheap, effective, rugged, and safe (QuEChERS)-based method was previously deemed acceptable for tolerance enforcement. The limit of quantitation (LOQ; determined as the

lowest level of method validation) for afidopyropen is 0.01 ppm. Acceptable method validation and concurrent recoveries within the range of 70–120% were obtained from samples of strawberry fruit fortified with afidopyropen at 0.010–1 ppm, thus the method.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The recommended tolerance for afidopyropen residues in/on strawberry were obtained using the Organization for Economic Co-operation and Development (OECD) maximum residue limit (MRL) calculation procedures. The recommended strawberry tolerance would change the harmonization status with Codex since Codex currently has an MRL for strawberry at the U.S. existing tolerance level of 0.15 ppm.

There are no Canadian MRLs established for residues of afidopyropen in/on strawberry.

C. Effective and Expiration Date(s)

In general, a tolerance action is effective on the date of publication of the final rule in the **Federal Register**. For actions in the final rule that lower or revoke existing tolerances, EPA will set an expiration date for the existing tolerance of six months after the date of publication of the final rule in the **Federal Register**, in order to allow a reasonable interval for producers in exporting members of the World Trade Organization's (WTO's) Sanitary and Phytosanitary (SPS) Measures Agreement to adapt to the requirements.

V. Conclusion

Therefore, the existing strawberry tolerance established under 40 CFR 180.700 will be increased from 0.15 ppm to 0.3 ppm. EPA will also remove

the existing time-limited tolerance established for residues of afidopyropen in or on strawberry at 0.3 ppm.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/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)

Since tolerance actions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the RFA, 5 U.S.C. 601 *et seq.*, do not apply to this action.

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 on 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 tolerance actions like this one are exempt from review under Executive Order 12866. 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 summarized in Unit III.E.I.

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 the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: February 10, 2026.

Charles Smith,

*Director, Registration Division, 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. In § 180.700 amend paragraph (a) in
table 1 by revising the entry for
“Strawberry” to read as follows:

**§ 180.700 Afidopyropen; tolerances for
residues.**

(a) * * *
(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
* * * *	*
Strawberry	0.3
* * * *	*
* * * *	*

§ 180.700 [Amended]

■ 3. Amend § 180.700 by removing and
reserving paragraph (b).

[FR Doc. 2026–02933 Filed 2–12–26; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 180

[EPA–HQ–OPP–2023–0514; FRL–13128–01–
OCSPP]

**Rice Bran Wax in Pesticide
Formulations; Exemption From the
Requirement for a Tolerance**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an
exemption from the requirement of a
tolerance for residues of rice bran wax
(CAS Reg. No. 8016–60–2) when used as

an inert ingredient (lubricant) on
growing crops and raw agricultural
commodities pre- and post-harvest,
when applied to animals, and in
antimicrobial formulations applied to
food-contact surfaces in public eating
places, dairy-processing equipment, and
food-processing equipment and utensils.
Micro Powders, Inc., submitted a
petition to EPA under the Federal Food,
Drug, and Cosmetic Act (FFDCA)
requesting establishment of an
exemption from the requirement of a
tolerance. This regulation eliminates the
need to establish a maximum
permissible level for residues of rice
bran wax when used in accordance with
the terms of those exemptions.

DATES: This regulation is effective
February 13, 2026. Objections and
requests for hearings must be received
on or before April 14, 2026 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–2023–0514, is
available online at <https://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:

Charles Smith, Registration Division
(7505T), Office of Pesticide Programs,
Environmental Protection Agency, 1200
Pennsylvania Ave. NW, Washington, DC
20460–0001; main telephone number:
(202) 566–1030; email address:
RDfRNotices@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).

If you have any questions regarding
the applicability of this proposed action
to a particular entity, consult the person

**listed under FOR FURTHER INFORMATION
CONTACT.**

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

EPA is issuing this rulemaking under
section 408 of the 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–2023–0514 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 April 14, 2026.

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 November 21, 2023 (88 FR 81021, FRL-10579-10-OCSP), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN-11778) by Micro Powders, Inc. (EPA Company Number 102655, 580 White Plains Road, Tarrytown, NY 10591 USA). The petition requested that 40 CFR be amended by establishing an exemption from the requirement of a tolerance for residues of rice bran wax (CAS Reg. No. 8016-60-2) when used as an inert ingredient (lubricant) in pesticide formulations applied to growing crops or raw agricultural commodities pre- and post-harvest under 40 CFR 180.910, when applied to animals under 40 CFR

180.930, and when used in antimicrobial formulations (food-contact surface sanitizing solutions) applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils under 40 CFR 180.940(a). That document referenced a summary of the petition prepared by Micro Powders, Inc., the petitioner, which is available in the docket (EPA-HQ-OPP-2023-0514) available online at <https://www.regulations.gov>. There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all substances (or groups of similar substances) that are intentionally included in a pesticide product, other than active ingredients as defined in 40 CFR 153.125. Inert ingredients include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for rice bran wax including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with rice bran wax follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by rice bran wax as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

The toxicological database of rice bran wax is supported by data regarding surrogates (Carnauba wax, D-002, D-003, γ -Oryzanol, Docosanoic Acid). EPA has determined that it is appropriate to bridge surrogate (Micro Powders, Inc.) data to assess rice bran wax due to similarities in the functional groups/structure (long-chain aliphatic esters, fatty acids, and alcohols), composition (natural plant wax mixtures), and physical/chemical properties (high molecular weight, low water solubility, low vapor pressure), and the available human health toxicity and ecological toxicity data of the five surrogate substances.

Rice bran wax has low acute toxicity via the oral route, and it is anticipated to have low toxicity via the dermal and inhalation routes. Rice bran wax is not an acute eye or dermal irritant, nor a skin sensitizer. Repeated dose toxicity was evaluated comprehensively using surrogate data. Subchronic toxicity studies with D-002 and D-003 in rats (90-day gavage) showed no adverse effects at doses up to 1,500 milligrams per kilogram per day (mg/kg/day). Carnauba wax administered in rat diet at up to 10 percent (approximately 8,800 to 10,200 mg/kg body weight per day) for 13 weeks produced no treatment-related effects. A three-generation reproductive toxicity study with carnauba wax in rats demonstrated no reproductive or developmental toxicity

at dietary concentrations up to 1 percent (approximately 10,000 mg/kg/day). Chronic toxicity studies with carnauba wax (28 weeks in dogs) and D-003 (9 months in dogs, 18 months in mice, 24 months in rats) at doses up to 1,500 mg/kg/day showed no treatment-related adverse effects.

Mutagenicity was assessed using an Ames bacterial reverse mutation test with rice bran wax oxidized in *Salmonella typhimurium* and it showed no evidence of mutagenic activity in any tested strain. Carcinogenicity was evaluated using surrogate data. Two-year dietary carcinogenicity bioassays with γ -oryzanol in Fischer 344 rats and B6C3F1 mice showed no increase in tumor incidence at doses up to 2,000 mg/kg/day. Carcinogenicity studies with D-003 in Sprague-Dawley rats (24 months) and OF1 mice (18 months) at doses up to 1,500 mg/kg/day showed no evidence of carcinogenic potential. These data support a determination that rice bran wax is not likely to be carcinogenic to humans.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the NOAEL dose and the LOAEL dose. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level, generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD), and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program>.

The hazard profile of rice bran wax is adequately defined. Overall, rice bran wax is of low acute, subchronic, and developmental toxicity. No systemic toxicity is observed up to 1,000 mg/kg/day. Since signs of toxicity were not

observed, no toxicological endpoints of concern or PODs were identified. Therefore, the Agency performed a qualitative risk assessment.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to rice bran wax, EPA considered exposure under the proposed exemption from the requirement of a tolerance. Dietary exposure (food and drinking water) to rice bran wax may occur following ingestion of foods with residues from their use in accordance with this exemption. However, a quantitative dietary exposure assessment is not necessary since a toxicological endpoint for risk assessment was not identified.

2. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Rice bran wax may be present in pesticide and non-pesticide products that may be used in and around the home. However, a quantitative residential exposure assessment is not necessary since a toxicological endpoint for risk assessment was not identified.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Based on the lack of toxicity in the available database, EPA has not found rice bran wax to share a common mechanism of toxicity with any other substances, and rice bran wax does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that rice bran wax does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides>.

D. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Based on an assessment of rice bran wax, EPA has concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children. Because there are no threshold effects associated with rice bran wax, EPA conducted a qualitative assessment. As part of that assessment, the Agency did not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children.

E. Aggregate Risks and Determination of Safety

Because no toxicological endpoints of concern were identified, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to rice bran wax residues.

F. Analytical Enforcement Methodology

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

G. Conclusions

Therefore, an exemption from the requirement of a tolerance is established for residues of rice bran wax (CAS Reg. No. 8016-60-2) when used as an inert ingredient (lubricant) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest under 40 CFR 180.910; when applied to animals under 40 CFR 180.930; and when used in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils under 40 CFR 180.940(a).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/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.

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 (See Unit V.A.), 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 the Congress and to the Comptroller General of the United States. This action does not meet the criteria set forth in 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: February 9, 2026.

Charles Smith,
Director, Registration Division, Office of Pesticide Programs.

For the reasons stated in the preamble, the EPA amends 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. In § 180.910, amend Table 1 to § 180.910 by adding, in alphabetical order, an entry for “rice bran wax” to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.910

Inert ingredients	Limits	Uses
* * * * *		
Rice bran wax (CAS Reg. No. 8016–60–2)	None	Lubricant.
* * * * *		

■ 3. In § 180.930, amend Table 1 to § 180.930 by adding, in alphabetical

order, an entry for “rice bran wax” to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.
* * * * *

TABLE 1 TO 180.930

Inert ingredients					Limits	Uses
*	*	*	*	*	*	*
Rice bran wax (CAS Reg. No. 8016–60–2)					None	Lubricant.
*	*	*	*	*	*	*

■ 4. In § 180.940, amend Table 1 to paragraph (a) by adding, in alphabetical order, an entry for “rice bran wax” to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).
* * * * *

TABLE 1 TO PARAGRAPH (a)

Inert ingredients					CAS Reg. No.	Limits
*	*	*	*	*	*	*
Rice bran wax					8016–60–2	None.
*	*	*	*	*	*	*

Proposed Rules

Federal Register

Vol. 91, No. 30

Friday, February 13, 2026

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 HOMELAND SECURITY

6 CFR Part 226

[Docket ID: CISA–2022–0010]

Cyber Incident Reporting for Critical Infrastructure Act (CIRCIA) Rulemaking; Town Hall Meetings

AGENCY: Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

ACTION: Notification of town hall meetings.

SUMMARY: This notice announces town hall meetings to allow external stakeholders a limited additional opportunity to provide input on refining the scope and burden of the CIRCIA Notice of Proposed Rulemaking (NPRM) issued in the **Federal Register** on April 4, 2024. The proposed CIRCIA rulemaking seeks to implement the Cyber Incident Reporting for Critical Infrastructure Act of 2022, as amended, by implementing covered cyber incident and ransom payment reporting requirements for covered entities.

DATES: Town hall meetings are scheduled to be held on the following dates:

- *Chemical Sector; Water and Wastewater Sector; Dams Sector; Energy Sector; and Nuclear Reactors, Materials, and Waste Sector*—March 9, 2026—Virtual
- *Commercial Facilities Sector; Critical Manufacturing Sector; and Food and Agriculture Sector*—March 12, 2026—Virtual
- *Emergency Services Sector, Government Facilities Sector, Healthcare and Public Health Sector*—March 17, 2026—Virtual
- *Communications Sector; Transportation Systems Sector; and Financial Services Sector*—March 18, 2026—Virtual
- *Defense Industrial Base Sector and Information Technology Sector*—March 19, 2026—Virtual

CISA also plans to hold two general town hall meetings scheduled to be held on the following dates:

- *General Session 1:* March 31, 2026—Virtual
- *General Session 2:* April 2, 2026—Virtual

All town hall meetings are tentatively scheduled to take 2 hours. The start and end times will be during core business hours (Eastern Time) and will be posted on www.cisa.gov/circia. CISA reserves the right to extend the schedule, reschedule, or cancel any of these meetings for any reason, including for severe weather, a health emergency, a lack of registered attendees, or an incident that impacts CISA's ability to safely conduct these meetings at the proposed date, time, or location. Any changes or updates to dates, locations, or start and end times for these town hall meetings will be posted on www.cisa.gov/circia and communicated via email to registered attendees.

ADDRESSES: Registration is required to attend each town hall meeting. To register, visit www.cisa.gov/circia and follow the instructions to complete registration. Registration for each town hall meeting will be accepted until 5:00 p.m. Eastern Time two (2) business days before the meeting.

Docket: To view the docket, including documents, written materials, and comments related to the proposed rulemaking, go to <https://www.regulations.gov>, type CISA–2022–0010 in the search box, and click “Search.”

FOR FURTHER INFORMATION CONTACT:

Nichole Clagett, CIRCIA Deputy Associate Director, Cybersecurity and Infrastructure Security Agency, circia@cisa.dhs.gov, 202–815–4427.

SUPPLEMENTARY INFORMATION:

I. Background

Enacted in March 2022, CIRCIA directed CISA to issue a rulemaking requiring “covered entities” to report “covered cyber incidents” and “ransom payments” to CISA. (6 U.S.C. 681b(b); 6 U.S.C. 681–681g). Before initiating the rulemaking process, CISA published a Request for Information (RFI), which was open for 60 days for public comment, and held listening sessions in person across the country and virtually with each of the 16 critical infrastructure sectors. (87 FR 55830 &

55833 (Sep. 12, 2022) and 87 FR 60409 (Oct. 5, 2022)). CISA received approximately 130 comments in response to the RFI and approximately 730 people attended the listening sessions. Consistent with CIRCIA's requirements, CISA published an NPRM on April 4, 2024, which was open for a 90-day public comment period. (89 FR 23644 and 37141).¹ CISA received approximately 300 comments in response to the NPRM.

CISA received many written comments and requests from critical infrastructure sector entities and other stakeholders to directly engage CISA further on the CIRCIA rulemaking. CISA appreciates stakeholders' interest and concern that CISA implement CIRCIA to maximize its impact on improving our nation's cybersecurity posture while minimizing unnecessary burden to entities in critical infrastructure sectors. CISA remains committed to working within the rulemaking process to enable stakeholders to provide input as CISA finalizes the rulemaking to strike an appropriate balance of costs and benefits.

Given the broad stakeholder community that CIRCIA may potentially impact, CISA will conduct a series of town hall meetings to solicit input on the NPRM. CISA selected this approach to additional engagement on the CIRCIA NPRM to provide access to CISA across the broad range of entities within the critical infrastructure sectors. This approach will also enable maintenance of a transparent and accurate record of stakeholder feedback. Because this is a limited engagement opportunity for stakeholders, CISA will not reopen the comment period for the NPRM at this time but may elect to do so in the future if CISA determines that doing so is warranted.

II. Specific Topics of Interest

During the town hall meetings, CISA welcomes any specific, actionable improvements that CISA could implement in the final rule to clarify or reduce burden of CIRCIA's regulatory requirements while enhancing the federal government's visibility into the cyber threat landscape for critical infrastructure sectors. Input that would be most useful are examples on how the

¹ CISA also published a correction related to the Transportation Systems sector-based criteria on June 3, 2024. (89 FR 47471).

NPRM may impact regulated entities and specific improvements, including how such suggestions would increase the benefit of CIRCIA to critical infrastructure owners and operators. Specifically:

- The scope of entities that would only be considered covered entities because of size-based criterion and would not meet any of the sector-based criteria.
- The proposed decision to include a size-based criterion.
- The proposed sector-based criteria used in the Applicability Section to identify certain entities as covered entities.
- Potential alternative sector-based criteria for the Commercial Facilities Sector, Dams Sector, and Food and Agriculture Sector if CISA modifies or removes the general size-based threshold criterion.
- The use of the Environmental Protection Agency Risk Management Program (EPA RMP) as alternative sector-based criteria for the Chemical Sector given that CFATS remains unauthorized.
- CISA's proposal to incorporate Oil and Natural Gas Subsector entities primarily through the size-based threshold instead of developing one or more criteria specifically targeting Oil and Natural Gas Subsector entities—and whether this size threshold will capture the correct population of entities in this subsector.
- Whether CISA should include in the final rule specific criteria to cover Managed Service Providers (MSPs) or Cloud Service Providers (CSPs) utilizing open-source software or additional, specific criteria that would require reporting related to open-source code, open-source software, or code repositories.
- Whether there are other lists of entities in a critical infrastructure sector that should be included as covered entities (either instead of the applicability criteria for covered entity proposed in the NPRM or in addition to the proposed applicability criteria), to the extent that those listed entities fall within a critical infrastructure sector.
- The proposed examples of incidents that likely would or would not qualify as a substantial cyber incident, to include whether the examples provided by CISA are accurate and whether there are other types of incidents that it would be useful to include in the list of examples of incidents that likely would or would not qualify as a substantial cyber incident.
- CISA's proposed interpretations of what constitutes substantially similar

information and a substantially similar timeframe.

- Improvements to the content of reports.
- Improvements to the proposed approach for RFIs and subpoenas.
- Potential approaches to harmonizing CIRCIA's regulatory reporting requirements with other existing federal or state local, tribal, or territorial (SLTT) laws, regulations, directives, or similar policies that require reporting of cyber incidents or ransom payments.
- How to reduce actual, likely, or potential duplication or conflict between other federal or SLTT laws, regulations, directives, or policies and CIRCIA's reporting requirements.

III. Town Hall Meeting Procedures and Participation

Town hall meetings are intended to provide stakeholders with the opportunity to directly share their feedback on the CIRCIA NPRM with CISA. CISA will not be able to share non-public or deliberative information about the CIRCIA rulemaking during meetings, nor will CISA be able to commit to resolving policy issues impacting or impacted by the rulemaking in a specific manner.

Registration is required to attend each town hall meeting. See the **ADDRESSES** Section of this notice for instructions on how to register. CISA will send registered individuals a meeting-specific link and any other pertinent information necessary to participate in the meeting via email. CISA encourages individuals representing entities that they do not believe fall within a specific critical infrastructure sector to register for a general town hall meeting. Those individuals who are unable to attend a town hall meeting for their sector may also attend general town hall meetings.

Each town hall meeting is expected to last up to a total of two hours. To allow as many stakeholders as possible the opportunity to speak, CISA requests that speakers limit their remarks and responses to three minutes. CISA reserves the right to stop speakers who exceed the limit. Please note that a town hall meeting may adjourn early if all registered individuals present have had the opportunity to speak prior to the scheduled conclusion of the meeting.

Town hall meetings will be recorded and transcribed by CISA. After a meeting has taken place, CISA will post copies of the transcripts of the town hall meetings in the docket for the CIRCIA rulemaking. CISA will also include the name and organizational affiliation of each person that attends town hall meetings in the docket. Additionally,

CISA will provide public notice that a meeting has taken place on www.cisa.gov/circia with a link to transcripts and any associated materials.

If a participant wants CISA to consider data or specific written materials as part of a town hall meeting, stakeholders must provide that information to CISA in writing no later than seven (7) calendar days after the meeting. Written material must be sent to CIRCIA@cisa.dhs.gov and will be made publicly available in the docket for the CIRCIA rulemaking.

CISA is committed to ensuring all participants have equal access to this opportunity regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please contact CISA at circia@cisa.dhs.gov as soon as possible prior to the town hall meeting that you wish to attend.

Madhu Gottumukkala,

Acting Director, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2026-02948 Filed 2-12-26; 8:45 am]

BILLING CODE 9111-LF-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2026-1326; Project Identifier MCAI-2025-00312-R]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (AHD) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all AHD Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T3, EC635T2+, MBB-BK 117 C-2, and MBB-BK 117 D-2 helicopters. This proposed AD was prompted by reports of cracks on the cable drum of the rescue hoist assembly. This proposed AD would require repetitively inspecting the cable drum of certain rescue hoist assemblies for cracks and depending on the results, replacing or repairing the cable drum of the rescue hoist assembly. This proposed AD would also prohibit the operation and the installation of an affected rescue hoist assembly on a helicopter, unless certain requirements are met. The FAA

is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by March 30, 2026.

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

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2026-1326; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

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

FOR FURTHER INFORMATION CONTACT: Steven Warwick, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (817) 222-5225; email: steven.r.warwick@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under **ADDRESSES**. Include “Docket No. FAA-2026-1326; Project Identifier MCAI-2025-00312-R” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any

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

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Steven Warwick, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2025-0055, dated March 11, 2025 (EASA AD 2025-0055) (also referred to as the MCAI), to correct an unsafe condition on AHD Model EC135 P1, EC135 P2, EC135 P2+, EC135 P3, EC135 T1, EC135 T2, EC135 T2+, EC135 T3, EC635 P2+, EC635 P3, EC635 T1, EC635 T2+, and EC635 T3 helicopters. The MCAI states that cracks were reported on a cable drum installed on certain part numbered Goodrich rescue hoist assemblies. Additionally, the material referenced in the MCAI states that Goodrich determined that this occurrence was isolated to a batch of cable drums made from a plate material, which was determined to have increased susceptibility to corrosion-induced fatigue. This unsafe condition, if not addressed, could result in

corrosion-induced fatigue of the cable drum, and consequent injuries to human load or individuals on the ground.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2026-1326.

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2025-0055 specifies procedures for repetitively inspecting the cable drum installed on the rescue hoist assembly for cracks longer than 3 mm and, depending on the results, contacting the manufacturer for approved repair instructions. Additionally, the MCAI allows the installation of an affected rescue hoist assembly on a helicopter if it meets certain requirements. Finally, the MCAI prohibits the operation of an affected rescue hoist assembly after a certain effective date as specified in the MCAI.

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

FAA's Determination

These products have been approved by the civil aviation authority (CAA) of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2025-0055, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD. See “Differences Between this NPRM and the MCAI” for a discussion of the general differences included in this proposed AD.

Differences Between This Proposed AD and the MCAI

The MCAI applies to AHD Model EC635 P2+, EC635 P3, EC635 T1, and EC635 T3 helicopters, whereas this proposed AD would not because those models do not have an FAA type certificate.

Where the MCAI specifies to contact the manufacturer for repair instructions,

this proposed AD would require repairing an affected rescue hoist assembly in accordance with a method approved by the Manager, International Validation Branch or Airbus Helicopters' Design Organization Approval.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some CAA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been

coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2025–0055 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2025–0055 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2025–0055 does not mean that operators need to comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,”

compliance with this proposed AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2025–0055. Material referenced in EASA AD 2025–0055 for compliance will be available at *regulations.gov* under Docket No. FAA–2026–1326 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 476 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Visual inspection of the cable drum	1 work-hour × \$85.00 per hour = \$85	\$0.00	\$85	\$40,460

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the proposed inspection. The agency has no way of determining the

number of helicopters that might need this replacement:

ESTIMATED COSTS FOR OPTIONAL ACTION

Action	Labor cost	Parts cost	Cost per product
Replace rescue hoist assembly	3.5 work-hours × \$85 per hour = \$298	\$123,000	\$123,298

The FAA has no way of determining the cost to repair a rescue hoist assembly or the number of helicopters that may require either repair or replacement of the rescue hoist assembly if any cracks are found in the cable drum that are of a certain length or more.

Authority for This Rulemaking

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

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

develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters Deutschland GmbH (AHD): Docket No. FAA–2026–1326; Project Identifier MCAI–2025–00312–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 30, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T3, and

EC635T2+ helicopters, all serial numbers (S/N) up to 1999; and Model MBB-BK 117 C-2 and MBB-BK 117 D-2 helicopters, all S/Ns, certificated in any category.

Note 1 to paragraph (c): Helicopters with an EC135P3H designation are Model EC135P3 helicopters. Helicopters with a EC135T3H designation are Model EC135T3 helicopters.

Note 2 to paragraph (c): Helicopters with an MBB-BK 117 C-2e designation are Model MBB-BK 117 C-2 helicopters.

(d) Subject

Joint Aircraft System Component (JASC) Code 2500, Cabin Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by reports of cracks on the cable drum of the rescue hoist assembly. The FAA is issuing this AD to detect and correct cable drums installed on certain rescue hoist assemblies that have been manufactured with a certain plate material that could result in corrosion-induced fatigue of the cable drum. This unsafe condition, if not addressed, could result in failure of the cable drum, and consequent injuries to human load or individuals on the ground.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2025-0055, dated March 11, 2025 (EASA AD 2025-0055).

(h) Exceptions to EASA AD 2025-0055

(1) Where EASA AD 2025-0055 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2025-0055 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(3) Where paragraph (2) of EASA AD 2025-0055 and the material referenced in EASA AD 2025-0055 specifies to contact the manufacturer for repair instructions, or where the material specifies to contact Goodrich Hoist and Winch for further instructions if any cracks or suspected cracks longer than 3 mm are found, for this AD repair an affected rescue hoist assembly in accordance with a method approved by the Manager, International Validation Branch or Airbus Helicopters' Design Organization Approval.

(4) Where the material referenced in EASA AD 2025-0055 specifies "magnifying Glass 6x maximum," this AD requires replacing that text with "6X magnification or higher power."

(5) This AD does not adopt the "Remarks" section of EASA AD 2025-0055.

(i) No Reporting Requirement

Although the material referenced in EASA AD 2025-0055 specifies to submit certain information to the manufacturer, this AD does not require that action.

(j) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 provided there are no external loads.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Additional Information

For more information about this AD, contact Steven Warwick, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (817) 222-5225; email: steven.r.warwick@faa.gov.

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2025-0055, dated March 11, 2025.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

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

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on February 10, 2026.

Steven W. Thompson,

Acting Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2026-02923 Filed 2-12-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2026-1324; Project Identifier AD-2025-00986-T]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. This proposed AD was prompted by a report of cracks found in the fuselage skin underneath the aft drain mast. This proposed AD would require repetitive inspections of the fuselage skin and structure common to the aft drain mast for any crack or corrosion and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 30, 2026.

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

- *Federal eRulemaking Portal:* Go to regulations.gov. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2026-1324; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Boeing material identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone

562-797-1717; website myboeingfleet.com.

• You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at regulations.gov under Docket No. FAA-2026-1324.

FOR FURTHER INFORMATION CONTACT: Wayne Ha, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562-627-5238; email: wayne.ha@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under the **ADDRESSES** section. Include “Docket No. FAA-2026-1324; Project Identifier AD-2025-00986-T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated

as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Wayne Ha, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562-627-5238; email: wayne.ha@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating that two cracks were found on a 737-400 airplane, measuring 0.4 inches and 0.6 inches in length, located in the fuselage skin underneath the aft drain mast. The airplane had accumulated 30,684 flight hours and 30,735 flight cycles. Boeing has determined that cracks in this location could be caused by local elevated skin stress from the elliptical cutout, aerodynamic loading effects, and minor skin defects. This condition, if not addressed, could result in the inability of the principal structural element (PSE) to sustain limit loads, which may result in rapid decompression of the fuselage and loss of structural integrity of the airplane.

FAA’s Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Alert Service Bulletin 737-53A1409, Revision 1, dated October 27, 2023. This material specifies procedures for repetitive internal detailed inspections around the fastener holes, cutout, channel, and

fillers of the structure common to the aft drain mast (also referred to as the “aft waste water drain mast”) for any crack or corrosion; repetitive external detailed inspections and external surface high frequency eddy current (HFEC) inspections around the fastener holes and cutout on the fuselage skin common to the aft drain mast for any crack or corrosion; and applicable on-condition actions. On-condition actions include obtaining and following repair instructions. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions in the Accomplishment Instructions of Boeing Alert Service Bulletin 737-53A1409, Revision 1, dated October 27, 2023, already described, except as discussed under “Differences Between this Proposed AD and the Referenced Material,” and except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this material at regulations.gov under Docket No. FAA-2026-1324.

Differences Between This Proposed AD and the Referenced Material

Although the actions in paragraph 3.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 737-53A1409, Revision 1, dated October 27, 2023, instruct Group 2 airplanes to accomplish Part 1 through 4 of the Work Instructions, this proposed AD would only require the accomplishment of Parts 2 and Part 3 of the Work Instructions.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 123 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive inspections	7 work-hours × \$85 per hour = \$595 per inspection cycle.	\$0	\$595 per inspection cycle.	\$73,185 per inspection cycle.

The FAA has received no definitive data on which to base the cost estimates

for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2026–1324; Project Identifier AD–2025–00986–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 30, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1409, Revision 1, dated October 27, 2023.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of cracks found in the fuselage skin underneath the aft drain mast. The FAA is issuing this AD to address cracking or corrosion in the fuselage skin and structure common to the aft drain mast. The unsafe condition, if not addressed, could result in the inability of the principal structural element (PSE) to sustain limit loads, which may result in rapid decompression of the fuselage and loss of structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions for Group 1 Airplanes

For airplanes identified as Group 1 in Boeing Alert Service Bulletin 737–53A1409, Revision 1, dated October 27, 2023: Within 120 days after the effective date of this AD, inspect the fuselage skin and structure common to the aft drain mast for any crack or corrosion and applicable on-condition actions, using a method approved in paragraph (k) of this AD.

(h) Required Actions for Group 2 Airplanes

For airplanes identified as Group 2 in Boeing Alert Service Bulletin 737–53A1409, Revision 1, dated October 27, 2023: Except as specified in paragraph (i) of this AD, at the applicable times specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1409, Revision 1, dated October 27, 2023, do all applicable actions identified in, and in accordance with, paragraphs 3.B.2., "Action 1: Do Part 2," and 3.B.3., "Action 2: Do Part 3," of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1409, Revision 1, dated October 27, 2023.

(i) Exceptions to Service Bulletin Specifications

(1) Where the Compliance Time columns of the tables in the "Compliance" paragraph of Boeing Alert Service Bulletin 737–53A1409, Revision 1, dated October 27, 2023, refer to the original issue date of Service Bulletin 737–53A1409, this AD requires using the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 737–53A1409, Revision 1, dated October 27,

2023, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraphs (g) and (h) of this AD, as applicable, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 737–53A1409, dated May 4, 2023.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(l) Additional Information

(1) For more information about this AD, contact Wayne Ha, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 562–627–5238; email: wayne.ha@faa.gov.

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (m)(3) this AD.

(m) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 737–53A1409, Revision 1, dated October 27, 2023.

(ii) [Reserved]

(3) For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des

Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on February 10, 2026.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2026–02912 Filed 2–12–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–1323; Project Identifier MCAI–2025–01190–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This proposed AD was prompted by the obsolescence of the clamp holding in place the oxygen generator in the container and introduction of a new clamp from another manufacturer with different locking torque specifications, which were not properly reflected in Airbus documentation. This proposed AD would require replacing each affected part, would prohibit accomplishing maintenance actions using certain versions of a maintenance procedure task, and would also prohibit the installation of affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 30, 2026.

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

- *Federal eRulemaking Portal:* Go to regulations.gov. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room

W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2026–1323; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu. It is also available at regulations.gov under Docket No. FAA–2026–1323.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3225; email: Dan.Rodina@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under the **ADDRESSES** section. Include “Docket No. FAA–2026–1323; Project Identifier MCAI–2025–01190–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dan Rodina, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3225; email: Dan.Rodina@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2025–0138, dated July 1, 2025 (EASA AD 2025–0138) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. The MCAI states that due to the obsolescence of the clamp holding in place the oxygen generator in the container, Collins introduced a new clamp from another manufacturer with different locking torque specifications. This new torque value was not properly reflected in Airbus documentation. Installing a part using the incorrect torque value (not updated with new specifications) could lead to damage of the chemical oxygen generator housing. This condition, if not corrected, could lead to a reduction of the available oxygen capacity of the airplane when needed, possibly resulting in injury to the airplane occupants.

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

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2026–1323.

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2025–0138 specifies procedures for replacing each affected chemical oxygen generator. EASA AD 2025–0138 also prohibits accomplishing

maintenance actions using maintenance procedure task A350–A–35–21–36–A0001–720A–A dated earlier than October 2024, and prohibits the installation of affected parts. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA’s Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2025–0138 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2025–0138 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2025–0138 in its entirety through that

incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2025–0138 does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2025–0138. Material required by EASA AD 2025–0138 for compliance will be available at *regulations.gov* under Docket No. FAA–2026–1323 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 38 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 350 work-hour × \$85 per hour = \$29,750	Up to \$230,300	Up to \$260,050	Up to \$9,881,900.

Authority for This Rulemaking

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

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

Regulatory Findings

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

on the distribution of power and responsibilities among the various levels of government.

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2026–1323; Project Identifier MCAI–2025–01190–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 30, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by the obsolescence of the clamp holding in place the oxygen generator in the container and introduction of a new clamp from another manufacturer with different locking torque specifications, which were not properly reflected in Airbus documentation. Installing a part using the incorrect torque value (not updated with new specifications) could lead to damage of the chemical oxygen generator housing. This condition, if not addressed, could result in a reduction of the available

oxygen capacity of the airplane when needed, possibly resulting in injury to the airplane occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2025–0138, dated July 1, 2025 (EASA AD 2025–0138).

(h) Exceptions to EASA AD 2025–0138

(1) Where EASA AD 2025–0138 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2025–0138 defines the affected parts as those meeting certain conditions listed in “Table 1 of the AOT”, this AD requires replacing that text with “Table 1 of Airbus Alert Operator Transmission (AOT) A35P024–24, dated April 22, 2025”.

(3) Where EASA AD 2025–0138 defines a serviceable part as “Any chemical oxygen generator, eligible for installation in accordance with Airbus approved instructions, that is not an affected part”, this AD requires replacing that text with “Any chemical oxygen generator, eligible for installation, that is not an affected part”.

(4) This AD does not adopt the “Remarks” section of EASA AD 2025–0138.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (j) of this AD and email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, AIR–520, Continued Operational Safety Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: Except as required by paragraph (i)(2) of this AD, if any material referenced in EASA AD 2025–0138 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under

those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Dan Rodina, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3225; email: Dan.Rodina@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2025–0138, dated July 1, 2025.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADS@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on February 10, 2026.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2026–02910 Filed 2–12–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2225; Airspace Docket No. 23–AGL–35]

RIN 2120–AA66

Establishment of Class E Airspace; Wall Municipal Airport, Wall, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Wall Municipal Airport, Wall, SD, to accommodate the airport's transition to instrument flight rules (IFR) service. This action would support the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before March 30, 2026.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–2225 and Airspace Docket No. 23–AGL–35 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11K, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the

agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace to support IFR operations at Wall Municipal Airport, Wall, SD.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class E5 airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September 15, 2025. These updates would be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 that would establish Class E airspace extending upward from 700 feet above the surface at Wall Municipal Airport, Wall, SD, to provide controlled airspace containment for the Area Navigation (RNAV) (Global Positioning System [GPS]) Runway (RWY) 13 and RNAV (GPS) RWY 31 approach procedures that were recently developed for the airport, and would also provide containment for diverse IFR departures. The Class E airspace should have a 6.5-mile radius of Class E airspace surrounding the airport to provide sufficient containment for departing IFR operations until reaching 1,200 feet above the surface and arriving IFR operations when operating less than 1,500 feet above the surface.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant

preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1G, "FAA National Environmental Policy Act Implementing Procedures," prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11K, Airspace Designations and Reporting Points, dated August 4, 2025, and effective September 15, 2025, would be amended as follows:

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

* * * * *

AGL SD E5 Wall, SD [New]

Wall Municipal Airport, SD
(Lat. 43°59'59" N, long. 102°15'15" W)

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

* * * * *

Issued in Washington, DC, on February 10, 2026.

B.G. Chew,

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

[FR Doc. 2026-02929 Filed 2-12-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2025–5832; Airspace
Docket No. 25–AWP–140]

RIN 2120–AA66

**Modification of Class D, Establishment
and Revocation of Class E Airspaces;
Travis Air Force Base (SUU), Fairfield,
CA**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: This action proposes to modify the Class D airspace area, establish a Class E airspace area designated as a surface area (Class E2 airspace area), and revoke the Class E airspace area designated as an extension to a Class D airspace area (Class E4 airspace area) at Travis Air Force Base, Fairfield, CA. Additionally, this action proposes administrative amendments to update the airport's legal descriptions. These actions would support the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before March 30, 2026.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2025–5832 and Airspace Docket No. 25–AWP–140 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11K, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/.

FOR FURTHER INFORMATION CONTACT:

Keith T. Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2428.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the Class D airspace area, establish a Class E2 airspace area, and remove the Class E4 airspace area to support IFR operations at Travis Air Force Base, Fairfield, CA.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring

expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class D, E2, and E4 airspace area designations are published in paragraphs 5000, 6002 and 6004, respectively, of FAA Order JO 7400.11, *Airspace Designations and Reporting Points*, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September 15, 2025. These amendments would be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 that would modify the Class D airspace area, establish a Class E airspace area designated as a surface area, and remove the Class E airspace area designated as an extension to a Class D airspace area at Travis Air Force Base, Fairfield, CA.

The Class D airspace area is not appropriately sized to contain the airport's instrument approach procedures (IAP) descent profiles once reaching 1,000 feet above the surface. The following IAPs are not in compliance with the design criteria for containing instrument approach operation within a Class D airspace area: Instrument Landing System (ILS) Runway (RWY) 21 Left (L) (CAT II), ILS or Localizer (LOC) or Area Navigation (RNAV) (Global Positioning System [GPS]) RWY 21L, Tactical Air Navigation (TACAN) RWY 21L, ILS RWY 3L, and LOC RWY 3L. Additionally, the Class D airspace area is not within design standards as it does not adequately contain the following IFR departure procedures until reaching 700 feet above the surface or the next adjacent controlled airspace: BESSA TWO DEPARTURE (RNAV) (the RWY 3 Right (R)/21L profile), and REJOY ONE DEPARTURE (RNAV) (the RWY 3R/21R profile). The Class D airspace area would be modified to a 4.3-mile radius of the airport, within 2 miles either side of the airport's 049° bearing extending from the 4.3-mile arc to five miles northeast, within two miles either side of the airport's 229° bearing extending from the 4.3-mile arc to 5.8 miles southwest to better contain the above listed instrument procedures.

SUU's airport traffic control tower is transitioning to part-time operating hours. Therefore, the FAA proposes to establish a Class E2 surface area for periods when the tower is not operating in accordance with FAA policies. The Class E2 surface area would consist of the same lateral dimensions as the Class D airspace area to maintain continuity of IFR procedure containment.

The Class E4 airspace area is no longer required. The required IAP points that authorized the establishment of the extension area will be contained within the proposed surface areas. Accordingly, FAA proposes removal of this airspace.

Finally, the FAA proposes administrative amendments to SUU's legal airspace descriptions. The airport's name should be updated from Fairfield, Travis AFB, CA, to Travis Air Force Base, CA. The airport reference point (ARP) should be amended from lat. 38°15'46" N, long. 121°55'39" W to lat. 38°15'52" N, long. 121°55'27" W. Lastly, the Class D and E legal descriptions should be amended to include part-time operating nomenclature. The Class D legal description should read: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be

continuously published in the Chart Supplement." The Class E legal description should read: "This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement."

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1G, *FAA National Environmental Policy Act Implementing Procedures*, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11K, *Airspace Designations and Reporting Points*, dated August 4, 2025, and effective September 15, 2025, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP CA D Fairfield, CA [Amended]

Travis Air Force Base, CA

(Lat. 38°15'52" N, long. 121°55'27" W)

That airspace extending upward from the surface to and including 2,600 feet within a 4.3-mile radius of the airport, within 2 miles either side of the airport's 049° bearing extending from the 4.3-mile arc to 5 miles northeast, within 2 miles either side of the airport's 229° bearing extending from the 4.3-mile arc to 5.8 miles southwest. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AWP CA E2 Fairfield, CA [New]

Travis Air Force Base, CA

(Lat. 38°15'52" N, long. 121°55'27" W)

That airspace extending upward from the surface within a 4.3-mile radius of the airport, within 2 miles either side of the airport's 049° bearing extending from the 4.3-mile arc to 5 miles northeast, within 2 miles either side of the airport's 229° bearing extending from the 4.3-mile arc to 5.8 miles southwest. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AWP CA E4 Fairfield, CA [Remove]

Fairfield, Travis AFB, CA

(Lat. 38°15'46" N, long. 121°55'39" W)

That airspace extending upward from the surface within 1.8 miles each side of the Travis AFB 047° bearing, extending from the 4.3-mile radius to 8.7 miles northeast, and within 1.8 miles each side of the Travis AFB 227° bearing extending from the 4.3-mile radius of the airport to 8.7 miles southwest, and within 3.7 miles northwest and 1.8 miles southeast of the Travis AFB 236° bearing extending from the 4.3-mile radius to 5.6 miles southwest.

* * * * *

Issued in Des Moines, Washington, on February 11, 2026.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2026–02985 Filed 2–12–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2025–2244; Airspace
Docket No. 24–AWP–113]

RIN 2120–AA66

**Establishment, Modification, and
Revocation of Class E Airspace;
Jacqueline Cochran Regional Airport,
Palm Springs, CA**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: This action proposes to establish Class E airspace area designated as an extension to a Class E surface area (Class E4 airspace area), modify Class E airspace area designated as a surface area (Class E2 airspace area), and revoke Class E airspace area extending upward from 700 feet or more above the surface (Class E5 airspace area) at Jacqueline Cochran Regional Airport (TRM), Palm Springs, CA. These actions support the safe and efficient management of instrument flight rules (IFR) and visual flight rules (VFR) operations at the airport. Additionally, the FAA proposes administrative revisions to TRM's legal descriptions of the controlled airspace areas associated with TRM's to ensure consistency within the FAA's aeronautical database.

DATES: Comments must be received on or before March 30, 2026.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2025–2244 and Airspace Docket No. 24–AWP–113 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for

accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11K, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 600 Independence Avenue SW, Washington DC, 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Keith T. Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2428.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish, modify, and revoke Class E airspace to support IFR and VFR operations at Jacqueline Cochran Regional Airport, Palm Springs, CA.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report

summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class E2, E4 and E5 airspace areas are published in paragraphs 6002, 6004, and 6005, respectively, of FAA Order JO 7400.11, *Airspace Designations and Reporting Points*, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11K, dated August 8, 2025, and effective September 15, 2025. These updates would be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 that would establish a Class E4 airspace area, modify the Class E2 airspace area, and revoke the Class E5 airspace area at TRM, Palm Springs, CA.

The Very High Frequency Omnidirectional Range (VOR)-A approach procedure serving TRM has a final approach segment where IFR aircraft descend to 1,000 feet above the surface. This arrival point is located beyond two miles from the existing lateral boundaries of the Class E2 airspace area and is not currently contained within controlled airspace extending upward from the surface. In accordance with FAA airspace design criteria, a surface-based controlled airspace area for an airport should contain arriving aircraft descending to 1,000 feet above the surface. The FAA proposes establishing a Class E4 airspace area, designated as an extension to the Class E2 airspace area, to more appropriately contain the airport's arrival procedures. The proposed Class E4 airspace area would extend upward from the surface within 2.5 miles either side of TRM's 140° bearing, from the airport's 4.4-mile arc extending 7.1 miles southeast.

The existing Class E2 airspace area at TRM does not fully contain Category D aircraft conducting circling maneuvers. The authorized circling radius of 3.6 miles from each landing threshold point extends beyond the current 4.2-mile radius of the Class E2 airspace area. To more appropriately contain IFR aircraft within the surface-based controlled airspace area during circling operations, the FAA proposes to extend the Class E2 radius from 4.2 to 4.4 miles.

The Class E5 airspace area associated with TRM is no longer required. The Class E5 airspace area for Palm Springs International Airport, Palm Springs, CA fully encompasses the TRM Class E5 airspace area and would serve as the transitional airspace extending upward from 700 feet above the surface to facilitate the transition between the terminal and en-route air traffic environments. The Los Angeles En-Route Domestic airspace area would fulfill the role of transitional controlled airspace area extending upward from 1,200 feet above the surface, supporting the transition between the terminal and en-route air traffic environments.

Additionally, the FAA proposes several administrative updates to the TRM's airspace legal descriptions. The airport reference point should reflect the following geographical coordinates: lat. 33°37'36" N, long. 116°09'35" W,

formerly lat. 33°37'35" N, long. 116°09'39" W. Lastly, the airport name should be changed from Thermal Airport, CA to Jacqueline Cochran Regional Airport, CA.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

- 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11K, Airspace Designations and Reporting Points, dated August 8, 2025, and effective September 15, 2025, is amended as follows:

Paragraph 6002 Class E Airspace Area Designated as a Surface Area.

* * * * *

AWP CA E2 Palm Springs, CA [Amended]

Jacqueline Cochran Regional Airport, CA
(Lat. 33°37'36" N, Long. 116°09'35" W)

That airspace extending upward from the surface within a 4.4-mile radius from the airport.

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AWP CA E4 Palm Springs, CA [New]

Jacqueline Cochran Regional Airport, CA
(Lat. 33°37'36" N, Long. 116°09'35" W)

That airspace extending upward from the surface within 2.5 miles either side of the airport's 140° bearing from the airport's 4.4-mile arc extending 7.1 miles southeast.

* * * * *

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

* * * * *

AWP CA E5 Thermal, CA [Removed]

Thermal VORTAC
(Lat. 33°37'41" N, Long. 116°09'37" W)

* * * * *

Issued in Des Moines, Washington, on February 11, 2026.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2026–02986 Filed 2–12–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2026–0027; Airspace Docket No. 24–AWP–106]

RIN 2120–AA66

Modification of Class D and Class E Airspace; Palm Springs International Airport, Palm Springs, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class D airspace area and the Class E airspace area designated as an extension to a Class D airspace area (Class E4 airspace area) at Palm Springs International Airport (PSP), Palm Springs, CA. Additionally, the FAA proposes several administrative corrections to the airport's airspace legal descriptions. These actions will support the safety and management of instrument flight rules (IFR) and visual flight rules (VFR) operations at the airport.

DATES: Comments must be received on or before March 30, 2026.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2026–0027 and Airspace Docket No. 24–AWP–106 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11K, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Keith T. Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone: (206) 231–2428.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the

safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify Class D and Class E4 airspace areas in support of IFR and VFR operations at Palm Springs International Airport, Palm Springs, CA.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may

also be examined during normal business hours at the office of the Northwest Mountain Regional Office, Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class D and E4 airspace areas are published in paragraphs 5000 and 6004, respectively, of FAA Order JO 7400.11, *Airspace Designations and Reporting Points*, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September 15, 2025. These updates would be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to modify the Class D and Class E4 airspace areas at PSP. Additionally, the airspace legal descriptions would be amended to reflect current aeronautical databases.

The proposed Class D airspace area consists of lateral boundary modifications to better accommodate several of PSPs' IFR departure procedures and two extensions to the 4.3-mile radius in the northwest and southeast sectors of the surface area. The Class D airspace area would be extended from the airport's 4.3-mile radius to encompass an area within 1.8 miles on either side of the airport's 142° bearing, extending to 6.6 miles southeast. The other extension would extend from the airport's 4.3-mile radius to encompass an area within 1.9 miles either side of the airport's 324° bearing, extending to 4.4 miles northwest. The proposed Class D airspace area due to precipitous terrain would support IFR procedural containment to the extent practicable until aircraft reach the base of adjacent controlled airspace.

The airport's Class E4 airspace area would be modified to better accommodate aircraft when executing the Area Navigation (RNAV) Required Navigation Performance (RNP) Z Runway (RWY) 13 Right and RNAV (RNP) Y RWY 31 Left instrument approach procedures. The proposed modification would provide for arrival containment to the extent practicable once aircraft descend to below 1,000 feet above the surface. The extension

was evaluated as being two miles or more from the lateral boundaries of the Class D airspace area; therefore, a Class E4 airspace area is required to provide IFR procedural containment to the extent practicable.

The FAA is also proposing several administrative corrections to the airport's airspace legal descriptions. The PSP airport reference point would be amended to match the FAA's database: lat. 33°49'47" N, long. 116°30'24" W. Lastly, this action would render the Class D and Class E4 airspace at PSP as part-time. To support this change, the phrase, "This Class D/E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement" would be added to the Class D and E airspace area legal descriptions.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1G, FAA National Environmental Policy Act Implementing Procedures, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11K, Airspace Designations and Reporting Points, dated August 4, 2025, and effective September 15, 2025, would be amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP CA D Palm Springs, CA [Amended]

Palm Springs Airport, CA

(Lat. 33°49'47" N, Long. 116°30'24" W)

That airspace extending upward from the surface up to and including 3,000 feet MSL within a 4.3-mile radius of the airport, within 1.8 miles either side of the airport's 142° bearing extending 6.6 miles southeast, and within 1.9 miles either side of the airport's 324° bearing extending 4.4 miles northwest. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AWP CA E4 Palm Springs, CA [Amended]

Palm Springs Airport, CA

(Lat. 33°49'47" N, Long. 116°30'24" W)

That airspace extending upward from the surface within 1.8 miles either side of the airport's 142° bearing from 6.6 miles extending 9.5 miles southeast, and within 1.9 miles either side of the airport's 324° bearing from 4.4 miles extending 6 miles northwest. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Issued in Des Moines, WA, February 11, 2026.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2026–02987 Filed 2–12–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 70

[REG–110519–25]

RIN 1545–BR65

Updating Regulation References To Reflect Reorganizations at the Department of Justice and the Internal Revenue Service

Correction

In proposed document 2025–22825 beginning on page 57937 in the issue of Monday, December 15, 2025, make the following correction:

On page 57938, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the last line "publichearings@" should read "publichearings@irs.gov".

[FR Doc. C1–2025–22825 Filed 2–12–26; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 51

[267D0102DM DS61900000
DMSN00000.000000 DX61901; Docket # DOI–2025–0170]

Program Review—Subsistence Management for Public Lands in Alaska

AGENCY: Forest Service, Agriculture; Office of the Secretary, Interior.

ACTION: Extension of public comment period.

SUMMARY: This notice extends the public comment period for the review of the Federal Subsistence Management Program (Program) that was announced in the **Federal Register** on December 15, 2025. This extension provides additional time for stakeholders to submit comments.

DATES: The public comment period for the targeted review of the Program noticed in the **Federal Register** at 90 FR 57941 (December 15, 2025) is extended.

Public comments now must be received on or before March 30, 2026.

ADDRESSES: Written comments and materials concerning the review may be submitted by one of the methods:

- *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter DOI–2025–0170, which is the docket number for this rulemaking action. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the document Type heading, check the Notice box to locate this document. You may submit a comment by clicking on “Comment.”

- *Email:* subsistence@ios.doi.gov.
- *By hard copy:* Submit by U.S. mail or hand delivery to Office of the Secretary, U.S. Department of the Interior, 4230 University Drive, Suite 300, Anchorage, Alaska 99508.

We can accept oral comments by telephone through an appointment request submitted by one of the above methods.

We intend to make all public comments publicly available. If you submit a comment via email, hard copy, or electronically, your entire comment, including any personally identifiable information, may be posted online.

FOR FURTHER INFORMATION CONTACT: Kara Moriarty, Senior Advisor to the

Secretary of the Interior for Alaska Affairs, by email at kara_moriarty@ios.doi.gov or by phone at 907–786–3888 (toll free 800–478–1456).

SUPPLEMENTARY INFORMATION: The Office of the Senior Advisor to the Secretary of the Interior for Alaska Affairs and the Office of the Secretary of Agriculture are conducting a targeted review of the Federal Subsistence Management Program (Program) to ensure the Program effectively and efficiently meets the needs of Alaska residents and the Secretaries’ obligations under title VIII of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Additional information about the Program review is provided in the notice published at 90 FR 57941 (December 15, 2025).

The notice published today extends the public comment period for this targeted review. Public comments now must be received on or before March 30, 2026.

Troy W. Finnegan,

Deputy Assistant Secretary, Exercising the Delegated Authority of the Assistant Secretary—Policy, Management and Budget, Department of the Interior.

Michael K. Boren,

Under Secretary, Natural Resources and Environment, Department of Agriculture.

[FR Doc. 2026–02975 Filed 2–12–26; 8:45 am]

BILLING CODE 4334–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 251212–0184; RTID 0648–XF348]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; 2026 and 2027 Harvest Specifications for Groundfish

Correction

In proposed rule document 2025–22995, appearing on pages 58204 through 58228 in the issue of Tuesday, December 16, 2025, make the following correction:

On page 58212, below Table 3, below footnote 6, footnote 7 should read:

⁷ The 2027 allocations for Atka mackerel between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2026.

[FR Doc. C1–2025–22995 Filed 2–12–26; 8:45 am]

BILLING CODE 0099–10–D

Notices

Federal Register

Vol. 91, No. 30

Friday, February 13, 2026

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 COMMERCE

Foreign-Trade Zones Board

[B-17-2026]

Foreign-Trade Zone (FTZ) 38, Notification of Proposed Production Activity; Coroplast Tape Corporation; (Pressure Sensitive Tapes); Rock Hill, South Carolina

Coroplast Tape Corporation submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility within FTZ 38. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on February 9, 2026.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/ component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via www.trade.gov/ftz.

The proposed finished products include: double sided adhesive tape; electrical insulated tape; PVC tape; halogen free wire harness tape; foam tape; single sided paper tape; non-woven stitch bonded tape; sleeve; tape; abrasion resistant tape; polyester cloth tape; velour adhesive tape; tube tape; and, heat resistant tape (duty rate ranges from duty-free to 17.20%).

The proposed foreign-status materials/components include: acrylic based adhesive; vinyl acetate

copolymer; copolymer of ethylene and butyl acrylate; polyacrylate resin; liquid resin; single sided film tape; high density polyethylene film; polyethylene plastic liner; plastic mother roll core; thermoplastic elastomer; paper liner; corrugated cores for tape rolls; finger left self-adherent tape; polyethylene terephthalate tape; polyethylene cloth (non-woven baric made from polyethylene terephthalate fibers); polyethylene terephthalate tissue; and, aluminum carrier (duty rate ranges from duty-free to 10%).

The request indicates that certain materials/components are subject to duties under section 1702(a)(1)(B) of the International Emergency Economic Powers Act (section 1702) and section 232 of the Trade Expansion Act of 1962 (section 232 depending on the country of origin. The applicable section 1702, and section 232 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is March 25, 2026.

A copy of the notification will be available for public inspection in the "Online FTZ Information System" section of the Board's website.

For further information, contact Brian Warnes at brian.warnes@trade.gov.

Dated: February 10, 2026.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2026-02932 Filed 2-12-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Rescission of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: Based upon the timely withdrawal of all review requests, the U.S. Department of Commerce (Commerce) is rescinding the administrative reviews covering the periods of review (PORs) of the antidumping duty (AD) and countervailing duty (CVD) orders identified in the table below.

DATES: Applicable February 13, 2026.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-4735.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.221(c)(1)(i),¹ based upon timely requests for review, Commerce initiated administrative reviews of certain companies for the PORs and the AD and CVD orders listed in the table below. All requests for these reviews have been timely withdrawn.²

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested the review withdraw their review requests within 90 days of the date of publication of the notice of initiation for the requested review. All parties withdrew their requests for the reviews listed in the table below within the 90-day deadline. No other parties requested administrative reviews of these AD/CVD orders for the PORs noted in the table. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding, in their entirety, the administrative reviews listed in the table below.

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 90 FR 26967 (June 25, 2025); *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 90 FR 21459 (July 25, 2025); *Initiation of Antidumping and Countervailing Duty*

Administrative Reviews, 90 FR 41043 (August 22, 2025); and *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 90 FR 46173 (September 25, 2025).

² The letters withdrawing the review requests may be found in Enforcement and Compliance's

Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>.

	Period of review
AD Proceedings	
Burma: Mattresses, A-546-001	12/2/2023-6/30/2025
Canada: Utility Scale Wind Tower, A-122-867	8/1/2024-7/31/2025
India:	
Brass Rod, A-533-915	12/1/2023-5/31/2025
Raw Honey, A-533-903	6/1/2024-5/31/2025
Japan: Certain Cold-Rolled Steel Flat Products, A-588-873	7/1/2024-6/30/2025
Mexico: Brass Rod A-201-858	12/1/2023-5/31/2025
Socialist Republic of Vietnam:	
Boltless Steel Shelving Units Prepacked for Sale, A-552-835	11/29/2023-5/31/2025
Certain Steel Nails, A-552-818	7/1/2024-6/30/2025
Oil Country Tubular Goods, A-552-817	9/1/2024-8/31/2025
Seamless Refined Copper Pipe and Tube, A-552-831	8/1/2024-7/31/2025
Taiwan: Boltless Steel Shelving Units Prepacked for Sale, A-583-871	6/1/2024-5/31/2025
The People's Republic of China:	
Certain Collated Steel Staples, A-570-112	7/1/2024-6/30/2025
Certain Vertical Shaft Engines Between 99cc and up to 225cc, And Parts Thereof, A-570-124	5/1/2024-4/30/2025
Ukraine: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe, A-823-819	8/1/2024-7/31/2025
CVD Proceedings	
Canada: Utility Scale Wind Tower, C-122-868	1/1/2024-12/31/2024
India:	
Certain Non-Refillable Steel Cylinders, C-533-913	9/29/2023-12/31/2024
Certain Paper Shopping Bags, C-533-918	11/6/2023-12/31/2024
The People's Republic of China: Certain Collated Steel Staples, C-570-113	1/1/2024-12/31/2024

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping and/or countervailing duties on all appropriate entries during the PORs noted above for each of the listed administrative reviews at rates equal to the cash deposit of estimated antidumping or countervailing duties, as applicable, required at the time of entry, or withdrawal of merchandise from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register** for rescinded administrative reviews of AD/CVD orders on countries other than Canada and Mexico. For rescinded administrative reviews of AD/CVD orders on Canada or Mexico, Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of this rescission notice in the **Federal Register**, in accordance with 19 CFR 356.8(a).

Notification to Importers

This notice serves as the only reminder to importers of merchandise subject to AD orders of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the presumption that reimbursement of

antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order (APO)

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

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: February 10, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2026-02959 Filed 2-12-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-899]

Acetone From the Republic of Korea: Preliminary Results and Recission, In Part, of Antidumping Duty Administrative Review; 2024-2025

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that Kumho P&B Chemicals, Inc. (KPB) made sales of subject merchandise at less than normal value (NV) during the period of review (POR) March 1, 2024, through February 28, 2025. In addition, Commerce is rescinding the review with respect to LG Chem, Ltd. (LG Chem). Interested parties are invited to comment on these preliminary results.

DATES: Applicable February 13, 2026.

FOR FURTHER INFORMATION CONTACT: Toni Page, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1398.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2020, Commerce published in the **Federal Register** the antidumping duty (AD) order on acetone from the Republic of Korea

(Korea).¹ On March 4, 2025, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order* for the period of review (POR).² On April 28, 2025, based on timely request for a review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order* with respect to KPB and LG Chem.³

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁴ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁵ Accordingly, the deadline for these preliminary results is now February 9, 2026.

For a complete description of events that occurred since the *Initiation Notice*, see the Preliminary Decision Memorandum.⁶ A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The product covered by the *Order* is acetone from Korea. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.

¹ See *Acetone from Belgium, the Republic of South Africa, and the Republic of Korea: Antidumping Duty Orders*, 85 FR 17866 (March 31, 2020) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 90 FR 11155 (March 4, 2025).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 90 FR 17568 (April 28, 2025).

⁴ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

⁵ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

⁶ See Memorandum, "Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Acetone from Korea; 2024–2025," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Rescission of Administrative Review, In Part

Pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review when there are no entries of subject merchandise during the POR for which liquidation is suspended.⁷ Normally, upon completion of an administrative review, the suspended entries are liquidated at the antidumping duty assessment rate calculated for the review period.⁸ Therefore, for an administrative review of a company to be conducted, there must be a suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the AD assessment rate calculated for the POR.

Because LG Chem had no suspended entries in the POR, on January 13, 2026, Commerce notified interested parties that we intended to rescind this administrative review with respect to LG Chem and invited parties to comment.⁹ No interested party commented on our intent to rescind. As a result, we are rescinding this review with respect to LG Chem, pursuant to 19 CFR 351.213(d)(3) and (4).

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum.

Preliminary Results of Review

We preliminarily determine that the following estimated weighted-average dumping margin exists for the period March 1, 2024, through February 28, 2025:

Exporter/producer	Weighted-average dumping margin (percent)
Kumho P&B Chemicals, Inc	1.43

Disclosure

Commerce intends to disclose the calculations and analysis performed to interested parties for these preliminary results within five days after public announcement or, if there is no public

⁷ See 19 CFR 351.212(b)(2).

⁸ See 19 CFR 351.213(d)(3).

⁹ See Memorandum, "Notice of Intent to Rescind Review, In Part," dated January 13, 2026 at 3.

announcement, within five days after the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance.¹⁰ Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce to no later than 21 days after the date of the publication of this notice.¹¹ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.¹² Interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹³

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁴ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results of this review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice in the **Federal Register**. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of issues to be discussed. Oral presentations at the hearing will be

¹⁰ See 19 CFR 351.309(c)(1)(ii); see also 19 CFR 351.303 (for general filing requirements).

¹¹ See 19 CFR 351.309.

¹² See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Final Service Rule*).

¹³ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁴ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

limited to issues raised in the case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the date, time, and location of the hearing.¹⁵ Parties should confirm the date, time, and location of the hearing two days before the scheduled hearing date.

All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed via ACCESS.¹⁶ An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁷

Assessment Rates

Upon completion of the administrative review, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.¹⁸ Commerce intends to issue assessment instruction to CBP no earlier than 35 days after the date of publication of the final results in the **Federal Register**.

Pursuant to 19 CFR 351.212(b)(1), for KPB, whose weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.50 percent), we intend to calculate importer-specific *ad valorem* AD assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). If the respondent has not reported entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those sales. To determine whether an importer-specific, per-unit assessment rate is *de minimis*, in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values.

For LG Chem, for which this review is being rescinded, antidumping duties shall be assessed on entries at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP for LG Chem no earlier than 35 days

after the date of publication of this notice in the **Federal Register**.

Commerce's "automatic assessment" practice will apply to entries of subject merchandise during the POR produced by KPB for which it did not know that the merchandise it sold to an intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate those entries at the all-others rate (i.e., 33.10 percent),¹⁹ if there is no rate for the intermediate company(ies) involved in the transaction.²⁰

The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.²¹ Commerce intends to issue assessment instructions regarding KPB to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for each specific company listed above will be equal to the weighted-average dumping margin established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rates will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, the cash deposit rate

will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate established in the less-than-fair-value investigation (i.e., 33.10 percent).²² These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless the deadline is extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in written briefs, no later than 120 days after the date of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing the preliminary results of this review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4) and 19 CFR 351.213d(4).

Dated: February 9, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

[FR Doc. 2026-02877 Filed 2-12-26; 8:45 am]

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¹⁵ See 19 CFR 351.310(d).

¹⁶ See 19 CFR 351.303.

¹⁷ See *APO and Service Final Rule*, 88 FR at 67069.

¹⁸ See 19 CFR 351.212(b)(1).

¹⁹ See *Order*, 86 FR at 66286.

²⁰ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

²¹ See section 751(a)(2)(C) of the Act.

²² See *Order*, 85 FR at 17866.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-469-817]

Ripe Olives From Spain: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Review; 2023–2024

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR), August 1, 2023, through July 31, 2024. In addition, we are rescinding the administrative review with respect to one company. We invite interested parties to comment on these preliminary results.

DATES: Applicable February 13, 2026.

FOR FURTHER INFORMATION CONTACT: Maria Teresa Aymerich, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482-0499.

SUPPLEMENTARY INFORMATION:**Background**

On August 1, 2018, Commerce published in the **Federal Register** the antidumping duty order on ripe olives (olives) from Spain.¹ On August 1, 2024, we published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.² On September 20, 2024, based on timely requests for an administrative review, Commerce initiated the administrative review of four companies.³ On October 22, 2024, Commerce selected Agro Sevilla Aceitunas, S. Coop. And. (Agro Sevilla) as the sole mandatory respondent in this administrative review.⁴

¹ See *Ripe Olives from Spain: Antidumping Duty Order*, 83 FR 37465 (August 1, 2018) (*Order*); see also *Ripe Olives from Spain: Notice of Correction to Antidumping Duty Order*, 83 FR 39691 (August 10, 2018) (*Amended Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 89 FR 62714 (August 1, 2024).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 77079 (September 20, 2024) (*Initiation Notice*).

⁴ See Memorandum, “2023–2024 Administrative Review of the Antidumping Duty Order on Ripe Olives from Spain: Respondent Selection,” dated October 22, 2024.

On December 9, 2024, Commerce tolled certain deadlines in this administrative proceeding by ninety days.⁵ On June 23, 2025, Commerce extended the preliminary results of this review to November 24, 2025.⁶ Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceeding by 47 days.⁷ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁸ On January 29, 2026, Commerce extended the preliminary results of this review to February 5, 2026.⁹ Therefore, the deadline for these final results is February 5, 2026.

For a complete description of the events between the initiation of this review and these preliminary results, see the Preliminary Decision Memorandum.¹⁰ A list of the topics discussed in the Preliminary Decision Memorandum is attached as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum is available at <https://access.trade.gov/public/FRNotices/ListLayout.aspx>.

Scope of the Order

The products covered by this *Order* are olives from Spain. For a full description of the scope of the *Order*, see the Preliminary Decision Memorandum.

⁵ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated December 9, 2024.

⁶ See Memorandum, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated June 23, 2025.

⁷ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

⁸ See Memorandum, “Tolling of all Case Deadlines,” dated November 24, 2025.

⁹ See Memorandum, “Second Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated January 29, 2026.

¹⁰ See Memorandum, “Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Ripe Olives from Spain; 2023–2024,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Methodology

Commerce is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation. The request for an administrative review of Aceitunas Guadalquivir, S.L. (Aceitunas Guadalquivir) was withdrawn within 90 days of the date of publication of the *Initiation Notice*.¹¹ No other party requested an administrative review of Aceitunas Guadalquivir. As a result, Commerce is rescinding this review with respect to this company, in accordance with 19 CFR 351.213(d)(1). Additionally, we initiated an administrative review of Alimentary Group DCOOP, S.Coop.And. (Alimentary Group). However, because Alimentary Group did not have any entries during the POR, we intend to rescind the review with respect to this company.

Rate for Non-Selected Companies

The statute and Commerce’s regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding any zero or *de minimis* margins, and any

¹¹ See Aceitunas Guadalquivir, S.L. Letter, “Aceitunas Guadalquivir, S.L. Withdrawal Request for Administrative Review Ripe Olives from Spain (POR6),” dated October 1, 2024.

margins determined entirely {on the basis of facts available}.” For these preliminary results, we calculated a dumping margin of 3.54 percent for Agro Sevilla, the mandatory respondent in this review. Thus, for the non-examined company, Angel Camacho Alimentacion, S.L., we are assigning Agro Sevilla’s rate of 3.54 percent.

Preliminary Results of Review

We preliminarily determine that the following estimated weighted-average dumping margins exist for the period August 1, 2023, through July 31, 2024:

Producer/exporter	Weighted-average dumping margin (percent)
Agro Sevilla Aceitunas, S. Coop. And Angel Camacho Alimentacion, S.L S.L	3.54 3.54

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(3) of the Act, because Commerce has received a timely request to conduct verification by an interested party and has not made a verification in the two immediately preceding reviews, Commerce intends to verify certain information reported by Agro Sevilla.¹²

Public Comment

Because Commerce intends to conduct verification of the questionnaire responses of Agro Sevilla, interested parties will be notified of the deadline for the submission of case briefs at a later date.¹³ Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁴ Pursuant to 19 CFR

351.309(c)(2) and (d)(2), interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁵ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Hearing requests should contain: (1) the requesting party’s name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.¹⁶ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed via ACCESS.¹⁷ An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁸

Final Results of Review

Unless extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised

in any written briefs, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of the final results, Commerce shall determine, and the U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.¹⁹ If a respondent’s weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.5 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer’s examined sales and the total entered value of those same sales in accordance with 19 CFR

351.212(b)(1).²⁰ If the respondent’s weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of this review, we intend to instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews*.²¹ The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.²²

For entries of subject merchandise during the POR produced by either of the individually examined respondents for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate these entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.²³

For the companies identified above that were not selected for individual examination, we will instruct CBP to liquidate entries at the rates established after the completion of the final results of review.

Because Commerce is rescinding this review with respect to Aceitunas Guadalquivir, we will instruct CBP to

¹⁹ See 19 CFR 351.212(b)(1).

²⁰ In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

²¹ See *Final Modification for Reviews*, 77 FR at 8103; see also 19 CFR 351.106(c)(2).

²² See section 751(a)(2)(C) of the Act.

²³ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹² See Musco Family Olive Company’s Letter, “Ripe Olives from Spain; 6th Administrative Review; Request for Verification,” dated December 9, 2024. The Musco Family Olive Company is a member of the Petitioners (the Coalition for Fair Trade in Ripe Olives).

¹³ See 19 CFR 351.303 (for general filing requirements).

¹⁴ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*,

88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹⁵ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁶ See 19 CFR 351.310(d).

¹⁷ See 19 CFR 351.303.

¹⁸ See *APO and Service Final Rule*.

assess antidumping duties on all appropriate entries of subject merchandise during the POR from this company at a rate equal to the cash deposit rate for estimated antidumping duties that was required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue its rescission instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

Further, because Commerce intends to rescind this review with respect to Alimentary Group, we intend to instruct CBP to assess antidumping duties on all appropriate entries of subject merchandise during the POR from this company at a rate equal to the cash deposit rate for estimated antidumping duties that was required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue its rescission instructions to CBP no earlier than 35 days after the date of publication of the final results in the **Federal Register**.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective upon publication in the **Federal Register** of the notice of final results of this review for all shipments of olives from Spain entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the weighted-average dumping margins established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation but the producer is, then the cash deposit rate will be the rate established in the completed

segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 19.98 percent,²⁴ the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of countervailing duties.

Notification to Interested Parties

These preliminary results and notice are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act, 19 CFR 351.213(d)(4), 19 CFR 351.213(h) and 19 CFR 351.221(b)(4).

Dated: February 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Rescission of Review, In Part
- V. Rate for Non-Selected Companies
- VI. Discussion of the Methodology
- VII. Currency Conversion
- VIII. Recommendation

[FR Doc. 2026-02875 Filed 2-12-26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-008, C-570-009]

Calcium Hypochlorite From the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on calcium hypochlorite from the People's Republic of China would likely lead to the continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT: Tylar Lewis, Trade Agreements Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-6009.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 2015, Commerce published in the **Federal Register** the AD and CVD orders on calcium hypochlorite from the People's Republic of China.¹ On June 2, 2025, the ITC instituted,² and Commerce initiated,³ the second sunset reviews of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Order* would likely lead to the continuation or recurrence of dumping and countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins of dumping and subsidy rates likely to prevail should the *Orders* be revoked.⁴

¹ See *Calcium Hypochlorite from the People's Republic of China: Antidumping Duty Order*, 80 FR 5085 (January 30, 2015); see also *Calcium Hypochlorite from the People's Republic of China: Countervailing Duty Order*, 80 FR 5082 (January 30, 2015) (collectively, *Orders*).

² See *Calcium Hypochlorite from China; Institution of Five-Year Reviews*, 90 FR 23361 (June 2, 2025).

³ See *Initiation of Five-Year (Sunset) Reviews*, 90 FR 23310 (June 2, 2025).

⁴ See *Calcium Hypochlorite from the People's Republic of China: Final Results of the Second*

²⁴ See *Order*, 83 FR at 37466; see also *Amended Order*, 83 FR at 39692.

On February 10, 2026, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁵

Scope of the Orders

The product covered by these *Orders* is calcium hypochlorite, regardless of form (e.g., powder, tablet (compressed), crystalline (granular), or in liquid solution), whether or not blended with other materials, containing at least 10 percent available chlorine measured by actual weight. The scope also includes bleaching powder and hemibasic calcium hypochlorite.

Calcium hypochlorite has the general chemical formulation $\text{Ca}(\text{OCl})_2$, but may also be sold in a more dilute form as bleaching powder with the chemical formulation, $\text{Ca}(\text{OCl})_2 \cdot \text{CaCl}_2 \cdot \text{Ca}(\text{OH})_2 \cdot 2\text{H}_2\text{O}$ or hemibasic calcium hypochlorite with the chemical formula of $2\text{Ca}(\text{OCl})_2 \cdot \text{Ca}(\text{OH})_2$ or $2\text{Ca}(\text{OCl})_2 \cdot 0.5\text{Ca}(\text{OH})_2$. Calcium hypochlorite has a Chemical Abstract Service (CAS) registry number of 7778–54–3, and a U.S. Environmental Protection Agency (EPA) Pesticide Code (PC) Number of 014701. The subject calcium hypochlorite has an International Maritime Dangerous Goods (IMDG) code of Class 5.1 UN 1748, 2880, or 2208 or Class 5.1/8 UN 3485, 3486, or 3487.

Calcium hypochlorite is currently classifiable under the subheading 2828.10.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The subheading covers commercial calcium hypochlorite and other calcium hypochlorite. When tableted or blended with other materials, calcium hypochlorite may be entered under other tariff classifications, such as 3808.94.5000 and 3808.99.9500, which cover disinfectants and similar products. While the HTSUS subheadings, the CAS registry number, the U.S. EPA PC number, and the IMDG codes are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

Expedited Sunset Review of the Antidumping Duty Order, 90 FR 48047 (October 3, 2025); see also *Calcium Hypochlorite from China: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order*, 90 FR 51652 (November 18, 2025).

⁵ See *Calcium Hypochlorite from China: Determinations*, 91 FR 5955 (February 10, 2026) (ITC Final Determination).

Continuation of the Orders

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

The effective date of the continuation of the *Orders* will be February 10, 2026.⁶ Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

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

Dated: February 10, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2026–02951 Filed 2–12–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–838]

Carbazole Violet Pigment 23 From India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2023–2024

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Western Chemical Industries P Limited did not make sales of subject merchandise at prices below normal value. The period of review (POR) is December 1, 2023, through November 30, 2024. In addition, we are rescinding this review, in part, with respect to Meghmani Pigments. We invite interested parties to comment on these preliminary results.

DATES: Applicable February 13, 2026.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Henry Wolfe, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5973, and (202) 482–0574, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 27, 2025, based on a timely request for review, and in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), Commerce initiated this administrative review of the antidumping duty (AD) order on carbazole violet pigment 23 (CVP–23) from India covering two companies: Western Chemical Industries P Limited (Western Chemical) and Meghmani Pigments.¹ On December 9, 2024, Commerce tolled the deadline to issue the preliminary results in this administrative review by 90 days.² Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.³ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 90 FR 8187 (January 27, 2025).

² See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated December 9, 2024.

³ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

⁶ See *ITC Final Determination*.

Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁴ The deadline for the preliminary results is now February 9, 2026. For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.⁵

Scope of the Order⁶

The product covered by the *Order* is CVP–23, in any form. For a full description of the scope of the *Order*, *see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, In Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On January 22, 2025, Meghmani Pigments timely withdrew its request for review of itself.⁷ No other parties requested an administrative review of this company. Because there was a timely withdrawal of all requests for review of Meghmani Pigments, we are rescinding this review with respect to Meghmani Pigments, pursuant to 19 CFR 351.213(d)(1).

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is on file electronically via ACCESS. ACCESS is

available to registered users at <https://access.trade.gov>. In addition, the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNotices/ListLayout.aspx>.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margins for the period December 1, 2023, through November 30, 2024:

Producer/exporter	Weighted-average dumping margin (percent)
Western Chemical Industries P Limited	0.00

Disclosure

Commerce intends to disclose the calculations performed to interested parties in this review within five days of any public announcement, or if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or written comments may be submitted to the Assistant Secretary for Enforcement and Compliance.⁸ Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce to no later than 21 days after the date of the publication of this notice.⁹ Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁰ Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument; and (3) a table of authorities.¹¹ All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we

request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹² Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹³

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.¹⁴ Requests should contain: (1) the party’s name, address, and telephone number; (2) the number of participants, and whether any participant is a foreign national; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.¹⁵ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.¹⁶ If a respondent’s weighted-average dumping margin is not zero or not *de minimis* (*i.e.*, less than 0.5 percent) in the final results of this review, then Commerce will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for each importer’s examined sales to the total entered value of those same sales in

⁴ See Memorandum, “Tolling of all Case Deadlines,” dated November 24, 2025.

⁵ See Memorandum, “Decision Memorandum for the Preliminary Results and Partial Rescission of the Antidumping Duty Order on Carbazole Violet Pigment 23 from India; 2023–2024,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁶ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbazole Violet Pigment 23 from India*, 69 FR 77988 (December 29, 2004) (*Order*).

⁷ See Meghmani Pigment’s Letter, “Withdrawal of Request for Administrative Review,” dated January 22, 2025.

⁸ See 19 CFR 351.309(c)(1)(ii); *see also* 19 CFR 351.303 (for general filing requirements).

⁹ Commerce is exercising its discretion to alter the time limit for filing of case briefs. *See* 19 CFR 351.309(c)(1)(ii).

¹⁰ *See* 19 CFR 351.309(d); *see also* *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

¹¹ *See* 19 CFR 351.309(c)(2) and (d)(2).

¹² We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹³ *See APO and Service Procedures*.

¹⁴ *See* 19 CFR 351.310(c).

¹⁵ *See* 19 CFR 351.310(d).

¹⁶ *See* 19 CFR 351.212(b).

accordance with 19 CFR 351.212(b)(1). If the weighted-average dumping margin is zero or *de minimis* in the final results, or if an importer-specific assessment rate is zero or *de minimis* in the final results, Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise that entered the United States during the POR that were produced by the respondent for which the respondent did not know that its merchandise was destined to the United States, Commerce will instruct CBP to liquidate unreviewed entries at the all-others rate in the original less-than-fair-value (LTFV) investigation (*i.e.*, 27.48 percent), if there is no rate for the intermediate company(ies) involved in the transaction.¹⁷

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of CVP-23 from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 27.48

percent, the all-others rate established in the LTFV investigation.¹⁸ These cash deposit rates, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in any written briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4) and 19 CFR 351.221(b)(4).

Dated: February 9, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistance Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Partial Rescission of Review
- V. Discussion of the Methodology
- VI. Currency Conversion
- VII. Recommendation

[FR Doc. 2026-02878 Filed 2-12-26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-945]

Chromium Trioxide From India: Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

DATES: Applicable February 13, 2026.

FOR FURTHER INFORMATION CONTACT: Dusten Hom, AD/CVD Operations, Offices I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5075.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2025, the U.S. Department of Commerce (Commerce) initiated a countervailing duty (CVD) investigation of imports of chromium trioxide from India.¹ Currently, the preliminary determination is due no later than March 4, 2026.

Postponement of Preliminary Determinations

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination in a CVD investigation until no later than 130 days after the date on which Commerce initiated the investigation if: (A) the petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

¹⁷ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003); see also *Order*.

¹⁸ See *Order*.

¹ See *Chromium Trioxide From India: Initiation of Countervailing Duty Investigation*, 91 FR 240 (January 5, 2026).

On February 4, 2026, the petitioner² submitted a timely request that Commerce postpone the preliminary CVD determinations.³ The petitioners stated that a postponement is warranted to provide all parties sufficient time to develop the record of this investigation.⁴

In accordance with 19 CFR 351.205(e), the petitioners have timely stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, in accordance with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determinations to no later than 130 days after the date on which these investigations were initiated, *i.e.*, May 8, 2026.

Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations.

Notification to Interested Parties

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: February 9, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2026–02876 Filed 2–12–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–869]

Fresh Winter Strawberries From Mexico: Initiation of Less-Than-Fair-Value Investigation

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

DATES: Applicable February 9, 2026.

FOR FURTHER INFORMATION CONTACT: Anjali Mehindiratta, Office III, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue

NW, Washington, DC 20230; telephone: (202) 482–9127.

SUPPLEMENTARY INFORMATION:

The Petition

On December 31, 2025, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of fresh winter strawberries (winter strawberries) from Mexico filed in proper form on behalf of the Strawberry Growers for Free Trade (the petitioner).¹ On January 20, 2026, Commerce extended the initiation deadline by 20 days to poll the domestic industry in accordance with subsections 732(c)(1)(B) and (4)(D) of the Tariff Act of 1930, as amended (the Act), because “the Petition has not established that the domestic producers or workers accounting for more than 50 percent of total production support the Petition. . . .”²

Between January 5 and February 4, 2026, Commerce requested supplemental information pertaining to certain aspects of the Petition in supplemental questionnaires.³ Between January 9 and February 6, 2026, the petitioner filed timely responses to these requests for additional information.⁴

¹ See Petitioner’s Letter, “Petition for the Imposition of Antidumping Duties,” dated December 31, 2025 (Petition). Strawberry Growers for Free Trade is an ad hoc association, the majority of whose members consist of a trade association whose members produce the domestic like product and domestic producers of fresh winter strawberries. The members of the Strawberry Growers for Fair Trade are: Astin Strawberry Exchange, BBI Produce, Inc., dba Berry Boss, Florida Department of Agriculture and Consumer Services, Grimes Produce Company, Mathis Farms, Simmons Farms, Inc., Sizemore Farms, Inc., Sweet Life Farms, Ultra Farms, and Florida Strawberries Association.

² See *Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping Duty Petition: Fresh Winter Strawberries from Mexico*, 91 FR 2910 (January 23, 2026) (*Initiation Extension Notice*).

³ See Commerce’s Letters, “Supplemental Questions,” dated January 5, 2026 (First General Issues Supplemental Questionnaire); *see also* “Supplemental Questions,” dated January 6, 2026 (First Mexico AD Supplemental Questionnaire); “Second Supplemental Questions,” dated January 26, 2026 (Second General Issues and Mexico AD Questionnaire); “Third Supplemental Questions,” dated February 4, 2026 (Third Mexico AD Supplemental Questionnaire).

⁴ See Petitioner’s Letters, “Response to Supplemental Questions Regarding Volume II of the Petition,” dated January 9, 2026 (First Mexico AD Supplement); “Response to Supplemental Questions Regarding Volume I of the Petition,” dated January 12, 2026 (First General Issues Supplement); “Response to Second Supplemental Questions Regarding Volumes I and II of the Petition,” dated January 27, 2026 (Second General Issues and Mexico AD Supplement); and “Response to Third Supplemental Questions Regarding Volume II of the Petition,” dated February 6, 2026 (Third Mexico AD Supplement).

In accordance with section 732(b) of the Act, the petitioner alleges that imports of winter strawberries from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the winter strawberries industry in the United States. Consistent with section 732(b)(1) of the Act, the Petition was accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(F) of the Act.⁵ Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested LTFV investigation.⁶

Period of Investigation (POI)

The petitioner has proposed November 1, 2024 to March 31, 2025 as the POI, consistent with the scope definition of winter strawberries as those strawberries harvested or entered during the period of November 1 through March 31.⁷

Scope of the Investigation

The product covered by this investigation is winter strawberries from Mexico. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on the Scope of the Investigation

On January 6, 2026, Commerce requested information and clarification from the petitioners regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.⁸ On January 12, 2026, the petitioners provided clarification regarding the scope.⁹ The description of merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce’s regulations, we are setting

⁵ Strawberry Growers for Fair Trade is an interested party as defined in section 771(9)(F) of the Act. The majority of the members of the Strawberry Growers for Fair Trade are interested parties as defined in sections 771(9)(C) and (E) of the Act.

⁶ See section on “Determination of Industry Support for the Petition,” *infra*.

⁷ See Petition at Volume II (page 5).

⁸ See First General Issues Supplemental Questionnaire.

⁹ See First General Issues Supplement at 4–7.

² The petitioner is American Chrome & Chemical, Inc.

³ See Petitioner’s Letter, “Request for Postponement of the Department’s Countervailing Duty Preliminary Determination,” dated February 4, 2026.

⁴ *Id.*

aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).¹⁰ Commerce will consider all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.¹¹

Commerce requests that interested parties provide at the beginning of their scope comments a public executive summary for each comment or issue raised in their submission. Commerce further requests that interested parties limit their public executive summary of each comment or issue to no more than 450 words, not including citations. Commerce intends to use the public executive summaries as the basis of the comment summaries included in the analysis of scope comments. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on March 2, 2026, which is the next business day after 20 calendar days from the signature date of this notice.¹² Any rebuttal comments, which may include factual information, and should also be limited to public information, must be filed by 5:00 p.m. ET on March 12, 2026, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of this investigation be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party must contact Commerce and request permission to submit the additional information.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS),

unless an exception applies.¹³ An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of winter strawberries to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant cost of production (COP) accurately, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe winter strawberries, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on March 2, 2026, which is the next business day after 20 calendar days from the signature date of this notice.¹⁴ Any

rebuttal comments must be filed by 5:00 p.m. ET on March 12, 2026, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of the LTFV investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹⁵ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product,

Sunday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day (in this instance, March 2, 2026). See 19 CFR 351.303(b)(1) ("For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.").

¹⁵ See section 771(10) of the Act.

¹⁰ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (Preamble); see also 19 CFR 351.312.

¹¹ See 19 CFR 351.102(b)(21) (defining "factual information").

¹² The deadline for initial scope comments falls on March 1, 2026, which is a Sunday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day (in this instance, March 2, 2026). See 19 CFR 351.303(b)(1) ("For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.").

¹³ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

¹⁴ The deadline for initial product characteristics comments falls on March 1, 2026, which is a

such differences do not render the decision of either agency contrary to law.¹⁶

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.¹⁷ Based on our analysis of the information submitted on the record, we have determined that winter strawberries, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁸

The petitioner alleges that there is a regional industry producing the domestic like product and included data for both factors required by section 771(4)(C) of the Act: (1) the producers within such market sell all or almost all of their production of the like product in question in the regional market; and (2) the demand in the regional market is not supplied, to any substantial degree, by producers located elsewhere in the United States.¹⁹ Moreover, the petitioner alleges that there is a concentration of dumped imports from Mexico in the region, pursuant to section 771(4)(C) of the Act and

consistent with the SAA.²⁰ We have examined the adequacy and accuracy of the information supporting the regional industry claim to determine whether the petitioner provided reasonably available evidence sufficient to justify initiation based on a regional industry analysis. Based on the information on the record, we have determined that the petitioner has satisfied the statutory requirements for establishing a regional industry for initiation purposes.²¹ However, because the petitioner contends that Commerce should initiate on both a regional basis and a national basis,²² we have analyzed industry support on a regional basis and a national basis, as discussed further below.

Pursuant to section 732(c)(4)(C) of the Act, if the petitioner alleges there is a regional industry, Commerce, on the basis of production in the region, shall determine whether the petition has been filed by or on behalf of the domestic industry by applying the requirements enunciated in section 732(c)(4)(A) of the Act. This section of the Act provides that Commerce’s industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant regional industry supports the petition.²³ Pursuant to sections 732(c)(4)(A) and 732(c)(4)(C) of the Act, a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product in the region; and (2) more than 50 percent of the production of the domestic like product in the region produced by that portion of the industry expressing support for, or opposition to, the petition.

On January 20, 2026, Commerce extended the initiation deadline by 20 days to poll the industry in accordance with subsections 732(c)(1)(B) and (4)(D) of the Act, because “the Petition has not established that the domestic producers or workers accounting for more than 50 percent of total production support the Petition. . . .”²⁴ On January 21, 2026, we issued polling questionnaires to potential U.S. producers identified by interested parties and by Commerce, regardless of whether the company was located within or outside the region

defined by the petitioner.²⁵ We requested that the companies complete the polling questionnaire and certify their responses by the due date specified in the cover letter to the questionnaire.²⁶ We received comments on industry support and the questionnaire responses.²⁷

Our analysis of the data we received in the polling questionnaire responses indicates that the domestic producers and workers who support the Petition account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition under both a regional analysis and on a national basis.²⁸ Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act, regardless of whether we define the domestic industry producing the domestic like product as a regional industry or a national industry.²⁹

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the regional U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act, as well as under section 771(24)(D) of the Act, which pertains to negligibility analysis for a regional industry.³⁰

The petitioner contends that the industry’s injured condition is illustrated by a significant increase in the volume of subject imports; reduced market share; underselling and price suppression; lost sales and revenues; and negative impact on financial

¹⁶ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d Algoma Steel Corp., Ltd. v. United States*, 865 F.2d 240 (Fed. Cir. 1989)).

¹⁷ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, see Checklist, “Antidumping Duty Investigation Initiation Checklist: Fresh Winter Strawberries from Mexico,” dated concurrently with, and hereby adopted by, this notice (Mexico AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping Duty Petition Covering Fresh Winter Strawberries from Mexico (Attachment II). This checklist is on file electronically via ACCESS.

¹⁸ For further discussion, see Attachment II of the Mexico AD Initiation Checklist.

¹⁹ See Petition at Volume I (pages 2–3 and 11–12). The region defined by the petitioner consists of the following states: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin.

²⁰ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, Vol. 1 (1994) (SAA), at 860.

²¹ For further discussion, see Attachment II of the Mexico AD Initiation Checklist.

²² See First General Issues Supplement at 11.

²³ See SAA at 863.

²⁴ See *Initiation Extension Notice*.

²⁵ See Commerce’s Letter, “Polling Questionnaire,” dated January 21, 2026.

²⁶ *Id.* For information and analysis of the responses received, see Attachment II of the Mexico AD Initiation Checklist. The polling questionnaire and questionnaire responses are on file electronically via ACCESS.

²⁷ For a discussion of parties’ comments, see Attachment II of the Mexico AD Initiation Checklist.

²⁸ For further discussion, see Attachment II of the Mexico AD Initiation Checklist.

²⁹ *Id.*

³⁰ For further information regarding negligibility and the injury allegation, see Mexico AD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petition Covering Fresh Winter Strawberries from Mexico.

performance.³¹ We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.³²

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate an LTFV investigation of imports of winter strawberries from Mexico. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Mexico AD Initiation Checklist.

U.S. Price

The petitioner calculated export price (EP) based on terminal market prices for winter strawberries produced in Mexico and sold or offered for sale in the U.S. market and monthly average unit values (AUVs) for obtained from publicly available official import statistics for U.S. imports winter strawberries from Mexico.³³ The petitioner made certain adjustments to U.S. price to calculate net ex-factory U.S. prices, where applicable.³⁴ However, for purposes of this initiation, we have based EP on the POI AUV calculated by Commerce.³⁵

Normal Value³⁶

The petitioner calculated NV on home market pricing information they obtained for winter strawberries produced in and sold, or offered for sale, in Mexico during the POI.³⁷ The petitioner made certain adjustments to the home market prices to calculate net home market prices, where applicable.³⁸ For purposes of this initiation, we have relied on the POI average “Frequent price” reported in the home market pricing provided by the petitioner.³⁹

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that

imports of winter strawberries from Mexico are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP or NV in accordance with sections 772 and 773 of the Act, using Commerce’s methodology for EP and NV outlined above, the estimated dumping margin for winter strawberries from Mexico covered by this initiation is 18.32 percent.⁴⁰

Initiation of LTFV Investigation

Based upon the examination of the Petition and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating an LTFV investigation to determine whether imports of winter strawberries from Mexico are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

In the Petition, the petitioner identified 60 companies in Mexico as producers and/or exporters of winter strawberries.⁴¹ Following standard practice in LTFV investigations involving market economy countries, in the event Commerce determines that the number of companies is large, and it cannot individually examine each company based upon Commerce’s resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheading(s) listed in the “Scope of the Investigations,” in the appendix.

On February 9, 2026, Commerce released CBP data on imports of winter strawberries from Mexico under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on CBP data and/or respondent selection must do so within three business days of the publication date of this notice in the **Federal Register**.⁴² Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m.

⁴⁰ *Id.*

⁴¹ See Petition at Volume I (page 6 and Exhibit I–8); see also Second General Issues and AD Supplement at 1.

⁴² See Memorandum, “Release of U.S. Customs and Border Protection Entry Data,” dated February 9, 2026.

ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce’s website at <https://www.trade.gov/administrative-protective-orders>.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the Government of Mexico via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which the ITC received notice from Commerce of initiation of the investigation, whether there is a reasonable indication that imports of winter strawberries from Mexico are materially injuring, or threatening material injury to, a U.S. industry.⁴³ A negative ITC determination will result in the investigation being terminated.⁴⁴ Otherwise, this LTFV investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce’s regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted⁴⁵ and, if the information is submitted to rebut, clarify, or correct factual information

⁴³ See section 733(a) of the Act.

⁴⁴ *Id.*

⁴⁵ See 19 CFR 351.301(b).

³¹ *Id.*

³² *Id.*

³³ See Mexico AD Initiation Checklist.

³⁴ *Id.*

³⁵ For further discussion, see Mexico AD Initiation Checklist.

³⁶ In accordance with section 773(b)(2) of the Act, for this investigation, Commerce will request information necessary to calculate the constructed value (CV) and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

³⁷ See Mexico AD Initiation Checklist.

³⁸ *Id.*

³⁹ *Id.*

already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.⁴⁶ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of constructed value, stating that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act (*i.e.*, a cost-based PMS allegation), the submission must be filed in accordance with the requirements of 19 CFR 351.416(b), and Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a cost-based PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), sets a deadline for the submission of cost-based PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a cost-based PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent’s initial section D questionnaire response.

We note that a PMS allegation filed pursuant to sections 773(a)(1)(B)(ii)(III) or 773(a)(1)(C)(iii) of the Act (*i.e.*, a sales-based PMS allegation) must be filed within 10 days of submission of a respondent’s initial section B questionnaire response, in accordance with 19 CFR 351.301(c)(2)(i) and 19 CFR 351.404(c)(2).

⁴⁶ See 19 CFR 351.301(b)(2).

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.⁴⁷ For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce’s regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in this investigation.⁴⁸

Certification Requirements

Any party submitting factual information in an AD or countervailing duty proceeding must certify to the accuracy and completeness of that information.⁴⁹ Parties must use the certification formats provided in 19 CFR 351.303(g).⁵⁰ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305.

⁴⁷ See 19 CFR 351.301; see also *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

⁴⁸ See 19 CFR 351.302; see also, *e.g.*, *Time Limits Final Rule*.

⁴⁹ See section 782(b) of the Act.

⁵⁰ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2023) (*Final Rule*). Additional information regarding the *Final Rule* is available at <https://access.trade.gov/Resources/filing/index.html>.

Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.*, by filing the required letter of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).⁵¹

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: February 9, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is all fresh and chilled winter strawberries (winter strawberries) from Mexico harvested or entered during the period November 1 through March 31.

Winter strawberries may be stemmed or destemmed, whole or sliced, imported in bulk or loose form, or may be imported in individual containers packaged for retail sale. The scope of this investigation includes all winter strawberries, whether or not organic, regardless of production method, and irrespective of color, grade, shape, size, or packaging. Subject merchandise may be cleaned, coated (including chocolate covered or other coated confectionary items), washed, waxed, inspected, subjected to metal detection, and/or vacuum cooled prior to importation, including winter strawberries that undergo further processing in a third country.

Winter strawberries covered by this investigation are classified under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) and may enter under: 0810.10.4020; 0810.10.4040; 0810.10.4060; 0810.10.4080; and prior to 2024, 0810.10.4010 and 0810.10.4090. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

[FR Doc. 2026–02931 Filed 2–12–26; 8:45 am]

BILLING CODE 3510–DS–P

⁵¹ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XF037]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Naval Base Point Loma Deperming Pier Replacement Project and the Naval Base San Diego Chollas Creek Quay Wall Repair Project in San Diego Bay, California*Correction*

In notice document 2026–02173, appearing on pages 4875 through 4904

in the issue of Tuesday, February 3, 2026, make the following correction:

On page 4895, in Table 7, the column headings should read:

Site, activity, pile size/type	Level A harassment zone (m)				All marine mammals Level B harassment zone (m)
	LFC Gray whales	HFC Bottlenose, common dolphins	OW CSL	PW Harbor seals	

[FR Doc. C1–2026–02173 Filed 2–12–26; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XF539]

Snapper-Grouper Fishery of the South Atlantic; Requests for Exempted Fishing Permits

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

ACTION: Notice of receipt of applications for exempted fishing permits; request for comments.

SUMMARY: NMFS announces the receipt of four applications for exempted fishing permits (EFP) from the Florida Fish and Wildlife Conservation Commission (FWC), Georgia Department of Natural Resources (GADNR), South Carolina Department of Natural Resources (SCDNR), and North Carolina Division of Marine Fisheries (NCDMF). If issued by NMFS, each EFP would exempt the applicable state agency and participating fishermen from specific Federal regulations applicable to the recreational harvest of red snapper in the South Atlantic. The applicants each propose to pilot test state data collection and management strategies for the recreational harvest of red snapper in 2026. The outcomes of the 2026 EFPs

would guide the need for, and possible refinement of, future EFP applications in 2027 and 2028. The purposes of these EFPs are to improve data on recreational fishing effort, catch, and discards of red snapper in the South Atlantic and to inform the development of a long-term state-led management strategy for the recreational red snapper fishery.

DATES: Written comments must be received no later than March 10, 2026.

ADDRESSES: You may submit comments on the applications, identified by NOAA–NMFS–2026–0496 by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and type “NOAA–NMFS–2026–0496”, in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit all written comments to Mary Vara, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will

be publicly accessible. NMFS will accept anonymous comments—enter “N/A” in the required fields if you wish to remain anonymous.

Electronic copies of the EFP applications may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/southeast/recreational-fishing-data/south-atlantic-red-snapper-state-data-collection-and-management>.

FOR FURTHER INFORMATION CONTACT: Andy Strelcheck, phone: 727–824–5305, email: andy.strelcheck@noaa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The EFPs are requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

On November 10, 2025, NMFS received four EFP applications from the FWC, GADNR, SCDNR, and NCDMF (or “the applicants”) for the recreational harvest of South Atlantic red snapper. NMFS reviewed the applications and provided feedback to the applicants on January 9, 2026. Updated applications addressing this feedback were received on January 23, 2026. The applicants are the primary agencies for marine fisheries management in their respective states, and actively participate with NMFS in the management of Federal fisheries in the South Atlantic. The primary purposes of these EFPs are to

improve data on recreational fishing effort, catch, and discards of red snapper in the South Atlantic, and to inform the development of a long-term state-led management strategy for the recreational red snapper fishery. Additional purposes of the EFPs are to provide recreational fishermen on privately owned vessels (private vessels, private anglers), and the owners or operators of charter vessels or headboats (for-hire fishermen) increased fishing opportunities for red snapper, and collect related biological, social, and economic information from the fishery. Fishery managers have been challenged to satisfy fishermen's desires for longer fishing seasons as red snapper encounter rates have increased in response to rebuilding measures, resulting in forgone yield because more fish are estimated to be dying after release. Further, percent standard error estimates in this fishery are high, which are generated from the Federal Marine Recreational Information Program (MRIP), indicating low precision and significant uncertainty that would benefit from improved data collection efforts and approaches. These proposed EFPs aim to address this challenge by improving recreational catch estimation and reducing discards so fishing opportunities can increase.

The geographic scope of the states' proposed projects is South Atlantic state and Federal waters off Florida, Georgia, South Carolina, and North Carolina. Currently, red snapper data are collected through NMFS' MRIP and supplemented by FWC's specialized East Coast red snapper survey and various state carcass collection programs. Florida implemented the specialized survey in 2012 to provide more accurate estimates of in-season red snapper landings given MRIP's limitations in generating precise and timely in-season estimates during the short Federal seasons supported by recreational catch limits in recent years.

The applicants propose to use existing state-based surveys (FWC) or develop and test new electronic methods for data collection (FWC, GADNR, SCDNR, NCDMF) during extended state and Federal recreational red snapper fishing seasons to further increase the precision of recreational catch, effort, and discard estimates. The applicants collaborated to develop similar proposals, and this notice addresses the four state applications together due to similarities between the applicants' desired timing for the proposed projects. This notice summarizes the states' applications for EFPs by the shared features, and then gives an overview of each application by state to explain unique elements.

Reference the individual state EFP applications for complete details of each proposed project at the website in the **ADDRESSES** section.

General Description of Proposed Projects

The projects proposed to be conducted under EFPs and summarized in this notice would apply to the recreational harvest of red snapper in state and Federal waters off the states of Florida, Georgia, South Carolina, and North Carolina. The common goals of the proposed projects are to provide more precise estimates of the numbers of recreational fishermen targeting red snapper, and the associated fishing effort and catch, and to gather information that may be used for further state involvement in management of the resource. Recreational fishermen participating under an EFP would include state-permitted private anglers, and state or federally permitted for-hire fishermen. Any discussion in this notice that relates to an angler that has paid to access fish from a for-hire vessel will be described specifically (paying angler on a for-hire vessel). None of the applicants' proposed projects would apply to the commercial harvest of red snapper in South Atlantic state or Federal waters, which would occur as usual in a manner consistent with the current regulations.

The applicants intend to conduct multi-year projects for the purposes described in the Background section of this notice. Each applicant has proposed to establish a state management strategy for the recreational harvest of red snapper in 2026 to expand access to red snapper over a longer period during a fishing year through the establishment of extended state and Federal recreational fishing seasons. The applicants stated that at the end of year 1, they would meet with NMFS to discuss outcomes, and any requested modifications to their EFPs for subsequent years would be submitted to NMFS as changes are made to the methodology of the projects. The total number of red snapper that would be harvested under these EFPs would be commensurate with the length of the proposed recreational fishing seasons for red snapper. The applicants intend to constrain harvest utilizing bag limits, a size limit (SCDNR), and the number of fishing days authorized under the EFPs, noting their lack of confidence in MRIP effort, catch, and discard estimates, and that those estimates do not allow for an exact estimate of landings until the first year of data collection under the EFPs is complete. Then, they noted their intent to estimate this information in

future years using data collected during the extended 2026 recreational red snapper fishing seasons. These proposed extended recreational seasons would replace the Federal recreational season in July annually announced by NMFS under current regulations. During 2026, the applicants' data collection programs would each focus on a few aspects of the fishery, including identifying the number of recreational anglers, improving effort and catch data through testing and use of electronic data collection, and gathering biological, social and economic information.

To participate as a private angler or for-hire fisherman in any of the proposed projects and be exempted from Federal regulations for recreational red snapper harvest, a participant must follow all of the requirements under the EFP issued to the state in which they are licensed and landing the fish. Participating private anglers and for-hire operators landing red snapper in the states granted EFPs would be required to have the necessary state and Federal permits and licenses for the states where they will land the fish.

Participants in any of the four projects would be required to report electronically to the applicable state agency after a fishing trip. Participants would be required to complete and submit a trip report before they can initiate a new trip. Methods to submit the mandatory trip report would vary by state and whether fishing would occur as a private angler or on a vessel operated by a for-hire fisherman.

Participants would be able to retain one red snapper per person per day if they meet the other required conditions. Additionally, each of the applicants propose to prohibit the retention of red snapper by captain and crew of a for-hire vessel.

Unless specifically exempted under an EFP for the recreational harvest of red snapper or for the recreational harvest of other federally managed snapper-grouper species, current Federal regulations will continue to apply. Participation under each EFP may require additional or more restrictive provisions than current Federal regulations, such as a state license requirement or different harvest limit, and those provisions are summarized later by state and detailed in each application.

Proposed Projects by State

Florida

FWC is requesting an EFP from May 1, 2026, through December 31, 2028, applicable to the recreational harvest of red snapper in state and Federal waters

off Florida's Atlantic coast. The proposal would test two methods of recreational data collection to improve monitoring of red snapper fishing effort, landings, and discards by private anglers and for-hire fishermen in state and Federal waters during an extended state and Federal recreational fishing season. FWC would use the data collected in 2026 to inform the season length and structure established by the state for 2027 and 2028 in collaboration with NMFS.

In 2026, FWC proposes to allow the recreational harvest of red snapper in state and Federal waters during a season divided into summer and fall segments totaling 39 fishing days. The proposed season would occur daily from May 22 through June 20, and then from Fridays through Sundays during October 2–4, October 9–11, and October 16–18. FWC proposed these dates to gather baseline data over a longer and more varied period compared to recent Federal seasons, and after consideration of fishery and environmental data, and public input. Each fishing trip during those summer and fall segments would be required to begin and end in Florida.

Participants, Permits, and License Requirements

FWC would allow a fisherman to harvest red snapper under the EFP if applicable state license and Federal permit requirements are met. At minimum, a private angler would need a valid saltwater recreational fishing license issued by Florida (or be otherwise exempt) and a valid State Reef Fish Survey (SRFS) endorsement to fish in state and Federal waters. For-hire fishermen would need the state Atlantic red snapper for-hire permit to fish in state waters only, while the same state permit and a Federal charter vessel/headboat permit for snapper-grouper would be required to fish in state and Federal waters. Harvest of red snapper would be allowed by spearfishing or hook-and-line fishing gear.

Aggregate Bag Limit

In addition to a maximum of one red snapper per person each day, FWC proposes to manage red snapper harvest as part of a 10-fish aggregate bag limit of snapper-grouper species to test whether such a limit could reduce discard mortality of the aggregate species. The proposed composition and limits for the species in the aggregate are detailed in the FWC application linked in the **ADDRESSES** section. Once a participant was to reach any combination of 10 fish from the aggregate, they would be required to stop bottom fishing for federally

managed snapper-grouper species for the remainder of the trip to minimize catch and reduce discard mortality of other snapper-grouper species. Fishermen may still target other species managed by the state or NMFS after reaching the limit, such as coastal migratory pelagic species, like king mackerel and cobia.

Unless specifically exempted or required to participate under the EFP, all other current Federal regulations would continue to apply. For example, if a regulatory closure occurs in-season for any species other than for recreationally harvested red snapper, EFP participants would be prohibited from harvesting that species.

Reporting

FWC is proposing to use SRFS, an established state data collection method, and a voluntary smartphone application (phone app) for data collection. FWC would request private anglers and for-hire operators to submit a trip declaration using the voluntary phone app before each fishing trip. FWC intends that a trip declaration could provide additional insight into intended and actual fishing effort during the fishing season. Private anglers and for-hire captains fishing under the EFP would be required to report information about the trip, landings, and discards through SRFS. FWC would also encourage participants to voluntarily submit the same trip information through the phone app. Trip reports submitted through the voluntary phone app would need to occur within 24 hours after a fishing trip ends. An EFP would allow FWC to evaluate the usefulness of the phone app as a method to collect recreational data and to compare collected data with those collected through SRFS. The data collected through the FWC project would include elements such as the number of fish harvested and released, and the number of fish released alive and dead. Unless exempted, for-hire fishermen will continue to report all for-hire trips as required by 50 CFR 622.176(b).

Enforcement

FWC's proposed enforcement strategy for the project would involve a multi-layered approach that integrates education with direct field monitoring by state and Federal agents. FWC managers would closely coordinate with law enforcement, field biologists, and phone staff to ensure all parties are informed of the project's specific requirements, such as the aggregate bag limit. Signing up for the state Atlantic red snapper for-hire permit would allow

FWC to provide a registry of participants to law enforcement for verification. Furthermore, FWC staff would conduct dockside sampling and angler interviews at access points to validate catch data and ensure adherence to the experimental fishing guidelines, including verifying and recording the use of descending devices.

Outreach

FWC would implement a targeted outreach plan for participants under the EFP to reduce confusion and increase compliance. Outreach would include information on how the aggregate bag limit would change throughout the year as fishing seasons for some snapper-grouper species (*e.g.*, gag grouper, blueline tilefish) will be open during the first portion of the proposed split season but closed during the second portion. FWC states that they already developed outreach materials for the aggregate bag limit, which they previously tested under the FWC's 2024–2026 Atlantic EFP projects.

Other Existing EFPs

FWC is currently in year 2 of three Atlantic red snapper research projects supported by EFPs through September 30, 2026 (more information on these projects can be found at <https://www.fisheries.noaa.gov/southeast/bycatch/south-atlantic-red-snapper-exempted-fishing-permits-2025-2026>). NMFS funded these projects in 2024 and 2025 in response to a request for proposals designed to test innovative recreational management strategies aimed at reducing dead discards of snapper-grouper species and to provide additional red snapper harvest opportunities. FWC intends to continue these Atlantic research projects at least until NMFS responds to this new EFP request. FWC has stated that they are able to conduct all of the projects simultaneously but are willing to coordinate with NMFS on whether to end the three ongoing Atlantic research projects early if this new EFP is issued.

Georgia

GADNR is requesting an EFP to conduct a pilot study to develop and test a state-based data collection system for the recreational harvest of red snapper off Georgia in state and Federal waters using a state management system. This study aims to address the lack of precision in current Federal catch estimates and to evaluate alternative data collection approaches. GADNR anticipates that the outcome of the 2026 pilot will inform a decision to extend the program through 2027 and 2028.

GADNR is requesting an initial 1-year EFP to harvest red snapper beginning in 2026. Specifically, the state proposes to establish a 62-day recreational fishing season for red snapper in state and Federal waters that aligns with MRIP wave 4, running from July 1 through August 31, 2026. This timing was selected because wave 4 historically represents the period with the highest rates of recreational fishing effort and discards. While GADNR is seeking the EFP for 2026, the state has expressed its intent to potentially extend the project through a subsequent EFP request for an additional 2 years (covering 2027 and 2028) to better test the validity of their data collection application and establish long-term catch trends.

Each fishing trip taken under the EFP would be required to begin and end at a landing location in Georgia. Consistent with the proposed methods, private anglers and anglers on a for-hire vessel would be allowed to harvest one red snapper per person per day. While the captain and crew on charter or headboat trips would be prohibited from retaining a bag limit, properly licensed private anglers and paying anglers on a for-hire vessel could harvest red snapper within the defined season. Unless specifically exempted or required to participate under the EFP, all other current Federal regulations would continue to apply.

Participants, Permits, and License Requirements

Participation in the state management program under an EFP would be open to properly licensed private anglers and for-hire fishermen. Private anglers would be required to possess a valid Georgia recreational fishing license and a free annual Saltwater Information Program permit. For-hire fishermen would be required to be properly licensed in Georgia and, when operating in Federal waters, to hold a valid Federal charter vessel/headboat permit for snapper-grouper. To harvest red snapper under the EFP, all participants would be required to register with the state's electronic data reporting application and follow all mandatory reporting conditions.

Reporting

GADNR proposes to use VESL, an electronic reporting application developed by Bluefin Data LLC, to collect data from private anglers. To be consistent with the legislative text for Georgia's reef and migratory fishes endorsement, the project would require each private angler to report except under certain circumstances, when alternate trip participants would be allowed to submit data on another

angler's behalf. Participants would be required to obtain a trip authorization code prior to departing on each fishing trip, and to submit a mandatory post-trip report within 24 hours of the trip's departure time. The data collected through the state survey program could include trip length and end time, depth fished, and the number of red snapper harvested or released and their status. Mandatory trip reporting by for-hire fishermen would continue under existing requirements at 50 CFR 622.176(b).

Enforcement

Compliance with the EFP regulations would be enforced by GADNR law enforcement officers, who would conduct at-sea and dockside intercepts to verify that private anglers have obtained the required trip authorization codes. Officers would also monitor for-hire fishing activity to ensure that mandatory trip reports are submitted following the landing of any red snapper. Additionally, the state would utilize law enforcement engagement and data from the existing MRIP to identify and determine rates of non-compliance during 2026. No correction factors for non-reporting or misreporting are proposed for generating catch estimates.

Outreach

To support the successful implementation of the 2026 project, GADNR would develop and distribute a variety of outreach materials aimed at educating private anglers and for-hire fishermen on participation requirements. These resources would emphasize the mandatory nature of the electronic data reporting system and detail the expectations for all participants under an EFP. Educational efforts would also encourage participants to complete and submit trip reports as soon as possible, while maintaining the reporting deadline of no later than 24 hours after the trip departure time. Furthermore, GADNR plans to leverage partnerships with industry leaders who have pledged to help disseminate this information and support the project requirements and reporting mandates within the fishing community.

South Carolina

SCDNR is requesting an EFP to conduct a pilot study to develop and test a state-based data collection system for the recreational harvest of red snapper off South Carolina in state and Federal waters. This study aims to increase fishing opportunities for fishermen, test a data collection program for private anglers, test

management options, and improve available data for management of the recreational harvest of red snapper.

SCDNR is requesting an initial 1-year EFP to harvest red snapper beginning in 2026. Specifically, the state proposes a 62-day season that aligns with MRIP wave 4, running from July 1 through August 31, 2026. This timing was selected because wave 4 historically represents the period with the highest rates of fishing effort and discards. While the permit is being sought for 2026, the state has expressed the intent to potentially extend the pilot program for an additional 2 years (covering 2027 and 2028) to better test the validity of their data collection application and establish long-term catch trends.

Each fishing trip must originate and terminate at a South Carolina landing location. Consistent with the proposed methods, anglers would be allowed to harvest one red snapper per person per day. In addition to the bag limit, SCDNR proposed a minimum size limit of 20 inches or approximately 51 centimeters in total length to match the current minimum size limit in state waters. The rationale provided for such a limit in Federal waters off South Carolina is to match existing state water regulations for fishermen and enforcement benefit. All other provisions for red snapper and for other species would remain in effect. While the captain and crew on charter or headboat trips would be prohibited from retaining a daily bag limit, properly licensed private and for-hire anglers may harvest fish within the defined season.

Participants, Permits, and License Requirements

Under the proposed project, SCDNR would allow private anglers and for-hire fishermen to fish under the EFP after meeting the license and permit requirements. For private anglers, SCDNR would require an existing state saltwater fishing license (or be otherwise exempt) and would require a state-issued experimental red snapper harvest permit. A for-hire fisherman would need a state charter vessel or headboat license, and a Federal charter vessel/headboat permit for snapper-grouper to fish in Federal waters. To prevent an increase of new for-hire fishermen solely to participate under an EFP and to harvest red snapper, SCDNR would require possession of the valid for-hire state license and Federal permit to have been issued prior to January 1, 2026. All private anglers and for-hire fishermen participating under an EFP must possess a copy of the EFP while fishing. If granted, SCDNR would distribute a digital copy of the issued

EFP to all participating private anglers and for-hire fishermen.

Reporting

Participating private anglers and for-hire fishermen would use VESL, a data reporting program to register to fish. VESL is the application currently used to collect electronic for-hire data from state licensed and federally permitted charter vessels and headboats. To participate under the EFP, private anglers must declare each trip via the VESL application no earlier than 5 days before departure, and then complete and submit a mandatory trip report no later than 24 hours after the trip departure time. Upon declaring a trip, private anglers would receive a trip authorization code, which must be presented to law enforcement for inspection if requested. Under certain circumstances, alternate trip participants may submit data on another angler's behalf. To ensure compliance and data integrity, the VESL system is designed so that a new trip cannot be initiated or authorized until the previous trip's report has been completed and submitted. For-hire fishermen would continue mandatory reporting through the same VESL application in compliance with existing requirements at 50 CFR 622.176(b). The data collected through the SCDNR project could include elements such as the number of red snapper harvested, the number of fish released alive or dead, primary depth fished, and total hours spent fishing.

Enforcement

Compliance with the EFP regulations would be enforced by SCDNR law enforcement officers, who would conduct inspections at-sea and at landing locations. Officers would verify that all private anglers and for-hire fishermen possess the necessary valid licenses and permits. During these encounters, private anglers would be required to present their trip authorization code for the specific trip being inspected. To ensure data integrity, enforcement officers would also monitor for-hire fishermen to verify that landed fish correspond with submitted mandatory reports. SCDNR would provide absolute harvest and discard values for red snapper collected during wave 4. No correction factors for non-reporting or misreporting are proposed for generating catch estimates as the focus of year 1 is to assist anglers in reaching a full census of data through direct engagement and automated system reminders.

Outreach

To support the successful implementation of the 2026 pilot program, SCDNR plans to implement an extensive outreach and education campaign to ensure angler compliance and build positive momentum for the new data reporting program. Prior to a red snapper recreational season, SCDNR would use social media, news releases, and in-person engagements at fishing clubs and seminars to clearly communicate permit and mandatory reporting requirements. A dedicated website would provide instructional videos for the VESL application, step-by-step reporting guides, and a downloadable trip datasheet to assist with accurate data entry. During the fishing season, SCDNR staff and law enforcement would engage directly with participants at docks to distribute materials, assist with the post-trip reporting process, and collect biological data such as length, weight, and otoliths. The agency would also leverage partnerships with industry leaders to disseminate information and conduct post-season surveys to evaluate angler preferences and program effectiveness.

North Carolina

NCDMF is requesting an EFP from July 1 through August 31, 2026. NCDMF may also request an EFP annually for up to 3 years. NCDMF proposes to develop and test a state-based data collection system for the recreational harvest of red snapper in state and Federal waters off North Carolina. The study aims to improve the accuracy of harvest and discard data, better understand behavior of recreational fishermen, and ultimately transition toward state-led management of the species. The proposed methodology for this pilot program focuses on improving the accuracy of fishery data through several integrated research activities. Through the state's fish carcass collection program, the NCDMF would gather biological data from donated fish carcasses to better understand the stock's health.

Under the NCDMF proposal, the recreational harvest of red snapper would be allowed during a proposed 62-day season from July 1 through August 31, 2026, which corresponds to the same sampling period of MRIP wave 4. NCDMF has proposed these dates to test an alternate data collection program and management measures in this fishery to provide immediate tracking of both harvests and discards.

The allowable gear to participate under an EFP would be limited to hook and line gear. Private anglers and paying

anglers on for-hire vessels would be allowed to harvest one red snapper per person per day. Participants would be required to follow all other existing state and Federal regulations. To constrain the overall harvest during the extended season, the NCDMF would limit private anglers to the more restrictive of either one fish per person or four fish per vessel per day. Within the for-hire component, the bag and vessel limits would vary based on the number of paying anglers. On a charter vessel (six or fewer passengers), the more restrictive of either a bag limit per paying angler or a vessel limit would apply. The bag limit per paying angler would be one fish per day, or a vessel limit of four. On a headboat (more than 6 paying passengers), a vessel limit of 20 fish would apply. A for-hire captain and crew would be excluded from possessing a bag limit of red snapper.

Participants, Permits, and License Requirements

As detailed in the application, NCDMF would allow participation under an EFP as a private angler or for-hire fisherman if all applicable state license and Federal permit requirements are met. Private anglers would need a valid state coastal recreational fishing license unless an individual is otherwise exempted. All for-hire fishermen would need one of two state licenses and the Federal charter vessel/headboat permit for snapper-groupers. To prevent an increase of new for-hire fishermen solely to participate under an EFP and to harvest red snapper, NCDMF would require possession of the valid for-hire state license and Federal permit to have been issued prior to January 1, 2026. As part of these requirements, all private anglers and for-hire fishermen must also apply to be data collectors under a state scientific or educational activity permit.

Further, participants must formally acknowledge that reporting is required for all red snapper caught, whether they were specifically targeted or caught incidentally. The NCDMF application does not state whether each fishing trip under an EFP would need to begin and end in North Carolina.

Reporting

All private anglers would submit mandatory trip reports using the VESL application created by Bluefin LLC. The proposed project also includes a specific mail and email survey to collect demographic, social, and economic data. Private anglers would utilize the phone app to declare a fishing trip no earlier than 5 days prior to the start of a trip to receive a trip authorization

code linked to each trip, which NCDMF would also verify this code during trip reporting. After each fishing trip, private anglers must complete and submit the trip report no later than 24 hours from the trip departure time. Mandatory trip reporting by for-hire fishermen would continue under existing requirements at 50 CFR 622.176(b). As mentioned earlier, NCDMF does not state whether fishing under an EFP would require all trips to begin and end in North Carolina. However, the application does specify that data collected through VESL would require private anglers to submit the landing county and site before fishing occurs. Data collected through the VESL phone app would be summarized every other week. No correction factors for non-reporting or misreporting are proposed for generating catch estimates in year 1.

Enforcement

Enforcement of the EFP would be managed through a combination of field inspections and digital reporting controls. NCDMF law enforcement officers would intercept private recreational anglers at boat ramps and docks to verify that they have obtained a unique trip authorization code for any trip targeting or retaining red snapper. For-hire captains are also required to keep a copy of the EFP on board to prove participation during law enforcement checks. NCDMF requested an increase in the presence of NOAA law enforcement officers during the proposed season to help with compliance of anglers participating in the EFP study.

Outreach

NCDMF would conduct outreach through press releases and social media to announce participation opportunities for the EFP. To ensure compliance with mandatory reporting, NCDMF would develop instructional videos demonstrating how to use the VESL phone app. Private recreational anglers and for-hire captains who register would be subject to follow-up surveys via email to collect demographic, social, and economic data, as well as feedback on trip satisfaction.

Requested Exemptions

The applicants have each requested exemptions to certain Federal regulations for the proposed projects in the South Atlantic.

FWC has requested exemptions from:

50 CFR 622.181(c)(2) that restricts combining harvest limits of red snapper in Federal waters with any harvest limitation in state waters, limits the harvest and possession of red snapper to

the specified season, and applies these limitations to a federally permitted for-hire vessel in both state and Federal waters.

50 CFR 622.183(b)(5)(i) that specifies when the recreational season will occur each year.

50 CFR 622.193(y)(2) that specifies the annual catch limit and accountability measures applicable to the recreational harvest of red snapper.

GADNR, SCDNR, and NCDMF have requested exemptions from:

50 CFR 622.8(b) that describes general closure provisions that apply if landings reach a catch quota specified in 50 CFR part 622.

50 CFR 622.181(c)(2) that restricts combining harvest limits of red snapper in Federal waters with any harvest limitation in state waters, limits the harvest and possession of red snapper to the specified season, and applies these limitations to a federally permitted for-hire vessel in both state and Federal waters.

50 CFR 622.193(y)(2) that specifies the annual catch limit and accountability measures applicable to the recreational harvest of red snapper.

NMFS Preliminary Finding

NMFS finds the applications warrant further consideration based on a preliminary review. The applications are considered together in this notice because of the similar nature as stated earlier. However, each application is independent and will be considered individually as part of the overall recreational management of red snapper. If issued by NMFS, an EFP may impose possible conditions, including but not limited to a prohibition on fishing within marine protected areas, marine sanctuaries, or special management zones without additional authorization.

Final decisions on issuance of EFPs and the regulatory exemptions will depend on NMFS' review of public comments received on the applications, consultations with the appropriate fishery management agencies of the affected states, the South Atlantic Fishery Management Council, and the U.S. Coast Guard, and a determination that the activities to be taken under the EFPs are consistent with all other applicable laws.

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

Dated: February 10, 2026.

David R. Blankinship,

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

[FR Doc. 2026-02927 Filed 2-11-26; 4:15 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 24-111]

Arms Sales Notification

Correction

In Notice document 2025-22754 beginning on page 57963 in the issue of Monday, December 15, 2025, make the following corrections:

On pages 57964 and 57965 the Arms Sales Notifications for August 25, 2022 should be removed.

[FR Doc. C1-2025-22754 Filed 2-12-26; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

National Assessment Governing Board

Seeking Initial Public Comment Prior To Updating the Civics Assessment Framework for the National Assessment of Educational Progress (NAEP)

AGENCY: National Assessment Governing Board, U.S. Department of Education.

ACTION: Notice of opportunity for initial public comment prior to updating the Civics Assessment Framework for the National Assessment of Educational Progress (NAEP).

SUMMARY: The National Assessment Governing Board (Governing Board) is seeking initial public comment prior to updating the Civics Assessment Framework for the National Assessment of Educational Progress (NAEP).

DATES: Comments must be received on or before 5:00 p.m. Eastern Time on Friday, March 27, 2026.

ADDRESSES: Submit written comments via email to nagb@ed.gov with the subject line "NAEP Civics Framework."

FOR FURTHER INFORMATION CONTACT: Sharyn Rosenberg, National Assessment Governing Board, 400 Maryland Avenue SW, Washington, DC 20202, telephone: (202) 245-6249, email: Sharyn.Rosenberg@ed.gov.

SUPPLEMENTARY INFORMATION: The Governing Board is responsible for developing and updating NAEP frameworks, which guide the content of NAEP assessments. Section 302(e)(1)(c) of Public Law 107-279 specifies that the Governing Board determines the content to be assessed for each NAEP Assessment. Each NAEP subject area assessment is guided by a framework that defines the scope of the domain to be measured by delineating the

knowledge and skills to be tested at each grade and subject, the format of the assessment, and the achievement level descriptions—guiding assessments that are valid, reliable, and reflective of widely accepted professional standards.

In preparation for a potential update, the Board is initiating a preliminary review of the current NAEP Civics Assessment Framework. This initial gathering of public comment is the first stage in a comprehensive multi-year process that, if the Board decides framework revisions are needed, will later involve multiple iterations of stakeholder feedback and an expert panel to guide the development of assessment questions and recommendations for contextual questionnaires administered to students, teachers, and schools.

Individuals and organizations are invited to provide written comments and recommendations relative to the current framework. Comments should specifically address three questions:

- Does the NAEP Civics Assessment Framework need to be updated?
- If the framework needs to be updated, why is a revision needed?
- What should a revision to the framework include?

Your name and affiliation may be shared and discussed publicly with your comments in upcoming Governing Board meetings and materials unless you indicate that your comments can only be shared without attribution.

If the Governing Board decides that an update is needed, the charge to launch the revision process for the NAEP Civics Framework is anticipated to be adopted at the May 2026 quarterly Board meeting. Each NAEP framework development and update process considers a wide set of factors, including but not limited to reviews of recent research on teaching and learning, changes in state and local standards and assessments, and the latest perspectives on the nation's future needs and desirable levels of achievement.

Resources

NAEP Civics Framework
NAEP Civics Specifications
Board Policy on Assessment Framework Development

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. 2026–02980 Filed 2–12–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2026–SCC–0199]

Agency Information Collection Activities; Comment Request; 2027–2028 Free Application for Federal Student Aid (FAFSA)

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 14, 2026.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2026–SCC–0199. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by

postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C210, Washington, DC 20202–1200.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carolyn Rose, 202–803–1502.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 2027–2028 Free Application for Federal Student Aid (FAFSA).

OMB Control Number: 1845–0001.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 32,946,253.

Total Estimated Number of Annual Burden Hours: 16,065,539.

Abstract: Section 483, of the Higher Education Act of 1965, as amended (HEA), mandates that the Secretary of Education “. . . shall produce, distribute, and process free of charge common financial reporting forms as described in this subsection to be used for application and reapplication to determine the need and eligibility of a student for financial assistance . . .”.

The determination of need and eligibility are for the following Title IV, HEA, federal student financial assistance programs: the Federal Pell Grant Program; the Campus-Based programs (Federal Supplemental Educational Opportunity Grant (FSEOG) and Federal Work-Study (FWS)); the William D. Ford Federal Direct Loan (Direct Loan) Program; the Teacher Education Assistance for College and Higher Education (TEACH) Grant; the Children of Fallen Heroes Scholarship; and the Iraq and Afghanistan Service Grant.

Federal Student Aid (FSA), an office of the U.S. Department of Education,

subsequently developed an application process to collect and process the data necessary to determine a student's eligibility to receive Title IV, HEA program assistance. The application process involves an applicant's submission of the *Free Application for Federal Student Aid* (FAFSA®). After submission and processing of the FAFSA form, an applicant receives a FAFSA Submission Summary, which is a summary of the processed data they submitted on the FAFSA form. The applicant reviews the FAFSA Submission Summary, and, if necessary, will make corrections or updates to their submitted FAFSA data. Institutions of

higher education listed by the applicant on the FAFSA form also receive a summary of processed data submitted on the FAFSA form which is called the Institutional Student Information Record (ISIR).

ED and FSA seek OMB approval of all application components as a single "collection of information." The aggregate burden will be accounted for under OMB Control Number 1845-0001. The specific application components, descriptions, and submission methods for each are listed in Table 1.

TABLE 1—FEDERAL STUDENT AID APPLICATION COMPONENTS

Component	Description	Submission method
Initial Submission of FAFSA Form		
<i>fafsa.gov</i>	Any applicant with a Federal Student Aid ID (FSA ID) can complete the electronic version of the FAFSA form.	Submitted by the applicant.
Printed FAFSA form	The printed version of the FAFSA PDF for applicants who are unable to access the internet or complete the form using <i>fafsa.gov</i> .	Mailed by the applicant.
Correcting and Reviewing Submitted FAFSA Information		
<i>fafsa.gov</i> —Corrections	Any applicant with an FSA ID—regardless of how they originally applied—may make corrections to their own data. Note that no user will be able to make corrections to any federal tax information (FTI) that was obtained from the IRS.	Submitted by the applicant.
Electronic Other—Corrections ...	With the applicant's permission, corrections can be made by an FAA (Financial Aid Administrator) using the Electronic Data Exchange (EDE).	The FAA may be using their mainframe computer or software to facilitate the EDE process.
Paper FAFSA Submission Summary.	The paper summary is mailed to paper applicants who did not provide an email address. Applicants can write corrections directly on the paper FAFSA Submission Summary and mail for processing. Note that users for whom federal tax information (FTI) was obtained from the IRS will not be able to make corrections to that data.	Mailed by the applicant.
FAFSA Partner Portal (FPP)—Corrections.	An institution can use FPP to correct the FAFSA form	Submitted by an FAA on behalf of an applicant.
Internal Department Corrections	The Department will submit an applicant's record for system-generated corrections to the FAFSA Processing System. There is no burden to the applicants under this correction type as these are system-based corrections.	These corrections are system-generated.
FAFSA Submission Summary—electronic.	The electronic FAFSA Submission Summary is an online version of the FAFSA Submission Summary that is available on <i>fafsa.gov</i> to all applicants. Notification for the FAFSA Submission Summary is sent to students who applied electronically or by paper and provided a valid email address. These notifications are sent by email and include a secure hyperlink that takes the user to the <i>fafsa.gov</i> site.	Cannot be submitted for processing.

This information collection also documents an estimate of the annual public burden as it relates to the application process for federal student aid. The Applicant Burden Model (ABM) measures applicant burden through an assessment of the activities each applicant conducts in conjunction with other applicant characteristics and, in terms of burden, the average applicant's experience. Key determinants of the ABM include:

- The total number of applicants that will potentially apply for federal student aid;

- How the applicant chooses to complete and submit the FAFSA form (e.g., by paper or electronically);
- How the applicant chooses to submit any corrections and/or updates (e.g., the paper FAFSA Submission Summary or electronically);
- The type of FAFSA Submission Summary document the applicant receives (paper or electronic);
- The formula applied to determine the applicant's student aid index (SAI); and

- The average amount of time involved in preparing to complete the application.

The ABM is largely driven by the number of potential applicants for the application cycle. The total application projection for 2027–2028 is based on the projected total enrollment into post-secondary education for Fall 2027. The ABM is also based on the application options available to students and parents. ED accounts for each application component based on analytical tools, survey information and other ED data sources.

For 2027–2028, ED is reporting a net burden decrease of 4,347,214 hours.

Brian Fu,

Program and Management Analyst, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2026–02905 Filed 2–12–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1644–004.

Applicants: Richland-Stryker Generation LLC.

Description: Refund Report: Refund Report.

Filed Date: 2/10/26.

Accession Number: 20260210–5075.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER20–681–009;

ER20–681–010; ER20–681–011; ER20–681–012; ER20–681–014.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Errata to Change in Status and Triennial Market Power Analyses of Tri-State Generation and Transmission Association, Inc.

Filed Date: 2/3/26.

Accession Number: 20260203–5169.

Comment Date: 5 p.m. ET 2/24/26.

Docket Numbers: ER20–681–015.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Notice of Change in Status of Tri-State Generation and Transmission Association, Inc.

Filed Date: 2/2/26.

Accession Number: 20260202–5256.

Comment Date: 5 p.m. ET 2/23/26.

Docket Numbers: ER25–2308–003.

Applicants: Magnolia Power LLC.

Description: Notice of Non-Material Change in Status of Magnolia Power LLC.

Filed Date: 2/2/26.

Accession Number: 20260202–5258.

Comment Date: 5 p.m. ET 2/23/26.

Docket Numbers: ER26–729–001.

Applicants: Vaca Dixon BESS LLC.

Description: Tariff Amendment: Deficiency Letter Response to be effective 2/10/2026.

Filed Date: 2/10/26.

Accession Number: 20260210–5095.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER26–730–001.

Applicants: Arges BESS LLC.

Description: Tariff Amendment: Deficiency Letter Response to be effective 2/10/2026.

Filed Date: 2/10/26.

Accession Number: 20260210–5096.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER26–964–001.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: Tariff Amendment: 2026–02–10 SA 4654 Entergy AR–SWPA IOA Sub Certificate of Concurrence to be effective 1/1/2026.

Filed Date: 2/10/26.

Accession Number: 20260210–5150.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER26–1316–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Schedule 1–B of the Markets+ Tariff to be effective 12/31/9998.

Filed Date: 2/10/26.

Accession Number: 20260210–5062.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER26–1317–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original GIA, SA No. 7858; Project Identifier No. AF2–388 to be effective 1/14/2026.

Filed Date: 2/10/26.

Accession Number: 20260210–5093.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER26–1318–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2025–02–10 SA 4676 ITC-Washtenaw Solar GIA (S1067) to be effective 2/6/2026.

Filed Date: 2/10/26.

Accession Number: 20260210–5122.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER26–1319–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Industrial Bravo Project Amended Generation Interconnection Agreement to be effective 1/26/2026.

Filed Date: 2/10/26.

Accession Number: 20260210–5128.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER26–1320–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Tariff Amendment: DEC–SCPSA—Termination of RS No. 689 to be effective 4/12/2026.

Filed Date: 2/10/26.

Accession Number: 20260210–5132.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER26–1321–000.

Applicants: Pastoria Power, LLC.

Description: Initial rate filing: Certificate of Concurrence and Request for Waiver to be effective 2/11/2026.

Filed Date: 2/10/26.

Accession Number: 20260210–5134.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER26–1322–000.

Applicants: Pastoria Solar Energy Company, LLC.

Description: Initial rate filing: Certificate of Concurrence and Request for Waiver to be effective 2/11/2026.

Filed Date: 2/10/26.

Accession Number: 20260210–5138.

Comment Date: 5 p.m. ET 3/3/26.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Dated: February 10, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–02940 Filed 2–12–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC26–57–000.

Applicants: BIV Generation Company, L.L.C., Colorado Power Partners.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of BIV Generation Company, L.L.C., et al.

Filed Date: 2/2/26.

Accession Number: 20260202–5247.

Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EC26–58–000.
Applicants: Morgantown Power, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Morgantown Power, LLC.
Filed Date: 2/2/26.
Accession Number: 20260202–5249.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EC26–59–000.
Applicants: Darby Power, LLC, Lawrenceburg Power, LLC, Waterford Power, LLC, Cornerstone Generation Marketing, LLC, Talen Generation, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Darby Power, LLC, et al.
Filed Date: 1/30/26.
Accession Number: 20260130–5589.
Comment Date: 5 p.m. ET 3/16/26.
Docket Numbers: EC26–60–000.
Applicants: SE Athos I, LLC, SE Athos II, LLC, Angiola East, LLC, Pelicans Jaw Solar, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of SE Athos I, LLC, et al.
Filed Date: 2/2/26.
Accession Number: 20260202–5251.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EC26–61–000.
Applicants: Dempsey Ridge Wind Farm, LLC, EcoGrove Wind LLC, Red Hills Wind Project, L.L.C., Acciona Wind Energy USA LLC, Tatanka Wind Power, LLC, Nevada Solar One, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Dempsey Ridge Wind Farm, LLC et al.
Filed Date: 2/3/26.
Accession Number: 20260203–5161.
Comment Date: 5 p.m. ET 2/24/26.
Docket Numbers: EC26–62–000.
Applicants: Sugar Maple Wind, LLC, Exus Sugar Maple Holdings LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Sugar Maple Wind, LLC, et al.
Filed Date: 2/6/26.
Accession Number: 20260206–5185.
Comment Date: 5 p.m. ET 2/27/26.
Docket Numbers: EC26–63–000.
Applicants: Bridgeport Energy LLC, Essential Power Massachusetts, LLC, Essential Power Newington, LLC, Essential Power OPP, LLC, Essential Power Rock Springs, LLC, Hamilton Liberty LLC, Hamilton Patriot LLC, Hamilton Projects Acquiror, LLC, Lakewood Cogeneration, L.P., Nautilus Power, LLC, Revere Power, LLC, Rumford Power LLC, Tiverton Power LLC, Vistra Corp.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Bridgeport Energy LLC, et al.
Filed Date: 2/6/26.
Accession Number: 20260206–5187.
Comment Date: 5 p.m. ET 2/27/26.
Docket Numbers: EC26–64–000.
Applicants: EAM Nelson Holding, LLC, Entergy Power, LLC, EWO Marketing, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of EAM Nelson Holding, LLC, et al.
Filed Date: 2/9/26.
Accession Number: 20260209–5161.
Comment Date: 5 p.m. ET 3/2/26.
 Take notice that the Commission received the following electric rate filings:
Docket Numbers: ER10–2302–015; ER19–2674–008.
Applicants: New Mexico PPA Corporation, Public Service Company of New Mexico.
Description: Notice of Non-Material Change in Status of Public Service Company of New Mexico, et al. under ER10–2302, et al.
Filed Date: 1/30/26.
Accession Number: 20260130–5582.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER11–2035–001; ER11–4729–002.
Applicants: APN Starfirst, LP, American Powernet Management, LP.
Description: Notice of Change in Status of American Powernet Management, LP, et al. under ER11–2035, et al.
Filed Date: 1/30/26.
Accession Number: 20260130–5584.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER15–1905–022.
Applicants: AZ721 LLC.
Description: Notice of Change in Status of Amazon Energy LLC.
Filed Date: 1/30/26.
Accession Number: 20260130–5583.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER23–2541–003.
Applicants: Nevada Cogeneration Associates #2.
Description: Notice of Non-Material Change in Status of Nevada Cogeneration Associates #2.
Filed Date: 1/30/26.
Accession Number: 20260130–5585.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER24–1151–002.
Applicants: Aquamarine Lessee, LLC.
Description: Tariff Amendment: Errata to Response to Deficiency Letter to be effective 4/1/2024.
Filed Date: 2/9/26.
Accession Number: 20260209–5147.

Comment Date: 5 p.m. ET 3/2/26.
Docket Numbers: ER24–1152–002.
Applicants: Aquamarine Westside, LLC.
Description: Tariff Amendment: Errata to Response to Deficiency Letter to be effective 4/1/2024.
Filed Date: 2/9/26.
Accession Number: 20260209–5146.
Comment Date: 5 p.m. ET 3/2/26.
Docket Numbers: ER25–2182–001; ER25–2184–001.
Applicants: Energy Prepay IX, LLC, Energy Prepay VIII, LLC.
Description: Notice of Change in Status of Energy Prepay VIII, LLC, et al.
Filed Date: 1/30/26.
Accession Number: 20260130–5587.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER25–2211–002.
Applicants: American Beech Solar LLC.
Description: Notice of Non-Material Change in Status of American Beech Solar LLC.
Filed Date: 1/30/26.
Accession Number: 20260130–5581.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER26–1304–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: Compliance filing: 676–K Compliance to be effective 2/27/2026.
Filed Date: 2/9/26.
Accession Number: 20260209–5140.
Comment Date: 5 p.m. ET 3/2/26.
Docket Numbers: ER26–1305–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1313R20 Oklahoma Gas and Electric Company NITSA and NOA to be effective 12/1/2025.
Filed Date: 2/10/26.
Accession Number: 20260210–5008.
Comment Date: 5 p.m. ET 3/3/26.
Docket Numbers: ER26–1306–000.
Applicants: Keystone Appalachian Transmission Company.
Description: § 205(d) Rate Filing: KATCo submits amended IA—SA No. 6650 to be effective 4/12/2026.
Filed Date: 2/10/26.
Accession Number: 20260210–5009.
Comment Date: 5 p.m. ET 3/3/26.
Docket Numbers: ER26–1307–000.
Applicants: Rouget Road Solar Farm, LLC.
Description: Request for Limited and Prospective Waiver, et al. of Rouget Road Solar Farm, LLC.
Filed Date: 2/9/26.
Accession Number: 20260209–5160.
Comment Date: 5 p.m. ET 3/2/26.
Docket Numbers: ER26–1308–000.
Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original GIA No. 7837; AE1–185/AG2–478; Notice of Cancellation of ISA No. 6154 to be effective 1/12/2026.

Filed Date: 2/10/26.

Accession Number: 20260210–5018.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER26–1310–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 2360; Queue No. AD2–133/Q36 to be effective 4/12/2026.

Filed Date: 2/10/26.

Accession Number: 20260210–5024.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER26–1311–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Attachment O for Interregional Transmission Coordination in the SPP to be effective 4/1/2026.

Filed Date: 2/10/26.

Accession Number: 20260210–5026.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER26–1312–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 4605 Hecate Energy Sooner Solar GIA to be effective 1/16/2026.

Filed Date: 2/10/26.

Accession Number: 20260210–5032.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER26–1313–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 53 to be effective 4/12/2026.

Filed Date: 2/10/26.

Accession Number: 20260210–5046.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER26–1314–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions Related to Attachment A, Section 3.7.2 and Tariff Clean Up to be effective 12/31/9998.

Filed Date: 2/10/26.

Accession Number: 20260210–5052.

Comment Date: 5 p.m. ET 3/3/26.

Docket Numbers: ER26–1315–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original GIA, Service Agreement No. 7841; Project Identifier No. AF2–081 to be effective 1/14/2026.

Filed Date: 2/10/26.

Accession Number: 20260210–5057.

Comment Date: 5 p.m. ET 3/3/26.

The filings are accessible in the Commission's eLibrary system ([https://](https://elibrary.ferc.gov/idmws/search/fercgensearch.asp)

elibrary.ferc.gov/idmws/search/fercgensearch.asp) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Dated: February 10, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–02939 Filed 2–12–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15418–000]

Bluestone Hydro AE, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 23, 2025, Bluestone Hydro AE, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of hydropower at the existing U.S. Army Corps of Engineers' Bluestone Dam located on the New River in Summers County, West Virginia. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Bluestone Hydroelectric Project would consist of the following: (1) a new 180-foot-wide,

180-foot-long reinforced concrete powerhouse to be located downstream along the right bank looking downstream; (2) an existing intake and trashracks; (3) three 5-megawatt (MW) turbine-generator units with a total generating capacity of 15 MW; (4) a new 180-foot-wide by 300-foot-long tailrace; (5) an existing access road; (6) a new 60-foot-long by 60-foot-wide substation with a three-phase step-up transformer; (7) a new 2.1-mile-long, 36.7-kilovolt transmission line; and (8) appurtenant facilities. The proposed project would have an estimated annual generation of 83 gigawatt-hours.

Applicant Contact: Roy Powers/Zac Osgood, Agilitas Energy Inc., 401 Edgewater Place, Suite 570, Wakefield, MA; phone: 914–805–2522.

FERC Contact: Monir Chowdhury; phone: (202) 502–6736.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: on or before 5:00 p.m. Eastern Time on April 10, 2026. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at <https://ferconline.ferc.gov/FEROnline.aspx>. Commenters can submit brief comments up to 10,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. For assistance, please contact FERC Online Support at FEROnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's website at <https://elibrary.ferc.gov/eLibrary/search>. Enter the docket number (P–15418) in the docket number field to access the

document. For assistance, contact FERC Online Support.

(Authority: 18 CFR 2.1)

Dated: February 9, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-02869 Filed 2-12-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP26-475-000.

Applicants: Gillis Hub Pipeline, LLC.

Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreements 2.9.26 to be effective 2/9/2026.

Filed Date: 2/9/26.

Accession Number: 20260209-5097.

Comment Date: 5 p.m. ET 2/23/26.

Docket Numbers: RP26-476-000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: Northern Natural Gas Company submits tariff filing per 154.204: 20260209 Negotiated Rate Filing to be effective 2/10/2026.

Filed Date: 2/9/26.

Accession Number: 20260209-5112.

Comment Date: 5 p.m. ET 2/23/26.

Docket Numbers: RP26-477-000.

Applicants: Adelphia Gateway, LLC.
Description: Compliance filing: Adelphia Gateways OPS Report Filing to be effective N/A.

Filed Date: 2/10/26.

Accession Number: 20260210-5043.

Comment Date: 5 p.m. ET 2/23/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing

requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: February 10, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026-02941 Filed 2-12-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26-78-000]

Texas Eastern Transmission, LP; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on January 27, 2026, Texas Eastern Transmission, LP (Texas Eastern), 915 North Eldridge Parkway, Suite 1100, Houston, Texas 77079, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and Texas Eastern's blanket certificate issued in Docket No. CP82-535-000, for authorization to abandon in place approximately 10.58 miles of its 6.625-inch-diameter Line 16-B supply lateral; meter and regulating stations 73385, 73381, 73362, 70366, and 72222; and to remove various related ancillary facilities as necessary. All of the above facilities are located in Hidalgo County, Texas (Line 16-B Abandonment Project). The project will allow Texas Eastern to avoid the costs associated with the ongoing maintenance and repair of facilities that are no longer needed to provide gas transportation services, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this

information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

Any questions concerning this request should be directed to Berk Donaldson, Director, Regulatory, 915 North Eldridge Parkway, Suite 1100, Houston, Texas 77079, by phone at (713) 204-5106, or by email at Berk.Donaldson@enbridge.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on April 10, 2026. How to file protests, motions to intervene, and comments is explained below.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation (OPP) at (202) 502-6595 or OPP@ferc.gov.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,¹ any person² or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,³ and must be submitted by the protest deadline, which is 5:00 p.m. Eastern Time on April 10, 2026. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is 5:00 p.m. Eastern Time on April 10, 2026. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to/intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission

considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before 5:00 p.m. Eastern Time on April 10, 2026. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP26-78-000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or⁶

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP26-78-000.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail at: Berk Donaldson, Director, Regulatory, 915 N Eldridge Parkway, Suite 1100, Houston, Texas 77079, or by email (with a link to the document) at Berk.Donaldson@enbridge.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the

⁶ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from OPP at (202) 502-6595 or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

(Authority: 18 CFR 2.1)

Dated: February 9, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-02870 Filed 2-12-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25-35-001]

Columbia Gas Transmission, LLC; Notice of Request for Extension of Time

Take notice that on February 2, 2026, Columbia Gas Transmission, LLC (Columbia) requested that the Commission grant an extension of time, until May 1, 2026, to complete construction and place into service one new injection/withdrawal well, connecting pipeline, and appurtenant facilities located at Columbia's Donegal Storage Field in Washington County, Pennsylvania (Project). On December 20, 2024, the Commission issued a Notice of Request Under Blanket Authorization, which established a 60-day comment period, ending on February 18, 2025, to file protests. No protests were filed during the comment period, and accordingly the project self-implemented on February 19, 2025, and by Rule should have been completed within one year.

Columbia states that construction of the Project commenced on September 15, 2025. Columbia reiterates that the

³ 18 CFR 157.205(e).

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

construction start date was delayed by approximately seven months due to an extended process to obtain a storage drilling permit from the Pennsylvania Department of Environmental Protection (PADEP), as was previously communicated in Columbia's biweekly status updates.¹ Columbia asserts that the delay was driven by several rounds of comments and additional review time required by PADEP. To date, the remaining work for the Project includes drilling Well 12653, installing the connecting pipeline, and the final tie-ins connecting the new pipeline lateral and the well, ensuring full integration with the storage field and readiness for service. Columbia's anticipated in-service date, based on the Project's current progress, is May 1, 2026.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Columbia's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (NGA) (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for NGA facilities when such requests are contested before order issuance. For those extension requests that are contested,² the Commission will aim to issue an order acting on the request within 45 days.³ The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.⁴ The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act

(NEPA).⁵ At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.⁶ The Director of the Office of Energy Projects, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy which must reference the Project docket number.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

Comment Date: 5:00 p.m. Eastern Time on February 24, 2026.

⁵ Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

⁶ *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 40 (2020).

(Authority: 18 CFR 2.1.)

Dated: February 9, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-02873 Filed 2-12-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently

¹ *Columbia Gas Transmission, LLC*, Construction Status Reports No. 1 through No. 15, Docket No. CP25-35-000 (March 18, 2025, through September 15, 2025).

² Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1).

³ *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 40 (2020).

⁴ *Id.* at P 40.

received by the Secretary of the Commission. Each filing may be viewed on the Commission's website at <http://www.ferc.gov> using the eLibrary link.

Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online

Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Docket Nos.	File date	Presenter or requester
Prohibited: 1. ER26-129-000	1-29-2026	FERC Staff. ¹
Exempt: 1. ER26-455-000	1-30-2026	FERC Staff. ²
2. ER26-129-000	2-02-2026	FERC Staff. ³
3. RP25-844-000	2-06-2026	FERC Staff. ⁴

¹ Email communication dated 01/28/26 comments of James Brown Esq.

² Letter communication dated 1/7/2026 from U.S. Senator J.B. Jennings.

³ Letter communication dated 1/30/2026 from U.S. Senators Steve Daines and Tim Sheehy and U.S. Representatives Troy Downing and Ryan K. Zinke.

⁴ Letter communication dated 2/06/26 from U.S. Senators Marsha Blackburn and Bill Hagerty and U.S. Representatives Diana Harshbarger, Chuck Fleischmann and Tim Burchett.

Dated: February 10, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-02943 Filed 2-12-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[RD26-1-000; RD26-2-000; RD26-3-000]

North American Electric Reliability Corporation; Notice of Staff Attendance at North American Electric Reliability Corporation Industry Webinar and Planning and Operational Studies Drafting Teams Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation: Industry Webinar: Project 2025-03 Order No. 901 Operational Studies, WebEx

February 12, 2026 | 2:00 p.m.–3:00 p.m. Eastern

Further information regarding this webinar and how to join remotely may be found at: 02-02-26 Industry Webinar: Project 2025-03 Order No. 901 Operational Studies.

North American Electric Reliability Corporation: Project 2025-03 Order No. 901 Operational Studies Drafting Team Meeting, WebEx:

February 17, 2026 | 2:00 p.m.–4:00 p.m. Eastern

Further information regarding this meeting and how to join remotely may be found at: <https://www.nerc.com/events/02-17-26-project-2025-03-order->

no.-901-operational-studies-drafting-team-meeting.

North American Electric Reliability Corporation: Project 2025-04 Order No. 901 Operational Studies Drafting Team Meeting, WebEx

February 19, 2026 | 2:00 p.m.–4:00 p.m. Eastern

Further information regarding this meeting and how to join remotely may be found at: <https://www.nerc.com/events/02-19-26-project-2025-03-order-no.-901-operational-studies-drafting-team-meeting>.

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RD26-1-000 North American Electric Reliability Corporation

Docket No. RD26-2-000 North American Electric Reliability Corporation

Docket No. RD26-3-000 North American Electric Reliability Corporation

For further information, please contact Neil Yallabandi at (202) 502-8260 or Neil.Yallabandi@ferc.gov.

(Authority: 18 CFR 2.1.)

Dated: February 10, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-02942 Filed 2-12-26; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OPRM-FAD-209]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202-993-3272 or <https://www.epa.gov/nepa>.

Weekly receipt of Environmental Impact Statements (EIS)

Filed February 2, 2026 10 a.m. EST Through February 9, 2026 10 a.m. EST

Pursuant to CEQ Guidance on 42 U.S.C. 4332.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

EIS No. 20260009, Final, FERC, CA, FEIS for Dam Retrofit and Surrender of the Anderson Dam Hydroelectric Project Exemption, Review Period Ends: 03/16/2026, Contact: Office of External Affairs, 866-208-3372.

EIS No. 20260010, Draft, NRCS, MT, Draft Watershed Plan-Environmental Impact Statement for the Milk River and St. Mary River Watersheds, Comment Period Ends: 03/30/2026, Contact: Alyssa Fellow, 406-587-6712.

EIS No. 20260011, Final Supplement, TVA, TN, Continued Operation of Cumberland Fossil Plant, Contact: Erica McLamb, 423-751-8022.

EIS No. 20260012, Final Supplement, TVA, TN, Continued Operation of the Kingston Fossil Plant, Contact: Elizabeth Smith, 865-632-3053.

Dated: February 9, 2026.

Nancy Abrams,

Deputy Director, Federal Activities Division.

[FR Doc. 2026-02944 Filed 2-12-26; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Deputy Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than March 16, 2026.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *DMMS Purchaser, Inc., DMMS Management LLC, and DMMS Holdings LLC, all of New Orleans, Louisiana*; to become bank holding companies by acquiring M C Bancshares, Inc., and thereby indirectly acquiring MC Bank & Trust, both of Morgan City, Louisiana.

B. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166-2034. Comments can also be sent electronically to Comments.applications@stls.frb.org:

1. *First Bank Corp., Fort Smith, Arkansas*; to merge with First State Banking Corp., and thereby indirectly acquire First State Bank, both of Russellville, Arkansas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026-02964 Filed 2-12-26; 8:45 am]

BILLING P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: February 24, 2026 at 11:00 a.m. ET

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1-202-599-1426, Code: 771 202 863#; or via web: <https://www.frtib.gov/>.

FOR FURTHER INFORMATION CONTACT:

James Kaplan, Director, Office of External Affairs, (202) 864-7150.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the January 27, 2026, Board Meeting Minutes
 2. Monthly Reports
 - (a) Participant Report
 - (b) Investment Report
 - (c) Legislative Report
 3. Quarterly Reports
 - (d) Metrics
 4. Enterprise Risk Management Update
- Authority:* 5 U.S.C. 552b (e)(1).

Dated: February 11, 2026.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2026-02963 Filed 2-12-26; 8:45 am]

BILLING CODE P

GOVERNMENT PUBLISHING OFFICE

Depository Library Council Meeting

AGENCY: U.S. Government Publishing Office.

ACTION: Notice of meeting.

SUMMARY: The Depository Library Council (DLC) will meet at the Spring 2026 DLC Virtual Meeting on Wednesday, March 4 and Thursday, March 5, 2026. The Meeting will take place online, and anyone may register to attend at <https://www.fdlp.gov/about/events-and-conferences/2026-depository-library-council-virtual-meeting>. Closed captioning will also be provided. The purpose is to discuss matters affecting the Federal Depository Library Program. All sessions are open to the public.

DATES: March 4-5, 2026.

Hugh Nathaniel Halpern,

Director, U.S. Government Publishing Office.

[FR Doc. 2026-02937 Filed 2-12-26; 8:45 am]

BILLING CODE 1520-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10164]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by March 16, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CMS Electronic Data Interchange (EDI) Enrollment Registration, CMS EDI Enrollment Form, and CMS EDI Enrollment Attestation Form; *Use:* The collection consists of three forms used by Medicare providers and suppliers to register for EDI services with Medicare contractors. The updated collection includes the revised CMS EDI Registration Form (10164A) and CMS EDI Enrollment Agreement Form (10164B), both serving as model forms. The collection also introduces the CMS EDI Enrollment Attestation Form

(10164C), a new mandatory attestation form requiring formal compliance verification from all participating entities.

The forms collect essential information necessary to identify Medicare providers and suppliers during electronic transactions, authorize requested EDI functions, and establish appropriate access privileges for healthcare entities. These forms ensure compliance with HIPAA transaction standards while implementing strengthened security requirements for billing vendors and clearing houses that handle Medicare data. The information collected by the forms will be uploaded into Medicare contractor computer systems. Medicare contractors will store this information in a database accessed at the time of provider connection to the Medicare Data Contractor Network (MDCN). When authentication is successful and connectivity is established, transactions may be exchanged. *Form Number:* CMS–10164 (OMB control number 0938–0983); *Frequency:* Yearly; *Affected Public:* Business or other-for-profits and not-for-profits; *Number of Respondents:* 229,767; *Total Annual Responses:* 229,767; *Total Annual Hours:* 153,178. (For questions regarding this collection contact Charlene Parks at 410–786–8684.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026–02874 Filed 2–12–26; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–1771, CMS–10488, CMS–10407 and CMS–R–284]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS’ intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA) federal agencies are also required to publish notice in the **Federal Register** concerning each proposed collection of

information before the agency’s request is submitted to OMB for approval.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by April 14, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 60 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 60-day Review—Open for Public Comments” or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency’s functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title:* Emergency and Foreign Hospital Services and Supporting Regulation in 42 CFR 424.103; *Use:* Section 1866 of the Social Security Act states that any provider of services shall be qualified to participate in the Medicare program and shall be eligible for payments under Medicare if it files an agreement with the Secretary to meet the conditions

outlined in this section of the Act. Section 1814(d)(1) of the Social Security Act and 42 *CFR* 424.100, allows payment of Medicare benefits for a Medicare beneficiary to a nonparticipating hospital that does not have an agreement in effect with the Centers for Medicare and Medicaid Services. These payments can be made if such services were emergency services and if CMS would be required to make the payment if the hospital had an agreement in effect and met the conditions of payment. This form is used in connection with claims for emergency hospital services provided by hospitals that do not have an agreement in effect under Section 1866 of the Social Security Act.

42 *CFR* 424.103 (b) requires that before a non-participating hospital may be paid for emergency services rendered to a Medicare beneficiary, a statement must be submitted that is sufficiently comprehensive to support that an emergency existed. Form CMS-1771 contains a series of questions relating to the medical necessity of the emergency. The attending physician must attest that the hospitalization was required under the regulatory emergency definition (42 *CFR* 424.101 attached) and give clinical documentation to support the claim. A photocopy of the beneficiary's hospital records may be used in lieu of the CMS-1771 if the records contain all the information required by the form.; *Form Number*: CMS-1771 (OMB Control Number: 0938-0023); *Frequency*: Annually; *Affected Public*: Private Sector, Business or other for-profit and not-for-profit institutions; *Number of Respondents*: 100; *Number of Responses*: 200; *Total Annual Hours*: 50. (For policy questions regarding this collection contact Shauntari Cheely at 410-786-1818.)

2. *Type of Information Collection Request*: Revision of currently approved collection; *Title of Information Collection*: Consumer Experience Survey Data Collection; *Use*: Section 1311(c)(4) of the Affordable Care Act requires the Department of Health and Human Services (HHS) to develop an enrollee satisfaction survey system that assesses consumer experience with qualified health plans (QHPs) offered through an Exchange. It also requires public display of enrollee satisfaction information by the Exchange to allow individuals to easily compare enrollee satisfaction levels between comparable plans. HHS established the QHP Enrollee Experience Survey (QHP Enrollee Survey) to assess consumer experience with the QHPs offered through the Marketplaces. The survey includes topics to assess consumer

experience with the health care system such as communication with providers and ease of access to health care services.

CMS developed the survey using the Consumer Assessment of Health Providers and Systems (CAHPS®) principles (<https://www.ahrq.gov/cahps/about-cahps/principles/index.html>) and established an application and approval process for survey vendors who want to participate in collecting QHP enrollee experience data. The QHP Enrollee Survey, which is based on the CAHPS® Health Plan Survey, will be used to (1) help consumers choose among competing health plans, (2) provide actionable information that the QHPs can use to improve performance, (3) provide information that regulatory and accreditation organizations can use to regulate and accredit plans, and (4) provide a longitudinal database for consumer research. To develop the QHP Enrollee Survey, CMS completed developmental testing, including psychometric testing and beta testing. Additional changes made the survey since its development have been informed by focus groups with consumers and QHP issuers, cognitive testing with consumers, and input CMS received from interested parties. CMS previously obtained clearance for the 2016–2026 administrations of the QHP Enrollee Survey. At this time, CMS is requesting to renew approval for the information collection related to the QHP Enrollee Experience Survey in 2027–2029. These activities are necessary to ensure that CMS fulfills legislative mandates established by section 1311(c)(4) of the Affordable Care Act to develop an “enrollee satisfaction survey system” and provide such information on Marketplace websites. CMS is also seeking approval to revise the QHP Enrollee Survey beginning with 2027 to improve response rates, reduce burden on QHP enrollees and improve overall instrument alignment with the Consumer Assessment of Healthcare Providers and Systems (CAHPS) 5.1 Survey. To accomplish this, CMS is proposing to remove four questions related to tobacco-usage that are used to calculate the Medical Assistance with Smoking and Tobacco Use Cessation measure. CMS is also proposing to replace the two demographic questions related to race and ethnicity with one question aligned with the Office of Management and Budget (OMB) Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race

and Ethnicity. CMS is further proposing to refine the survey instrument to align questions related to telehealth with the CAHPS 5.1 Survey. CMS is also proposing to add 5 gate questions to allow participants to screen out of detailed follow-up questions that do not apply to them (see the Crosswalk of Changes to the QHP Enrollee Survey). CMS proposes allowing the customization of the mail and internet survey instruments to replace “Qualified Health Plan (QHP)” with the QHP issuer's name on the cover page. CMS is also proposing to update the QHP Enrollee Survey sampling protocol to allow oversampling at any level. CMS is also seeking to add a third email reminder on Day 40 of the fielding timeline and to extend the telephone dialing period by one week to begin on Day 48 of the fielding timeline. Finally, CMS is proposing revisions to the survey instrument, prenotification letter, reminder letter, survey cover letter, and notification/reminder emails for plain language to reduce repetition and improve readability. *Form Number*: CMS-10488 (OMB control number: 0938-1221); *Frequency*: Annually; *Affected Public Sector*: (Individuals and Households), Private sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents*: 72,008 respondents; *Total Annual Responses*: 72,008; *Total Annual Hours*: 12,013. (For policy questions regarding this collection contact Preeti Hans 301-492-5114).

3. *Type of Information Collection Request*: Extension of a currently approved collection; *Title of Information Collection*: Summary of Benefits and Coverage and Uniform Glossary; *Use*: The Affordable Care Act amends the Public Health Service Act (PHS Act) by adding section 2715 “Development and Utilization of Uniform Explanation of Coverage Documents and Standardized Definitions.” This section directs the Secretary, in consultation with the National Association of Insurance Commissioners (NAIC) and a working group composed of stakeholders, to develop standards for use by a group health plan and a health insurance issuer in compiling and providing to applicants, enrollees, and policyholders and certificate holders a summary of benefits and coverage (SBC) explanation that accurately describes the benefits and coverage under the applicable plan or coverage. Section 2715 also requires 60-days advance notice of any material modification in any of the terms of the plan or coverage that is not reflected in the most recently provided summary

and the development of standards for the definitions of terms used in health insurance coverage.

This information collection will ensure that over 30 million consumers shopping for or enrolled in private, individually purchased, or non-federal governmental group health plan coverage receive the consumer protections of the Affordable Care Act. Employers, employees, and individuals will use this information to compare coverage options prior to selecting coverage and to understand the terms of, and extent of medical benefits offered by, their coverage (or exceptions to such coverage or benefits) once they have coverage. *Form Number:* CMS-10407 (OMB control number 0938-1146); *Frequency:* Annually; *Affected Public:* Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 90,805; *Number of Responses:* 10,507,165; *Total Annual Hours:* 204,140. (For policy questions regarding this collection contact Daniel Kidane at daniel.kidane@cms.hhs.gov.)

4. Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Transformed—Medicaid Statistical Information System (T-MSIS); *Use:* The data reported in T-MSIS are used by federal, state, and local officials, as well as by private researchers and corporations to monitor past and projected future trends in the Medicaid and CHIP programs. The data provide the only national level information available on enrollees, beneficiaries, and expenditures. It also provides the only national level information available on Medicaid utilization. The information is the basis for analyses and for cost savings estimates for the Department's cost sharing legislative initiatives to Congress. The collected data are also crucial to our actuarial forecasts.

This iteration proposes to: (1) add a new valid value that will enable CMS to obtain A-Number, I-94 Number, SEVIS ID, and I-797 Receipt Number for Medicaid and CHIP beneficiaries, (2) add a new valid value to identify state-specific managed care program codes, (3) remove the collection of SOGI data, (4) remove the active Records Layouts file, and (5) update certain T-MSIS Data Dictionary documents. We are not proposing any burden changes.

Form Number: CMS-R-284 (OMB control number: 0938-0345); *Frequency:* Quarterly and monthly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 54; *Total Annual Responses:* 648; *Total Annual Hours:* 7,290. (For policy questions

regarding this collection contact Connie Gibson at 410-786-0755.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026-02871 Filed 2-12-26; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10945]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA) federal agencies are also required to publish notice in the **Federal Register** concerning each proposed collection of information before the agency's request is submitted to OMB for approval.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by April 14, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 60 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 60-day Review—Open for Public Comments" or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT:

William Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct

or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection

1. Type of Information Collection Request: New collection (Request for a new OMB control number); *Title of Information Collection:* Administrative Procedures for Chronic and Post-Acute Care Quality Programs; *Use:* This is a request for a new information collection for certain procedural requirements associated with the Centers for Medicare & Medicaid Services' (CMS') quality reporting programs (QRPs) and value-based purchasing (VBP) programs. CMS' QRPs and VBP programs promote higher quality, more efficient healthcare for Medicare beneficiaries by collecting and reporting on quality-of-care metrics. This information is made available to consumers, both to empower Medicare beneficiaries and inform decision-making, as well as to incentivize providers to make continued quality improvements.

Specifically, CMS has implemented QRPs for multiple settings, including for the home health (HH), hospice, inpatient rehabilitation facility (IRF), long-term acute care hospital (LTCH), and skilled nursing facility (SNF) settings, to achieve its overarching priorities and initiatives. Any Hospice, HH Agency (HHA), IRF, LTCH, or SNF—collectively referred to as providers—that does not meet the reporting requirements for their respective program may be subject to a payment reduction in its annual payment update (APU).

CMS has also implemented value-based purchasing (VBP) programs to provide incentive payments to providers who deliver high quality care to patients, as measured by their performance on specific quality metrics.

These QRPs and SNF VBP Program include quality measures calculated using data collected through claims,

staffing data, standardized assessment tools, patient surveys, and the Centers for Disease Control and Prevention's (CDC) National Healthcare Safety Network (NHSN). SNFs participating in the SNF QRP and VBP Program are also required to participate in a MDS data validation process.

Quality measures calculated using data collected through claims are referred to as claims-based measures. Claims data are reported to Medicare for payment purposes, and there is no additional burden required from providers. Quality measures calculated from staffing data use the data submitted by SNFs to the Payroll-based Journal as required by Section 6106 of the Affordable Care Act (ACA), and there is no additional burden required from providers.

These QRPs, as pay-for-reporting programs, strive to have a streamlined measure set that provides meaningful measurement and differentiates providers by quality of care while limiting burden to the fullest extent possible. CMS provides confidential feedback reports that providers may use to assess their performance and operationalize quality improvement activities throughout the quality reporting period. These reports include the data that CMS has collected from the provider and the provider's claims, and some also include information about how the provider's data compares relative to the performance of other providers.

CMS also uses SNF quality reporting information to set payment adjustments for the SNF VBP program. For example, the SNF VBP Interim (Partial-Year) Workbook and Full-Year Workbooks allow SNFs to assess their current performance in each measure. The SNF VBP Performance Score Report allows SNFs to assess how the SNF VBP Program scored their current measure performance and determine the SNF VBP Program's incentive payment adjustments for the coming fiscal year. *Form Number:* CMS-10945 (OMB control number: 0938-NEW); *Frequency:* Annually; *Affected Public:* Private Sector—Not-for-profit institutions and Business or other for-profits and State, Local or Tribal Governments; *Number of Respondents:* 33,340; *Total Annual Responses:* 72; *Total Annual Hours:* 18. (For policy questions regarding this collection

contact Heidi Magladry at (410)786-6034.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026-02966 Filed 2-12-26; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10260, CMS-10500 and CMS-10344]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by March 16, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT:

William Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment.

1. Type of Information Collection Request: Revision with of a currently approved collection; *Title of Information Collection:* Medicare Advantage and Prescription Drug Program; *Use:* CMS requires MA organizations and Part D sponsors to use the standardized documents being submitted for OMB approval to satisfy disclosure requirements mandated by section 1851 (d)(3)(A) of the Act and § 422.111 for MA organizations and section 1860D-1(c) of the Act and § 423.128(a)(3) for Part D sponsors.

The regulatory provisions at §§ 422.111(b) and 423.128(b) require MA organizations and Part D sponsors to disclose plan information, including: service area, benefits, access, grievance and appeals procedures, and quality improvement/assurance requirements. MA organizations and sponsors may send the ANOC separately from the EOC but must send the ANOC for enrollee receipt by September 30. The required due date for the EOC is 15 days prior to the start of the AEP. *Form Number:* CMS-10260 (OMB control number 0938-1051); *Frequency:* Annually; *Affected Public:* Private sector and

Business or other for-profits; *Number of Respondents*: 712; *Number of Responses*: 45,996; *Total Annual Hours*: 12,316. (For questions regarding this collection, contact: Lauren Yeary at (410) 786–3211 or lauren.dulay@cms.hhs.gov).

2. *Type of Information Collection Request*: Revision with change of a currently approved collection; *Title of Information Collection*: National Implementation of the Outpatient and Ambulatory Surgery Consumer Assessment of Healthcare Providers and Systems (OAS CAHPS); *Use*: The Agency for Healthcare Research and Quality (AHRQ) and its Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Consortium, in conjunction with the Centers for Medicare & Medicaid Services (CMS), have developed standardized CAHPS Surveys and tools for a variety of patient populations, including commercially insured ambulatory patients, patients whose care is covered by Medicare and Medicaid, dialysis patients, home health patients, hospital inpatients, dental patients, and patients who receive behavioral health care and services. The purpose of the CAHPS family of surveys is to collect data about patients' assessment and rating of the care they receive from their health care provider or health care system.

The national implementation of OAS CAHPS is designed to allow third-party, CMS-approved survey vendors to administer OAS CAHPS using mail-only, telephone-only, mixed mode (mail with telephone follow-up), mixed-mode (web with mail follow-up), or mixed-mode (web with telephone follow-up). The CMS-approved survey vendors who administer the survey use an electronic data collection system if they administer a telephone-only or mixed-mode survey using web. *Form Number*: CMS–10500 (OMB control number: 0938–1240); *Frequency*: Once; *Affected Public*: Business or other for-profits and Not-for-profits institutions; *Number of Respondents*: 2,045,727; *Total Annual Responses*: 2,045,727; *Total Annual Hours*: 500,805. (For policy questions regarding this collection contact Memuna Ifedirah 410–786–6849.)

3. *Type of Information Collection Request*: Extension of a currently approved collection; *Title of Information Collection*: Elimination of Cost-Sharing for Full Benefit Dual-Eligible Individuals Receiving Home and Community-Based Services; *Use*: Section 1860 D–14 of the Social Security Act (the Act) sets forth requirements for premium and cost-sharing subsidies for low-income beneficiaries enrolled in Medicare Part

D. Based on this statute, 42 CFR 423.771, provides guidance concerning limitations for payments made by and on behalf of low-income Medicare beneficiaries who enroll in Part D plans. 42 CFR 423.771 (b) establishes requirements for determining a beneficiary's eligibility for full subsidy under the Part D program. Regulations set forth in §§ 423.780 and 423.782 outline premium and cost sharing subsidies to which full subsidy eligible are entitled under the Part D program.

Each month CMS deems individuals automatically eligible for the full subsidy, based on data from State Medicaid Agencies and the Social Security Administration (SSA). The SSA sends a monthly file of Supplementary Security Income-eligible beneficiaries to CMS. Similarly, the State Medicaid agencies submit Medicare Modernization Act files to CMS that identify full subsidy beneficiaries. CMS deems the beneficiaries as having full subsidy and auto-assigns these beneficiaries to benchmark Part D plans. Part D plans to receive premium amounts based on the monthly assessments. *Form Number*: CMS–10344 (OMB control number: 0938–1127); *Frequency*: Monthly; *Affected Public*: State, Local, or Tribal Governments and Not-for-profits institutions; *Number of Respondents*: 51; *Total Annual Responses*: 51; *Total Annual Hours*: 612. (For policy questions regarding this collection contact Roland Herrera 410–786–0668.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026–02967 Filed 2–12–26; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Office of Management and Budget #: 0970–0486]

Proposed Information Collection Activity: 2024 Low Income Home Energy Assistance Program (LIHEAP) Residential Energy Consumption Survey (RECS) Data Match

AGENCY: Office of Community Services; Administration for Children and Families; U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Community Services (OCS) is requesting a

reinstatement with changes to the collection and reporting of administrative household beneficiary data from state Low Income Home Energy Assistance Program (LIHEAP) grant recipients. The LIHEAP Residential Energy Consumption Survey (RECS) Data Match request is completed approximately every five years, to support research and analysis of LIHEAP program impacts. Office of Management and Budget (OMB) approved the original collection under #: 0970–0486. Through the LIHEAP RECS data match, OCS requires state grant recipients to provide household-level recipient data. This request will cover data for fiscal years 2024, and 2025, and include revisions aimed to reduce the reporting burden by approximately 30 percent compared to the last such data collection in 2021.

DATES: *Comments due* April 14, 2026.

ADDRESSES: In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above. You can obtain copies of the proposed collection of information and submit comments by emailing infocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Congress established the LIHEAP block grant (42 U.S.C. 8621 *et seq.*) under Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, as amended. OCS administers LIHEAP at the federal level. The LIHEAP statute requires the Department of Health and Human Services (HHS) to report to Congress annually on program impacts on recipient and eligible households. The primary program goals, as articulated in the statute, are to ensure that benefits are targeted to those households where the greatest program impacts are expected, and to assure that timely resources are available to households experiencing home energy crises.

OCS is seeking to collect data from all state LIHEAP grant recipients and the District of Columbia that will allow OCS to identify LIHEAP recipients that respond to the RECS, and support research and analysis of LIHEAP program impacts. The U.S. Energy Information Administration (EIA) conducted the 2024 RECS in 2024 and early 2025. EIA conducts this survey to provide periodic national and regional data on residential energy use in the U.S. OCS uses RECS data to furnish Congress and HHS with important national and regional descriptive data

on the energy needs of households with low incomes, as required by the LIHEAP statute (42 U.S.C. 8629). Specific data elements OCS is seeking to collect are detailed below.

ACF is proposing to request the majority of the data elements included in the 2021 request through which state LIHEAP grant recipients provided household-level recipient data to identify LIHEAP recipients that participated in the 2020 RECS. For the upcoming 2024–2025 LIHEAP RECS data match, ACF proposes to eliminate eight data fields compared to the prior data request: Household name, household telephone number, date of heating assistance, date of cooling assistance, date of crisis assistance, other assistance awarded, amount of other assistance, and date of other assistance. These elements were determined to be either duplicative data from other sources or are not essential to determining residential energy consumption and expenditures. The LIHEAP Annual Household Report (OMB Control #: 0970–0060), completed by grant recipients, gives OCS data on household make up. Similarly, the LIHEAP Performance Data report (OMB Control #: 0970–0449), provided OCS an overview of crisis assistance and expenditures. With these reports, OCS determined the 8 elements were not necessary for this data collection. Additionally, ACF has streamlined the brief instructions to state grant recipients.

The LIHEAP data collected for this effort will be used by OCS to study and report on the impact of LIHEAP on income eligible and recipient

households in accordance with 42 U.S.C. 8629(b)(2). The information is being collected for use in development of the Department’s annual LIHEAP report to Congress and the annual LIHEAP Home Energy Notebook. The collection of this data is authorized by the LIHEAP statute, which requires the Secretary of Health and Human Services, following consultation with the Secretary of Energy, to provide for the collection of specific information on the characteristics of LIHEAP recipient and LIHEAP eligible households within each state and the RECS provides detailed data on residential end uses of energy. This includes collecting information that is reasonably necessary to carry out the provisions of the LIHEAP statute if that information is not collected by any other agency of the federal government.

State LIHEAP grant recipients will be asked to furnish data for LIHEAP beneficiary households that reside in areas included in the RECS sample.

Consistent with prior requests, state LIHEAP grant recipients will be asked to furnish the following data for LIHEAP recipient households that reside in areas included in the RECS sample:

- Address (including ZIP code)
- Gross Income
- Household or Client ID
- Household Size
- Heating assistance awarded
- Amount of heating assistance
- Cooling assistance awarded
- Amount of cooling assistance
- Crisis assistance awarded
- Amount of crisis assistance
- Presence of children 5 or younger
- Presence of adult 60 or older
- Presence of member with a disability

The following are additional optional data items that grantees can provide if the data are already available in your database:

- Tenancy (*i.e.*, own or rent)
- Type(s) of fuel used
- Heat included in rent

The RECS provides detailed data on residential end uses of energy. This data will also help ACF to analyze specific information for the LIHEAP recipient population in accordance with 42 U.S.C. 8629(b)(2), including information related to benefits targeting, energy usage, and energy insecurity, and it will support analysis of LIHEAP data for the annual report to Congress and the annual LIHEAP Home Energy Notebook. The collection of this data is authorized in 42 U.S.C. 8629(a) and 42 U.S.C. 8623(a)(4).

State LIHEAP grant recipients can provide the data elements in the selected format of their choosing.

The privacy of client data will be strictly protected as part of the project. OCS plans to maximize rapid file transfer technology by using a secure internet site that employs File Transfer Protocol. LIHEAP application client waivers allow grant recipients to share information with OCS and its contractor(s).

Respondents: 51 (state governments and the District of Columbia).

Annual Burden Estimates: Eliminating data elements and streamlining instructions is expected to reduce the estimated time per response from 24 to 16 hours, which is a 33 percent reduction in burden compared to the 2021 request.

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total annual burden hours
2024 LIHEAP RECS Data Match	51	1	16	816

Additional Information: As LIHEAP is a block grant, there is varying capacity to collect and report data among grant recipients. The estimated burden hours displayed above are for the average state LIHEAP grant recipient. All LIHEAP grant recipients have existing data systems to collect, maintain, and analyze this data to complete annual reporting requirements. This data collection will only be done once in the short to mid-term future because the RECS is only conducted every five years or so.

Comments: The Department specifically requests comments on (a)

whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given

to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 8629(a).

Mary C. Jones,
ACF/OPRE Certifying Officer.
[FR Doc. 2026–02928 Filed 2–12–26; 8:45 am]
BILLING CODE 4184–80–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket Nos. FDA–2025–E–0355; FDA–2025–E–0357; FDA–2025–E–0358; FDA–2025–E–0359; FDA–2025–E–0360]

Determination of Regulatory Review Period for Purposes of Patent Extension; ATTRUBY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ATTRUBY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 14, 2026. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 12, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 14, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any

confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket Nos. FDA–2025–E–0355; FDA–2025–E–0357; FDA–2025–E–0358; FDA–2025–E–0359; and FDA–2025–E–0360 for “Determination of Regulatory Review Period for Purposes of Patent Extension; ATTRUBY.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit

both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Jack Dan, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240–402–6940.

SUPPLEMENTARY INFORMATION:**I. Background**

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product.

Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, ATTRUBY (acoramidis). ATTRUBY is indicated for the treatment of the cardiomyopathy of wild-type or variant transthyretin-mediated amyloidosis (ATTR-CM) in adults to reduce cardiovascular death and cardiovascular-related hospitalization. Subsequent to this approval, the USPTO received patent term restoration applications for ATTRUBY (U.S. Patent Nos. 9,169,214; 9,642,838; 9,913,826; 10,398,681; and 10,842,777) from Bridgebio Pharma, Inc. and the USPTO requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated September 23, 2025, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ATTRUBY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ATTRUBY is 2,648 days. Of this time, 2,288 days occurred during the testing phase of the regulatory review period, while 360 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* August 25, 2017. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 25, 2017.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* November 29, 2023. FDA has verified the applicant's claim that the new drug application (NDA) for ATTRUBY (NDA 216540) was initially submitted on November 29, 2023.

3. *The date the application was approved:* November 22, 2024. FDA has verified the applicant's claim that NDA

216540 was approved on November 22, 2024.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 910; 1,134; 1,404; or 1,504 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–02971 Filed 2–12–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2024–E–3532 and FDA–2024–E–3534]

Determination of Regulatory Review Period for Purposes of Patent Extension; AMTAGVI

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has

determined the regulatory review period for AMTAGVI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 14, 2026. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 12, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 14, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the

manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket Nos. FDA-2024-E-3532 and FDA-2024-E-3534 for “Determination of Regulatory Review Period for Purposes of Patent Extension; AMTAGVI.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Jack Dan, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240-402-6940.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product AMTAGVI

(lifileucel). AMTAGVI is indicated for the treatment of adult patients with unresectable or metastatic melanoma previously treated with a PD-1 blocking antibody, and if BRAF V600 mutation positive, a BRAF inhibitor with or without a MEK inhibitor. This indication is approved under accelerated approval based on objective response rate. Continued approval for this indication may be contingent upon verification and description of clinical benefit in a confirmatory trial(s). Subsequent to this approval, the USPTO received patent term restoration applications for AMTAGVI (U.S. Patent Nos. 10,639,330 and 11,291,687) from Iovance Biotherapeutics, and the USPTO requested FDA’s assistance in determining these patents’ eligibility for patent term restoration. In a letter dated August 12, 2025, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of AMTAGVI represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for AMTAGVI is 3,306 days. Of this time, 2,969 days occurred during the testing phase of the regulatory review period, while 337 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* January 30, 2015. FDA has verified the applicant’s claim that the date the investigational new drug application became effective was on January 30, 2015.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* March 17, 2023. The applicant claims August 24, 2022, as the date the biologics license application (BLA) for AMTAGVI (BLA 125773) was initially submitted. However, FDA records indicate that BLA 125773 was submitted on March 17, 2023.

3. *The date the application was approved:* February 16, 2024. FDA has verified the applicant’s claim that BLA 125773 was approved on February 16, 2024.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several

statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 42 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see DATES). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–02974 Filed 2–12–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2024–E–3872; FDA–2024–E–3873; FDA–2024–E–3874; FDA–2024–E–3875; FDA–2024–E–3876]

Determination of Regulatory Review Period for Purposes of Patent Extension; RYTELO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for RYTELO and is publishing this notice of that determination as required by law. FDA has made the determination because of the

submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 14, 2026. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 12, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 14, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged.

Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

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- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket Nos. FDA–2024–E–3872; FDA–2024–E–3873; FDA–2024–E–3874; FDA–2024–E–3875; and FDA–2024–E–3876 for “Determination of Regulatory Review Period for Purposes of Patent Extension; RYTELO.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov>, and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Jack Dan, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240–402–6940.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product.

Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, RYTELO (imetelstat), indicated for the treatment of adult patients with low-to intermediate-1 risk myelodysplastic syndromes (MDS) with transfusion-

dependent anemia requiring 4 or more red blood cell units over 8 weeks who have not responded to or have lost response to or are ineligible for erythropoiesis-stimulating agents (ESA). Subsequent to this approval, the USPTO received patent term restoration applications for RYTELO (U.S. Patent Nos. 7,494,982; 9,375,485; 9,388,415; 9,388,416; 9,657,296) from Geron Corporation and the USPTO requested FDA’s assistance in determining these patents’ eligibility for patent term restoration. In a letter dated August 19, 2025, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of RYTELO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for RYTELO is 6,967 days. Of this time, 6,610 days occurred during the testing phase of the regulatory review period, while 357 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* May 12, 2005. The applicant claims May 11, 2005, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 12, 2005, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* June 16, 2023. FDA has verified the applicant’s claim that the new drug application (NDA) for RYTELO (NDA 217779) was initially submitted on June 16, 2023.

3. *The date the application was approved:* June 6, 2024. FDA has verified the applicant’s claim that NDA 217779 was approved on June 6, 2024.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,464, 1,622, 1,629 days, or 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–02903 Filed 2–12–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2025–E–0369 and FDA–2025–E–0370]

Determination of Regulatory Review Period for Purposes of Patent Extension; KEBILIDI

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for KEBILIDI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 14, 2026. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 12, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 14, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management

Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket Nos. FDA-2025-E-0369 and FDA-2025-E-0370 for “Determination of Regulatory Review Period for Purposes of Patent Extension; KEBILIDI.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Jack Dan, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240-402-6940.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product KEBILIDI (eladocagene expuravovec-tneq). KEBILIDI is indicated for the treatment of adult and pediatric patients with aromatic L-amino acid decarboxylase deficiency. This indication is approved under accelerated approval based on the change from baseline in gross motor milestone achievement at 48 weeks post treatment. Continued approval for this indication may be contingent upon verification and description of clinical benefit in a confirmatory clinical trial. Subsequent to this approval, the USPTO

received patent term restoration applications for KEBILIDI (U.S. Patent Nos. 10,898,585 and 11,865,188) from National Taiwan University, and the USPTO requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated September 23, 2025, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of KEBILIDI represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for KEBILIDI is 1,612 days. Of this time, 1,368 days occurred during the testing phase of the regulatory review period, while 244 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* June 17, 2020. The applicant claims March 29, 2020, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 17, 2020, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* March 15, 2024. FDA has verified the applicant's claim that the biologics license application (BLA) for KEBILIDI (BLA 125722) was initially submitted on March 15, 2024.

3. *The date the application was approved:* November 13, 2024. FDA has verified the applicant's claim that BLA 125722 was approved on November 13, 2024.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 277 or 816 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**).

Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–02976 Filed 2–12–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–2925]

Defining Durations of Use for Approved Medically Important Antimicrobial Drugs Fed to Food-Producing Animals; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry (GFI) #273 entitled “Defining Durations of Use for Approved Medically Important Antimicrobial Drugs Fed to Food-Producing Animals.” This guidance document provides recommendations on how sponsors may voluntarily establish defined durations of use for certain antimicrobial new animal drugs used in or on the medicated feed of food-producing animals that are currently approved with one or more indications that lack a defined duration of use. Establishing defined durations of use within the approved new animal

drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) is intended to mitigate development of antimicrobial resistance for these antimicrobial drugs, which are important to human medicine. It also proposes timelines for sponsors to voluntarily align their affected applications with this guidance.

DATES: The announcement of the guidance is published in the **Federal Register** on February 13, 2026.

ADDRESSES: You may submit either electronic or written comments on Agency guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2023–D–2925 for “Defining Durations of Use for Approved Medically Important Antimicrobial Drugs Fed to Food-

Producing Animals.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and Regulations Staff, U.S. Food and Drug Administration, Center for Veterinary Medicine, CPK1, 5001 Campus Drive, College Park, MD 20740–3835. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:
askCVM@fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 26, 2023 (88 FR 66009), FDA published the notice of availability for a draft guidance entitled “Defining Durations of Use for Approved Medically Important Antimicrobial Drugs Fed to Food-Producing Animals” giving interested persons until December 26, 2023, to comment on the draft guidance. In response to a request for an extension, the comment period was extended to January 5, 2024 (88 FR 82384, November 24, 2023).

FDA received 4,511 comments on the draft guidance from a variety of interested parties; 4,495 comments were campaign letters and from individuals, and 16 comments were from consumer advocacy groups, industry associations, pharmaceutical companies, academia, and veterinary organizations. The comments received from the campaign letters, consumer advocacy groups, and individuals primarily requested that FDA limit all durations of use to no more than 21 days and requested that drug sponsors provide data demonstrating that the established durations do not lead to increased antimicrobial resistance. The comments from industry associations, pharmaceutical companies, academia, and veterinary organizations expressed concerns regarding the timelines proposed in the draft guidance, sought assurance the antimicrobial resistance mitigation statements be clearly worded and consistently included on labeling, sought assurance that data and information used to justify newly-defined durations of use be of high quality and transparent, and expressed concerns that veterinarians may authorize the maximum labeled duration in practice if only a maximum duration is established. All comments were considered as the guidance was finalized.

Changes were made to the final guidance to (1) revise the anticipated submissions and overall project timelines, (2) clarify the discussion regarding mitigation statements with the inclusion of examples of such statements for illustrative purposes, (3) request that sponsors propose and justify a typical duration range, in addition to the maximum permitted duration, that encompasses durations that veterinarians would authorize in most circumstances, and (4) include criteria that should be followed to ensure that the justification of the typical duration range and maximum

permitted duration is comprehensive, focused, balanced, and limits bias. The recommended directions for use statements in this guidance were revised accordingly and now describe the typical duration range as well as the maximum permitted duration. Other editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated September 23, 2023.

This level 1 guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on defining durations of use for approved medically important antimicrobial drugs fed to food-producing animals. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. FDA considered the applicability of Executive Order 14192, per OMB guidance in M–25–20, and finds this action to be neither regulatory nor deregulatory.

II. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032; the collections of information in section 512(n)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(n)(1)) have been approved under OMB control number 0910–0669.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov/>.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–02934 Filed 2–12–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2025-E-2426]

Determination of Regulatory Review Period for Purposes of Patent Extension; BLUJEPa

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for BLUJEPa and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 14, 2026. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 12, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 14, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a

third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2025-E-2426 for “Determination of Regulatory Review Period for Purposes of Patent Extension; BLUJEPa.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly

available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Jack Dan, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240-402-6940.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the

Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, BLUJEPa (gepotidacin mesylate). BLUJEPa is indicated for the treatment of female adult and pediatric patients 12 years of age and older weighing at least 40 kilograms with uncomplicated urinary tract infections caused by the following susceptible microorganisms: *Escherichia coli*, *Klebsiella pneumoniae*, *Citrobacter freundii* complex, *Staphylococcus saprophyticus*, and *Enterococcus faecalis*. Subsequent to this approval, the USPTO received a patent term restoration application for BLUJEPa (U.S. Patent No. 8,389,524) from Glaxo Group Limited and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 19, 2025, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of BLUJEPa represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for BLUJEPa is 4,948 days. Of this time, 4,705 days occurred during the testing phase of the regulatory review period, while 243 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* September 9, 2011. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on September 9, 2011.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* July 26, 2024. FDA has verified the applicant's claim that the new drug application (NDA) for BLUJEPa (NDA 218230) was initially submitted on July 26, 2024.

3. *The date the application was approved:* March 25, 2025. FDA has verified the applicant's claim that NDA

218230 was approved on March 25, 2025.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–02901 Filed 2–12–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2025–E–0483]

Determination of Regulatory Review Period for Purposes of Patent Extension; ALYFTREK

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period

for ALYFTREK and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 14, 2026. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 12, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 14, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2025-E-0483 for “Determination of Regulatory Review Period for Purposes of Patent Extension; ALYFTREK.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the

electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Jack Dan, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240-402-6940.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, ALYFTREK (vanzacaftor/tezacaftor/deutivacaftor). ALYFTREK is indicated for the treatment of cystic fibrosis (CF) in patients 6 years of age and older who have at least one F508del mutation or another responsive mutation in the

cystic fibrosis transmembrane conductance regulator (CFTR) gene. Subsequent to this approval, the USPTO received a patent term restoration application for ALYFTREK (U.S. Patent No. 8,865,902) from Vertex Pharmaceuticals (Europe) Limited and the USPTO requested FDA’s assistance in determining the patent’s eligibility for patent term restoration. In a letter dated October 8, 2025, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ALYFTREK represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ALYFTREK is 5,335 days. Of this time, 5,102 days occurred during the testing phase of the regulatory review period, while 233 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* May 15, 2010. FDA has verified the applicant’s claim that the date the investigational new drug application became effective was on May 15, 2010.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* May 2, 2024. FDA has verified the applicant’s claim that the new drug application (NDA) for ALYFTREK (NDA 218730) was initially submitted on May 2, 2024.

3. *The date the application was approved:* December 20, 2024. FDA has verified the applicant’s claim that NDA 218730 was approved on December 20, 2024.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may

petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–02968 Filed 2–12–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2025–E–0491; FDA–2025–E–0492; and FDA–2025–E–0508]

Determination of Regulatory Review Period for Purposes of Patent Extension; CRENESSITY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for CRENESSITY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 14, 2026. Furthermore, any interested person may petition FDA for a determination

regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 12, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 14, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket Nos. FDA–2025–E–0491; FDA–2025–E–0492; and

FDA–2025–E–0508 for “Determination of Regulatory Review Period for Purposes of Patent Extension; CRENESSITY.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Jack Dan, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240–402–6940.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, CRENESSITY (crinecerfont). CRENESSITY is indicated as adjunctive treatment to glucocorticoid replacement to control androgens in adults and pediatric patients 4 years of age and older with classic congenital adrenal hyperplasia. Subsequent to this approval, the USPTO received patent term restoration applications for CRENESSITY (U.S. Patent Nos. 10,905,690; 11,311,544; and 11,730,739) from Neurocrine Biosciences, Inc. and the USPTO requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated October 8, 2025, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of CRENESSITY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for CRENESSITY is 2,884 days. Of this time, 2,655 days occurred during the testing phase of the regulatory review period, while 229 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* January 22, 2017. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 22, 2017.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* April 29, 2024. FDA has verified the applicant's claim that the new drug application (NDA) for CRENESSITY (NDA 218808) was initially submitted on April 29, 2024.

3. *The date the application was approved:* December 13, 2024. FDA has verified the applicant's claim that NDA 218808 was approved on December 13, 2024.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 355, 596, or 820 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket

No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–02973 Filed 2–12–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2025–E–0361 and FDA–2025–E–0362]

Determination of Regulatory Review Period for Purposes of Patent Extension; AUCATZYL

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for AUCATZYL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 14, 2026. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 12, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 14, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket Nos. FDA-2025-E-0361 and FDA-2025-E-0362 for "Determination of Regulatory Review Period for Purposes of Patent Extension; AUCATZYL." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two

copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Jack Dan, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240-402-6940.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the

amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product AUCATZYL (obecabtagene autoleucel). AUCATZYL is indicated for the treatment of adults with relapsed or refractory B-cell precursor acute lymphoblastic leukemia. Subsequent to this approval, the USPTO received patent term restoration applications for AUCATZYL (U.S. Patent Nos. 10,457,730 and 11,578,126) from Autolus Limited, and the USPTO requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated September 23, 2025, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of AUCATZYL represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for AUCATZYL is 1,671 days. Of this time, 1,313 days occurred during the testing phase of the regulatory review period, while 358 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* April 14, 2020. FDA has verified the applicant's claim that the date the investigational new drug

application became effective was on April 14, 2020.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* November 17, 2023. FDA has verified the applicant's claim that the biologics license application (BLA) for AUCATZYL (BLA 125813) was initially submitted on November 17, 2023.

3. *The date the application was approved:* November 8, 2024. FDA has verified the applicant's claim that BLA 125813 was approved on November 8, 2024.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 496 or 705 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–02972 Filed 2–12–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: In Vivo Manufactured Anti-CD19 Chimeric Antigen Receptor (CAR) Products for the Treatment or Prevention of B Cell Mediated Autoimmune Diseases

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the patents and patent applications listed in the **SUPPLEMENTARY INFORMATION** section of this notice to Kyverna Therapeutics, Inc. (“Kyverna”), a company located in Emeryville, California, the United States of America.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before March 2, 2026 will be considered.

ADDRESSES: Inquiries and comments relating to the contemplated Exclusive Patent License should be directed to: Andrew Burke, Ph.D., Senior Technology Transfer Manager, NCI Technology Transfer Center, Telephone: (240)–276–5484; Email: andy.burke@nih.gov.

SUPPLEMENTARY INFORMATION:

Intellectual Property

1. U.S. Provisional Patent Application 62/006,313 (HHS Reference E–042–2014–0–US–01), filed 2 June 2014;
2. PCT Application PCT/US2015/033473 (HHS Reference E–042–2014–0–PCT–02), filed 1 June 2015;
3. Australian Patent 2015270912 (HHS Reference E–042–2014–0–AU–03), issued 17 December 2020;
4. Canadian Patent Application 2951045 (HHS Reference E–042–2014–0–CA–04), filed 1 June 2015;
5. Chinese Patent ZL201580033802.5 (HHS Reference E–042–2014–0–CN–05), issued 31 August 2021;
6. European Patent 3149044 (HHS Reference E–042–2014–0–EP–06), issued 21 October 2020 and validated in the following jurisdictions:
 - a. Germany (HHS Reference E–042–2014–0–DE–19);
 - b. Spain (HHS Reference E–042–2014–0–ES–20);

- c. France (HHS Reference E–042–2014–0–FR–21);
- d. The United Kingdom (HHS Reference E–042–2014–0–GB–22);
- e. Italy (HHS Reference E–042–2014–0–IT–23); and
- f. Ireland (HHS Reference E–042–2014–0–IE–24);
7. Israeli Patent 249305 (HHS Reference E–042–2014–0–IL–07), issued 1 October 2021;
8. Indian Patent 406961 (HHS Reference E–042–2014–0–IN–08), filed 19 May 2022;
9. Japanese Patent 6797693 (HHS Reference E–042–2014–0–JP–09), issued 20 November 2020;
10. South Korean Patent 2016–7036828 (HHS Reference E–042–2014–0–KR–10), issued 20 May 2024;
11. Mexican Patent 383150 (HHS Reference E–042–2014–0–MX–11), issued 3 June 2021;
12. New Zealand Patent 727167 (HHS Reference E–042–2014–0–NZ–12), issued 8 October 2024;
13. Saudi Arabian Patent 8651 (HHS Reference E–042–2014–0–SA–13), issued 15 September 2021;
14. Singapore Patent 11201609960Q (HHS Reference E–042–2014–0–SG–14), issued 28 September 2021;
15. United States Patent 10,287,350 (HHS Reference E–042–2014–0–US–15), issued 14 May 2019;
16. Hong Kong Patent HK 1234420 (HHS Reference E–042–2014–0–HK–16), issued 4 June 2021;
17. United States Patent 11,236,161 (HHS Reference E–042–2014–0–US–17), issued 1 February 2022;
18. New Zealand Patent 764530 (HHS Reference E–042–2014–0–NZ–18), issued 8 October 2024;
19. European Patent Application 20197459.9 (HHS Reference E–042–2014–0–EP–25), filed 22 September 2020;
20. Australian Patent 2020267211 (HHS Reference E–042–2014–0–AU–26), issued 15 August 2024;
21. Japanese Patent 7004470 (HHS Reference E–042–2014–0–JP–27), issued 6 January 2022;
22. Mexican Patent Application MX/a/2021/006239 (HHS Reference E–042–2014–0–MX–28), filed 27 May 2021;
23. Israeli Patent 283423 (HHS Reference E–042–2014–0–IL–29), issued 2 July 2022;
24. Hong Kong Patent Application 42021038427.7 (HHS Reference E–042–2014–0–HK–30), filed 8 September 2021;
25. United States Patent Application 17/557,845 (HHS Reference E–042–2014–0–US–31), filed 21 December 2021;

26. Japanese Patent 7485650 (HHS Reference E-042-2014-0-JP-32), issued 6 January 2022;

27. United States Patent 12,473,359 (HHS Reference E-042-2014-0-US-33), issued 18 November 2025;

28. Israeli Patent Application 291292 (HHS Reference E-042-2014-0-IL-34), filed 13 March 2022;

29. Indian Patent Application 202248047256 (HHS Reference E-042-2014-0-IN-35), filed 19 August 2022;

30. South Korean Patent Application 10-2024-7016401 (HHS Reference E-042-2014-0-KR-01), filed 17 May 2024;

31. Japanese Patent Application 2024-074954 (HHS Reference E-042-2014-0-JP-01), filed 2 May 2024;

32. Australian Patent Application 2024205043 (HHS Reference E-042-2014-0-AU-01), filed 24 July 2024;

33. European Patent Application 25209657.3 (HHS Reference E-042-2014-0-EP-01), filed 20 October 2025;

34. Israeli Patent Application 324883 (HHS Reference E-042-2014-0-IL-01), filed 24 November 2025; and

35. Japanese Patent Application 2025-283967 (HHS Reference E-042-2014-0-JP-02), filed 26 December 2025.

The patent rights in these inventions have been assigned to the Government of the United States of America.

The prospective exclusive license territory may be “worldwide”, and the field of use may be limited to the following:

“The development, production, and commercialization of an anti-CD19 targeting chimeric antigen receptor (CAR)-based immunotherapy using a:

1. non-viral synthetic nanoparticle-based system, or
2. viral system (excluding lentiviral) that encapsulates mRNA or DNA encoding a CAR having the complementary determining region (CDR) sequences of the anti-CD19 scFv known as Hu19, for the treatment or prevention of autoimmune diseases.

The following are specifically excluded from the Licensed Field of Use:

1. Anti-CD19 targeting CAR-based immunotherapy using CRISPR/Cas9-edited allogeneic (where the donor and recipient are different) T lymphocytes.
2. Anti-CD19 targeting CAR-based immunotherapy using autologous T lymphocytes engineered by lentivirus.”

The E-042-2014-0 invention family generally discloses CARs which recognize the cell surface protein CD19. CD19 is expressed primarily on B cells, including autoreactive B cells which drive the development of certain autoimmune disorders. For many autoimmune diseases there are limited

therapeutic options. The development of a new anti-CD19 CAR-based therapy has the potential to meet the needs of patients who are poorly served by existing standards of care.

It is noted that the exclusive field of use which may be granted to Kyverna applies to only a subset of CAR constructs claimed in the patent rights and does not include, for example, any constructs which exclusively utilize the FMC63-based antigen binding domain. Accordingly, the scope of rights which may be conveyed under the proposed license covers a portion of the possible applications of E-042-2014.

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license that are timely filed in response to this notice will be treated as objections to the grant of the contemplated exclusive patent license. In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 10, 2026.

Richard U. Rodriguez,

Supervisory Technology Transfer and Patent Specialist, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2026-02907 Filed 2-12-26; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government Owned Inventions Available for License: Gait Assistance Systems and Methods of Control Thereof

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Clinical Center (CC), an institute/center of the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is giving notice of the license opportunity for the invention listed below, which is owned by an agency of the U.S. Government and is available to achieve expeditious commercialization of results of federally-funded research and development.

FOR FURTHER INFORMATION CONTACT:

Inquiries related to this license opportunity should be directed to: Tedd Fenn, J.D., M.S., Technology Transfer Manager, NCI, Technology Transfer Center, Email: Edward.Fenn@nih.gov or Phone: 240-276-6833.

SUPPLEMENTARY INFORMATION:

Human movement disorders such as those arising from cerebral palsy cause diminished coordination, impaired motor control, and often long-term abnormal walking patterns in children and adults. There is a need for more effective interventions which can preserve and/or augment mobility and strength on a continuous basis for those with such movement disorders, especially in pediatrics. Robotic exoskeleton devices and powered orthoses are specifically designed for treatment of gait pathologies but better methods of controlling such devices/systems to better personalize and adapt them to a patient and provide assistive torque, are needed.

Researchers at the National Institutes of Health Clinical Center have developed an adaptive, machine-learning-based method and associated computing system for generating personalized assistive torque in powered gait assistance systems (e.g., exoskeletons and orthotic devices). The method employs a multilayer perceptron (MLP) trained on sensor data collected from multiple individuals using powered gait assistance systems, including data that may be pre-processed through attention mechanisms and recurrent neural networks. Once trained, the model processes real-time sensor inputs from a new user to generate predicted torque values tailored to that individual's gait dynamics, or alternatively, to generate a predicted gait cycle for the user in which a specific torque profile is applied. These predicted torque values are applied directly to a motor in the powered gait assistance system, enabling adaptive assistive torque between mechanical arms or joints. The approach allows rapid personalization without extensive manual tuning or user-specific recalibration. The

technology uses sensor data and a trained neural network to predict and apply individualized torque profiles, enabling more natural, efficient, and responsive gait assistance across users with varying biomechanics.

This Notice is in accordance with 35 U.S.C. 209 and 37 CFR part 404 and the intellectual property rights have been assigned to the Government of the United States of America.

NIH Reference Number: E-121-2013.

Product Type: Powered gait assistance systems for robotic orthotic devices, powered orthoses, and exoskeleton devices and methods of control.

Therapeutic Area(s): Gait assistance systems.

Potential Commercial Applications:

- Lower-limb exoskeletons for mobility assistance.
- Rehabilitation robotics for neurological or orthopedic conditions.
- Assistive devices for aging or mobility-impaired populations.
- Wearable robotic devices for load-bearing assistance in military or industrial applications.

Competitive Advantages:

- Personalized assistance without lengthy calibration.
- Improved gait naturalness and user comfort.
- Scalable across users and device platforms.
- Compatible with real-time sensor data streams.

Patent Status: A PCT application was filed on September 20, 2024.

Development Stage: Prototype.

Collaboration Opportunity:

Researchers at the CC seek licensees for powered gait assistance systems and associated computing environments and methods of control in certain fields of use.

Dated: February 10, 2026.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2026-02906 Filed 2-12-26; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7109-N-01; OMB Control No.: 2577-0169]

60-Day Notice of Proposed Information Collection: Housing Choice Voucher Program and Tribal HUD-VASH

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: Comments Due Date: April 14, 2026.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to www.regulations.gov. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Eva Fulton, Program Analyst, Department of Housing and Urban Development, 451 Seventh Street SW, Room 3180, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Eva Fulton, Program Analyst, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Eva Fulton at pih-prapubliccomments@hud.gov, telephone (202) 402-5847. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Fulton.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Housing Choice Voucher (HCV) Program, Project-based Voucher (PBV) Program and Tribal HUD-VASH.

OMB Approval Number: 2577-0169.
Type of Request: Revision of a currently approved collection.

Form Numbers: HUD-50164, HUD-52515, HUD-52517, HUD-52530A Part 1, HUD-52530A Part 2, HUD-52530B Part 1, HUD-52530B Part 2, HUD-52530C, HUD-52531A, HUD-52531B, HUD-52578B, HUD-52580, HUD-52580A, HUD-52641, HUD-52641A,

HUD-52642, HUD-52646, HUD-52649, HUD-52665, HUD-52667, HUD-5980.

Description of the need for the information and proposed use: Public housing agencies (PHA) apply for funding to assist very low-income families to lease or purchase housing. PHAs maintain records on participant eligibility, unit acceptability, lease and housing assistance payments, and budget and payment documentation. PHAs may also project-base a portion of their vouchers or use their vouchers under the Homeownership Option. The Tribal HUD-VASH program provides rental assistance and supportive services to Native American veterans who are Homeless or At Risk of Homelessness living on or near a reservation or other Indian areas.

The Housing Choice Voucher (HCV) Program is the federal government's major program for assisting low-income families, the elderly, and individuals with disabilities to afford decent, safe, and sanitary housing in the private market. Since housing assistance is provided on behalf of the family or individual, participants are able to find their own housing, including single-family homes, townhouses and apartments. The participant may choose any housing that meets the requirements of the program. The Project-based Voucher (PBV) program is a component of the HCV program where the assistance is "attached to the structure," which may be a multifamily building or a single-family property.

PHAs will prepare an application for funding which specifies the number of units requested as well as the PHA's objectives and plans for administering the HCV and PBV programs. The application is reviewed by HUD Headquarters and HUD Field Offices and ranked according to the PHA's administrative capability, the need for housing assistance and other factors specified in a notice of funding opportunity. The PHAs must establish a utility allowance schedule for all utilities and other services. Units must be inspected using HUD prescribed forms to determine if the units meet the housing quality standards (HQS) of the HCV program. Under certain circumstances, if authorized by the PHA, a family may use its voucher to purchase a modest home. Section 8(o) of the United States Housing Act of 1937 (USHA) (42 U.S.C. 1437), as amended by Section 545 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA) and more recently by the Housing Opportunity Through Modernization Act of 2016 (Pub. L. 114-201, 130 Stat. 782) (HOTMA), authorized the merger of the Section 8

tenant-based programs (certificate and voucher programs) into a single market-driven program (entitled the HCV program). Section 8(y) of the USHA, as amended by Section 555 of QHWRRA authorized the “homeownership option” under the HCV program.

Under the HCV program, the Department enters into an Annual Contributions Contract (ACC) with PHAs to assist very low-income families to lease or purchase safe, decent, and affordable housing. PHAs are required to maintain complete and accurate program and accounting records in accordance with HUD requirements; in a manner that permits a speedy and effective audit. PHAs must maintain records on eligibility (e.g., verification of income, disability status and citizenship); records of subsidized units (e.g., unit inspection reports, rent reasonableness documentation, tenant leases and housing assistance payments (HAP) contracts).

Section 8(o)(13) of the USHA allows PHAs to project-base a portion of their tenant-based vouchers. PHAs participating in the PBV program may: (1) enter into a housing assistance payments (HAP) contract with a private owner for existing housing projects; or (2) pursuant to the HOTMA Voucher Final Rule published on May 7, 2024 (89 FR 38224), have the option of entering into an agreement governing development activity for newly constructed or rehabilitated housing projects or rather proceeding directly to entering into a HAP contract with a private owner. PHAs may also now allow for development activity to occur after HAP contract execution, subject to execution of a rehabilitated housing rider. For PHA-owned units that are not owned by a separate legal entity from the PHA, the HOTMA Voucher Final Rule gives PHAs the option to execute a PHA-owned agreement certification, a PHA-owned certification, or a PHA-owned rehabilitation housing rider in lieu of executing an Agreement, a PBV HAP contract, or a rehabilitated housing rider, respectively.

The Tribal HUD-VA Supportive Housing (Tribal HUD-VA SH) Program provides rental assistance and supportive services to Native American veterans who are homeless or at risk of homelessness in Indian country. Housing assistance under this program is made available by grants to Tribes and Tribally Designated Housing Entities (TDHEs) that are eligible to receive Indian Housing Block Grant (IHBG) funding under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4212) (NAHASDA). Tribes request

Tenant-Based and/or Project-Based Rental Assistance by the number of bedrooms in a rental unit. Grants and renewal funds are awarded based on the number of rental units (Tenant-Based and Project-Based Rental Assistance) approved by HUD. Grants include an additional amount for administrative costs and eligible homeless veterans receive case management services through the Department of Veterans Affairs.

Changes to HUD Forms

Changes were made to the following HUD forms to comply with current laws, regulations, and executive orders, update definitions, fix typos and update the burden hour language: HUD-52517 Request for Tenancy Approval, HUD-52667 Utility Allowance Schedule, HUD 52641 HAP Contract, Tenant Based Assistance, HUD 52641A Tenancy Addendum, Tenant Based Assistance, HUD 52642 HAP Contract Manufactured Home Space Rental, Tenant Based Assistance, HUD-52646 Voucher, HCV Tenant Based Assistance, HUD-52649 Statement of Homeowner Obligations, HCV Homeownership, HUD-50164 Unexploded Ordnance, HUD-52531A and HUD-52531B Agreement to Enter into a Housing Assistance Payments Contract, HUD-52530A, Part 1 and Part 2 PBV HAP Contract for New Construction or Rehabilitation, HUD-52530B, Part 1 and Part 2 PBV HAP Contract for Existing, HUD-52530C PBV Tenancy Addendum, HUD-52578B PBV Statement of Family Responsibilities.

HUD-52517 Request for Tenancy Approval—Added a utility allowance flat fee option (24 CFR 982.517(b)), added a field for owner's email address.

HUD-52667 Utility Allowance Schedule—Added “applicable surcharges” (24 CFR 982.517(b)(2)(ii)).

HUD 52641 HAP Contract, Tenant Based Assistance—Added utility flat fee option (24 CFR 982.517(b)) and language to reflect that the PHA may waive the owner's responsibility for tenant-caused HQS deficiencies (24 CFR 982.404(a)(4)). Added an instruction to select one of two tenancy addendums, as appropriate, and added a second tenancy addendum to the HAP Contract to apply when a family has elected to use its tenant-based assistance to remain in the same project after termination or expiration without extension of the project's PBV contract. Aligned fair housing language with PBV forms.

HUD 52641A Tenancy Addendum, Tenant Based Assistance—Updated language to reflect that the PHA may waive the owner's responsibility for tenant-caused HQS deficiencies (24 CFR 982.404(a)(4)).

HUD 52642 HAP Contract Manufactured Home Space Rental, Tenant Based Assistance—Added an option for a single HAP payment made to the family (24 CFR 982.622(a)(1)), updated language to reflect that the PHA may waive the owner's responsibility for tenant-caused HQS deficiencies (24 CFR 982.404(a)(4)), aligned fair housing language with PBV forms.

HUD-52646 Voucher, HCV Tenant Based Assistance—Added language to state that the unit has passed HQS unless the PHA has approved the unit with only NLT deficiencies (24 CFR 982.406(e)) or passed an alternative inspection in the past 24 months (24 CFR 982.405(j)). Added language to comply with the new requirement that if the HAP contract terminates due to a failure to correct HQS deficiencies, the PHA must give the family at least 90 days following the termination of the HAP contract to lease a new unit (24 CFR 982.404(e)(1)).

HUD-52649 Statement of Homeowner Obligations, HCV Homeownership—Removed 2(I) that stated The family fails, willfully and persistently, to fulfill any welfare to work program obligations, as all references to the welfare to work program were removed under the HOTMA Voucher final rule.

HUD-50164 Unexploded Ordnance—Updated contact information for submitting a complaint.

HUD-52531A and HUD-52531B Agreement to Enter into a Housing Assistance Payments Contract—To comply with recent executive orders, conform with the Department of Labor's current regulatory language found at 29 CFR 5.5, and conform with changes made in the HOTMA Voucher Final Rule, including those changes to 24 CFR 983.3 (definitions), 983.51 (selection), 983.56 (environmental review), 983.57 (PHA-owned units), 983.153 (development requirements), 983.154 (development agreement), 983.155 (completion of work), 983.156 (acceptance of completed units), 983.251 (how participants are selected).

HUD-52530A, Part 1 and Part 2 PBV HAP Contract for New Construction or Rehabilitation—Edited to address typos, comply with recent executive orders, conform with 24 CFR 982.451 regarding payments, conform with 24 CFR 982.453 regarding owner breach, and conform with changes made in the HOTMA Voucher Final Rule, including those changes to 24 CFR 5.100 (definitions), 982.4 (definitions), 982.405 (inspection), 983.3 (definitions), 983.51 (selection), 983.54 (income-mixing), 983.57 (PHA-owned units), 983.59 (units excluded from program cap and project cap), 983.103

(inspecting units), 983.157 (development activity after HAP contract execution), 983.203 (HAP contract information), 983.204 (execution of HAP contract), 983.205 (term of HAP contract), 983.206 (contract termination), 983.207 (contract amendments to add or substitute units), 983.208 (condition of contract units), 983.210 (owner certification), 983.212 (substantial improvement), 983.251 (how participants are selected), 983.253 (leasing), 983.254 (vacancies), 983.255 (tenant screening), 983.259 (security deposit), 983.260 (overcrowded, under-occupied, and accessible units), 983.261 (family right to move), 983.302 (redetermination of rent to owner), 983.351 (payment for occupied unit).

HUD-52530B, Part 1 and Part 2 PBV HAP Contract for Existing Units—Edited to address typos, comply with recent executive orders, conform with 24 CFR 982.451 regarding payments, conform with 24 CFR 982.453 regarding owner breach, and conform with changes made in the HOTMA Voucher Final Rule, including those changes to 24 CFR 5.100 (definitions), 982.4 (definitions), 982.405 (inspection), 983.3 (definitions), 983.51 (selection), 983.54 (income-mixing), 983.57 (PHA-owned units), 983.59 (units excluded from program cap and project cap), 983.103 (inspecting units), 983.203 (HAP contract information), 983.204 (execution of HAP contract), 983.205 (term of HAP contract), 983.206 (contract termination), 983.208 (condition of contract units), 983.210 (owner certification), 983.212 (substantial improvement), 983.251 (how participants are selected), 983.253 (leasing), 983.254 (vacancies), 983.255 (tenant screening), 983.259 (security deposit), 983.260 (overcrowded, under-occupied, and accessible units), 983.261 (family right to move), 983.302 (redetermination of rent to owner), 983.351 (payment for occupied unit).

HUD-52530C PBV Tenancy Addendum—Edited to comply with recent executive orders and address typos and conform with changes made in the HOTMA Voucher Final Rule, including those changes to 24 CFR 5.100 (definitions), 982.4 (definitions), 983.3 (definitions), 983.157 (development activity after HAP contract execution), 983.206 (contract termination), 983.208 (condition of contract units), 983.212 (substantial improvement), 983.257 (eviction), 983.259 (security deposit), 983.261 (family right to move).

HUD-52578B PBV Statement of Family Responsibilities—Edited to comply with recent executive orders and address typos and conform with changes made in the HOTMA Voucher Final Rule, including those changes to 983.252 (PHA information for selected family), 983.261 (family right to move).

New HUD Forms

The following new forms were created pursuant to the HOTMA Voucher Final Rule published on May 7, 2024 (89 FR 38224): Tenancy Addendum, following termination of Project-Based Voucher assistance to a project, PHA-owned Agreement Certification, Tenant-based Assistance, PHA-owned Agreement Certification Part 1 and Part 2, PBV PHA-owned Certification for Existing Housing Part 1 & 2, PBV PHA-owned Certification New Construction or Rehabilitated Housing Part 1 and Part 2, PBV Rehabilitated Housing HAP Contract Rider PBV Rehabilitated Housing PHA-owned Certification Rider.

Tenancy Addendum following termination of Project-Based Voucher assistance to a project. To conform to the HOTMA Voucher Final Rule, this form is a separate tenancy addendum that applies when a family chooses to remain in the unit following the termination of a project-based HAP contract.

PHA-owned Agreement Certification, Tenant-based Assistance—The HOTMA Voucher Final Rule establishes regulations permitting a PHA to execute a HUD-prescribed certification in lieu of a HAP Contract for a PHA-owned unit. The final rule provides that the PHA-owned certification obligates the PHA, as the owner, to all of the requirements of the HAP contract (24 CFR 982.451(c)) (to become effective upon publication of this form per 89 FR 38224 (May 7, 2024)).

PHA-owned Agreement Certification Part 1 and Part 2—The HOTMA Voucher Final Rule establishes regulations permitting a PHA to execute HUD-prescribed certifications in lieu of an AHAP. The PHA-owned agreement certification serves as the equivalent of the AHAP, and subjects the PHA, as owner, to all of the requirements of the AHAP contained in part 983. Where the PHA has elected to use the PHA-owned agreement certification, all references to the AHAP throughout part 983 must be interpreted to be references to the PHA-

owned agreement certification. 24 CFR 983.154

PBV PHA-owned Certification for Existing Housing Part 1 & 2—The HOTMA Voucher Final Rule establishes regulations permitting a PHA to execute HUD-prescribed certifications in lieu of a HAP Contract. The PHA-owned certification serves as the equivalent of the HAP contract, and subjects the PHA, as owner, to all of the requirements of the HAP contract contained in parts 982 and 983. Where the PHA has elected to use the PHA-owned certification, all references to the HAP contract throughout parts 982 and 983 must be interpreted to be references to the PHA-owned certification. 24 CFR 983.204

PBV PHA-owned Certification New Construction or Rehabilitated Housing Part 1 and Part 2—The HOTMA Voucher Final Rule establishes regulations permitting a PHA to execute HUD-prescribed certifications in lieu of a HAP Contract. The PHA-owned certification serves as the equivalent of the HAP contract, and subjects the PHA, as owner, to all of the requirements of the HAP contract contained in parts 982 and 983. Where the PHA has elected to use the PHA-owned certification, all references to the HAP contract throughout parts 982 and 983 must be interpreted to be references to the PHA-owned certification. 24 CFR 983.204

PBV Rehabilitated Housing HAP Contract Rider—The HOTMA Voucher Final Rule establishes regulations permitting a PHA to execute a HAP contract, subject to a rider, for rehabilitated housing before the rehabilitation is complete. 24 CFR 983.157

PBV Rehabilitated Housing PHA-owned Certification Rider—The HOTMA Voucher Final Rule establishes regulations permitting a PHA to execute a HUD-prescribed certification, subject to a rider, for rehabilitated housing before the rehabilitation is complete. 24 CFR 983.157

Respondents: State and Local Governments, Tribes and TDHEs, owners of rental housing.

Estimated Number of Respondents: 2,244 PHAs and Tribal HUD-VASH grantees.

Estimated Number of Responses: 8,848,209.

Frequency of Response: Varies by form.

Average Hours per Response: 1.15.

Total Estimated Burdens: 3,456,326.

Description	Number of respondents ¹	Responses per respondent ²	Total annual responses	Hours per response	Total hours
Funding Application (HUD-52515)	300	1	300	5.00	1,500.00
Application for Federal Assistance (SF-424) ³	300	1	300	0.75	225.00
Applicant/Recipient Disclosure/Update Report (HUD-2880) ⁴	300	1	300	0.08	24.00
Acknowledgement of Application Receipt (HUD-2993) ⁵	300	1	300	0.08	24.00
Certification of Consistency with the Consolidated Plan (HUD-2991) ⁶	300	1	300	0.08	24.00
Disclosure of Lobbying Activities (SF-LLL) ⁷	300	1	300	0.08	24.00
Tenant-Furnished Utilities (HUD-52667)	2,192	350	767,200	0.25	191,800.00
Inspection Checklist (HUD-52580)	2,192	950	2,082,400	0.50	1,041,200.00
Inspection Form (HUD-52580A)	2,192	950	2,082,400	0.50	1,041,200.00
Request for Tenancy Approval (HUD-52517)	2,192	55	120,560	0.50	60,280.00
Notice of Unit Approval/Denial	2,192	55	120,560	0.50	60,280.00
Voucher (HUD-52646)	2,192	60	131,520	0.05	6,576.00
Applications (Pre-Application, Application for Continued Occupancy, Interim Change) ⁸	2,192	1,400	⁹ 3,068,800	0.25	767,200.00
Information Packet	2,192	55	120,560	1.00	120,560.00
PHA Information to Owner about tenant	2,192	55	120,560	0.50	60,280.00
PHA notification to HUD of insufficient funds for portability moves	400	1	400	0.50	200.00
Portability Information (HUD-52665)	2,192	10	21,920	0.50	10,960.00
HAP Contracts (HUD-52641, 52641-A, 52641x, 52642) ...	2,192	65	142,480	0.50	71,240.00
PHA-Owned Certification	300	10	3,000	0.50	1,500.00
Statement of Homeowner Obligations (HUD-52649)	100	10	1,000	0.25	250.00
Homeownership: Required Contract of Sale Provisions	100	10	1,000	0.25	250.00
PHA PBV Public Notice of RFP	268	1	268	1.00	268.00
PHA PBV Notice of Proposal or Project Selection	268	1	268	0.50	134.00
PBV Agreement to enter into a HAP Contract (HUD-52531A and B)	95	1	95	0.50	47.50
PBV NC/R HAP Contract (HUD-52530A, Part 1 & 2)	242	1	242	1.00	242.00
PBV Existing HAP Contract (HUD-52530B, Part 1 & 2)	242	1	242	1.00	242.00
PBV Tenancy Addendum (HUD-52530C)	871	33	28,743	0.25	7,185.75
PHA-owned Agreement Certification (HUD-xxxxx, Part 1 & 2)	10	1	10	0.50	5.00
PBV PHA-owned Certification for Existing Housing (HUD-xxxxx, Part 1 & 2)	26	1	26	1.00	26.00
PBV PHA-owned Certification for NC/R Housing (HUD-xxxxx, Part 1 & 2)	26	1	26	1.00	26.00
PBV Rehabilitated Housing HAP Contract Rider (HUD-xxxxx)	26	1	26	0.50	13.00
PBV Rehabilitated Housing PHA-owned Certification Rider (HUD-xxxxx)	3	1	3	0.50	1.50
PBV Statement of Family Responsibilities (HUD-52578B)	871	33	28,743	0.25	7,185.75
Waikoloa Maneuver Area public notice (HUD-50164)	100	1	100	0.30	30.00
PHA Notice of Intent to Project-Base Vouchers	292	1	292	1.00	292.00
PHA Request to HUD for Approval to Terminate PBV HAP Contract	20	1	20	1.00	20.00
Owner Notice to Terminate PBV HAP Contract	27	30	810	0.25	202.50
Legal Opinion that PHA's Unit/Project is No Longer PHA-owned	45	1	45	1.00	45.00
Notification of Ownership if Unit/Project is PHA-owned	150	1	150	1.00	150.00
Joint PHA/Independent Entity Certification Regarding No Legal, Financial, Other Ties	150	1	150	0.50	75.00
Certification Regarding Previously Approved Independent Entity	180	1	180	0.50	90.00
Notice of Determination of Rent Reasonableness	150	3	450	2.00	900.00
Review of PHA's PBV Selection Process	90	2	180	3.00	540.00
FUP Statement of Need	300	1	300	2.00	600.00
FUP Memorandum of Understanding	300	1	300	5.00	1,500.00
FUP Evidence of a self-sufficiency program	175	1	175	0.50	87.50
HUD-VASH VAMC letter of support	50	1	50	5.00	250.00
HUD-VASH signed formal agreement	50	1	50	6.00	300.00
HUD-VASH boundary description	50	1	50	0.50	25.00
Tribal HUD-VASH application materials	29	1	29	8.00	232.00
Tribal HUD-VASH Leasing Performance Report (HUD-5980)	26	1	26	0.50	13.00
Totals	2,244	4,168	¹⁰ 8,848,209	58.67	3,456,325.50

¹ This column represents number of PHA respondents.

² This column represents the number of responses per PHA. For example, for the HUD-52517 this means that 2,192 PHAs are expected to have an average of 950 forms submitted on behalf of families totaling 2,082,400 forms submitted nationwide annually.

³ This form is included in another PRA (OMB 2501–0032). The additional burden hours for the voucher program are included in this application (4040–0004).

⁴ This form is included in another PRA (OMB 2501–0032). The additional burden hours for the voucher program are included in this application (2510–0011).

⁵ This form is included in another PRA (OMB 2501–0032). The additional burden hours for the voucher program are included in this application (2577–0259).

⁶ This form is included in another PRA (OMB 2501–0032). The additional burden hours for the voucher program are included in this application (2506–0112).

⁷ This form is included in another PRA (OMB 0348–0046). HUD will submit a Request for Common Form through the Regulatory Information Service Center (RISC) RISC/OIRA Combined Information System (ROCIS). The burden hours listed here are not included in the overall burden for this collection. They are presented here to give an accurate picture of the PHA's effort involved in responding to NOFOs.

⁸ The burden calculated here reflects the burden associated with the federal requirements of this information collection. The number of respondents reflects the total number of federal grantees (PHAs) and not the number of individual respondents submitting pre-application, application, and interim changes associated with the HCV process. As indicated in this row, HUD estimates that the time it takes a respondent to provide the federally required information associated with the HCV application, pre-application, or interim change is, on average, 15 minutes or 0.25 hours. The actual time to complete a form may be greater reflecting additional information collection requirements or submission processes that are not associated with federal requirements.

⁹ The number of Total Annual Responses has been reduced to reflect the expected decrease in Interim Change Forms needed as a result of the Housing Opportunity Through Modernization Act of 2015 (HOTMA) sections 102 and 104 as detailed in the final rule published in **Federal Register** Notice 88 FR 9600 on February 13, 2023. The Regulatory Impact Analysis for the HOTMA Final Rule (FR–6057–F–03) estimated that there would be a decrease of 120,000 fewer interims for Public Housing and the Housing Choice Voucher Program combined. The HCV Program consists of about two thirds of the total combined households, so HUD estimates that interim reexaminations for the HCV program will decrease by about 81,120 annually.

¹⁰ This represents an overall decrease in burden since 2023 due to changes related to HOTMA. HUD discovered an error in the 2023 Form-83i estimate of burden HUD erroneously reported its overall burden in 2023 as 5,762,595 hours but it should have been 8,831,401 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 2 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Laura Kunkel,

Acting Director, Office of Policy, Programs, and Legislative Initiatives.

[FR Doc. 2026–02955 Filed 2–12–26; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R7–ES–2025–0539; FXES111607MRG01–267–FF07Camm00]

Marine Mammals; Proposed Incidental Harassment Authorization for the Southern Beaufort Sea Stock of Polar Bears During Legacy Well Remediation Activities, North Slope of Alaska; Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application; proposed incidental harassment authorization; notice of availability of draft environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, in response to a request under the Marine Mammal Protection Act from the Bureau of Land Management, propose to authorize nonlethal incidental take by harassment of small numbers of Southern Beaufort Sea (SBS) polar bears (*Ursus maritimus*) for 1 year from the date of issuance of the incidental harassment authorization (IHA). The applicant requested this authorization for take by harassment that may result from activities associated with oil well plugging and reclamation, soil sampling, snow trail, pad, and airstrip construction, and summer cleanup activities in the North Slope Borough of Alaska between western Smith Bay and Oliktok. This proposed authorization, if finalized, will be for up to 10 takes of polar bears by Level B harassment. No Level A harassment or lethal take is requested, expected, or proposed to be authorized. We invite comments on the proposed IHA and accompanying draft

environmental assessment from the public, Tribes, and local, State, and Federal agencies.

DATES: Comments must be received by March 16, 2026.

ADDRESSES: *Document availability:* You may view supplemental information at <https://www.regulations.gov> under Docket No. FWS–R7–ES–2025–0539. Alternatively, you may request these documents from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Comment submission: You may submit comments on the proposed authorization by one of the following methods:

- *Electronic submission:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS–R7–ES–2025–0539, which is the docket number for this rulemaking action. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Notice box to locate this document. You may submit a comment by clicking on “Comment.” Comments must be submitted to <https://www.regulations.gov> before 11:59 p.m. (Eastern Time) on the date specified in **DATES.**

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R7–ES–2025–0539, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments at <https://www.regulations.gov>. You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we

will be able to do so. See Request for Public Comments for more information.

FOR FURTHER INFORMATION CONTACT:

Stephanie Burgess, by email at r7mmmregulatory@fws.gov, by telephone at 907-786-3800, or by U.S. mail at U.S. Fish and Wildlife Service, MS 341, 1011 East Tudor Road, Anchorage, AK 99503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361, *et seq.*), authorizes the Secretary of the Interior (Secretary) to allow, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals in response to requests by U.S. citizens (as defined in title 50 of the Code of Federal Regulations (CFR) in part 18, at 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) in a specified geographic region during a period of not more than 1 year. The Secretary has delegated authority for implementation of the MMPA to the U.S. Fish and Wildlife Service (FWS or we). According to the MMPA, the FWS shall allow this incidental taking by harassment if we make findings that the total of such taking for the 1-year period:

- (1) is of small numbers of marine mammals of a species or stock;
- (2) will have a negligible impact on such species or stocks; and
- (3) will not have an unmitigable adverse impact on the availability of the species or stock for taking for subsistence use by Alaska Natives.

If the requisite findings are made, we issue an authorization that sets forth the following, where applicable:

- (a) permissible methods of taking;
- (b) means of effecting the least practicable adverse impact on the species or stock and its habitat and the availability of the species or stock for subsistence uses; and
- (c) requirements for monitoring and reporting of such taking by harassment, including, in certain circumstances, requirements for the independent peer review of proposed monitoring plans or other research proposals.

The term “take” means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill, any marine mammal. “Harassment” for activities other than military readiness activities or scientific research conducted by or on behalf of the Federal Government means any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (the MMPA defines this as “Level A harassment”), or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (the MMPA defines this as “Level B harassment”).

The terms “negligible impact” and “unmitigable adverse impact” are defined in 50 CFR 18.27 (*i.e.*, regulations governing small takes of marine mammals incidental to specified activities) as follows: “Negligible impact” is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. “Unmitigable adverse impact” means an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term “small numbers” is also defined in 50 CFR 18.27. However, we do not rely on that definition here as it conflates “small numbers” with “negligible impacts.” We recognize “small numbers” and “negligible impacts” as two separate and distinct requirements when reviewing requests for incidental harassment authorizations (IHA) under the MMPA (see *Natural Res. Def. Council, Inc. v. Evans*, 232 F. Supp. 2d 1003, 1025 (N.D. Cal. 2003)). Instead, for our small numbers determination, we estimate the likely number of marine mammals to be taken and evaluate if that number is small relative to the size of the species or stock.

The term “least practicable adverse impact” is not defined in the MMPA or its enacting regulations. For this IHA, we ensure the least practicable adverse

impact by requiring mitigation measures that are effective in reducing the impact of specified activities, but not so restrictive as to make specified activities unduly burdensome or impossible to undertake and complete.

If the requisite findings are made, we shall issue an IHA, which may set forth the following, where applicable: (i) permissible methods of taking; (ii) other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for subsistence uses by coastal-dwelling Alaska Natives (if applicable); and (iii) requirements for monitoring and reporting take by harassment.

Summary of Request

On July 10, 2025, the FWS received a request from the U.S. Department of the Interior’s Bureau of Land Management (BLM) for authorization to take by nonlethal incidental harassment, small numbers of Southern Beaufort Sea (SBS) polar bears (*Ursus maritimus*) during oil well plugging and reclamation; soil sampling; snow trail, pad, and airstrip construction; and summer cleanup activities in the North Slope Borough of Alaska between western Smith Bay and Oliktok for a period of 1 year from the date of issuance, and beginning during the winter of 2025–2026. Their request also included a proposed Polar Bear Awareness and Interaction Plan.

The FWS met with the BLM on July 22 and August 7, 2025, to discuss the proposed project. The FWS received a revised request on August 18, 2025. The FWS deemed the revised request dated August 2025 (received August 18, 2025; hereafter referred to as the “Request”) adequate and complete on August 21, 2025.

Description of Specified Activities and Specified Geographic Region

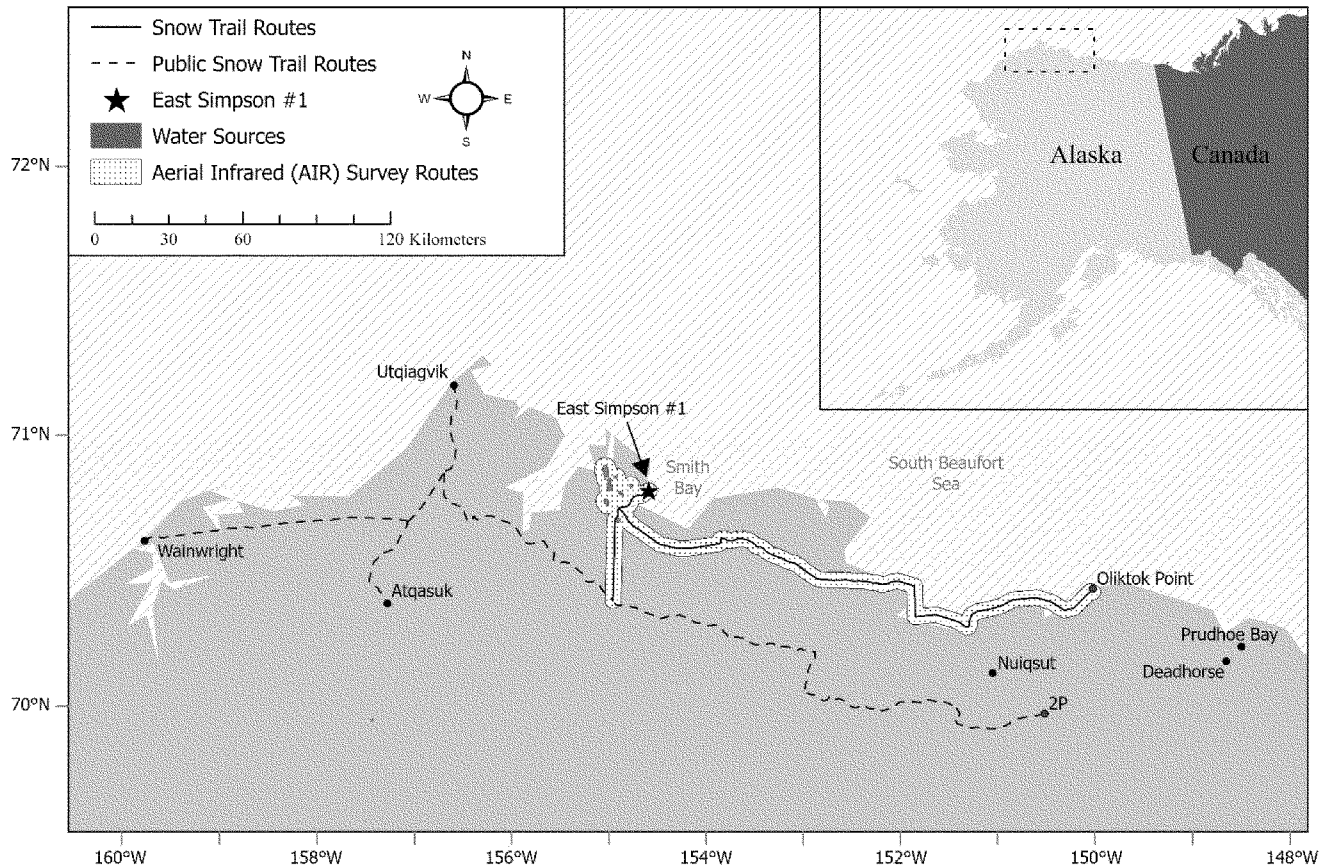
The specified activities described in the Request consist of oil well plugging and reclamation; soil sampling; snow trail, pad, and airstrip construction; and summer cleanup activities associated with one legacy well site, East Simpson #1, in the North Slope Borough of Alaska between western Smith Bay and Oliktok (figure 1; BLM 2025). The greater project area includes use of annually constructed public-use trail systems such as the North Slope Borough Community Winter Access Trail (CWAT) as a contingency plan if environmental conditions do not allow use of the planned northern coastal route to access East Simpson #1 (figure 1; BLM 2025). This public-use trail

system will also be utilized during demobilization operations after polar bear denning season (see *Mobilization, Resupply, and Demobilization*). However, the BLM is only requesting an authorization for harassment of polar bears incidental to use of the northern coastal route and the operations at East Simpson #1, highlighted in figure 1 as

areas included within the Aerial Infrared (AIR) Survey Routes. The BLM is not requesting authorization for harassment incidental to travel on publicly constructed trails. Therefore, these trail systems are not considered as components of the specified activities or geographic region and are excluded from our analyses and consideration in

this proposed IHA. Should harassment of polar bears occur in excluded areas it would be considered unauthorized. The excluded areas and operations are referenced in this proposed authorization only for context purposes.

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Figure 1—Specific geographic region of the proposed legacy well plugging and reclamation in the North Slope Borough of Alaska

East Simpson #1 Legacy Well Reclamation

The East Simpson #1 well, located approximately 97 kilometers (km) (60 miles [mi]) southeast of Utqiagvik, was drilled in 1979 by Husky Oil for the U.S. Geological Survey (USGS) (BLM 2025) (figure 1). Structures associated with the well were removed in the spring of 1980. At that time, pilings were also cut (not flush to ground surface) and removed, and the pad was fertilized and seeded. No additional cleanup of the East Simpson #1 site has occurred since 1980 (BLM 2025). The East Simpson #1 well site includes a well head located in a 3.7 by 3.7 meter (m) (12 by 12 foot [ft]) well cellar (constructed with wood

beams), as well as a reserve pit, flare pit, and camp/drilling pad. The site also consists of a drilling/camp pad constructed from silt/clay that had been excavated from the reserve and flare pits. The flare pit walls have collapsed into the reserve pit. The reserve and flare pits combined are approximately 1 hectare (ha) (2.5 acres [ac]). The site is approximately 244 m (800 ft) from the Beaufort Sea coast and contains little topographical relief.

In 2023, the FWS issued an IHA to the BLM for take of polar bears during winter and summer operations of 2023 and 2024 at the East Simpson #1 well site (88 FR 88943), which included soil sampling, characterization, and delineation. This work was successfully completed by the BLM during their previous operations and this current proposed IHA would authorize take of

polar bears for necessary follow-up remediation activities.

Snow Trail, Pad, and Airstrip Construction

Most of the proposed winter access routes included in this project have been previously used for various winter operations in the National Petroleum Reserve Alaska (NPR-A). Although the proposed snow trails are expected to follow or closely parallel previously used routes, variations in snow depth and other environmental conditions may necessitate adjustments to the routes or segments of the routes. The exact location of all snow trails would be determined in the field based on current conditions and would cross areas with the best snow cover to protect tundra and to safely transport vehicles and equipment. Exact locations may vary up to 1.6 km (1 mi) on either

side of the center lines of the snow trail routes depicted in figure 1 based on field conditions. Snow trail construction will begin in January or February 2026, starting with “prepacking” base snow via all-terrain smooth-tracked vehicles approved for off-road tundra travel. Prepacking promotes lower tundra soil temperatures and accelerates freezing of soils prior to use, thereby helping to protect the tundra during snow trail and pad grooming, maintenance, and use. Snow will also be packed around stream crossings to protect stream banks and vegetation. The proposed activities will include up to approximately 281 km (175 mi) of 9-m (30-ft) wide snow trails. All snow trail usage will cease with the spring thaw.

A 610-m (2,000-ft) long by 30-m (100-ft) wide snow airstrip will be constructed at the well site to allow winter resupply via fixed-wing aircraft. No fuel will be stored at the airstrip. A 2.4-hectare (6-ac, 152-m-by-152 m, 500-ft-by-500-ft) snow pad will be constructed at East Simpson #1 to support testing, cleanup, plugging, and other associated activities. No water will be used for snow trail, pad, or airstrip construction.

Mobilization, Resupply, and Demobilization

Large equipment, including mobile camp trailers, drill rigs, and other support equipment and supplies, will be moved west to East Simpson #1 well site from routes originating at either the 2P gravel pad and/or existing pads at Oliktok (figure 1). Equipment will be hauled along snow trails by appropriately sized tractors or other similar equipment. In January or February 2026, eight to ten trips will be required to haul camp trailers, vehicles, and drill rig equipment to the well site, followed by eight to ten trips to return equipment during demobilization in April 2026. During operations, up to 20 additional round trips will be required for resupply and/or backhaul waste at both well sites. In total there will be up to 40 round trips for mobilization, resupply, backhaul, and demobilization during operations. Furthermore, up to 25 winter resupply flights via fixed-wing aircraft will be required.

Following final well plugging, cleanup, inspections, and soil sampling, all equipment will be demobilized to Wainwright, Utqiagvik, or Atkasuk along routes shown in figure 1, which would include the routes that the BLM is not seeking take authorization for. The drill rig and waste generated from the well plugging and closure would be transported along routes to 2P or Oliktok before final transportation for

appropriate disposal. The majority of snow trail and camp cleanup, such as trash removal and stick-picking, will occur during demobilization, but final inspections will occur during the summer via helicopter (see *Summer Cleanup and Inspections*). Full scope of waste material disposal procedures is available in the BLM’s application (BLM 2025).

Camp Setup

A mobile camp will be required to provide crew lodging during well site activities. The camp set up at East Simpson #1 will consist of 20–25 trailers to provide housing, restrooms, kitchen, office space, shop spaces, and other required facilities for approximately 25 personnel. The camp will be established within 1.6 km (1 mi) of the well site based on initial field scouting and environmental conditions. The camp site will also not be located on frozen lakes or require the construction of an ice or snow pad. Generation of potable water from snow and disposal of grey water will follow Alaska Department of Environmental Conservation guidance and regulations. Project-generated waste such as household trash, rags, and other used disposable materials will be stored on location in approved containers to prevent wildlife access until being incinerated using appropriate equipment or disposed of at a permitted landfill. Multiple generators would provide power to the camp and facilities. A communication tower (dish for email and satellite phones) will be located at the mobile camp.

Summer Cleanup and Inspections

The majority of snow trail and camp cleanup, such as trash removal and stick-picking, will occur during demobilization in spring 2026 (April–May). However, a helicopter will be used for approximately 8–10 days in July and/or August 2026 to inspect and remove any debris left on the snow trails, pads, airstrip, and well sites. The helicopter will fly at low elevation (under 16 m [50 ft]) to conduct inspections. In addition, the helicopter will land at the well site for soil sampling (with hand tools) and final inspections, and to remove surface debris that may have been missed during winter operations. Approximately 36 helicopter landings would be expected during summer cleanup, inspections, and sampling activities.

Maternal Den Surveys

The BLM will conduct two aerial infrared (AIR) maternal polar bear den

surveys prior to beginning operations to attempt to identify any active dens in project areas that will be utilized during the denning period. The surveyors will use AIR cameras on fixed-wing aircraft, with flights flown between 245–457 m (800–1,500 ft) above ground level at a speed of <185 kilometers per hour (km/h) (<115 miles per hour [mph]). These surveys will be concentrated on areas within 1.6 km (1 mi) of project activities that would be suitable for polar bear denning activity, such as drainages, banks, bluffs, or other areas of topographic relief. The first survey will be conducted between December 1 and December 25, 2025, and the second survey will be conducted between December 15, 2025, and January 10, 2026, with a minimum of 24 hours between surveys. Only sections of the project impact area that have been surveyed via AIR will be used during denning season (figure 1).

Description of Marine Mammals in the Specified Geographic Region

Polar bears are the only species of marine mammal managed by the FWS likely to be found within the specified geographic region. Information on range, stocks, biology, and climate change impacts on polar bears can be found in appendix A of the supplemental information (available as described above in **ADDRESSES**).

Potential Impacts of the Specified Activities on Marine Mammals

Surface-Level Impacts on Polar Bears

Disturbance impacts on polar bears will be influenced by the type, duration, intensity, timing, and location of the source of disturbance. Disturbance from the specified activities would originate primarily from aircraft overflights (helicopter and fixed wing), tundra travel, well site plugging and reclamation, well site soil sampling, mobilization and demobilization, and cleanup activities. The noises, sights, and smells produced by these activities could elicit variable responses from polar bears, ranging from avoidance to attraction. When disturbed by noise, animals may respond behaviorally by walking, running, or swimming away from a noise source, or physiologically via increased heart rates or hormonal stress responses (Harms et al. 1997; Tempel and Gutierrez 2003). However, individual response to noise disturbance can be influenced by previous interactions, sex, age, and maternal status (Anderson and Aars 2008; Dyck and Baydack 2004). Noise and odors could also attract polar bears to work areas. Attracting polar bears to

these locations could result in human-polar bear interactions, unintentional harassment, intentional hazing, or possible lethal take in defense of human life. This proposed IHA, if finalized, would authorize only the nonlethal, incidental, unintentional take of polar bears that may result from the specified activities and would require mitigation measures to manage attractants in work areas and reduce the risk of human-polar bear interactions.

Human-Polar Bear Interactions

A larger percentage of polar bears are spending more time on land during the open-water season, which may increase the risk for human-polar bear interactions (Atwood et al. 2016; Rode et al. 2022). Polar bear interaction plans, personnel training, attractants management, and polar bear monitoring are mitigation measures used to reduce human-polar bear interactions and minimize the risks to humans and polar bears when interactions occur. Polar bear interaction plans detail the policies and procedures that will be implemented by the BLM to avoid attracting and interacting with polar bears, as well as minimizing impacts to the polar bears. Interaction plans also detail how to respond to the presence of polar bears, the chain of command and communication, and required training for personnel. Efficient management of attractants (e.g., human food, garbage) can prevent polar bears from associating humans with food, which mitigates the risk of human-polar bear interactions (Atwood and Wilder 2021). Information gained from monitoring polar bears near industrial infrastructure can be useful for better understanding polar bear

distribution, behavior, and interactions with humans. Technology that may be used to facilitate detection and monitoring of polar bears includes bear monitors, closed-circuit television, video cameras, thermal cameras, radar devices, and motion-detection systems. It is possible that human-polar bear interactions may occur during the specified activities, and mitigation measures, as described in the applicant's Polar Bear Awareness and Interaction Plan, will be implemented by the BLM to minimize the risk of human-polar bear interactions during the specified activities.

From mid-July to mid-November, SBS stock polar bears can be found in large numbers and high densities on barrier islands, along the coastline, and in the nearshore waters of the Beaufort Sea, particularly on and around Barter and Cross Islands (Wilson et al. 2017). This distribution leads to a significantly higher number of human-polar bear interactions on land and at offshore structures during the open-water season than other times of the year. Polar bears that remain on the multi-year pack ice are not typically present in the ice-free areas where vessel traffic occurs, as barges and vessels associated with industrial activities travel in open water and avoid large ice floes.

On land, polar bear monitoring reports indicate most polar bear observations occur within 2 km (1.2 mi) of the coastline. Facilities within the offshore and coastal areas are more likely to be approached by polar bears, and they may act as physical barriers to polar bear movements. As polar bears encounter these facilities, the chances

for human-polar bear interactions increase. However, polar bears have frequently been observed crossing existing roads and causeways, and they appear to traverse the human-developed areas as easily as the undeveloped areas based on monitoring reports.

Effects of Aircraft Overflights on Polar Bears

Polar bears experience increased noise and visual stimuli when fixed-wing aircraft or helicopters fly above them, which may elicit a biologically significant behavioral response. Sound frequencies produced by aircraft will likely fall within the hearing range of polar bears (Nachtigall et al. 2007) and will be audible to polar bears during flyovers or when aircraft operate in proximity to polar bears. Polar bears likely have acute hearing, with sensitivities previously demonstrated at frequencies between 1.4 and 22.5 kilohertz (kHz) (tests were limited to 22.5 kHz (Nachtigall et al. 2007)). Exposure to high-energy sound may cause polar bears' hearing to become impaired temporarily (called temporary threshold shift, or TTS) or permanently (called permanent threshold shift, or PTS). Species-specific TTS and PTS thresholds have not been established for polar bears at this time, but TTS and PTS thresholds have been established for the general group "other marine carnivores," which includes polar bears (Southall et al. 2019). Through a series of systematic modeling procedures and extrapolations, Southall et al. (2019) generated modified noise exposure thresholds for both in-air and underwater sound (table 1).

TABLE 1—TEMPORARY THRESHOLD SHIFT (TTS) AND PERMANENT THRESHOLD SHIFT (PTS) THRESHOLDS ESTABLISHED BY SOUTHALL ET AL. (2019) THROUGH MODELING AND EXTRAPOLATION FOR "OTHER MARINE CARNIVORES," WHICH INCLUDES POLAR BEARS

	TTS			PTS		
	Non-impulsive	Impulsive		Non-impulsive	Impulsive	
	SEL _{CUM}	SEL _{CUM}	Peak SPL	SEL _{CUM}	SEL _{CUM}	Peak SPL
Air	157	146	170	177	161	176
Water	199	188	226	219	203	232

Note: Values are weighted for other marine carnivores' hearing thresholds and given in cumulative sound exposure level (SEL_{CUM} dB re 20μPa in air and SEL_{CUM} dB re 1 μPa in water) for impulsive and nonimpulsive sounds, and unweighted peak sound pressure level in air (dB re 20μPa) and water (dB 1μPa) (impulsive sounds only).

The Federal Aviation Administration has found that test aircraft produced sound at all frequencies measured (50 Hz to 10 kHz) (Healy 1974). At frequencies centered at 5 kHz, jets flying at 300 m (984 ft) produced 1/3 octave band noise levels of 84 to 124 dB, propeller-driven aircraft produced 75 to

90 dB, and helicopters produced 60 to 70 dB (Richardson et al. 1995). Thus, level of airborne sounds typically produced by aircraft are unlikely to cause TTS or PTS unless polar bears are very close to the sound source.

Although neither TTS nor PTS is anticipated during the specified

activities, impacts from aircraft overflights have the potential to elicit biologically significant behavioral responses from polar bears. Exposure to aircraft overflights is expected to result in short-term behavior changes, such as ceasing to rest, walking, or running, and, therefore, has the potential to be

energetically costly. Polar bears observed during intentional aircraft overflights conducted to study impacts of aircraft on polar bear responses, with an average flight altitude of 143 m (469 ft), exhibited biologically meaningful behavioral responses during 66.6 percent of aircraft overflights. These behavioral responses were significantly correlated with the aircraft's altitude, the bear's location (e.g., coastline, barrier island), and the bear's activity (Quigley 2022; Quigley et al. 2024). Polar bears associated with dens exhibited various responses when exposed to low-flying aircraft, ranging from increasing their head movement and observing the aircraft to initiating rapid movement and/or den abandonment (Larson et al. 2020). Aircraft activities can impact polar bears across all seasons; however, aircraft have a greater potential to disturb both individuals and groups of polar bears on land during the summer and fall. These onshore polar bears are primarily fasting or seeking alternative terrestrial foods (Cherry et al. 2009; Griffen et al. 2022), and polar bear responses to aircraft overflights may result in metabolic costs to limited energy reserves. To reduce potential disturbance of polar bears during aircraft activities, mitigation measures, such as minimum flight altitudes over polar bears and their frequently used areas and flight restrictions around known polar bear aggregations, will be implemented when safe to do so.

Effects to Denning Polar Bears

Known or suspected polar bear dens around the oil fields and other areas of the North Slope are monitored by the FWS. These dens may be discovered opportunistically or during planned surveys for tracking marked polar bears and detecting polar bear dens. However, these sites are only a small percentage of the total active polar bear dens for the SBS stock in any given year. Each year, many entities conducting operations on the North Slope coordinate with the FWS to conduct surveys to attempt to locate polar bear dens that may be in close proximity to any of the operator's planned activities for that denning season. The BLM would conduct AIR surveys (see AIR Surveys below) prior to on-ground site operations to locate polar bear dens within the specified project area and avoid all known polar bear den by 1.6 km (1 mi). However, previously-unidentified polar bears dens may be encountered during the BLM's activities. If this occurs, and a previously-unidentified polar bear den is located within the project area, the

BLM would contact and collaborate with the FWS to develop immediate mitigations such as a 1.6-km (1-mi) activity exclusion zone around the den and 24-hours monitoring of the den site.

The responses of denning polar bears to disturbance and the consequences of these responses can vary throughout the denning process. We divide the denning period into four stages when considering impacts of disturbance: den establishment, early denning, late denning, and post-emergence; definitions and descriptions are provided by Woodruff et al. (2022) and are also located in the 2021–2026 Beaufort Sea ITR (86 FR 42982, August 5, 2021). The stage at which harassment occurs defines the level of disturbance response (Level B harassment, Level A harassment, or Lethal) attributed to either the sow or cub(s), along with the probability of the specific response occurring (see *Denning Analysis*).

Impacts of the Specified Activities on Polar Bear Prey Species

Information on the potential impacts of the specified activities on polar bear prey species can be found in the supplemental information to this document (available as described in ADDRESSES).

Estimated Take

Definitions of Incidental Take Under the Marine Mammal Protection Act

Below we provide definitions of three types of take of polar bears. The FWS does not anticipate and is not authorizing either Level A harassment or lethal take as a part of this proposed IHA; however, the definitions of these take types are provided for context and background.

Lethal Take

Human activity may result in biologically significant impacts to polar bears. In the most serious interactions (e.g., vehicle collision, running over an unknown den causing its collapse), human actions can result in the mortality of polar bears. We also note that, while not considered incidental, in situations where there is an imminent threat to human life, polar bears may be killed. Additionally, though not considered incidental, polar bears have been accidentally killed during efforts to deter polar bears from a work area for safety and from direct chemical exposure (81 FR 52276, August 5, 2016). Unintentional disturbance of a female polar bear by human activity during the denning season may cause the female either to abandon her den prematurely with cubs or abandon her cubs in the

den before the cubs can survive on their own. Either scenario may result in the incidental lethal take of the cubs.

Level A Harassment

Human activity may result in the injury of polar bears. Level A harassment, for nonmilitary readiness activities, is defined as any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild.

Numerous actions can cause take by Level A harassment of polar bear cubs during the denning period, such as creating a disturbance that separates mothers from dependent cubs (Amstrup 2003), inducing early den emergence during the late denning period (Amstrup and Gardner 1994; Rode et al. 2018), instigating early departure from the den site during the post-emergence period (Andersen et al. 2024), or repeatedly interrupting the nursing or resting of cubs to the extent that it impacts the cubs' body condition.

Level B Harassment

Level B harassment for nonmilitary readiness activities means any act of pursuit, torment, or annoyance that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering. Changes in behavior that disrupt biologically significant behaviors or activities for the affected animal are indicative of take by Level B harassment under the MMPA. Such reactions include, but are not limited to, the following:

- Fleeing (running or swimming away from a human or a human activity);
- Displaying a stress-related behavior such as jaw or lip-popping, front leg stomping, vocalizations, circling, intense staring, or salivating;
- Abandoning or avoiding preferred movement corridors such as ice floes, leads, polynyas, a segment of coastline, or barrier islands;
- Using a longer or more difficult route of travel instead of the intended path;
- Interrupting breeding, sheltering, or feeding;
- Moving away at a fast pace (adult) and cubs struggling to keep up;
- Temporary, short-term cessation of nursing or resting (cubs);
- Ceasing to rest repeatedly or for a prolonged period (adults);
- Loss of hunting opportunity due to disturbance of prey; or
- Any interruption in normal denning behavior that does not cause injury, den abandonment, or early departure of the female with cubs from the den site.

This list is not meant to encompass all possible behaviors; other behavioral responses may be indicative of take by Level B harassment. In some circumstances, eliciting behavioral responses that equate to take by Level B harassment repeatedly may result in Level A harassment. Relatively minor changes in behavior such as the animal raising its head or temporarily changing its direction of travel are not likely to disrupt biologically important behavioral patterns, and the FWS does not view such minor changes in behavior as indicative of a take by Level B harassment.

Surface Interactions

We analyzed take by Level B harassment for polar bears that may potentially be encountered and impacted during the BLM's oil well plugging and reclamation, soil sampling, snow trail, pad, and airstrip construction, and summer cleanup activities within the specified geographic region.

Impact Area

To assess the area of potential impact from the project activities, we calculate the area affected by project activities where harassment is possible. We refer to this area as an impact area. Behavioral response rates of polar bears to disturbances are highly variable, and data to support the relationship between distance to polar bears and disturbance are limited. Dyck and Baydack (2004) found sex-based differences in the frequencies of vigilance bouts, which

involves an animal raising its head to visually scan its surroundings, by polar bears in the presence of vehicles on the tundra. However, in their summary of polar bear behavioral response to ice-breaking vessels in the Chukchi Sea, Smultea et al. (2016) found no difference between reactions of males, females with cubs, or females without cubs. During the FWS's coastal aerial surveys, 99 percent of polar bears that responded in a way that indicated possible Level B harassment (polar bears that were running when detected or began to run or swim in response to the aircraft) did so within 1.6 km (1 mi), as measured from the ninetieth percentile horizontal detection distance from the flight line. Similarly, Andersen and Aars (2008) found that female polar bears with cubs (the most conservative group observed) began to walk or run away from approaching snowmobiles at a mean distance of 1,534 m (0.95 mi). Thus, while future research into the reaction of polar bears to anthropogenic disturbance may indicate a different zone of potential impact is appropriate, the current literature suggests that the 1.6-km (1.0-mi) impact area will encompass most surface polar bear harassment events.

Estimated Harassment

We estimated Level B harassment using the spatio-temporally specific encounter rates and temporally specific harassment rates derived in the 2021–2026 Beaufort Sea ITR (86 FR 42982, August 5, 2021) in conjunction with the specified project activity information.

Some portion of SBS bears may occur within the Chukchi Sea at a given time. However, the ITR rates do not explicitly account for this possibility, and the project area for this proposed IHA occurs only within the geographical boundary of the SBS subpopulation. Therefore, our analyses account only for SBS bears located within the SBS subpopulation boundary. Distribution patterns of polar bears along the coast of the SBS were estimated in Wilson et al. (2017) by dividing the North Slope Coastline into 10 equally sized grids and applying a Bayesian hierarchical model based on 14 years of aerial surveys in late summer and early fall. Wilson et al. (2017) estimated 140 polar bears per week along the coastline (a measurement that included barrier islands), but, not with uniform distributions. The study found that disproportionately high densities of bears occur in grids 6 and 9, which contain known large congregating areas such as Kaktovik and Cross Island; thus, the study has required polar bear density correction of factors in previously issued ITAs. The vast majority of the coastline within the project area in this proposed IHA falls within grids 1–5. The Wilson et al. (2017) values for grids 1–5 are similar to those in the North Slope area where the 2021–2026 Beaufort Sea ITR (86 FR 42982, August 5, 2021) encounter rates were developed; therefore, we believe those values are applicable to the project area in this proposed IHA and do not require any correction factor for polar bear densities in our analyses.

TABLE 2—DEFINITIONS OF VARIABLES USED IN HARASSMENT ESTIMATES OF POLAR BEARS ON THE COAST OF THE NORTH SLOPE OF ALASKA

Variable	Definition
B_{es}	Bears encountered in an impact area for the entire season.
a_c	Coastal exposure area.
a_i	Inland exposure area.
r_o	Occupancy rate.
e_{co}	Coastal open-water season bear-encounter rate in bears/season.
e_{ci}	Coastal ice season bear-encounter rate in bears/season.
e_{io}	Inland open-water season bear-encounter rate in bears/season.
e_{ii}	Inland ice season bear-encounter rate in bears/season.
t_i	Ice season harassment rate.
t_o	Open-water season harassment rate.
B_t	Number of estimated Level B harassment events.

Table 2 provides the definition for each variable used in the formulas to calculate the number of potential harassment events. The variables defined in table 2 were used in a series of formulas to ultimately estimate the total harassment from surface-level interactions. Encounter rates were originally calculated as polar bears

encountered per square km per season. As a part of their Request, the BLM provided the FWS with digital geospatial files that included the maximum expected human occupancy (*i.e.*, rate of occupancy [r_o] for each individual structure (*e.g.*, snow trails, snow pads) of their specified activities for each season of the IHA period. Using

the buffer tool in ArcGIS Pro, we created a spatial file of a 3.2-km (2-mi) buffer around all snow trails (3.2 km on either side of the proposed snow trail center line, *i.e.*, 6.4 km [4 mi] total diameter) to account for up to 1.6-km (1-mi) deviations from the proposed center line of the routes, and around both well sites to account for the presently

undetermined camp locations (within 1.6 km [1 mi] of well head). Additionally, we placed a 1.6-km (1-mi) buffer around all lakes that may be potentially utilized during operations. We binned the structures according to their seasonal occupancy rates by rounding them up into tenths (10 percent, 20 percent, etc.). We determined the impact area of each bin by first calculating the area within the buffers of 100-percent occupancy locations. We then removed the area of the 100-percent occupancy buffers from the project impact area and calculated the area within the 90-percent occupancy buffers. This iterative process continued until we calculated the area within all buffers. The areas of impact were then clipped by coastal and inland zone geospatial files to determine the coastal areas of impact (a_c) and inland areas of impact (a_i) for each occupancy bin. This process was repeated for both seasons (ice season and open-water [ice-free] season).

Impact areas were multiplied by the appropriate encounter rate to obtain the number of polar bears expected to be encountered in the impact area per season (B_{es}). Equation 1 provides an example of the calculation of polar bears encountered in the ice season for an impact area in the coastal zone.

Equation 1

$$B_{es} = a_c * e_{ci}$$

To generate the number of estimated Level B harassments for each area of interest, we multiplied the number of polar bears in the area of interest per season by the proportion of the season the area is occupied, the rate of occupancy, and the harassment rate (equation 2).

Equation 2

$$B_i = B_{es} * S_p * r_o * t_i$$

Aircraft Impacts on Polar Bears

Polar bears in the project area will likely be exposed to the visual and auditory stimulation associated with the applicant's fixed-wing and helicopter activities; however, these impacts are likely to be minimal and short-term. Aircraft activities may cause disruptions in the normal behavioral patterns of polar bears as either an auditory or visual stimulus, thereby resulting in incidental Level B harassment. To reduce the likelihood that polar bears are disturbed by aircraft, BLM would implement mitigation measures, such as minimum flight altitudes over polar bears and restrictions on sudden changes to aircraft movements and direction, if this authorization is finalized. Once mitigated, such disturbances are expected to have no more than short-term, temporary, and minor impacts on individual polar bears.

Estimating Harassment Rates of Aircraft Activities

Harassment rates during aircraft activities were estimated using results from studies of fixed-wing aircraft and helicopter overflights (Quigley 2022; Quigley et al. 2024). In these studies, aerial searches along the northern coast of Alaska between Point Barrow and the western Canadian border were flown and polar bears were approached at different altitudes. Polar bears that did not exhibit behavioral changes consistent with harassment were then re-approached at progressively lower altitudes, reaching as low as 38 m (100 ft). Researchers recorded behavioral changes during these approaches and evaluated if and when Level B

harassment occurred. Covariates examined were polar bear location ("barrier island" or "mainland"), initial behavior ("active" or "inactive"), group size, whether the polar bear belonged to a family group, and the number of previous overflights (*i.e.*, how many times the group was re-approached to elicit a behavioral change). A Bayesian imputation approach accounted for polar bears that exhibited a behavioral change consistent with harassment on their first approach, thus lacking an identified altitude at which no harassment occurred due to a lack of a "non-harassment" observation. Their final model included location, activity level, and the number of previous overflights as predictors of the altitude at which a polar bear was harassed. For our aircraft impacts analysis, we used harassment rates estimated for active polar bears observed on barrier islands, as they had the highest rates of harassment. We further assumed that no previous overflights were conducted.

We provide harassment rates for the following five categories of flights: take-offs, landings, low-altitude flights (defined as those between 122 m [400 ft] and 305 m [1,000 ft] altitude), mid-altitude flights (defined as those between 305 m [1,000 ft] and 457 m [1,500 ft] altitude), and high-altitude flights (defined as those between 457 m [1,500 ft] and 610 m [2,000 ft] altitude). Harassment rates were assigned to each of these flight categories using the harassment rate for the lowest altitude in the category (*e.g.*, for low-altitude flights, the harassment rate estimated for 122 m [400 ft] was used). This binning method of using the lowest altitude harassment rate in the bin allowed our estimates to be inclusive of possible changes in altitude due to variable flight conditions (table 3).

TABLE 3—HARASSMENT RATES FOR THE FIVE CATEGORIES OF FLIGHTS FOR FIXED-WING AIRCRAFT AND HELICOPTER OVERFLIGHTS

Flight category	Fixed-wing	Helicopter
Take-offs	0.99	>0.99
Landings	0.99	>0.99
Low-Altitude Flights (122–305 m)	0.86	>0.99
Mid-Altitude Flights (305–457 m)	0.03	0.82
High-Altitude Flights (457–610 m)	<0.01	0.05

Note: The rates in this table are based on Quigley et al. (2024). We used the harassment rate associated with 30 m (100 ft) for take-offs and landings.

Estimating Area of Impact for Aircraft Activities

For each category of the flight path (*i.e.*, take-off, low-altitude travel, mid-altitude travel, high-altitude travel, and

landing), we calculated an impact area and duration of impact using flight hours or flight path information provided in the Request. We used flights logs available through FlightAware

(<https://www.flightaware.com/>), a website that maintains flight logs in the public domain, to estimate impact areas and flight hours for take-offs and landings. We estimated a take-off linear

distance of 2.41 km (1.5 mi) that would be impacted for 10 minutes. We estimated a landing linear distance of 4.83 km (3 mi) per 305 m (1,000 ft) of flight altitude that would be impacted for 10 minutes per landing. To estimate the impact area of traveling segments, we subtracted the take-off and landing segments from the total length of the flight path. The duration of impact for traveling flights was either provided in the Request or calculated using the length of the flight and a conservative flight speed of 129 km/hr (80 mph), which was approximately 1.5 minutes per 3.22 km (2 mi) of the flight path.

All take-offs, landings, and traveling segments were then spatially referenced to determine whether they were within the coastal or inland zones. The coastal zone is defined as the offshore and onshore areas within 2 km (1.2 mi) of the coastline, and the inland zone is defined as the onshore area greater than 2 km (1.2 mi) from the coastline. If no location or flight hour information was provided, flight paths were approximated based on the information provided in the Request. Of the flight paths that were described clearly or were addressed through assumptions, we marked the approximate flight path

take-off and landing locations using ArcGIS Pro, and the flight paths were drawn. Once spatially referenced, all flight paths were buffered by 1.6 km (1 mi), which is consistent with aircraft surveys conducted by the FWS and the USGS between August and October during most years from 2000 to 2014 (Schliebe et al. 2008; Atwood et al. 2015; Wilson et al. 2017). In these surveys, 99 percent of groups of polar bears that exhibited behavioral responses consistent with Level B harassment were observed within 1.6 km (1 mi) of the aircraft.

TABLE 4—SEASONAL POLAR BEAR ENCOUNTER RATES BY ZONE

Coastal Zone Seasonal Encounter Rate	
Ice Season (November 12–July 18)	0.05 bears/km ² .
Open-water Season (July 19–November 11)	1.48 bears/km ² .
Inland Zone Seasonal Encounter Rate	
Ice Season (November 12–July 18)	0.004 bears/km ² .
Open-water Season (July 19–November 11)	0.005 bears/km ² .

Note: This table is adapted from the 2021–2026 Beaufort Sea ITR (86 FR 42982, August 5, 2021).

To calculate the total number of Level B harassment events estimated to occur due to the specified activities, we calculated the number of flight hours for each flight category (*i.e.*, take-offs, low-altitude travel, mid-altitude travel, high-altitude travel, and landings) for each zone and season combination. These values were then used to calculate the proportion of the season that aircraft occupied their impact areas (*i.e.*, take-off area, landing area, or traveling segment

impact areas). This proportion-of-season metric is equivalent to the occupancy rate (r_o) generated for surface-level interaction harassment estimates. The total impact area for each of the flight categories was multiplied by the zone and season-specific polar bear encounter rate to determine the number of polar bears expected in that area for the season (*i.e.*, B_{es} , as seen in equation 1). This number was then multiplied by the proportion of the season to

determine the number of polar bears expected in that area when flights are occurring, which was then multiplied by the appropriate harassment rate based on flight altitude to estimate the number of polar bears that may be harassed as a result of the flights (as seen in equation 2). Table 5 shows a summary of aircraft operations during the specified activities and the values used to estimate Level B harassment of polar bears during aircraft operations.

TABLE 5—SUMMARY OF AIRCRAFT OPERATIONS BY SEASON AND ACTIVITY DURING THE PROPOSED IHA PERIOD

Activity	Ice season (fixed-wing aircraft only)		Open-water season (helicopter only)	
	Winter support: Deadhorse—East Simpson #1	Winter support: Utqiagvik—East Simpson #1	Site inspection: Deadhorse—East Simpson #1	Snow trail inspection and cleanup
Altitude *	High	High	High	Low
Total Flights	25	25	5	12
Proportion of Season	0.0039	0.0014	0.0022	0.0062
Proportion of Flight in Coastal Zone	1	1	1	1
Proportion of Flight in Inland Zone	0	0	0	0
Total Encounter Rate (bears/km ² /season) **	0.05	0.05	1.48	1.48
Harassment Rate	0.001	0.001	0.05	0.99
Flight Time Harassment	1.59×10^{-06}	5.53×10^{-07}	0.0014	0.05909
Total Takeoffs and Landings	50	50	10	24
Landing Time/Season	0.0013	0.0013	0.0006	0.0014
Landing Time Harassment	0.0016	0.0016	0.0210	0.0503
Takeoff Time/Season	0.0013	0.0013	0.0006	0.0014
Takeoff Time Harassment	0.0010	0.0010	0.0141	0.0338
Number Level B Harassment of Activity	0.0027	0.0027	0.0364	0.1576
Total number of level B harassment during winter aircraft activities.	0.0054: rounded to 1		Total number of level B harassment during summer aircraft activities.	0.1940: rounded to 1.

Note:

* High-altitude flight is defined as between 457 m [1,500 ft] and 610 m [2,000 ft] altitude. Low altitude is defined as between 122 m [400 ft] and 305 m [1,000 ft] altitude. There are no mid-altitude flights considered for this project.

** Accounts for unequal encounter rates over coastal and inland zones.

Estimated Harassment From Aircraft Activities

Using the approaches described above, we estimated the total number of polar bears expected to be harassed by the aircraft activities during the proposed IHA period as a total of two bears, including one bear during the winter and one bear during the summer aircraft activities.

Denning Analysis

Below we provide a complete description, plus results, of the polar bear den simulation model used to assess impacts to denning polar bears from disturbance associated with all phases of the specified activities. In our denning analysis, we used the analytical method described in the Revised Alaska Oil and Gas Association (AOGA) Incidental Take Regulations (ITR) (90 FR 27398, June 26, 2025).

Den Simulation

We simulated dens across the entire North Slope of Alaska, ranging from the areas identified as denning habitat (Durner et al. 2006, 2013; Durner and Atwood 2018) contained within the National Petroleum Reserve-Alaska (NPR-A) in the west to the Canadian border in the east. To simulate dens on the landscape, we relied on the estimated number of dens in three different regions of northern Alaska provided by Atwood et al. (2020). These included the NPR-A, the area between the Colville and Canning Rivers (CC), and Arctic National Wildlife Refuge (NWR). Den simulations for this proposed IHA were conducted following the exact methodology described previously in the AOGA ITR (90 FR 27398, June 26, 2025).

Impact Area of Specified Activities

The model developed by Wilson and Durner (2020) provides a template for estimating the level of potential impact on denning polar bears during the specified activities while also considering the natural denning ecology of polar bears in the region. Previous iterations of the denning analysis model, including those utilized in the 2021–2026 Beaufort Sea ITR (86 FR 42982, August 5, 2021) and 2023–2024 BLM IHA (88 FR 88943, December 26, 2023), assumed that during all denning periods, any polar bears within dens within 1.6 km (1 mi) from project activities could exhibit a disturbance response if exposed to industrial

stimuli. However, for this IHA, as in the 2024–2025 BLM IHA (90 FR 2718, January 13, 2025) and 2025–2026 Narwhal LLC IHA (90 FR 33982, July 17, 2025), we refined that broad assumption to account for denning data that have been collected subsequent to the promulgation of the 2021–2026 Beaufort Sea ITR. Since 2021, four known dens (monitored in 2022 and 2023) have occurred near human activity. Of the four newly observed dens, three were extremely close to human activity (<50 m [<164 ft]), yet the sows remained in their dens until the late denning period. We updated polar bear disturbance probabilities and litter size distributions with the information from these dens, then re-examined the historic dens that were used to create disturbance probabilities. We found that the distances between human activity and polar bear dens during the early denning period were considerably closer than those observed during other denning periods. Specifically, of the 17 dens within the case studies that were exposed to human activity during the early denning period, only one was potentially disturbed at a distance greater than 800 m (2,625 ft). This single den record also had imprecise information on the distance to human activity, so activity was assumed to occur within 1,610 m (5,282 ft) of the den and was likely closer. The historic dens analyzed during the den establishment, late denning, and post-emergence periods did not follow this pattern. For those dens, disturbance distances commonly exceeded 805 m (2,641 ft). Evidence derived from dens exposed to human activity during the early denning period, including both new den records and historic dens, illustrates the reluctance of sows to abandon their maternal den/cubs in response to exposure to stimuli from nearby activity, and supports the concept that sows may be more risk tolerant during the early denning period. Additionally, sows may be less affected by sound from outside activities during the early denning period because dens are typically closed during that time, which can affect propagation of noise into the den (Owen et al. 2020). Given this evidence, we modified the denning analysis model to adjust the impact area for the early denning period to range from 0 to 805 m (0 to 2,641 ft). As a result, dens that were simulated to be within 805 m (2,641 ft) of human activity could be disturbed during all

denning periods, while dens between 806 and 1610 m (2,644 and 5,282 ft) away from human activity could only be disturbed during the den establishment, late denning, and post-emergence periods.

AIR Surveys

We assumed that all operational and transit areas that will be utilized during denning season would have two AIR surveys flown prior to beginning any operations (figure 1). The first survey would occur between December 1 and December 25, 2025, and the second survey between December 15, 2025, and January 10, 2026, with a minimum of 24 hours between surveys. During each iteration of the model, each AIR survey was randomly assigned a probability of detecting dens using detection probabilities previously described in the 2024–2025 BLM IHA (90 FR 2718, January 13, 2025).

Model Implementation

For each iteration of the model, we first determined which dens were exposed to the specified activities. Dens that were simulated to be within 805 m (2,641 ft) of human activity could be disturbed during all denning periods, while dens within 806–1610 m (2,644–5,282 ft) of human activity could only be disturbed during the den establishment, late denning, and post-emergence periods. Dens detected during AIR survey were excluded if activity did not occur prior to AIR survey. We identified the stage in the denning period when the exposure occurred based on the date range of the activities the den was exposed to: den establishment (*i.e.*, initial entrance into den until cubs are born), early denning (*i.e.*, birth of cubs until they are 60 days old), late denning (*i.e.*, date cubs are 60 days old until den emergence) and post-emergence (*i.e.*, the date of den emergence until permanent departure from the den site). We then determined whether the exposure elicited a response by the denning polar bear based on probabilities derived from the reviewed case studies (Woodruff et al. 2022b), which were updated with data from the dens monitored in 2022 and 2023 using the methods described in Woodruff et al. (2022a).

Specifically, we divided the number of cases that documented responses associated with either Level B harassment (*e.g.*, potential to cause a disruption of behavioral patterns), Level A harassment (*e.g.*, potential to injure an

animal), or lethal take (*i.e.*, cub abandonment) of polar bears by the total number of cases with that combination of period and exposure type (table 6). Level B harassment was applicable to both adults and cubs, if present, whereas Level A harassment and lethal take were applicable to only cubs. AIR surveys were not considered to be a source of potential impact. In thousands of hours of AIR surveys conducted in northern Alaska over the last decade, we are not aware of a single instance of a polar bear abandoning its den during the early denning period due to an AIR survey overflight. These responses would be readily observable on the thermal cameras, and the fact that none have been observed indicates that den abandonment very likely does not occur given the brief duration of the aircraft overflight as well as the distance and altitude of the aircraft from the den site. Recent peer-reviewed research further supports the model assumption that AIR surveys are not a source of harassment (Quigley et al. 2024).

For dens exposed to activity, we used a multinomial distribution with the probabilities of different levels of take for that period (table 6) to determine whether a den was disturbed or not. If den abandonment was simulated to occur, a den was not allowed to be disturbed again during the subsequent denning periods because the outcome of that denning event (lethal take of any cubs present) was already determined.

The level of impact associated with a disturbance varied according to the severity and timing of the exposure (table 6). Exposures that resulted in emergence from dens prior to cubs

reaching 60 days of age were considered lethal takes of cubs. If an exposure resulted in Level A harassment during the late denning period, we first assigned that den a new random emergence date from a uniform distribution that ranged between the first date of exposure during the late denning period and the original den emergence date. We then determined whether that den was disturbed during the post-emergence period, but the probability of disturbance was dependent on whether or not a den was disturbed (*i.e.*, Level A harassment occurred) during the late denning period (table 6). If an exposure resulted in Level A harassment during the post-emergence period, we assigned the den a new time spent at the den site post-emergence from a uniform distribution that ranged from 0 to the original simulated time at the den post-emergence.

Recent research suggests that litter survival is related to the date of den emergence and time spent at the den post-emergence (Andersen et al. 2024), with litters having higher survival rates if they emerge later in the spring and if they spend more time at the den site after emergence. To determine whether dens that were disturbed during the late denning and/or post-emergence period(s) experienced Level A harassment, we relied on estimates of litter survival in the spring following den emergence, which were derived from the analysis of empirical data on the dates of emergence from the den and departure from the den site (*i.e.*, estimates were dependent on the date of

emergence and time spent at the den site post-emergence) (Andersen et al. 2024). For each den disturbed during the late denning and/or post-emergence periods, we obtained a random sample of regression coefficients from the posterior distribution and calculated the probability of litter survival in the spring after den departure with the following equation:

Equation 3

$$\text{logit}(s) = \beta_0 + \beta_1 \text{emerge} + \beta_2 \text{depart}$$

where s is the probability of at least one cub being alive in the spring after den departure, β_0 is the intercept coefficient, β_1 is the coefficient associated with the Julian date of emergence (*emerge*), and β_2 is the coefficient associated with the number of days the family group stayed at the den site post-emergence before departing (*depart*). These probabilities are based on estimates of litter survival derived from the analysis of empirical data on the dates of emergence from the den and departure from the den site (Andersen et al. 2024).

We developed the code to run this model in program R (R Core Development Team 2020) and ran 10,000 iterations of the model (*i.e.*, Monte Carlo simulation) to derive the estimated number of dens disturbed and associated levels of harassment. We then determined the number of cubs that would have lethal take, Level A harassment, and Level B harassment, and the number of females that would experience Level B harassment. Table 6 shows the probability of an exposure resulting in the types of harassment of denning polar bears.

TABLE 6—PROBABILITY THAT AN EXPOSURE ELICITED A RESPONSE BY DENNING POLAR BEARS THAT WOULD RESULT IN LEVEL B HARASSMENT, LEVEL A HARASSMENT, LETHAL TAKE, OR NO TAKE

Denning period	None (sow or cub(s))	Level B (sow)	Level B (cub(s))	Level A (cub(s))	Lethal cub(s)
Den Establishment	0.750	0.250	0.000	0.000	0.000
Early Denning	0.923	0.077	0.000	0.000	0.077
Late Denning	0.684	0.316	0.000	0.316	0.000
Post Emergence-Previously Undisturbed Den	0.000	1.000	0.316	0.684	0.000
Post Emergence-Previously Disturbed Den	0.000	1.000	0.667	0.333	0.000

Note: Level B harassment was applicable to both adults and cubs, if present; Level A harassment and lethal take were applicable to cubs only and were not possible during the den establishment period, which ended with the birth of the cubs. During the early denning period, there was no Level A harassment for cubs, only lethal take. We provide two sets of take probabilities for the post-emergence period. The first (Post-emergence—Undisturbed) is the set of probabilities when a den has not been disturbed during the late denning period. The second (Post-emergence—Disturbed) is the set of probabilities for a den that was disturbed during the late denning period (Rode et al. 2018; Andersen et al. 2024).

Model Results

In the denning model both sows and cubs may experience Level B harassment, but only cubs can experience either Level A harassment or lethal take (see *Model Implementation* and table 6 for further detail). The

distributions of model results for Level B harassments, Level A harassments, and lethal takes were non-normal and heavily skewed. The heavily skewed nature of these distributions suggests that the mean value is not representative of the most common model result.

Therefore, mean is not an appropriate measure of potential denning related harassments. However, the median value, which is the midpoint value of a frequency distribution of all model results, is a more precise estimator of common model results when the

distribution displays a non-normal and heavily skewed pattern. In all three take scenarios, Level B harassment, Level A harassment, and Lethal take, the median value was zero (0), with 95 percent confidence intervals ranging between 0–

2 for level B harassment, 0–4 for Level A harassment, and from 0–2 for Lethal take (table 7). Table 7 also shows the probability of Level B harassment was the highest (0.367), followed by Level A harassment (0.269), lowest for lethal

take (0.140). As a result of these model outputs, we anticipate zero (0) Level B harassment, Level A harassment, or Lethal take associated with denning polar bears during the 1-year period of this proposed IHA.

TABLE 7—RESULTS OF THE DEN DISTURBANCE MODEL FOR PROPOSED ACTIVITY

Level of harassment/take	Estimates *			
	Probability	Mean	Median	95% CI
Level B Harassment	0.367	0.479	0	0–2
Level A Harassment	0.269	0.566	0	0–4
Lethal Take	0.140	0.270	0	0–2

Note: *Estimates are provided for the probability, mean, median, and 95 percent Confidence Intervals (CI) for Level B harassment, Level A harassment, and Lethal take. The probabilities represent the probability of ≥1 take of a bear occurring during a given winter.

Critical Assumptions

To conduct this analysis and estimate the potential amount of Level B harassment, Level A harassment, and lethal take, we made several critical assumptions.

Our estimates do not account for variable responses by polar bear age and sex; however, sensitivity of denning polar bears was incorporated into the analysis. The available information suggests that polar bears are generally resilient to low levels of disturbance. Females with dependent young and juvenile polar bears are physiologically the most sensitive (Andersen and Aars 2008) and most likely to experience harassment from disturbance. Not enough information on composition of the SBS polar bear stock in the specified project area is available to incorporate individual variability based on age and sex or to predict its influence on harassment estimates. Our estimates are derived from a variety of sample populations with various age and sex structures, and we assume the exposed population will have a similar composition, and that, therefore, the response rates are applicable.

The estimates of behavioral response presented here do not account for potential individual movements of animals in response to the specified activities that would alter the density of polar bears in or near the project area. Not enough information is available about the movement of polar bears in response to specific disturbances to refine the assumption that their density does not change.

The SBS polar bears create maternal dens on the sea ice as well as on land. The den simulation used in our analysis does not simulate dens on the sea ice. However, the specified activities will be conducted entirely on land and only a small percentage of the activities will occur within 1.6 km (1 mi) of the coastline. Therefore, the impact of the activities will be primarily limited to land-based dens within 1.6 km (1 mi) of the project impact areas used during denning season. Additionally, this impact area will be surveyed during AIR surveys to mitigate impacts on denning polar bears.

The specific combination of snow trail segments depicted in figure 1 that will be used for mobilization, resupply,

and backhauling is not currently known. For the purposes of the above analyses and estimates of take by Level B and Level A harassment, and the risks of lethal take, we assumed that all routes within the AIR surveyed section (figure 1) of the project might potentially be used at some point during the denning season. This assumption results in a very conservative estimate of take for the 1-year IHA period that accounts for all possible operational scenarios.

Sum of Harassment From All Sources

Our analyses quantified the total number Level B harassment, Level A harassment, and lethal take potential to result from the BLM’s specified activities. We evaluated three potential sources of harassment/take, including surface interactions, aircraft overflights, and den disturbance of sows and/or cubs in our analyses. A summary of total estimated take via Level B harassment during the project by source is provided in table 8. We do not anticipate take by Level A harassment or lethal take to occur.

TABLE 8—TOTAL ESTIMATED TAKES BY HARASSMENT OF POLAR BEARS, BY SOURCE

Source and type of harassment	Number of estimated harassments
Bears on the surface—summer—Level B harassment	1
Bears on the surface—winter—Level B harassment	7
Aircraft activities—summer—Level B harassment	1
Aircraft activities—winter—Level B harassment	1
Denning Bears	0
Total	10

Determinations and Findings

In proposing these findings, we considered the best available scientific information, including: the biological and behavioral characteristics of polar

bears, the most recent information on polar bear distribution and abundance within the area of the specified activities, the current and expected future status of the stock (including

existing and foreseeable human and natural stressors), the potential sources of disturbance caused by the project, and the potential responses of polar bears to this disturbance. In addition,

we reviewed applicant-provided materials, information in our files and datasets, published reference materials, and we consulted with fellow species experts.

Small Numbers

For our small numbers determination, we consider whether the estimated number of polar bears to be subjected to incidental take is small relative to the population size of the species or stock.

1. We estimate that BLM's proposed specified activities in the specified geographic region will cause the take of no more than 10 polar bears by Level B harassment during the 1-year period of this proposed IHA (table 8). Take of 10 animals is 1.1 percent of the best available estimate of the current SBS stock size of 907 animals (Bromaghin et al. 2015, 2021; Atwood et al. 2020) $((10 \div 907) \times 100 \approx 1.10$ percent) and represents a "small number" of polar bears of that stock.

2. The footprint of the specified activities within the specified geographic region is extremely small relative to the range of the SBS stock of polar bears. Polar bears from the SBS stock occur well beyond the boundaries of the proposed IHA region. As such, the IHA boundaries represent only a minute subset of the potential area in which the polar bear may occur. Thus, the FWS concludes that a small portion of the SBS polar bear populations may be present in the specified geographic region during the time of the specified activities.

Small Numbers Conclusion

We propose a finding that take of up to 10 SBS polar bears represents a small number of the SBS stock of polar bears.

Negligible Impact

For our negligible impacts determination, we consider the following:

1. The documented impacts of previous activities (including the 2023–2024 BLM IHA (88 FR 88943, December 26, 2023) and the 2024–2025 BLM IHA (90 FR 2718, January 13, 2025), which are similar to the specified activities with respect to impact on polar bears), considered in addition to the baseline of existing impacts from factors such as oil and gas activities in the area and other ongoing or proposed ITAs, suggest that the types of activities analyzed for this proposed IHA will have minimal effects on polar bears. Additionally, the effects will be limited to short-term, temporary behavioral changes. Furthermore, our analyses do not indicate, nor do we anticipate, any take by Level A harassment or lethal take of polar bears

during the 1-year period of this proposed IHA. Therefore, we anticipate that the specified activities will not have lasting impacts that could significantly affect an individual polar bear's health, reproduction, or survival. The limited extent of anticipated impacts on polar bears is unlikely to adversely affect annual rates of polar bear survival or recruitment. Thus, we do not expect any long-term negative consequences to either individual- or population-level fitness.

2. The distribution and habitat use patterns of polar bears indicate that relatively few polar bears will occur in the specified areas of activity at any time and, therefore, few polar bears are likely to be affected.

3. The BLM has committed to the implementation of monitoring requirements and mitigation measures designed to reduce the potential impacts of their operations on polar bears. Den detection surveys for polar bears and adaptive mitigation and management responses based on real-time monitoring information (described in this proposed authorization) will be used to avoid or minimize interactions with polar bears and, therefore, limit potential disturbance of the species.

4. The FWS does not anticipate any lethal take that would remove individual polar bears from the population or prevent their successful reproduction. This proposed IHA does not authorize any take by Level A harassment or injury that will likely result in the death of a polar bear.

We also consider the conjectural or speculative impacts associated with these specified activities. The specific congressional direction described below justifies balancing the probability of such impacts with their severity: If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low, but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the FWS will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information (54 FR 40338, September 29, 1989, quoting 53 FR 8473, March 15, 1988, and 132 Cong. Rec. S 16305 (October 15, 1986)).

The potential effects of most concern here are the mortality of cubs that could

result from disturbances during certain periods of the denning season. The FWS estimated that the probability of greater than or equal to one lethal take resulting in the mortality of a denning polar bear is only 0.140 within the 1-year period of this proposed IHA. Therefore, the FWS does not anticipate any lethal take will occur during the IHA period. If a den is disturbed and lethal take were to occur, this take would be limited to only cubs during the denning period. Denning females, the demographic group most important to annual recruitment, are limited to take by Level B harassment. Therefore, the number of potentially available reproductive females that would contribute to recruitment for the SBS stock would remain unaffected if a den disturbance were to result in the mortality of the cubs.

Cub mortality occurs naturally each year. Cub litter survival was estimated at 50 percent (90 percent CI: 33–67 percent) for the SBS stock during 2001–2006 (Regehr et al. 2010), indicating a female may lose her litter for several reasons separate from den disturbance. The SBS stock of polar bears is currently estimated as 907 polar bears (Bromaghin et al. 2015, 2021; Atwood 2020). The loss of one litter ranges from 0 percent (0 cubs) to approximately 0.33 percent (3 cubs) of the annual SBS stock size of polar bears $((0 \text{ cubs to } 3 \text{ cubs}) \div 907) \times 100 \approx 0 \text{ to } 0.33$). The determining factor for polar bear stock growth is adult female survival (Eberhardt 1990). Consequently, the loss of female cubs has a greater impact on annual recruitment rates for the SBS stock of polar bears compared to male cubs. If a den disturbance were to result in the mortality of the entire litter, the adult female would be available to breed during the next mating season and could produce another litter during the next denning season.

Based on our projected zero cub mortality associated with these specified activities, and the recognition that even if a den is disturbed, the number of potentially affected cubs would be minimal and the number of reproductive females in the stock would remain the same, the FWS does not anticipate that the conjectural or speculative impacts associated with these specified activities warrant a finding of non-negligible impact or otherwise preclude issuance of this proposed IHA.

We reviewed the effects of the specified well-plugging and reclamation activities on polar bears, including impacts from surface interactions, aircraft overflights, and the potential for den disturbance. Based on our review of these potential impacts, past monitoring

reports, and the biology and natural history of polar bears, we anticipate that such effects will be limited to short-term behavioral disturbances.

We have evaluated the effects of climate change on polar bears as part of the environmental baseline. Climate change is a global phenomenon and was considered as the overall driver of effects that could alter polar bear habitat and behavior. The FWS is currently involved in research to understand how climate change may affect polar bears. As we gain a better understanding of climate change effects, we will incorporate the information in future authorizations.

We find that the impacts of these specified activities cannot be reasonably expected to, and are not reasonably likely to, adversely affect SBS polar bears through effects on annual rates of recruitment or survival. We therefore find that the total of the taking estimated above and proposed for authorization will have a negligible impact on SBS polar bears. We do not propose to authorize lethal take or any take by Level A harassment that we believe could result in long-term individual or population level fitness consequences.

Impact on Subsistence Use

Based on past community consultations, locations of hunting areas, the lack of anticipated overlap of hunting areas and project activities, and the best scientific information available, including monitoring data from similar activities, we propose a finding that take caused by the oil well plugging and reclamation; soil sampling; snow trail, pad, and airstrip construction; and summer cleanup activities in the project area will not have an unmitigable adverse impact on the availability of polar bears for taking for subsistence uses during the proposed timeframe.

While polar bears represent a small portion, in terms of the number of animals, of the total subsistence harvest for the Utqiagvik, Nuiqsut, Wainwright and Atkasuk communities, their harvest is important to Alaska Natives. The BLM would notify the cities of Wainwright and Utqiagvik and the Native villages of Atkasuk and Nuiqsut of the planned activities and document any discussions of potential conflict. The BLM will make reasonable efforts to ensure that activities do not interfere with subsistence hunting and that adverse effects on the availability of polar bears are minimized. Should such a concern be voiced, development of plans of cooperation (POC), which must identify measures to minimize any adverse effects, will be required. The

POC will ensure that project activities will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This POC must provide the procedures addressing how the BLM will work with the affected Alaska Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bears, as warranted.

The FWS has not received any reports and is not aware of information that indicates that polar bears are being or will be deterred from hunting areas or impacted in any way that diminishes their availability for subsistence use by oil well plugging and reclamation; soil sampling; snow trail, pad, and airstrip construction; and summer cleanup.

Least Practicable Adverse Impact

We evaluated the practicability and effectiveness of mitigation measures based on the nature, scope, and timing of the specified activities, the best available scientific information, and monitoring data during the BLM's activities in the specified geographic region. We propose a finding that the mitigation measures included within the BLM's Request will ensure least practicable adverse impacts on polar bears (BLM 2025).

Polar bear den surveys at the beginning of the winter season, the resulting 1.6-km (1-mi) operational exclusion zone around any known polar bear dens, and restrictions on the timing and types of activities in the vicinity of dens will ensure that impacts to denning female polar bears and their cubs are minimized during this critical period. Minimum flight elevations over polar bear areas and flight restrictions around observed polar bears and known polar bear dens will reduce the potential for aircraft disturbing polar bears. Finally, the BLM will implement mitigation measures to prevent the presence and impact of attractants in camps such as the use of wildlife-resistant waste receptacles, daily food waste incineration, and storing hazardous materials in drums or other secure containers. These measures are outlined in a polar bear interaction plan that was developed in coordination with the FWS and is part of the BLM's application for this IHA. Based on the information we currently have regarding den and aircraft disturbance and polar bear attractants, we concluded that the mitigation measures outlined in the BLM's Request (BLM 2025) and incorporated into this authorization will minimize impacts from the specified oil well plugging and reclamation, soil sampling, snow trail, pad, and airstrip

construction, and summer cleanup activities to the extent practicable.

Several mitigation measures were considered but determined to be not practicable. These measures are listed below:

- *Grounding all flights if they must fly below 457 m (1,500 ft)*—Requiring all aircraft to maintain an altitude of 457 m (1,500 ft) at all times is not practicable as some operations may require flying below 457 m (1,500 ft) to perform necessary inspections or maintain safety of flight crew. Aircraft are required to fly above 457 m (1,500 ft) at all times within 805 m (0.5 mi) of an observed polar bear unless there is an emergency;

- *One-mile buffer around all known polar bear denning habitat*—One-mile (1.6-km) buffer around all known polar bear denning habitat is not practicable as much of the BLM's proposed project area occurs within 1.6 km (1 mi) of denning habitat; thus, to exclude all areas within 1.6 km (1 mi) of denning habitat would preclude the planned activities from occurring;

- *Prohibition of driving over high relief areas, embankments, or stream and river crossings*—While general avoidance of denning habitat, such as high relief areas, embankments, and streams or riverbanks must be considered during tundra travel, complete prohibition is not practicable. High relief areas, embankments, streams, and rivers occur throughout the project area. To completely avoid these types of areas would likely cause personnel to drive further away from established operational areas and unnecessarily create additional safety concerns. Furthermore, other mitigation measures to minimize impact to denning habitats are included and will minimize the risk imposed by driving over high relief areas, embankments, or stream and river crossings;

- *Use of a broader definition of "denning habitat" for operational offsets*—There is no available data to support broadening the defining features of denning habitat beyond that established by the USGS.

- *Establishment of corridors for sow and cub transit to the sea ice*—As there is no data to support the existence of natural transit corridors to the sea ice, establishment of corridors in the IHA area would be highly speculative. Therefore, there would be no mitigative benefit realized by their establishment;

- *Require all activities to cease if a polar bear is injured or killed until an investigation is completed*—The FWS has incorporated reporting requirements into this proposed authorization for all polar bear interactions. While it may aid in any subsequent investigation, ceasing

all activities may not be practicable or safe and, thus, will not be mandated;

- *Require use of den detection dogs*—It is not practicable or safe to require scent-trained dogs to detect dens due to the large spatial extent that would need to be surveyed within activity areas;

- *Require the use of handheld or vehicle-mounted Forward Looking Infrared (FLIR)*—AIR has been found to be four times more effective at detecting dens versus ground-based FLIR (handheld or vehicle-mounted FLIR) due to impacts of blowing snow on detection. The BLM has incorporated into their mitigation measures the use of handheld or vehicle-mounted FLIR when transiting rivers occurring in suitable denning habitat, but it is not practicable to use the equipment during all transit;

- *Construct safety gates, fences, and enclosures to prevent polar bears from accessing facilities*—This project will require no permanent facility/structures and encompasses a large area. Construction and deconstruction of barriers for a moving camp would increase potential human–polar bear interactions and impacts to polar bear habitat;

- *Employ protected species observers (PSOs) for monitoring, recording, reporting, and implementing mitigation measures*—All personnel will be trained in wildlife observation. Monitoring, recording, reporting measures are described in the IHA application. If personnel cannot be observant and detect bears, dedicated bear guards would be used (Refer to the IHA application). A 360-degree visual survey of the access routes and any locations within sight of the coast will be completed during aviation and if any marine mammals are observed within 0.8 km (0.5 mi), the fixed wing aircraft or helicopter would not land or continue inspections and would leave the area;

- *Avoid areas of high-density polar bear use (e.g., barrier islands and coastline) including for the establishment of camps and pads*—This measure is not practicable because the legacy wells that this project is focused on are all located along the coastline, and snow trail must also cross through these areas to reach the well sites;

- *Avoid predominantly coastal routes for flight pathways*—This measure is not practicable because the remediation sites are located along the coast, and aviation access routes to project sites must occur over the coast; and

- *Restrict activity and travel over polar bear denning habitat to eliminate or lessen risk of den collapse*—This project has activities that will travel

over potential polar bear denning habitat. The BLM has committed to multiple effective mitigation measures to minimize their potential impacts to polar bear denning habitat and reduce to chance of den collapse. Therefore, we believe that the probability of this project's activities causing a den collapse is near zero and additional mitigation measures would not further reduce the probability.

Required Determinations

National Environmental Policy Act (NEPA)

We have prepared a draft environmental assessment in accordance with the NEPA (42 U.S.C. 4321 *et seq.*). We have preliminarily concluded that authorizing the nonlethal, incidental, unintentional take of 10 SBS polar bears by Level B harassment during the proposed harassment authorization period would not significantly affect the quality of the human environment and, thus, preparation of an environmental impact statement for this incidental harassment authorization is not required by section 102(2) of NEPA or its implementing regulations. We are accepting comments on the draft environmental assessment as specified above in **DATES** and **ADDRESSES**.

Endangered Species Act

Under the Endangered Species Act (ESA) (16 U.S.C. 1536(a)(2)), all Federal agencies are required to ensure the actions they authorize are not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of critical habitat. Prior to issuance of a final IHA, the FWS will complete intra-Service consultation under section 7 of the ESA on our proposed issuance of an IHA. These evaluations and findings will be made available on the FWS's website at <https://ecos.fws.gov/ecp/report/biological-opinion>.

Government-to-Government Consultation

It is our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Alaska Native Tribes in developing programs for healthy ecosystems. We seek their full and meaningful participation in evaluating and addressing conservation concerns for protected species. It is our goal to remain sensitive to Alaska Native culture, and to make information available to Alaska Tribal organizations

and communities. Our efforts are guided by the following policies and directives:

(1) The Native American Policy of the FWS (January 20, 2016);

(2) The Alaska Native Relations Policy (currently in draft form; see 87 FR 66255, November 3, 2022);

(3) Executive Order 13175 (January 9, 2000);

(4) Department of the Interior Secretarial Orders 3206 (June 5, 1997), 3225 (January 19, 2001), 3317 (December 1, 2011), 3342 (October 21, 2016), and 3403 (November 15, 2021) as well as Director's Order 227 (September 8, 2022);

(5) The Alaska Government-to-Government Policy (a departmental memorandum issued January 18, 2001); and

(6) the Department of the Interior's policies on consultation with Alaska Native Tribes and organizations.

We have evaluated possible effects of the proposed IHA on federally recognized Alaska Native Tribes and ANCSA (Alaska Native Claims Settlement Act) Corporations. The FWS has determined that authorizing the Level B harassment of up to 10 polar bears from the BLM's specified activities would not have any Tribal implications or ANCSA Corporation implications and, therefore, Government-to-Government consultation or Government-to-ANCSA Corporation consultation is not necessary. However, we invite continued discussion, either about the project and its impacts or about our coordination and information exchange throughout the IHA/POC public comment process.

Paperwork Reduction Act

This proposed IHA does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The OMB has previously approved the information collection requirements associated with IHAs and assigned OMB Control Number 1018–0194 (expires 08/31/2026). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Proposed Authorization

We propose to authorize, for 1 year from date of issuance, the nonlethal, incidental take by Level B harassment of up to 10 polar bears from the SBS stock of polar bears for activities associated with the BLM's oil well plugging and reclamation, soil sampling, snow trail, pad, and airstrip construction, and

summer cleanup activities in the North Slope Borough of Alaska between Wainwright and Oliktok. Authorized take will be limited to Level B harassment only, *i.e.*, disruption of behavioral patterns, and is not anticipated to incur any significant impacts to either individual- or population-level fitness. We do not anticipate or authorize any take by Level A harassment, lethal take, or any other injury.

A. General Conditions for the IHA for the BLM

1. Activities must be conducted in the manner described in the revised Request dated August 2025 (received August 18, 2025) for an IHA and in accordance with all applicable conditions and mitigation measures. The taking of polar bears whenever the required conditions, mitigation, monitoring, and reporting measures are not fully implemented as required by the IHA is prohibited. Failure to follow the measures specified both in the revised Request and within this proposed authorization may result in the modification, suspension, or revocation of the IHA.

2. If project activities cause unauthorized take (*i.e.*, take of more than 10 polar bears from the SBS stock by Level B harassment or a form of take other than Level B harassment, or take of 1 or more polar bears through methods not described in the IHA), then BLM must take the following actions:

- i. Cease its activities immediately (or reduce activities to the minimum level necessary to maintain safety);
- ii. Report the details of the incident to the FWS within 48 hours; and
- iii. Suspend further activities until the FWS has reviewed the circumstances and determined whether additional mitigation measures are necessary to avoid further unauthorized taking.

3. All operations managers, aircraft pilots, and vehicle operators must receive a copy of this IHA and maintain access to it for reference at all times during project work. These personnel must understand, be fully aware of, and be capable of implementing the conditions of the IHA at all times during project work.

4. This IHA will apply to activities associated with the proposed project as described in this document and in the BLM's revised Request. Changes to the proposed project without prior authorization may invalidate the IHA.

5. The BLM's revised Request is approved and fully incorporated into this IHA unless exceptions are specifically noted herein. The revised Request includes:

i. The BLM's original *Request for an IHA*, dated July 2025 (received by the FWS July 10, 2025), which includes the BLM's *Polar Bear Safety, Awareness, and Interaction Plan* and geospatial files; and

ii. The BLM's revised *Request for an IHA*, dated August 2025 (received by the FWS August 18, 2025).

6. Operators will allow the FWS personnel or the FWS's designated representative to visit project work sites to monitor for impacts to polar bears and subsistence uses of polar bears at any time throughout project activities so long as it is safe to do so. "Operators" are all personnel operating under the BLM's authority, including all contractors and subcontractors.

The BLM must implement the following policies and procedures to avoid interactions and minimize to the greatest extent practicable any adverse impacts on polar bears, their habitat, and the availability of these marine mammals for subsistence uses.

B. General Avoidance Measures

7. The BLM must cooperate with the FWS and other designated Federal, State, and local agencies to monitor and mitigate the impacts of activities on polar bears.

8. Trained and qualified personnel must be designated to monitor for the presence of polar bears, initiate mitigation measures, and monitor, record, and report the effects of the activities on polar bears. The BLM must provide all operators with polar bear awareness training prior to their participation in project activities.

9. A FWS-approved polar bear safety, awareness, and interaction plan must be on file with the FWS Marine Mammal Management office and available onsite. The interaction plan must include:

- i. A description of the proposed activity (*i.e.*, a summary of the plan of operations during the proposed activity);
- ii. A food, waste, and other attractants management plan;
- iii. Personnel training policies, procedures, and materials;
- iv. Site-specific polar bear interaction risk evaluation and mitigation measures;
- v. Polar bear avoidance and encounter procedures; and
- vi. Polar bear observation and reporting procedures.

10. The BLM must contact potentially affected subsistence communities and hunter organizations to discuss potential conflicts caused by the activities and provide the FWS documentation of communications as described in *D. Measures To Reduce Impacts to Subsistence Users*.

11. *Mitigation measures for aircraft.* The BLM must undertake the following activities to limit disturbance from aircraft activities:

i. Operators of support aircraft shall, at all times, conduct their activities at the maximum distance practicable from concentrations of polar bears.

ii. Fixed-wing aircraft and helicopter operations within the IHA area must maintain a minimum altitude of 457 m (1,500 ft) above ground level when safe and operationally possible.

iii. Under no circumstances, other than an emergency, will aircraft operate at an altitude lower than 457 m (1,500 ft) within 805 m (0.5 mi) of a polar bear observed on ice or land measured in a straight line between the polar bear and the ground directly underneath the aircraft. Helicopters may not hover or circle above such areas or within 805 m (0.5 mi) of such areas. If weather conditions or operational constraints necessitate operation of aircraft at altitudes below 457 m (1,500 ft), the operator must avoid areas of known polar bear concentrations and should take precautions to avoid flying directly over or within 805 m (0.5 mi) of these areas.

iv. Aircraft may not be operated in such a way as to separate individual polar bears from a group (*i.e.*, two or more polar bears).

12. *Mitigation measures for winter activities.* The BLM must undertake the following activities to limit disturbance around known polar bear dens:

i. The BLM must conduct or otherwise obtain the results of two aerial infrared (AIR) surveys of all denning habitat located within 1.6 km (1 mi) of specified activities in an attempt to identify maternal polar bear dens. The first survey must occur between December 1 and December 25, 2025, and the second survey must occur between December 15, 2025, and January 10, 2026, with at least 24 hours occurring between the completion of the first survey and the beginning of the second survey. Surveys must not be conducted during daytime or times when weather conditions significantly hinder visibility (*e.g.*, blowing snow, precipitation, or airborne moisture). A scientist with experience in real-time aerial infrared interpretation must be onboard during all flights. All AIR survey videos must be made available to FWS within 48 hours of survey completion.

ii. All observed or suspected polar bear dens must be reported to the FWS prior to the initiation of activities.

iii. If a suspected den site is located, the BLM will immediately consult with the FWS to analyze the data and

determine if additional surveys or mitigation measures are required. The FWS will determine whether the suspected den is to be treated as a putative den for the purposes of this IHA.

iv. Operators must observe a 1.6-km (1-mi) operational exclusion zone around all putative polar bear dens during the denning season (November–April, or until the female and cubs leave the areas). Should a suspected den be discovered within 1.6 km (1 mi) of activities, work must cease, and the FWS contacted for guidance. The FWS will evaluate these instances on a case-by-case basis to determine the appropriate action. Potential actions may range from cessation or modification of work to conducting additional monitoring, and the BLM must comply with any additional measures specified.

v. In determining the denning habitat that requires surveys, use the den habitat map developed by the USGS. A map of potential coastal polar bear denning habitat can be found at: https://www.usgs.gov/centers/asc/science/polar-bear-maternal-denning?qt-science_center_objects=4#qt-science_center_objects.

C. Monitoring

13. Operators must provide onsite observers and implement the FWS-approved polar bear safety, awareness, and interaction plan to apply mitigation measures, monitor the project's effects on polar bears and subsistence uses, and evaluate the effectiveness of mitigation measures.

14. Onsite observers must be present during all operations and must record all polar bear observations, identify and document potential harassment, and work with personnel to implement appropriate mitigation measures.

15. Operators shall cooperate with the FWS and other designated Federal, State, and local agencies to monitor the impacts of project activities on polar bears. Where information is insufficient to evaluate the potential effects of activities on polar bears and the subsistence use of this species, the BLM may be required to participate in joint monitoring efforts to address these information needs and ensure the least practicable impact to this resource.

D. Measures To Reduce Impacts to Subsistence Users

The BLM must conduct its activities in a manner that, to the greatest extent practicable, minimizes adverse impacts on the availability of polar bears for subsistence uses.

16. The BLM will be required to develop a FWS-approved POC if, through community consultation, concerns are raised regarding impacts to subsistence harvest or Alaska Native Tribes and organizations.

17. If a FWS-approved POC is required, the BLM will implement that POC.

18. Prior to conducting the work, the BLM will take the following steps to reduce potential effects on subsistence harvest of polar bears:

i. Avoid work in areas of known polar bear subsistence harvest;

ii. Notify the cities Wainwright and Utqiagvik and the Native Villages of Atkasuk and Nuiqsit of the proposed project activities;

iii. Work to resolve any concerns of potentially affected Alaska Native Tribal organizations and corporations regarding the project's effects on subsistence hunting of polar bears;

iv. If any unresolved or ongoing concerns of potentially affected Alaska Native Tribal organizations and corporations remain, modify the POC in consultation with the FWS and subsistence stakeholders to address these concerns; and

v. Implement FWS-required mitigation measures that will reduce impacts to subsistence users and their resources.

E. Reporting Requirements

The BLM must report the results of monitoring to the FWS Marine Mammals Management office via email at: Fw7_mmm_reports@fws.gov.

19. *In-season monitoring reports.*

20. *Activity progress reports.* The BLM must:

(i) Notify the FWS at least 48 hours prior to the onset of activities;

(ii) Provide the FWS weekly progress reports of any significant changes in activities and/or locations; and

(iii) Notify the FWS within 48 hours after ending of activities.

21. *Polar bear observation reports.*

The BLM must report, within 48 hours, all observations of polar bears and potential polar bear dens during any project activities. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the FWS). Information in the observation report must include, but need not be limited to:

i. Date and time of each observation;

ii. Locations of the observer and polar bears (GPS coordinates if possible);

iii. Number of polar bears;

iv. Sex and age class—adult, subadult, cub (if known);

v. Observer name and contact information;

vi. Weather, visibility, and if at sea, sea state, and sea-ice conditions at the time of observation;

vii. Estimated closest distance of polar bears from personnel and facilities;

viii. Type of work being conducted at time of sighting;

ix. Possible attractants present;

x. Polar bear behavior—initial

behavior when first observed (e.g., walking, swimming, resting, etc.);

xi. Potential reaction—behavior of polar bear potentially in response to presence or activity of personnel and equipment;

xii. Description of the encounter;

xiii. Duration of the encounter; and

xiv. Mitigation actions taken.

22. *Human-polar bear interaction*

reports. The BLM must report all human-polar bear interaction incidents immediately, and not later than 48 hours after the incident. Human-polar bear interactions include:

i. Any situation in which there is a possibility for unauthorized take. For instance, when project activities exceed those included in an IHA, when a mitigation measure was required but not enacted, or when the injury or death of a polar bear occurs. Reports must include all information specified for an observation report in paragraphs (3)(i)-(xiv) of this section E, a complete detailed description of the incident, and any other actions taken.

ii. Injured, dead, or distressed polar bears that are clearly not associated with project activities (e.g., animals found outside the project area, previously wounded animals, or carcasses with moderate to advanced decomposition or scavenger damage) must also be reported to the FWS immediately, and not later than 48 hours after discovery. Photographs, video, location information, or any other available documentation must be included.

23. *Final report.* The results of monitoring and mitigation efforts identified in the marine mammal avoidance and interaction plan must be submitted to the FWS for review within 90 days of the expiration of this IHA. Upon request, final report data must be provided in a common electronic format (to be specified by the FWS). Information in the final report must include, but need not be limited to:

i. Copies of all observation reports submitted under the IHA;

ii. A summary of the observation reports;

iii. A summary of monitoring and mitigation efforts including areas, total hours, total distances, and distribution;

iv. Analysis of factors affecting the visibility and detectability of polar bears during monitoring;

- v. Analysis of the effectiveness of mitigation measures;
- vi. A summary and analysis of the distribution, abundance, and behavior of all polar bears observed; and
- vii. Estimates of take in relation to the specified activities.

Request for Public Comments

If you wish to comment on this proposed authorization, the associated draft environmental assessment, or both documents, you may submit your comments by either of the methods described in **ADDRESSES**. Please identify whether you are commenting on the proposed authorization, draft environmental assessment, or both, make your comments as specific as possible, confine them to issues pertinent to the proposed authorization, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph that you are addressing. The FWS will consider all comments that are received before the close of the comment period (see **DATES**). The FWS does not anticipate extending the public comment period beyond the 30 days required under section 101(a)(5)(D)(iii) of the MMPA.

Comments, including names and street addresses of respondents, will become part of the administrative record for this proposal. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Peter Fasbender,
Assistant Regional Director—Fisheries and Ecological Services, Alaska Region.
[FR Doc. 2026–02960 Filed 2–12–26; 8:45 am]
BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2025–N031;
FXES11130500000–256–FF05E00000]

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct scientific research to promote conservation or other activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite local, State and Federal agencies, Tribes, and the public to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive any written comments on or before March 16, 2026.

ADDRESSES: Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant’s name and application number (e.g., PER0001234).

- *Email:* permitsR5ES@fws.gov.
- *U.S. Mail:* Abby Goldstein, Ecological Services, U.S. Fish and Wildlife Service, 300 Westgate Center Dr., Hadley, MA 01035.

FOR FURTHER INFORMATION CONTACT: Abby Goldstein, 413–253–8212 (phone), or permitsR5ES@fws.gov (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite local, State and Federal agencies, Tribes, and the public to review and comment on applications we have received for permits under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations. The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species, unless a Federal permit is issued that allows such activity. The ESA’s definition of “take” includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities constituting or resulting in take of endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

In accordance with the ESA, we invite local, State, and Federal agencies; Tribes; and the public to submit written data, views, or arguments with respect to the applications in table 1.

TABLE 1—PERMIT APPLICATIONS RECEIVED

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
CS13141785	Dylan Parry; Syracuse, NY.	Bog buck moth (<i>Hemileuca maia menyanthevora</i> (= <i>H. iroquois</i>)).	New York	Survey, capture, propagation, and release.	Capture	New.

TABLE 1—PERMIT APPLICATIONS RECEIVED—Continued

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
PER0030365–2	Gregory A. Myers; Wheeling, WV.	Add: Cumberland elktoe (<i>Alasmidonta atropurpurea</i>), Appalachian elktoe (<i>Alasmidonta raveneliana</i>), fanshell (<i>Cyprogenia stegaria</i>), dromedary pearlymussel (<i>Dromus dromas</i>), altamaha spiny mussel (<i>Elliptio spinosa</i>),.. cumberlandian combshell (<i>Epioblasma brevidens</i>), oyster mussel (<i>Epioblasma capsaeformis</i>), tan riffleshell (<i>Epioblasma florentina walkeri</i>), northern riffleshell (<i>Epioblasma rangiana</i>), longsolid (<i>Fusconaia subrotunda</i>), crackling pearlymussel (<i>Hemistena lata</i>), Higgin's eye pearlymussel (<i>Lampsilis higginsii</i>), Carolina heelsplitter (<i>Lasmigona decorata</i>), birdwing pearlymussel (<i>Lemoix rimosus</i>), scaleshell (<i>Leptodea leptodon</i>), ring pink (<i>Obovaria retusa</i>), James spiny mussel (<i>Parvaspina collina</i>), Tar River spiny mussel (<i>Parvaspina steinstansana</i>), littlewing pearlymussel (<i>Pegias fabula</i>), orange-foot pimpleback (<i>Plethobasus cooperianus</i>), clubshell (<i>Pleurobema clava</i>), rough pigtoe (<i>Pleurobema ple-num</i>), fluted kidneshell (<i>Ptychobranchus subtentus</i>),.. winged mapleleaf (<i>Quadrula fragosa</i>), rough rabbitsfoot (<i>Quadrula cylindrica strigillata</i>), Cumberland monkeyface pearlymussel (<i>Theliderma inter-media</i>), Appalachian monkeyface pearlymussel (<i>Theliderma sparsa</i>), dwarf wedgemussel (<i>Alasmidonta heterodon</i>), shiny pigtoe (<i>Fusconaia cor</i>), and Cumberland bean pearlymussel (<i>Villosa trabalis</i>).	Add: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Kansas, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Texas, and Vermont.	Presence/probable absence surveys, and release.	Capture	Amend.
PER1745522–2	Zeinab M. Hadar; Arcata, CA.	Indiana bat (<i>Myotis sodalis</i>), gray bat (<i>Myotis grisescens</i>), and northern long-eared bat (<i>Myotis septentrionalis</i>).	Add: Oklahoma and Texas ...	Add: Hibernacula survey, harp trapping, and research.	Capture, collect.	Amend.
CS13884066	Meagan Lout; Colchester, VT.	Indiana bat (<i>Myotis sodalis</i>), gray bat (<i>Myotis grisescens</i>), northern long-eared bat (<i>Myotis septentrionalis</i>), and Virginia big-eared bat (<i>Corynorhinus</i> (=Plecotus) townsendii virginianus).	Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, Wyoming, and District of Columbia.	Presence/probable absence survey, mist net, harp trap, hibernacula survey, telemetry, and release.	Capture	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number,

email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may

be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we

will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Amanda Cross,

Acting Assistant Regional Director, Ecological Services, Northeast Region.

[FR Doc. 2026–02962 Filed 2–12–26; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–780–782 and 731–TA–1767–1769 (Preliminary)]

Van-Type Trailers and Subassemblies From Canada, China, and Mexico; Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of van-type trailers and subassemblies from Canada, China, and Mexico, provided for in subheadings 8716.39.00 and 8716.90.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (“LTFV”) and imports of the subject merchandise from Canada, China, and Mexico that are alleged to be subsidized by the governments of Canada, China, and Mexico.²

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission’s rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as

provided in § 207.21 of the Commission’s rules, upon notice from the U.S. Department of Commerce (“Commerce”) of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Any other party may file an entry of appearance for the final phase of the investigations after publication of the final phase notice of scheduling. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations. As provided in section 207.20 of the Commission’s rules, the Director of the Office of Investigations will circulate draft questionnaires for the final phase of the investigations to parties to the investigations, placing copies on the Commission’s Electronic Document Information System (EDIS, <https://edis.usitc.gov>), for comment.

Background

On November 20, 2025, the American Trailer Manufacturers Coalition, whose members are Great Dane LLC, Chicago, Illinois, Stoughton Trailers LLC, Stoughton, Wisconsin, and Wabash National Corporation, Lafayette, Indiana, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of van-type trailers and subassemblies from Canada, China, and Mexico and LTFV imports of van-type trailers and subassemblies from Canada, China, and Mexico. Accordingly, effective November 20, 2025, the Commission instituted countervailing duty investigation Nos. 701–TA–780–782 and antidumping duty investigation Nos. 731–TA–1767–1769 (Preliminary).

Notice of the institution of the Commission’s investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC,

and by publishing the notice in the **Federal Register** of November 25, 2025 (90 FR 53388).³ The Commission conducted its conference on December 11, 2025. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on February 11, 2026. The views of the Commission are contained in USITC Publication 5704 (February 2026), entitled *Van-Type Trailers and Subassemblies from Canada, China, and Mexico: Investigation Nos. 701–TA–780–782 and 731–TA–1767–1769 (Preliminary)*.

By order of the Commission.

Issued: February 11, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–02990 Filed 2–12–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1422 and Investigation No. 337–TA–1425 (Consolidated)]

Certain TOPCon Solar Cells, Modules, Panels, Components Thereof, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Granting the Parties’ Joint Motion To Terminate the Investigation; Terminating Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined not to review an initial determination (“ID”) (Order No. 40) granting the parties’ joint motion to terminate the investigation. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the

³ As a result of the closure of the agency on December 24, 2025, and December 26, 2025, the Commission revised its schedule in a notice published in the **Federal Register** on December 31, 2025 (90 FR 61410). Subsequently, Commerce extended the deadline for its initiation determination. The Commission, therefore, further revised its schedule, notice of which was published in the **Federal Register** on February 2, 2026 (91 FR 4628), following notice of Commerce’s initiation of the subject investigations.

¹ The record is defined in § 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

² 91 FR 3104 and 91 FR 3124 (January 26, 2026).

General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Investigation No. 337-TA-1422 ("the 1422 investigation") on November 5, 2024, and instituted Investigation No. 337-TA-1425 ("the 1425 investigation") on December 9, 2024, based on complaints filed by Trina Solar (U.S.), Inc. of Fremont, CA, Trina Solar US Manufacturing Module 1, LLC of Wilmer, TX, and Trina Solar Co., Ltd. of Xinbei District, China (collectively, "Trina" or "Complainants"). 89 FR 87889-90 (Nov. 5, 2024); 89 FR 97653-54 (Dec. 9, 2024). The complaints, as supplemented, collectively allege violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain TOPCon solar cells, modules, panels, components thereof, and products containing the same by reason of infringement of claims 1-11 of U.S. Patent No. 9,722,104 ("the '104 patent") and claims 1-17 of U.S. Patent No. 10,230,009 ("the '009 patent"). The complaints further allege that a domestic industry exists. The Commission's notices of investigation collectively named as respondents: Runergy USA Inc., of Pleasanton, CA; Runergy Alabama Inc., of Huntsville, AL; Jiangsu Runergy New Energy Technology, Co., Ltd., of Yangcheng City, China; Adani Solar USA Inc., of Irving, TX; Adani Green Energy Ltd., of Ahmedabad, India; CSI Solar Co., Ltd., of Suzhou, China; Canadian Solar Inc., of West Guelph, Canada; Canadian Solar (USA) Inc., of Walnut Creek, CA; Canadian Solar Manufacturing (Thailand) Co., Ltd., of Bo Win, Thailand; Canadian Solar US Module Manufacturing Corporation, of Mesquite, TX; and Recurrent Energy Development Holdings, LLC, of Austin, TX. The Office of Unfair Import

Investigations is participating in the investigations. *Id.*

On January 21, 2025, the Commission consolidated the 1422 investigation and the 1425 investigation. Inv. No. 337-TA-1422, Order No. 5 (Dec. 20, 2024) and Inv. No. 337-TA-1425, Order No. 4 (Dec. 20, 2024), *unreviewed by* Comm'n Notice (Jan. 21, 2025).

On January 31, 2025, the Commission determined not to review Order No. 8 granting Trina's unopposed motion to terminate the investigation as to Adani Green Energy Ltd. and to add Mundra Solar PV Ltd. as a respondent. *See* Order No. 8 (Jan. 14, 2025), *unreviewed by* Comm'n Notice (Jan. 31, 2025).

On February 12, 2025, the Commission determined not to review Order No. 9 amending the target date to May 20, 2026. *See* Order No. 9 (Jan. 15, 2025), *unreviewed by* Comm'n Notice (Feb. 12, 2025).

On February 13, 2025, the Commission determined not to review Order No. 7 granting Trina's unopposed motion to withdraw the complaint and terminate the investigation as to respondent Recurrent Energy Development Holdings LLC. *See* Order No. 8 (Jan. 14, 2025), *unreviewed by* Comm'n Notice (Feb. 13, 2025).

On June 17, 2025, the Commission determined not to review Order No. 15 granting Trina's unopposed motion to amend the complaint and notice of investigation to reflect a corporate name change by Trina Solar US Manufacturing Module 1, LLC to T1 G1 Dallas Solar Module (Trina) LLC. *See* Order No. 15 (May 23, 2025), *unreviewed by* Comm'n Notice (June 17, 2025).

On August 26, 2025, the Commission determined not to review Order No. 20 granting Trina's unopposed motion to terminate the investigation in part by withdrawing claim 11 of the '104 patent and claim 14 of the '009 patent. Order No. 20 (Aug. 7, 2025), *unreviewed by* Comm'n Notice (Aug. 26, 2025).

On December 8, 2025, the Commission determined not to review Order No. 34 extending the target date for completion of the investigation to August 18, 2026. Order No. 34 (Nov. 19, 2025), *unreviewed by* Comm'n Notice (Dec. 8, 2025).

On December 9, 2025, the Commission determined not to review Order No. 35 granting Trina's unopposed motion to terminate the investigation in part by withdrawing claims 2-5 and 9-10 of the '104 patent and claims 2, 3, 5, 7, 11-13, and 16 of the '009 patent. Order No. 35 (Nov. 19, 2025), *unreviewed by* Comm'n Notice (Dec. 9, 2025).

On January 15, 2026, the presiding administrative law judge issued the subject ID (Order No. 40) granting the parties' joint motion to terminate the investigation in its entirety. The ID found that the motion complied with Commission Rule 210.21(a)(1) (19 CFR 210.21(a)(1)) and that termination of the investigation was in the public interest.

No petitions for review of the ID were filed.

The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

The Commission vote for these determinations took place on February 10, 2026.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 11, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-02949 Filed 2-12-26; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1659]

Bulk Manufacturer of Controlled Substances Application: Scottsdale Research Institute

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Scottsdale Research Institute has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 14, 2026. Such persons may also file a written request for a hearing on the application on or before April 14, 2026.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for

lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on January 8, 2026, Scottsdale Research Institute, 12815 North Cave Creek Road, Phoenix, Arizona 85022, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to bulk manufacture the listed controlled substances for internal research purposes and to support clinical trials. No other activities for these drug codes are authorized for this registration

Thomas Prevoznik,

Deputy Assistant Administrator.

[FR Doc. 2026-02909 Filed 2-12-26; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1650]

Bulk Manufacturer of Controlled Substances Application: Siemens Healthcare Diagnostics, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Siemens Healthcare Diagnostics, Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 14, 2026. Such persons may also file a written request

for a hearing on the application on or before April 14, 2026.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on January 14, 2026, Siemens Healthcare Diagnostics, Inc., 100 GBC Drive, Mailstop 108, Newark, Delaware 19702-2461, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Ecgonine	9180	II

The company plans to bulk manufacture the listed controlled substance in bulk to be used in the manufacture of the DEA exempt products. No other activity for this drug code is authorized for this registration.

Thomas Prevoznik,

Deputy Assistant Administrator.

[FR Doc. 2026-02911 Filed 2-12-26; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1661]

Importer of Controlled Substances Application: S&B Pharma LLC DBA Norac Pharma

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: S&B Pharma LLC DBA Norac Pharma has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before March 16, 2026. Such persons may also file a written request for a hearing on the application on or before March 16, 2026.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on January 13, 2026, S&B Pharma LLC DBA Norac Pharma, 405 South Motor Avenue, Azusa, California 91702, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
4-Anilino-N-phenethyl-4-piperidine (ANPP)	8333	II
Tapentadol	9780	II

The company plans to import intermediate forms of Tapentadol (9780) for further manufacturing prior to distribution to its customers. The company plans to import ANPP (8333) to bulk manufacture other controlled substances for distribution to its customers. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Thomas Prevoznik,

Deputy Assistant Administrator.

[FR Doc. 2026–02914 Filed 2–12–26; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1654]

Bulk Manufacturer of Controlled Substances Application: Scottsdale Research Institute

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Scottsdale Research Institute has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 14, 2026. Such persons may also file a written request for a hearing on the application on or before April 14, 2026.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on January 8, 2026, Scottsdale Research Institute, 12815 North Cave Creek Road, Phoenix,

Arizona 85022, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols ...	7370	I

The company plans to bulk manufacture the listed controlled substances to support clinical trials and distribution to their customers. No other activities for these drug codes are authorized for this registration.

Thomas Prevoznik,

Deputy Assistant Administrator.

[FR Doc. 2026–02908 Filed 2–12–26; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John Bender, M.D.; Decision and Order

On October 17, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to John Bender, M.D., of Fort Collins, Florida (Respondent). OSC/ISO, at 1. The OSC/ISO informed Respondent of the immediate suspension of his DEA Certificates of Registration Nos. BB3697577 and FB3064831, alleging that Respondent's continued registration is "an imminent danger to the public health or safety." *Id.* (quoting 21 U.S.C. 824(d)). The OSC also proposed the revocation of Respondent's registration because Respondent has committed such acts as would render his registration inconsistent with the public interest. *Id.* (citing 21 U.S.C. 823(g)(1); 824(a)(4)).

More specifically, the OSC alleges that between April 25, 2022, and June 11, 2024, Respondent filled approximately 4,244 controlled substance prescriptions issued by practitioners at his clinic without possessing a state pharmacy license or a DEA pharmacy registration, in violation of state and federal law. *Id.* at 4 (citing 21 CFR 1306.04 and 1306.06, and Colo. Rev. Stat. 12–280–120(1) and 12–280–129(1)(d)).¹ ² The OSC further

¹ The Government further alleges that Respondent violated 21 CFR 1307.11 but does not reference this provision in its Post-Hearing Brief. See OSC, at 4. The OSC also alleges that Respondent failed to report prescriptions to the Colorado Prescription Monitoring Program but the Government does not reference these allegations in its Post-Hearing Brief.

alleges that the two office locations where Respondent dispensed controlled substances operated as unregistered pharmacies. *Id.* (citing 21 U.S.C. 823(g)(1), 21 CFR 1301.11(a), 1301.13(e), Colo. Rev. Stat. 12–280–120(1), 12–280–129(1)(d)).

After conducting a hearing, Administrative Law Judge, Paul E. Soeffing issued his Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (Recommended Decision or RD) on June 2, 2025. The RD recommended that the Agency revoke Respondent's registration. RD, at 32. Respondent filed untimely exceptions to the RD.³ The Agency adopts and hereby incorporates by reference the ALJ's credibility findings,⁴ findings of fact, sanctions analysis, and recommended sanction, and summarizes and clarifies portions

Id. at 3. Accordingly, the Agency considers these allegations as abandoned and does address them.

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).

³ Respondent's Exceptions were filed on July 28, 2025, over a month after the regulatory deadline of June 22, 2025. See 21 CFR 1316.66 (requiring Exceptions to be filed "[w]ithin twenty days after the date upon which a party is served a copy of the report of the presiding officer"); June 30, 2025 Transmittal Letter from the Chief ALJ (stating that the ALJ's Recommended Decision was sent to the parties on June 2, 2025). Respondent states in its Motion for Leave to File Exceptions Out of Time that "[u]nder 21 CFR 1316.66, a party may be granted leave to file exceptions out of time when it serves the interests of justice and the other party is not prejudiced." This is a misstatement of 21 CFR 1316.66, which outlines the foregoing standard for assessing whether a party may file a response to the opposing party's Exceptions after the 20-day deadline has lapsed. Here, the Government did not file Exceptions.

In the absence of a more specific standard for assessing the timeliness of Respondent's Exceptions, the Agency considers whether Respondent has provided good cause for the untimely filing, and finds that Respondent has not. Respondent did not provide any explanation for why his Exceptions were over a month late, why he did not request an extension from the ALJ, or why the late filing should be excused. July 17, 2025 Motion for Leave. Respondent simply argued that the interests of justice require his Exceptions to be considered because the ALJ's recommendations were incorrect, unsupported, and infringed upon his constitutional rights. *Id.* at 1–2. In other words, Respondent's justification for the late filing was that he disagreed with the Recommended Decision.

Notwithstanding Respondent's failure to demonstrate good cause, the Agency exercises its discretion to consider Respondent's untimely Exceptions, in part because the Agency has not adopted the ALJ's legal analysis and finds that addressing Respondent's Exceptions provides important guidance to the registrant community on DEA's interpretations of the relevant provisions of the CSA. Ultimately, the Agency rejects Respondent's Exceptions and agrees with the ALJ's recommended sanction.

⁴ The Agency adopts the ALJ's summary of each witness's testimony, as well as the ALJ's assessment of each witness's credibility. See RD, at 3–10.

thereof herein. The Agency does not adopt the ALJ's conclusions of law, but ultimately agrees with the ALJ that revocation is the appropriate sanction.

I. 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. Here, the OSC's allegations concern the CSA's “strict requirements regarding registration[,] . . . [and] drug security” 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.” *Id.*

A. The Allegation That Respondent Unlawfully Filled Controlled Substance Prescriptions Without a Pharmacy State License or Pharmacy Registration

The CSA requires “[e]very person who dispenses, or proposes to dispense, any controlled substance” to obtain a registration according to DEA regulations, unless exempted. 21 U.S.C. 822(a)(2). The CSA defines “dispense” as “to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery.” 21 U.S.C. 802(10). Registrants are authorized to dispense controlled substances “to the extent authorized by their registration and in conformity with other provisions of [title 21 of the United States Code].” 21 U.S.C. 822(b).

There are two primary categories of dispensing: (1) filling prescriptions and (2) dispensing or administering medications directly to patients without a prescription. Pursuant to the CSA's implementing regulations, only a pharmacist “acting in the usual course of his [or her] professional practice”

may fill a prescription for a controlled substance. 21 CFR 1306.06. The regulations define a prescription as:

an order for medication which is dispensed to or for an ultimate user but does not include an order for medication which is dispensed for immediate administration to the ultimate user (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription).

21 CFR 1300.01.

A practitioner may not fill a prescription. 21 CFR 1306.06. However, a practitioner may dispense or administer a controlled substance directly to the ultimate user, without a prescription, in the usual course of his professional practice. *See supra* Section II.B. (discussing 21 U.S.C. 829(a), (b); 21 CFR 1306.11; 21 CFR 1306.21).

I. Findings of Fact

Respondent is a licensed physician in Colorado. Tr. 214–16, 241–42, 381, 408, 449; GX 2; RX 3; RD, at 17. Respondent has two DEA practitioner registrations in Fort Collins, Colorado, and Parker, Colorado. Tr. 70–71; GX 1; RD, at 4.

The Miramont Wellness Clinic (MWC)

Respondent has an ownership interest in Miramont Wellness Clinic (MWC), which has three office locations in Colorado, including two in Fort Collins (the Drake Road and Snow Mesa locations) and one in Parker (the Parker location). Tr. 79; RD, at 4. Each office has a retail store. Tr. 39–40, 78; GX 5. As of April 24, 2024, MWC employed several mid-level practitioners and physicians, including Dr. K.L., who was identified as a top ten recipient of controlled substances in Colorado. Tr. 31; RD, at 3. Dr. K.L. was the principal practitioner at the Drake Road location, while Respondent was the principal practitioner at the Snow Mesa and Parker locations. Tr. 79; RD, at 4. MWC also employed administrative staff and pharmacy technicians who were not practicing under a pharmacist's license. Tr. 58–59, 407;⁵ GX 7; RD, at 5. Respondent does not possess, and has never possessed, any pharmacy registrations for MWC with DEA or the State of Colorado. Tr. 75–76, 381; GX 69; RD, at 4–5, 16.

⁵ Respondent testified that MWC “did hire people who had degrees in pharmacy technician, but they weren't practicing under a pharmacist's license. When they come to work for me, they're practicing under a medical doctor license.” Tr. 407. Respondent further testified that one of MWC's employees, Ms. J.T., was trained as a Certified Pharmacy Technician, but she was not licensed by the Colorado Board of Pharmacy. *Id.* at 442.

MWC's Dispensing of Controlled Substances

On April 25, 2024, the Diversion Investigator (DI) assigned to this case inspected MWC's Drake Road location during an investigation of Dr. K.L. Tr. 31; RD, at 3. DI observed that this location appeared to be operating like a retail pharmacy. Tr. 35–36. There was a drive-thru for patients to fill their prescriptions and an area inside the office identified with a sign “Dispensary Rx,” that contained a pharmacy counter, a cash register, a retail waiting area, and a prescription vending machine, called VendRx, that dispensed medications. Tr. 35–39, 54–55; GX 7, at 5–7; GX 71, at 3; RD, at 3, 5. MWC's website includes a picture of the VendRx machine and states, “We also offer low-cost Prescription Dispensing, with 24 hour* prescription refills at our DirectRX vending machines.” Tr. 43; GX 5, at 1. The asterisk language states “*24 Hour dispensing available at our Miramont Drake Location.” Tr. 43–44; GX 5, at 2. Each MWC location has a VendRx machine that fills prescriptions issued by MWC's practitioners. Tr. 242; RD, at 7.

Respondent prepared a video demonstrating how the VendRx machine works. RX 7. The practitioner first generates an electronic prescription through the VendRx software by clicking on the “Write Rx” tab and entering the patient's name, gender, and date of birth, and then adding the drug type, strength, quantity, usage instructions, days' supply, number of refills, and practitioner's signature. *Id.* The practitioner then hits the “prescribe” button, and the prescription can be filled by the patient at the VendRx machine. *Id.*

The record includes video from MWC's website showing how the VendRx machine operates from the patient's perspective. Tr. 44–47, 51; GX 6. The video contains a spoken narrative that informs patients that MWC “pioneered a robotic prescription dispensing machine . . . calle[d] DirectRX . . . [that] allows [MWC's] doctors to prescribe your medications quickly during your office visits.” GX 6; GX 70. It instructs patients to “simply walk up to the machine, type in your last name, follow the prompt, pay with your credit card, and you will receive your prescription and your receipt.” GX 6; GX 70. As the patient begins typing in her last name, the machine auto generates a list of patients with last names containing those letters. For example, in Respondent's demonstrative video, a woman types in “M–A,” and the machine offers two individuals with

a last name beginning with those letters. RX 7. After the woman selects the correct name and enters the patient's date of birth, a screen pops up that reads, "retrieving prescription data," followed by a screen that lists the prescription(s) that will be filled and asks for the patient's signature. *Id.*

Respondent testified that the VendRx machine cannot dispense any medications that are in a box or in small or large bottles. Tr. 389. Because of these limitations, the VendRx can only fill about 10% of the controlled substance prescriptions filled at MWC. *Id.* When medications cannot be dispensed by the machine, the machine generates a receipt, which the patient takes to the retail manager, who confirms the identity of the patient, that the patient's signature is present, and that payment has been made. *Id.* at 397. The retail manager confirms that the medication on the claim ticket matches what is in the system, prepares a label, and dispenses the medication. *Id.*

Respondent testified that even when VendRx does not dispense the medication, its inventory control system keeps a permanent log of all medications dispensed at MWC. *Id.* at 248, 389, 399. Respondent testified that MWC does not fill prescriptions for individuals who are not patients of MWC. *Id.* at 399.

Respondent's Purchases of Controlled Substances From Suppliers

DEA maintains an internal system called ARCOS (Automated Reporting and Consolidated Ordering System) that contains reports of all controlled substances that a supplier has sold to an entity. Tr. 81; RD, at 5. Suppliers are required to report to ARCOS what they have sold to DEA registrants. Tr. 83; RD, at 5. ARCOS contains the name of the supplier, the name, quantity, and strength of the controlled substance, the size of the bottles or packaging, and the National Drug Code numbers for the controlled substance. Tr. 81–82; RD, at 5. DI searched ARCOS for all practitioners at MWC, including Respondent, for the two-year period from April 24, 2022, through April 24, 2024. Tr. 83–84, 94; RD, at 5. The ARCOS information for Respondent returned numerous orders, consistent with his ranking as the fourth highest recipient of controlled substances in Colorado. Tr. 95–96, 104; GX 8–9; RD, at 5. DI testified that, in contrast, the ARCOS information for the other practitioners at MWC (aside from Dr. K.L., who ordered controlled substances for the Drake location) showed that they ordered little or no controlled

substances for MWC. Tr. 96–97, 104, 208; GX 10–22; RD, at 5.

DI served administrative subpoenas on three of Respondent's suppliers, as well as VendRx, the Colorado Board of Pharmacy, and Walgreens to authenticate the ARCOS information for Respondent. Tr. 105–11; GX 23, 25, 31, 33, 35, 37, 39, 41, 43, 58, 62, 64, 66, and 68; RD, at 5. The subpoena responses showed, and Respondent admits, that Respondent purchased the vast majority of the controlled substances that were dispensed at the Snow Mesa and Parker locations. Tr. 112–13, 116–17, 125–26, 156, 159, 208, 428–29; GX 24, 26–30, 32, 34, 36, 38, 40, 42, 67, 69; Resp. Post-hearing brief, at 24 ("[Respondent] does not dispute, that he ordered many of the medications, including controlled substances, that were dispensed at the Miramont Snow Mesa and Parker offices."); RD, at 5; *but see* Tr. 325 (Respondent's testimony that he did not begin ordering controlled substances for the Parker location until June 2023).

Dispensing of Controlled Substances at MWC

From April 25, 2022 to April 25, 2024, MWC filled approximately 4,244 controlled substance prescriptions that were issued by practitioners other than Respondent at the Snow Mesa and Parker locations. Tr. 158–61; GX 40, 42, 67; RD, at 5. These prescriptions were filled by the VendRx machines and by unlicensed employees, and they were filled with controlled substances that Respondent had purchased. *Id.* Tr. 112–13, 116–17, 125–26, 156, 159, 208; GX 24, 26–30, 32, 34, 36, 38, 40, 42, 67, 69; Resp. Post-hearing brief, at 24; RD, at 5. The controlled substances dispensed included a schedule II opioid (hydrocodone-acetaminophen); a schedule III hormone (testosterone-cypionate); schedule IV benzodiazepines, sedatives, painkillers, and weight loss drugs (lorazepam, diazepam, alprazolam, clonazepam, zolpidem, carisoprodol, tramadol, eszopiclone, and phentermine); and a schedule V opioid (codeine-guaifenesin). Tr. 161–63; GX 40, 42, 67; RD, at 2–3, 5, 14, 23. The practitioners who issued these prescriptions included physicians, nurse practitioners, and physician assistants. Tr. 201–02; GX 3.

For example, Dr. P.M.J. is a physician at MWC's Snow Mesa location. Tr. 382; RX 21, 22; RD, at 9. Dr. P.M.J. is a primary care physician who primarily serves diabetic patients, but she dispenses some controlled substances, including alprazolam, lorazepam, clonazepam, phentermine, tramadol, testosterone, and zolpidem. Tr. 385–866, 445; GX 40, at 36–37; RD, at 9. The

dispensing data for the VendRx machine shows that approximately 50 controlled substance prescriptions issued by Dr. P.M.J. were filled from "staff storage" at the Snow Mesa location. GX 40, at 36–37. Dr. P.M.J.'s data shows that she did not purchase any controlled substances for any of the MWC locations, GX 13; these prescriptions were filled from Respondent's stock. Respondent admitted on cross-examination that he purchased the phentermine that Dr. P.M.J. dispensed. Tr. 446; RD, at 9.

Government Exhibits 40 and 42 list the additional prescriptions that were filled at MWC for patients of MWC's practitioners from the stock of controlled substances that Respondent purchased.

Accordingly, the Agency finds based on substantial evidence that Respondent allowed thousands⁶ of prescriptions⁷ issued by MWC's practitioners to be filled from the stock of controlled substances that Respondent purchased. The Agency finds based on substantial evidence that these prescriptions were filled by a machine or by unlicensed individuals and that neither Respondent nor the prescribing practitioner was involved in filling them. Finally, the Agency finds based on substantial evidence that MWC did not possess a pharmacy license with DEA or the State of Colorado.

II. 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.

⁶ Respondent testified that he did not begin ordering controlled substances for the Parker location until June 2023. Tr. 325. Government Exhibit 42 shows that approximately 1,000 prescriptions were filled at the Parker location before or during June 2023. GX 42, at 1–13. Thus, out of the 4,244 prescriptions filled at the Parker and Snow Mesa locations from April 25, 2022 to April 25, 2024, approximately 1,000 were not filled using controlled substances that Respondent purchased. The Agency is not considering these 1,000 as part of its decision in this matter.

⁷ The orders submitted by MWC's practitioners through the VendRx software were prescriptions under 21 CFR 1300.01 because they were "order[s] for medication which [were] dispensed to or for an ultimate user," and they were not for "immediate administration to the ultimate user." Respondent's video demonstration of the VendRx software showed the practitioner generate an electronic prescription by clicking on the "Write Rx" tab and entering the details required for the prescription, including the patient's identifying details, the medication details and instructions, and the practitioner's signature. RX 7. The practitioner then hit the "prescribe" button, and the prescription was filled by the patient at the machine. *Id.*

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).⁸

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); see *Morall v. Drug Enf’t Admin.*, 412 F.3d 165, 181 (D.C. Cir. 2005) (describing the Agency’s adjudicative process as “applying a multi-factor test through case-by-case adjudication,” quoting *LeMoyne-Owen Coll. v. N.L.R.B.*, 357 F.3d 55, 61 (D.C. Cir. 2004)). 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).

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), the Government’s evidence in support of its *prima facie* case is confined to Factors B and D. OSC, at 3–4. 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, as found above, the Agency finds that Respondent allowed thousands of prescriptions issued by MWC’s practitioners to be filled at MWC from a stock of controlled substances that Respondent had purchased. The controlled substances were dispensed by a machine and by unlicensed employees, and neither Respondent nor the prescribing practitioner was involved in the process of filling them. MWC did not have a pharmacy registration that would permit Respondent or MWC to fill controlled substance prescriptions. Accordingly, the Agency finds substantial record evidence that Respondent violated 21 CFR 1306.06, which provides that “[a] prescription for a controlled substance may only be filled by a pharmacist, acting in the usual course of his professional practice”

Respondent’s Exceptions

In his Exceptions, Respondent quotes various statutes and regulations out of context to imply that a practitioner may fill a controlled substance prescription for another practitioner. See Respondent’s Exceptions, at 6–9 (“Hence, regulations permit delivery to a patient by the practitioner, or by another individual pursuant to the practitioner’s lawful order.”) This interpretation is clearly contradicted by the plain language of the pertinent statutes and regulations. The CSA’s definitions of “dispense” and “dispenser,” along with corresponding statutes and regulations, delineate a clear distinction between lawful direct dispensing of controlled substances by

practitioners and lawful filling of prescriptions by pharmacists. The CSA defines dispense as:

to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling or compounding necessary to prepare the substance for such delivery.

21 U.S.C. 802(10). The conjunction “or” signals that dispensing may be done “by . . . a practitioner” or “pursuant to the lawful order of, a practitioner.” When read together with 21 CFR 1306.06’s mandate that only pharmacists may fill prescriptions, the CSA creates two categories of permissible dispensing: (1) delivery/dispensing of a controlled substance *by a practitioner* “to an ultimate user,” and (2) delivery/dispensing of a controlled substance *by a pharmacist* “to an ultimate user . . . pursuant to the lawful order of, a practitioner.” In other words, a practitioner may dispense a controlled substance to the ultimate user without a prescription, and a pharmacist may dispense a controlled substance to the ultimate user pursuant to a prescription issued by a practitioner.

The CSA and its implementing regulations further clarify that practitioners may only dispense controlled substances “*directly* . . . to an ultimate user” in the usual course of their professional practice. 21 U.S.C. 829(a), (b) (“Except when dispensed directly by a practitioner . . . to an ultimate user, no controlled substance in schedule[s] II through IV, . . . may be dispensed without the written prescription of a practitioner”); 21 CFR 1306.11 (“An individual practitioner may administer or dispense directly a controlled substance listed in Schedule II in the course of his professional practice without a prescription”); 21 CFR 1306.21 (“An individual practitioner may administer or dispense directly a controlled substance listed in Schedule III, IV, or V in the course of his/her professional practice without a prescription, subject to” regulations pertaining to narcotic drugs.). The CSA defines “ultimate user” as “a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household” *Id.*

Neither the CSA nor its implementing regulations provides further guidance on what it means for a practitioner to dispense a controlled substance “directly . . . to an ultimate user.” However, the word “directly” leaves

⁸ 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).

little ambiguity as to Congress's intent. Representative definitions of the words "direct" and "directly" from various dictionaries include: "without anyone or anything else being involved or between,"⁹ "[i]n a straight line or course,"¹⁰ "immediately,"¹¹ "in immediate physical contact,"¹² and "to cause to turn, move, or point undeviatingly or to follow a straight course."¹³ These definitions support the Agency's plain language reading that when a practitioner dispenses a controlled substance without a prescription, the practitioner must personally deliver the controlled substance to his patient without using an intermediary.¹⁴

This plain language reading is clearly consistent with Congress's intent when considered in the context of the CSA's implementation of a "closed regulatory system" with "strict requirements" intended to "to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances." *Gonzales v. Raich*, 545 U.S. at 12–14. The manner in which Respondent

permitted controlled substances to be dispensed at MWC could have led to the abuse and diversion of the controlled substances that Respondent purchased. Because the controlled substances were dispensed by the VendRx machine or unlicensed employees, no licensed practitioner or pharmacist physically handled the medication to ensure that the correct medication was dispensed or that it was dispensed in the correct quantity or dosage. Nor did a practitioner confirm that a patient who received a controlled substance from the machine was the same patient to whom the prescription was issued. As Respondent's video exhibit demonstrates, a prescription can be filled at the VendRx machine by any individual who knows the name and date of birth of an individual prescribed a controlled substance at MWC, with no photo identification required.¹⁵ GX 7; Tr. 393, 436–37, 444; *but see* Tr. 436–37 (Respondent's testimony that his employees "are watching the area and on guard in their control of the lobby"), 444–45. Thus, the controlled substances that Respondent dispensed exited the closed regulatory loop established by Congress when they were dispensed by individuals not trained to assess the legitimacy of prescriptions or ensure that prescriptions were filled in accordance with applicable state and federal laws and regulations. *See* 21 CFR 1306.04 ("The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription."); *see also Trinity Pharmacy II*, 83 FR 7304, 7331 (2018) (The corresponding responsibility requires "pharmacists to identify and resolve suspicions that a prescription is illegitimate . . . before 'knowingly filling such a purported prescription.'").

DEA's interpretation of the CSA in this context is not new or unexpected. The Agency has previously sanctioned practitioners for filling prescriptions issued by other practitioners. For example, in *Margy Temponeras, M.D.*, the Agency revoked a physician's

registration who—despite not holding a pharmacy registration—operated a dispensary out of which she dispensed "thousands of controlled substance prescriptions which were issued by her father, who was not registered at the location of [the respondent's] practice."¹⁶ 77 FR 45675, 45676 (2022); RD, at 15. The respondent's dispensary was located at the same address as her medical practice. *Id.* at 45,677; RD, at 15. The Administrator held that the

¹⁶ Respondent attempts to distinguish *Temponeras* because the physician whose prescriptions were filled by the respondent in *Temponeras* was not registered at the office where the respondent filled his prescriptions, whereas the practitioners in this case were registered where Respondent filled their prescriptions. Resp. Exceptions, at 10–11. However, 1306.06 clearly mandates that prescriptions may only be filled by registered pharmacists, without any exceptions for practitioners registered at the same office location, and Respondent does not cite to any authority suggesting that the registered address of the prescribing practitioner is relevant.

Respondent further argues that the *Temponeras* decision "is the primary cited basis for findings that [Respondent] violated federal law," and this decision "is not binding and would not even be entitled to judicial deference." *Id.* (citing *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412–13 (2024)). Although Respondent is correct that *Loper Bright* instructs federal courts to independently interpret statutes rather than relying on an Agency's interpretation, an Agency is still charged with enforcing and interpreting the statutes that it implements, and may reference prior Agency decisions in doing so. *Temponeras*, and this Decision, are based on a logical, plain language interpretation of federal regulations that state that only pharmacists may fill controlled substance prescriptions, and that practitioners must dispense controlled substances directly to the ultimate user. Moreover, the *Temponeras* decision is also relevant to show that Respondent had notice of the Agency's reasonable interpretation of the applicable statutes and regulations.

Finally, Respondent argues that *Temponeras* involved an Ohio law that required prescribing physicians to personally furnish drugs to the patient, whereas the ALJ in this case found that Colorado law did not require personal dispensation by the prescribing practitioner. Resp. Exceptions, at 11. As discussed throughout this Decision, the Agency does not adopt the ALJ's legal analysis and, accordingly, does not adopt his conclusions regarding Colorado law. The Agency need not make findings regarding Colorado state law, because the CSA's mandate that practitioners dispense controlled substances directly to their patients requires practitioners to personally deliver controlled substances to their patient without an intermediary. Federal law supersedes any state law that does not require direct dispensation.

The Agency notes, however, that the language of the applicable Colorado law is very similar to the Ohio law cited in *Temponeras*. The Ohio law exempts a physician from the unauthorized practice of pharmacy if he "personally furnish[es] . . . [his] patients with drugs, within [his] scope of professional practice." *Temponeras*, 77 FR at 45678 (citing Ohio Rev. Code Ann. § 4729.29(A)(1)). Similarly, the pertinent Colorado law states that "[a] practitioner may personally compound and dispense for any patient under the practitioner's care any drug that the practitioner is authorized to prescribe and that the practitioner deems desirable or necessary in the treatment of any condition being treated by the practitioner." Colo. Rev. Stat. §§ 12–280–120(6).

⁹ Cambridge Online Dictionary, available at <https://dictionary.cambridge.org/us/dictionary/english/direct>.

¹⁰ Black's Law Dictionary (12th ed. 2024).

¹¹ Black's Law Dictionary (12th ed. 2024).

¹² Merriam-Webster Online Dictionary, available at <https://www.merriam-webster.com/dictionary/directly>.

¹³ Merriam-Webster Online Dictionary, available at <https://www.merriam-webster.com/dictionary/direct>.

¹⁴ Respondent argues in his Exceptions that "[n]either the ALJ's Decision nor DEA's Order cites a statute or regulation requiring that the ordering practitioner physically deliver a controlled substance to the patient," and asserts that courts have interpreted 1306.04(a) "to prohibit a provider from dispensing a controlled substance for an illegitimate purpose outside the usual course of medical practice—not to require that the provider personally deliver the medication to the patient." Resp. Exceptions, at 7. However, none of the cases that Respondent cites involves a physician who authorized unlicensed employees to dispense controlled substances purchased by that physician, and Respondent has not identified any language in these cases that contradicts the Agency's reasonable interpretation of the relevant statutes and regulations discussed herein. Respondent's assertion that "[i]t is undisputed that [Respondent] dispensed controlled substances for legitimate medical purposes in the course of professional practice" is not supported by the record. Respondent's Exceptions, 8. Respondent's dispensing of controlled substances violated the CSA's implementing regulations, which require that a practitioner directly dispense controlled substances to the ultimate user.

Respondent also asserts that "[t]here is no evidence that [he] committed a knowing or intentional violation." Resp. Exceptions, at 3, 8. The Agency, however, has repeatedly held that "misconduct need not be intentional to revoke a registrant's registration," and that "[c]areless or negligent handling of controlled substances creates the opportunity for diversion and could justify revocation or denial." *See, e.g., Peter Dashkoff, M.D.*, 90 FR 19313, 19316 n.9 (2025) (citing *Paul J. Caragine*, 63 FR 51592, 51601 (1998)).

¹⁵ Respondent's video also demonstrated that the VendRx machine begins populating a list of names after the user types in only two letters. RX 7. For example, when the user types in "M–A," the machine provides two names where the letters "M–A" begin the patient's first or last name. *Id.* With the breadth of personal information currently available on the internet, a user could quickly type a few sets of letters that are common in first or last names, select a name, and conduct a quick internet search using the patient's name and general location to potentially find the patient's date of birth. The user could then purchase a controlled substance that was not prescribed for him.

respondent violated 21 CFR 1306.06 “because she exceeded the authority granted by her registration when she dispensed controlled substance prescriptions issued by her father without holding a pharmacy registration.” *Id.* (citing 21 U.S.C. 822(b)). The Agency also held in *Fred Samimi, M.D.*, that a physician’s practice of allowing his office staff to dispense controlled substances violated the CSA and its regulations, and articulated the Agency’s concerns about the heightened risk of abuse and diversion from this practice:

[T]he unsupervised dispensing of controlled substances by unlicensed individuals creates a heightened risk that those individuals will divert the drugs. . . . So too, allowing unlicensed persons, who likely have no training in identifying persons engaged in drug abuse or diversion, to dispense controlled substances without supervision, increases the opportunity for those persons who are self-abusing or engaged in diversion to obtain controlled substances.

79 FR 18698, 18710 (2014) (citing *Temponeras* 77 FR at 45677–78; *Gonzales v. Oregon*, 546 U.S. at 274).¹⁷

Although Respondent tries to muddy the distinction between filling prescriptions and dispensing controlled substances, Respondent was unable to avoid referring to MWC’s dispensing activities as “filling prescriptions.” *Cf.* Tr. 242 (“[W]e don’t fill outside prescriptions. We only dispense and fill medication orders.”); Respondent’s Post-Hearing Brief, at 7 (stating that “[the medical office] does not fill prescriptions for patients issued by providers outside of [the medical office]”). Nevertheless, MWC’s distribution of controlled substances was clearly unlawful whether considered under the standards applicable to practitioners dispensing controlled substances or pharmacists filling prescriptions.

In the RD, the ALJ sustained violations of 21 CFR 1306.06 (requiring that prescriptions be filled by pharmacists) and 21 CFR 1306.04 (providing that “[t]he responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with

the pharmacist who fills the prescription”). Respondent argues that the ALJ erred in finding that he violated 21 CFR 1306.04, and espouses two primary arguments in support: First, that the way in which the ALJ phrased the 1306.04 violation was different than what the Government alleged in the OSC, therefore raising a notice issue; and second, that the Government has not proven the requisite elements of 21 CFR 1306.04.

The Agency does not adopt the ALJ’s legal analysis in this Final Order and does not sustain a violation of 21 CFR 1306.04. Thus, Respondent’s notice concerns are moot. The Agency finds that Respondent’s dispensing activities are more accurately portrayed as “filling prescriptions” than “dispensing controlled substances,” which makes 21 CFR 1306.06 the more pertinent regulation. The Agency need not find violations of both 21 CFR 1306.04 and 1306.06 where 21 CFR 1306.06 more directly addresses Respondent’s unauthorized filling of prescriptions. However, the Agency notes that 21 CFR 1306.04 does not support Respondent’s defense. In fact, the error of Respondent’s dispensing practices is evident from a close examination of 21 CFR 1306.04, which states that:

A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

This regulation reinforces the distinction between filling prescriptions and dispensing controlled substances and makes clear that a licensed professional—either a pharmacist or a practitioner—must be responsible for ensuring that dispensing is “proper.” *Id.* Here, Respondent delegated the responsibility for proper dispensing to an unlicensed employee (and/or a machine), which clearly contravenes the structure outlined by 21 CFR 1306.04. Thus, while the Agency does not sustain a violation of 21 CFR 1306.04 because the nature of his misconduct is more accurately captured under 21 CFR 1306.06, Respondent’s attempt to use 21 CFR 1306.04 as a defense fails.

Respondent also argues that he did not violate 21 CFR 1306.06. Respondent argues that 21 CFR 1306.06 “addresses requirements that a pharmacist be properly registered and acting in the usual course of professional practice when filling a prescription,” and here, Respondent argues that “controlled

substances were dispensed to patients pursuant to lawful practitioner orders, as authorized by federal and state law.” Respondent’s Exceptions, at 9. Respondent argues that the ALJ made conflicting findings that on the one hand he violated 1306.06 because the prescriptions were not filled by a pharmacist, and on the other hand that he was not required to have a pharmacy registration because he was not operating a pharmacy. As stated above, the Agency does not adopt the ALJ’s legal analysis in this case. The Agency finds that MWC’s staff was filling prescriptions issued by MWC’s practitioners, which is an activity that may only be done by a pharmacist.¹⁸ The only lawful way for Respondent, a practitioner, to distribute the large quantity of controlled substances that he purchased would have been for him to dispense them directly to his own patients.¹⁹

¹⁸ The ALJ did not sustain the Government’s allegations that MWC’s locations were operating as unregistered pharmacies. RD, at 24–25. The Agency agrees with the ALJ that the Government did not prove that Respondent violated Colorado law by “falsely assum[ing] the title of or falsely represent[ing] that [he was] a pharmacist” or by “falsely represent[ing] that MWC was a ‘‘registered outlet.’” *Id.* at 26 (declining to find a violation of Colo. Rev. Stat. 12–280–129(1)(d)). Although MWC did advertise that it dispensed medications, there is no evidence that Respondent or MWC falsely represented that MWC was a pharmacy, and MWC did not fill prescriptions of outside patients. The Agency also agrees with the ALJ that the Government did not prove that Respondent violated 21 CFR 1301.13(e), which requires that any person engaging in more than one group of “independent activities” obtain a separate registration for each group of activities, because 21 CFR 1301.13(e) does not distinguish among different dispensing activities (e.g., pharmacists filling prescriptions versus practitioners dispensing medications) in its definition of “independent activities.” RD, at 22. The Agency further finds that the Government did not adequately develop its arguments as to why the other provisions cited—including 21 U.S.C. 823(g)(1), which governs registration requirements for practitioners, Colo. Rev. Stat. 12–280–120(1), which requires that controlled substances be dispensed only in accordance with that section, and 21 CFR 1301.11(a), which requires that every person who dispenses controlled substances obtain a DEA registration—support the allegation that Respondent was operating unregistered pharmacies. OSC/ISO, at 4.

However, the Agency notes that MWC’s unlicensed staff filled prescriptions, which is an activity that may only be done by a pharmacist. Respondent’s practitioner registration did not authorize him to allow unlicensed staff to fill prescriptions for controlled substance or dispense controlled substances that he purchased. In other words, Respondent exceeded the authority granted by his practitioner registration.

¹⁹ Respondent argues that Colorado law permits mid-level practitioners to dispense controlled substances purchased by their supervising physician. *See, e.g.*, Resp. Exceptions, at 17. The Agency does not make any findings related to Colorado law, because Respondent’s conduct clearly violated the CSA and its implementing regulations. However, the Agency notes that even if Colorado law permitted mid-level practitioners to

¹⁷ While Respondent correctly observes in its Exceptions that the CSA permits agents or employees of registrants to possess controlled substances, they may only do so while “acting in the usual course of [their] business or employment,” which does not include performing activities that they are not trained or registered to do, such as dispensing controlled substances, which must be done by registered pharmacists or practitioners. *See* Resp. Exceptions, at 7; 21 CFR 1306.04, 1306.06.

Respondent further argues that the ALJ improperly weighed the public interest factors by failing to consider positive evidence under factors B and D and failing to consider that factors A, C, and E weigh in his favor. However, as previously stated, federal courts have repeatedly affirmed that “the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant.” *Jayam Krishna-Iyer*, 74 FR at 462. Because the public interest inquiry “focuses on protecting the public interest[,] what matters is the seriousness of the registrant’s misconduct,” *id.*, and findings under a single factor can support the revocation of a registration. *MacKay*, 664 F.3d at 821. Here, the Agency finds that the Government has presented substantial evidence of Respondent’s non-compliance with federal law (factor D) and negative experience dispensing controlled substances (factor B), which weighs strongly against Respondent under factors B and D. Respondent allowed thousands of prescriptions for controlled substances to be filled outside of the CSA’s closed regulatory system, which could have led to abuse and diversion.

Respondent argues that the Agency should consider under factor B that only a small portion of the medications dispensed at MWC were controlled substances, that the amount of controlled substances dispensed was appropriate considering the number of patients and practitioners at MWC, that only 10% of controlled substances were dispensed through the VendRx machine, that only 10% of the prescriptions issued to MWC patients were filled at MWC, that the only schedule II controlled substance dispensed at MWC was hydrocodone, and that any patient receiving hydrocodone was subject to a urine drug screen and controlled substance contract. Respondent’s Exceptions, at 16. Respondent also argues that it is relevant to factor B that he has been licensed as a physician since July of 1993, and that he has supervised and consulted with numerous physician assistants and nurse practitioners who issue prescriptions for controlled substances.²⁰ *Id.* Finally, Respondent

dispense the controlled substances that Respondent purchased, the CSA required them to dispense the controlled substances directly to their patients. As found above, neither Respondent nor the prescribing practitioner was involved in dispensing the controlled substances to the patients. The prescribing practitioners issued prescriptions in the VendRx software that were then filled by the VendRx machine or by MWC’s employees.

²⁰ Respondent’s lengthy tenure as a physician and his supervision of mid-level practitioners is not

notes that he and all MWC providers stopped dispensing while this matter has been pending. *Id.*

The Agency does not find that these facts influence its factor B analysis. The Government’s allegations focused on the large volume of controlled substance prescriptions that MWC filled unlawfully, not whether prescriptions at MWC were issued lawfully or whether the percentage or volume of controlled substances was appropriate given the number of patients and practitioners.²¹ The Government need not prove generally that all operations at MWC were unlawful to demonstrate that revocation is warranted. The Agency has repeatedly held that “the public interest inquiry is not a numbers game in which the Government must prove a certain number of violations,” and has revoked registrations even where the Government has demonstrated only a few instances of unlawful prescribing or dispensing. *See Larry Daniels*, 82 FR at 14984 (collecting cases). Here, the Government proved that MWC unlawfully filled thousands of prescriptions for controlled substances, including at least 400 hydrocodone prescriptions, which weighs strongly against Respondent under Factors B and D.

Moreover, Respondent’s implementation of urine drug screens and opioid contracts does not negate the unlawfulness of MWC’s dispensing procedures, nor does the fact that hydrocodone was the only schedule II substance dispensed mitigate the Agency’s concerns about potential abuse and diversion of the more than 400 hydrocodone prescriptions filled

persuasive considering the substantial evidence of noncompliance with the CSA. The factor B analysis focuses on the registrant’s acts that are inconsistent with the public interest, rather than on a registrant’s neutral or positive acts and experience. *Kansky J. Delisma, M.D.*, 85 FR 23845, 23852 (2020) (citing *Randall L. Wolff, M.D.*, 77 FR 5106, 5121 n.25 (2012)).

²¹ In the absence of evidence of illegality, the Agency assumes that controlled substances at MWC were prescribed legitimately. *See, e.g., Larry C. Daniels, M.D.*, 86 FR 61630, 61611 (2021) (“With respect to consideration given to a practitioner’s positive experience in prescribing, the DEA assumes that all of the prescriptions a registrant has issued were issued lawfully, except for those prescriptions that the Government alleges were issued unlawfully.”) (citing *Wesley Pope, M.D.*, 82 FR 14944, 14984 (2017)). DEA gives no more than nominal weight to evidence that a practitioner has engaged in lawful dispensing to thousands of patients. *Syed Jawed Akhtar-Zaidi, M.D.*, 80 FR 42962, 42968 (2015) (citing *Krishna-Iyer*, 74 FR at 463); *see also Medicine Shoppe-Jonesborough*, 73 FR 364, 386 n.56 (2008) (ruling that no amount of lawful conduct could outweigh “flagrant violations” and make the misconduct somehow consistent with the public interest), *aff’d Medicine Shoppe-Jonesborough v. DEA*, 300 F. App’x 409 (6th Cir. 2008).

unlawfully. Additionally, the fact that only 10% of controlled substances were dispensed through the VendRx machine is immaterial because the remainder were dispensed by Respondent’s unlicensed employees, which is also unlawful. Finally, Respondent’s and MWC’s cessation of dispensing does not weigh in Respondent’s favor, because the immediate suspension of Respondent’s registration made it unlawful for Respondent to prescribe or dispense controlled substances.

With respect to Factor D, “[c]ompliance with applicable State, Federal, or local laws relating to controlled substances,” Respondent notes that the ALJ did not find any violations of Colorado law, that Respondent reasonably believed he was in compliance with Colorado and federal law, that Respondent had communicated with Colorado officials regarding “his understanding of governing Medical Board Rules [] that Physician Assistants and Nurse Practitioners can carry out delegated work for a physician’s patients including medication dispensing,” that DEA did not take action against Respondent in 2017 when it previously audited Respondent’s dispensing practices.²² Respondent’s Exceptions, at 17.

As discussed throughout this Decision, the Agency does not adopt the ALJ’s legal analysis or his conclusions regarding state law, and the Agency does not make any findings regarding Respondent’s compliance with state law because Respondent’s practice of allowing unlicensed staff to fill prescriptions clearly violated federal law. Respondent’s belief that he was operating in compliance with federal law was not reasonable because MWC’s dispensing practices conflicted with a

²² Because the Government’s allegations in this case range from April 25, 2022, to June 11, 2024, an audit in 2017 is irrelevant. OSC/ISO, at 4. Respondent argues that MWC’s “ordering and dispensing practices were functionally the same before and after 2017,” but there is no evidence on the record regarding Respondent’s 2017 practices, and Respondent acknowledges that the VendRx was not added until after DEA’s 2017 audit. Resp. Exceptions, at 17. It was not reasonable for Respondent to assume that a successful audit in one year portended a successful audit in later years, especially when MWC incorporated a new dispensing machine into its practice. *See, e.g., Svetlana Burtman, N.P.*, 90 FR 16881, 16882 n.3 (2025) (“Further, the Agency rejects Respondent’s theory that, if a registrant’s ‘storage and record-keeping practices’ are compliant in one year, the registrant may maintain a ‘reasonable belief’ that she will remain compliant going forward regardless of changes in the registrant’s practices or without the registrant continuously monitoring for required changes.”). Moreover, even if Respondent’s practices were identical in 2017, DEA is not precluded from enforcing the CSA simply because it did not do so in the past.

plain language reading of federal regulations governing dispensing and with prior Agency decisions espousing that interpretation. *See Temponeras*, 77 FR at 45677; *Samimi*, 79 FR at 18710. Thus, the Agency finds that factor D weighs strongly against Respondent's continued registration, as Respondent permitted thousands of controlled substances to be dispensed unlawfully over an extended time.

Although the Agency agrees with Respondent that the remaining factors do not weigh against his continued registration, the Agency need not find that each factor weighs against a registration to find that a registration is inconsistent with the public interest. *See, MacKay*, 664 F.3d at 821. Regarding factor A, although 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 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).²³ Accordingly, factor E does not weigh for or against Registrant.

Accordingly, the Agency has fully considered Respondent's Exceptions and still finds that after considering the

factors of 21 U.S.C. 823(g)(1), Respondent's continued registration is "inconsistent with the public interest." 21 U.S.C. 824(a)(4). The Agency further finds that the Government satisfied its *prima facie* burden of showing that Respondent's continued registration would be "inconsistent with the public interest." 21 U.S.C. 824(a)(4). The Agency also finds that there is insufficient mitigating evidence to rebut the Government's *prima facie* case. Thus, the only remaining issue is whether, in spite of the public interest determination, Respondent can be trusted with a registration.

III. 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 he can be entrusted with a registration. *Morall*, 412 F.3d at 174; *Jones Total Health Care Pharmacy*, 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.*, 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, the Agency agrees with the ALJ that Respondent did not accept responsibility for his conduct. RD, at 30. Respondent repeatedly testified that he believed that MWC's dispensing practices complied with federal and state law, *e.g.*, Tr. 306–07, 423, and he continued to defend MWC's conduct in his Post-hearing brief.²⁴ Respondent testified that he is very familiar with physician dispensing practices across Colorado and that MWC was "simply doing what physicians have done for 150 years in the state of Colorado, which is dispense meds." ²⁵ Tr. 306–07.

²⁴ Respondent cites two cases where the Agency determined that registrants accepted responsibility for overbilling Medicaid even though they offered an explanation for why they overbilled. Respondent's Exceptions, at 20 (citing *Melvin N. Seglin, M.D.*, 63 FR 70431, 70433 (1998); *Anibal P. Herrera, M.D.*, 61 FR 65075, 65078 (1996)). These cases are not relevant here, because Respondent did not acknowledge that his conduct was unlawful as these registrants did. Moreover, these cases are more than two decades old and apply an outdated sanctions analysis. *See infra* n.26.

²⁵ Respondent testified at the hearing that MWC operated in a similar manner to urgent care and health clinics where one physician orders controlled substances for the whole office. Tr. 307, 422. Although there are circumstances where practitioners who are agents or employees of another practitioner or institution may dispense using the DEA registration of that practitioner or institution, MWC operations did not comply with regulations governing affiliated physicians. Pursuant to 21 CFR 1301.22, which governs a practitioner using the registration of another practitioner:

An individual practitioner who is an agent or employee of another practitioner . . . registered to dispense controlled substances may, when acting in the normal course of business or employment, administer or dispense (other than by issuance of prescription) controlled substances if and to the extent that such individual practitioner is authorized or permitted to do so by the jurisdiction in which he or she practices, under the registration of the employer or principal practitioner in lieu of being registered him/herself.

This regulation is not applicable to MWC's dispensing practices because MWC's practitioners used their own DEA registrations (not Respondent's) and they issued prescriptions, which is expressly disallowed under this provision. *See, e.g.*, GX 13 (DEA registration for Dr. P.J.); GX 40, at 36 (Dispensing data for Snow Mesa showing that Dr. P.J. issued prescriptions under her DEA registration). Similarly, 21 CFR 1301.22(c), which governs practitioners using the registration of a hospital or other institution, requires the institution to designate a specific internal code number for each individual practitioner, and the practitioner prescribes or dispenses using the hospital's registration. By contrast, MWC's practitioners issued prescriptions under their own DEA registrations, and the prescriptions were filled from Respondent's stock of controlled substances. Thus, MWC's dispensing practices can be distinguished from urgent care facilities and hospitals that are operating in compliance with 21 CFR 1301.22.

Respondent argues in his post-hearing brief that the Government's expectation that each practitioner order his own controlled substances is impracticable and will lead to waste and stockpiling of medications. Resp. Post-Hearing Brief, at 27. However, as demonstrated above, the CSA has developed a framework for members of an affiliated medical group to dispense from a common

²³ Respondent argues that his career accomplishments—such as his service of thousands of patients over 30 years of medical practice and his service in the army and navy—should weigh in his favor under factor E. Respondent's Exceptions, at 15. While the Agency appreciates that Respondent is a highly-qualified and hardworking physician who has made substantial contributions to his community, community impact evidence is considered to be irrelevant to DEA revocation proceedings. *See Carol Hippenmeyer, M.D.*, 86 FR 33,748, 33,771 n.70 (2021) (citing *Frank Joseph Stirlacci, M.D.*, 85 FR 45,229, 45,239 (2020)).

Respondent testified that in 25 years of private practice he has never heard of limitations within a practice group of providers dispensing from a stock of controlled substances purchased by another member of the group. *Id.* at 423.

Respondent also attempted to minimize his conduct, which further suggests that the Agency cannot trust him with a registration. *See, e.g., Rachel Kientcha-Tita, M.D.*, 90 FR 45811, 45812 (2025) (citing *Michael A. White v. Drug Enf't Admin.*, 626 F. App'x 493, 496–97 (5th Cir. 2015)). For example, Respondent testified that only a fraction of the medications dispensed at MWC were controlled substances and that hydrocodone was the only schedule II drug dispensed at MWC. Tr. 249. However, any controlled substance dispensed outside of the CSA's closed regulatory system can result in abuse and diversion, and Respondent permitted thousands of controlled substance prescriptions, including more than 400 hydrocodone prescriptions, to be dispensed in this manner. GX 40, 42.

Respondent argues in his Exceptions that “[he] is entitled to explain why he believed the challenged conduct was permitted, while making clear that he respects the agency’s interpretation and will not engage in alleged improper conduct.” Resp. Exceptions, at 20. Respondent argues that there would be “significant due process implications” if the Agency “interpret[ed] acceptance of responsibility as requiring that he *also* admit premeditated wrongdoing,” because it “would nullify his right to defend against the government’s [case].” *Id.* at 21. However, DEA has long held that “[w]hen a registrant has committed acts inconsistent with the public interest, [he] must both accept responsibility and demonstrate that [he] has undertaken corrective measures.” *Janet S. Pettyjohn, D.O.*, 89 FR at 82641. Federal courts have affirmed that “DEA may properly consider a registrant’s acceptance of responsibility in determining if registration should be revoked.” *Jones Total Health Care Pharmacy*, 881 F.3d at 830. According to the eleventh circuit, “[i]f a [registrant] has failed to comply with its responsibilities in the past, it makes sense for the agency to consider whether the [registrant] will change its behavior in the future.” *Id.*

Here, Respondent’s assertions that he reasonably believed that MWC’s dispensing practices complied with federal law suggest that the Agency cannot trust Respondent to comply with the CSA in the future. The CSA and its

implementing regulations clearly state that prescriptions may only be filled by pharmacists, and DEA has published two decisions informing the registrant community that it is unlawful for practitioners to allow unlicensed employees to fill controlled substance prescriptions.

Respondent also argues that he “[look] responsibility for the underlying conduct” because he testified that “the buck stops with him” at MWC and he has “the ultimate responsibility” for MWC’s patients and employees. Resp. Exceptions, at 19–20 (citing Tr. 294, 426–27, 393, 447–48). However, these statements were vague and did not address the legality of MWC’s dispensing practices. Respondent maintained at the hearing and in post-hearing filings that MWC’s dispensing practices were legal under federal and state law. *See, e.g.,* Tr. 306–07, 423; Resp. Post-Hearing Brief, at 17 (“[Respondent] reasonably believed that practices at [MWC] were in compliance with state and federal law.”); Resp. Exceptions, at 6–19. Accordingly, the Agency rejects Respondent’s Exceptions and agrees with the ALJ that Respondent failed to unequivocally accept responsibility for his misconduct.

Acceptance of responsibility and remedial measures are assessed in the context of the “egregiousness of the violations and the [DEA’s] interest in deterring similar misconduct by [the] Respondent in the future as well as on the part of others.” *Daniel A. Glick, D.D.S.*, 80 FR 74800, 74810 (2015); *OakmontScript Limited Partnership*, 87 FR 21546, 21545 (2022). Here, the Agency agrees with the ALJ that the egregiousness of Respondent’s conduct favors revocation. RD, at 31. As the ALJ stated, “Respondent’s violations were not limited to a single instance or a single type of violation, but consisted of widespread violations involving numerous practitioners at his medical offices and thousands of controlled substance prescriptions.” *Id.* Respondent was the fourth highest purchaser of controlled substances in Colorado, tr. 95–96, and authorized MWC’s staff to fill thousands of prescriptions without a pharmacy registration. Over 400 of these prescriptions were for a dangerous and highly-abused schedule II opioid. GX 40.

Furthermore, considerations of specific and general deterrence in this case militate in favor of revocation. RD, at 31. Although Respondent testified that he will respect DEA’s interpretation of the CSA and cease filling controlled substance prescriptions going forward,

Respondent’s failure to accept responsibility suggests that he does not appreciate the registrant’s obligation to be knowledgeable of the CSA and DEA’s plain language interpretations of the CSA, and, therefore, may not be deterred from violating the CSA in the future.²⁶ Interests of general deterrence

²⁶ Respondent argues that it would be improper for DEA to revoke his registration because “[t]here is no evidence that any alleged improper practice would recur,” and Respondent has implemented “remedial systems that preclude recurrence.” Resp. Exceptions, at 18. While the Agency is not required to consider remedial evidence when a Respondent has not accepted responsibility, *see Salman Akbar, M.D.*, 86 FR 52181, 52195 (2021), Respondent’s only evidence of remediation appears to be the cessation of MWC’s unlawful dispensing practices. Cessation of unlawful behavior after Government action is not remedial evidence, especially here, where the ISO stripped Respondent of all authority to dispense, prescribe, or handle controlled substances. OSC/ISO, at 1, 5. The Agency has determined that revocation is the appropriate remedy in this case based on the extent and egregiousness of Respondent’s misconduct and his failure to accept responsibility.

Respondent argues that “[t]his case is markedly distinct from others in which DEA has imposed revocation or a lesser sanction,” and references several cases that are more than two decades old. Resp. Exceptions, at 18. As the Agency recently stated in *Mary A. Vreeke, M.D.*, the opioid epidemic has surged in the past decade, and “[t]he Agency has [] departed from some of its more lenient sanction policies, citing the need to protect the public from abuse and diversion.” 89 FR 75567, 75572 (2024). For example, the Agency has repeatedly reaffirmed that an unequivocal acceptance of responsibility is critical for a registrant to regain the Agency’s trust and maintain a registration. *See, e.g., Jones Total Health Care Pharmacy*, 881 F.3d at 833 (rejecting respondent’s argument that its conduct was not egregious enough to warrant a sanction of revocation and highlighting the Agency’s historical focus on acceptance of responsibility: “The DEA decisions Petitioners rely on are distinguishable because, in each of the decisions, the agency found that the registrant had rebutted the government’s case by, among other things, admitting fault or expressing remorse. . . . Petitioners . . . do not cite any decision in which the DEA has continued a registration despite finding that the registrant did not fully accept responsibility”); *MacKay*, 664 F.3d at 822 (finding that “because [the respondent] ha[d] not accepted responsibility for his conduct, revocation of his registration [was] entirely consistent with DEA policy”); *Jeffery J. Becker, D.D.S.*, 77 FR 72387, 72408 (2012) (“Agency precedent has firmly placed acknowledgement of guilt and acceptance of responsibility as conditions precedent to merit the granting or continuation of status as a registrant.”); *Jayam Krishna-Iyer*, 74 FR at 464 (“even where the Agency’s proof establishes that a practitioner has committed only a few acts of diversion, this Agency will not grant or continue the practitioner’s registration unless he accepts responsibility for his misconduct”).

Not only do the decisions Respondent references use an outdated sanctions framework, but they are factually distinguishable from this case. Resp. Exceptions, at 19–20. Several of these cases involve registrants with substance abuse issues, which raise distinct considerations, and the Agency has occasionally shown leniency towards registrants who accept responsibility and demonstrate that they have undergone successful treatment for substance abuse. For example, although the registrant in *Karen A. Kruger, M.D.*, unlawfully

stockpile of controlled substances if they comply with the requirements of the regulations.

also support a sanction of revocation. Any sanction less than revocation would signal to the registrant community that allowing unlicensed employees to fill thousands of prescriptions for schedule II through V controlled substances may be excused, even where Respondent has failed to accept responsibility. See *Joseph Gaudio, M.D.*, 74 FR 10083, 10095 (2009). Distributing such a large volume of controlled substances outside of the closed regulatory system poses a significant risk to the public, and the Agency bears the responsibility of deterring misconduct that endangers the public. *David A. Ruben, M.D.*, 78 FR 38363, 38385 (2013). Therefore, the Agency finds that the egregiousness of the Respondent's behavior and the interests of specific and general deterrence support a sanction of revocation.

In sum, Respondent has not offered sufficient credible evidence on the record to rebut the Government's case for revocation and Respondent has not demonstrated that he can be entrusted with the responsibility of registration. Accordingly, the Agency will order that Respondent's registration be revoked.

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 Certificates of Registration

prescribed diethylpropion to herself using fictitious names, she accepted responsibility, testified that she was addicted, and underwent successful treatment for her addiction. 69 FR 7016 (2004). The Agency highlighted the importance of the respondent's acceptance of responsibility in its decision not to revoke, and noted that "[t]he Acting Deputy Administrator finds significant the Respondent's ready willingness to cooperate with law enforcement authorities when questioned about allegations of her improperly prescribing." *Id.* at 7017–18. In *Theodore Neujahr, D.V.M.*, the Agency likewise noted that much of the respondent's unlawful behavior was a result of his addiction, and because the respondent had been sober for at least a decade when the decision was issued, the Agency determined that there was a low likelihood of relapse. 65 FR 5680, 5681 (2000). Similarly, the allegations against *Jeffrey Martin Ford, D.D.S.*, largely concerned self-abuse of controlled substances, and the respondent had successfully undergone treatment and been sober for over a decade at the time of the decision, which largely mitigated the Agency's concerns. 68 FR 10750, 10753 (2003). Finally, in *Paul W. Sexton*, the Agency did not sustain the majority of the Government's allegations but found that the respondent had unlawfully prescribed anabolic steroids and failed to keep complete and accurate records of controlled substances. 64 FR 25073, 25079 (1999). The Agency felt that revocation was too harsh of a sanction because the respondent accepted responsibility for the unlawful prescribing and recordkeeping deficiencies and demonstrated that he had remedied both. *Id.* By contrast, the Respondent in this case failed to accept responsibility for his misconduct and therefore failed to restore trust with the Agency.

Nos. BB3697577 and FB3064831 issued to John Bender, 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 John Bender, M.D., to renew or modify this registration, as well as any other pending application of John Bender, M.D., for registration in Colorado. This Order is effective March 16, 2026.

Signing Authority

This document of the Drug Enforcement Administration was signed on January 30, 2026, by Administrator Terrance C. 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. 2026–02902 Filed 2–12–26; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374; NRC–2026–0727]

Constellation Energy Generation, LLC; LaSalle County Station, Units 1 and 2; License Amendment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Opportunity to comment, request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Renewed Facility Operating Licenses (RFOLs) No. NPF–11 and NPF–18, issued to Constellation Energy Generation, LLC (Constellation, the licensee) for LaSalle County Station, Units 1 and 2 (LaSalle). The proposed license amendments, if granted, would temporarily revise the Technical Specification (TS) Limiting Condition for Operation (LCO) 3.3.7.1, "Control Room Area Filtration (CRAF) System Instrumentation," until December 31, 2027. The Atomic Energy Act of 1954, as amended, (the Act)

grants the Commission authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person. For this amendment request, the NRC proposes to determine that it involves NSHC.

DATES: Submit comments by March 16, 2026. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Requests for a hearing or petition for leave to intervene must be filed by April 14, 2026.

ADDRESSES: You may submit comments by any of the following methods however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2026–0727. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301–415–1003; email: Bridget.Curran@nrc.gov. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN–5–A85, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Robert Kuntz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3733; email: Robert.Kuntz@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2026–0727 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website*: Go to <https://www.regulations.gov> and search for Docket ID NRC–2026–0727.

- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. The amendment request is available in ADAMS under Accession No. ML26028A402.

- *NRC's PDR*: The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2026–0727 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of amendments to Renewed Facility Operating Licenses (RFOL) Nos. NPF–11 and NPF–18 for LaSalle County Station, Units 1 and 2 (LaSalle), located in LaSalle County, Illinois.

Constellation Energy Generation, LLC (Constellation, the licensee) submitted the request for these license amendments via letter dated January 28, 2026 (ADAMS Accession No. ML26028A402). The amendments, if granted, would temporarily revise the Technical Specification (TS) Limiting Condition for Operation (LCO) 3.3.7.1, "Control Room Area Filtration (CRAF) System Instrumentation," such that, if one of the CRAF trip subsystems becomes inoperable, the licensee will have 21 days to restore the inoperable subsystem. During that period, automatic actuation is not single-failure proof. This change would only apply to radiation monitor failure and apply until December 31, 2027. The proposed change would also fix a typographical error in the TS.

Before issuance of the proposed license amendments, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The Commission finds that the licensee's analyses provided, consistent with section 50.91 of title 10 of the *Code of Federal Regulations* (10 CFR) "Notice for public comment; State consultation," are sufficient to support the proposed determination that this amendment request involves NSHC. Under the NRC's regulations in 10 CFR 50.92, operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented as follows:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not alter any of the previously evaluated accidents in the UFSAR [Updated Final Safety Analysis Report]. The proposed changes do not affect any of the initiators of previously evaluated accidents in a manner that would increase the likelihood of the event. The proposed change would allow one of the two trip systems for a CRAF subsystem to be inoperable for up to 21 days. This would result in single failure criterion not to being maintained for this time period. However, manual initiation of the CRAF subsystem would continue to

be available per station operating procedures in the event that automatic initiation does not occur from the remaining operable trip system.

The CRAF subsystem is not an initiator of any accident previously evaluated. The CRAF and the associated subsystems are used to mitigate the consequences of an accident. It is designed to maintain the Control Room habitable for operators and continued equipment operation. The CRAF is not an accident initiator for any previously evaluated accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes will not introduce any new operating modes, safety-related equipment lineups, accident scenarios, system interactions, or failure modes that would create a new or different type of accident. Failure of the system will have the same effect as the present design.

The CRAF subsystem is not being modified by this proposed change, only the associated TS. The proposed change would allow one of the two trip systems for a CRAF subsystem to be inoperable for up to 21 days. The changes do not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation (*e.g.*, continue to use the same procedures to manually start the system in the event automatic actuation fails). In addition, the changes do not impose any new or different requirements that could involve a new or different kind of accident previously evaluated. The changes do not alter assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not significantly reduce the margin of safety. The CRAF subsystem is not being modified by this proposed change, only the associated TS. The CRAF subsystem will still provide a habitable environment by ensuring adequate radiation protection to permit access to and occupancy of the control room following a DBA [design basis accident]. The proposed change would allow one

of the two trip systems for a CRAF subsystem to be inoperable for up to 21 days during which time the automatic actuation is not single-failure proof. Existing procedures for manual start or restoration of the CRAF system remain in place and are deemed adequate for the 21-day period to ensure that habitability of the control is maintained following an accident in the event of automatic actuation failure. The additional time provided for the condition with one trip system inoperable does not change any analyses, system operational setpoints, or limited safety system settings required by the accident analyses.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves NSHC.

The Commission is seeking public comments on this proposed determination that the license amendment request involves NSHC. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to

intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053>) and on the NRC's public website (<https://www.nrc.gov/about-nrc/>

[regulatory/adjudicatory/hearing.html#participate](https://www.nrc.gov/regulatory/adjudicatory/hearing.html#participate)).

IV. Electronic Submissions and E-Filing

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the "Guidance for Electronic Submissions to the NRC" (ML13031A056), and on the NRC's public website (<https://www.nrc.gov/site-help/e-submittals.html>).

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at Hearing.Docket@nrc.gov, or by telephone at 301-415-1677, to: (1) request a digital identification (ID) certificate which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket is created, the participant must submit adjudicatory documents in the Portable Document Format. Guidance on submissions is available on the NRC's public website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends

the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed in order to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website at <https://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)-(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless otherwise excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing docket where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings

unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated January 28, 2026 (ADAMS Accession No. ML26028A402).

Attorney for licensee: Roland Blackhaus, Senior Lead Counsel-Nuclear, Vistra Corp., 325 7th Street NW, Suite 520, Washington, DC 20004.
NRC Branch Chief: Ilka Berrios.

Dated: February 11, 2026.

For the Nuclear Regulatory Commission.

Robert Kuntz,

*Project Manager, Plant Licensing Branch III,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.*

[FR Doc. 2026-02947 Filed 2-12-26; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2026-0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of February 16 and 23, and March 2, 9 16, and 23, 2026. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please contact the Reasonable Accommodations Resource by email at Reasonable_Accommodations.Resource@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301-415-1969, or by email at Betty.Thweatt@nrc.gov or Samantha.Miklaszewski@nrc.gov.

MATTERS TO BE CONSIDERED:

Week of February 16, 2026

There are no meetings scheduled for the week of February 16, 2026.

Week of February 23, 2026—Tentative

There are no meetings scheduled for the week of February 23, 2026.

Week of March 2, 2026—Tentative

There are no meetings scheduled for the week of March 2, 2026.

Week of March 9, 2026—Tentative

There are no meetings scheduled for the week of March 9, 2026.

Week of March 16, 2026—Tentative

There are no meetings scheduled for the week of March 16, 2026.

Week of March 23, 2026—Tentative

There are no meetings scheduled for the week of March 23, 2026.

CONTACT PERSON FOR MORE INFORMATION:

For more information or to verify the status of meetings, contact Wesley Held at 301-287-3591 or via email at Wesley.Held@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: February 11, 2026.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2026-02988 Filed 2-11-26; 4:15 pm]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52-025 and 52-026; NRC-2026-0628]

Southern Nuclear Operating Company; Vogtle Electric Generating Plant, Units 3 and 4; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption, on its own initiative, to Southern Nuclear Operating Company (SNC, the licensee) from a specific requirement in a voluntary regulation regarding risk-informed categorization and treatment of structures, systems and components for nuclear power reactors for Vogtle Electric Generating Plant (Vogtle), Units 3 and 4.

DATES: The exemption was issued on February 10, 2026.

ADDRESSES: Please refer to Docket ID NRC-2026-0628 when contacting the

NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC–2026–0628. Address questions about Docket IDs in [Regulations.gov](https://www.regulations.gov) to Bridget Curran; telephone: 301–415–1003; email: Bridget.Curran@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3100; email: John.Lamb@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: February 10, 2026.

For the Nuclear Regulatory Commission.

John Lamb,

Senior Project Manager, Plant Licensing Branch 2–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

Docket Nos. 52–025 and 52–026

Southern Nuclear Operating Company Vogtle Electric Generating Plant, Units 3 and 4 Exemptions

I. Background

Southern Nuclear Operating Company (SNC, the licensee) is the holder of Combined License Nos. NPF–91 and NPF–92 for the Vogtle Electric Generating Plant (Vogtle), Units 3 and 4, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. These facilities consist of two pressurized-water reactors located at the licensee's site in Burke County, Georgia, respectively.

II. Action

The NRC staff is initiating these exemptions to extend the applicability of 10 *Code of Federal Regulations* (10 CFR) 50.69, "*Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors*," paragraph (b)(1) for SNC to request the use of risk-informed treatment of structures, systems, and components (SSCs) for nuclear power reactors for Vogtle, Units 3 and 4. These exemptions would allow SNC to request a license amendment to voluntarily adopt 10 CFR 50.69 for Vogtle, Units 3 and 4. For the reasons explained below, the NRC staff has determined that the requirements of 10 CFR 50.12, "*Specific exemptions*" are met. Therefore, the exemptions from 10 CFR 50.69(b)(1) with respect to applicability may be granted.

III. Discussion

The NRC staff is initiating these exemptions based on a pre-submittal meeting held on September 17, 2025, between the NRC staff and SNC, in which SNC stated that it plans to submit a request for a license amendment to adopt 10 CFR 50.69 in the first quarter of 2026. The meeting notice was published on August 19, 2025, via the NRC's public website (Agencywide Documents Access and Management System Accession No. ML25231A077). The SNC slides are available at ADAMS

Accession No. ML25247A004. By letter dated September 25, 2025 (ML25265A043), the NRC staff issued the meeting summary.

Paragraph (b)(1) of 10 CFR 50.69, states, in part, that "[a] holder of a license to operate a light water reactor (LWR) nuclear power plant under this part [10 CFR part 50]; [. . .] ; an applicant for a construction permit or operating license under this part [10 CFR part 50]; or an applicant for . . . a combined license . . . under part 52 of this chapter; may voluntarily comply with the requirements in this section as an alternative to compliance with" certain requirements for [Risk-Informed Safety Class] RISC–3 and RISC–4 SSCs. SNC is no longer an "applicant" for a combined license under part 52 for Vogtle, Units 3 and 4. Rather, SNC is now a "holder" of a combined license to operate a LWR nuclear power plant under 10 CFR part 52 for Vogtle, Units 3 and 4. The applicability of 10 CFR 50.69(b)(1) to request voluntary adoption of 10 CFR 50.69 does not include a "holder" of a part 52 combined license. These exemptions would allow SNC to request a license amendment to voluntarily adopt 10 CFR 50.69 for Vogtle, Units 3 and 4.

Appendix D to part 52, "*Design Certification Rule for the AP1000 Design*," Section V.A.1 states: ". . . the regulations that apply to the AP1000 design are in [Title 10 of the *Code of Federal Regulations*] 10 CFR parts 20, 50, 73, and 100, codified as of January 23, 2006, that are applicable and technically relevant, as described in the [Final Safety Evaluation Report] FSER (NUREG–1793) and Supplement No. 1." The requirement in 10 CFR 52.7, "*Specific exemptions*," states, in pertinent part: "The Commission's consideration of requests for exemptions from requirements of the regulations of other parts in this chapter, which are applicable by virtue of this part, shall be governed by the exemption requirements of those parts."

Accordingly, pursuant to 10 CFR 50.12, the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, "*Domestic Licensing of Production and Utilization Facilities*," including 10 CFR 50.69, when: (1) the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) special circumstances are present. Under 10 CFR 50.12(a)(2), special circumstances include, among other things, whenever application of the regulation in the particular

circumstances would not serve, or is not necessary to achieve, the underlying purpose of the rule. Accordingly, 10 CFR 50.12 allows for the NRC to initiate exemptions.

Here, the NRC staff-initiated limited scope exemptions from the applicability requirement contained in 10 CFR 50.69(b)(1) is applicable to Vogtle, Units 3 and 4, because SNC cannot request a license amendment to voluntarily adopt 10 CFR 50.69 due to SNC being a “holder” of part 52 combined licenses as opposed to being an “applicant” for Vogtle, Units 3 and 4. According to 10 CFR 50.69(b)(1), “holders” of a part 52 combined license are not included among the licensees authorized to adopt 10 CFR 50.69. Accordingly, these NRC staff-initiated exemptions from the applicability requirement in 10 CFR 50.69(b)(1) for SNC, a 10 CFR part 52 COL holder for Vogtle, Units 3 and 4, will be governed by 10 CFR 50.12.

A. Exemptions Are Authorized by Law

SNC cannot seek voluntary adoption of 10 CFR 50.69 for Vogtle, Units 3 and 4, absent exemptions, because it is a “holder” of a combined license to operate an LWR nuclear power plant under 10 CFR part 52, which is not included in the applicability of 10 CFR 50.69(b)(1). The proposed exemptions to 10 CFR 50.69(b)(1) would allow SNC to request a license amendment to voluntarily adopt 10 CFR 50.69 for Vogtle, Units 3 and 4. The requirements in 10 CFR 50.12 allow the NRC to initiate exemptions from part 50 requirements and is also referenced in 10 CFR 52.7. Accordingly, the proposed exemptions to 10 CFR 50.69(b)(1) are allowed by 10 CFR 50.12, when the exemptions are authorized by law. Licensee and applicant compliance with 10 CFR 50.69 is voluntary, and no provisions in law expressly prohibit or otherwise restrict the application of these NRC staff-initiated exemptions. Accordingly, the proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended (AEA), or the Commission’s regulations. Therefore, the NRC staff finds that these exemptions are authorized by law.

B. The Exemptions Present No Undue Risk to Public Health and Safety

The NRC staff-initiated exemptions to 10 CFR 50.69(b)(1) would allow SNC, as a holder of a part 52 combined license, to request a license amendment to voluntarily adopt 10 CFR 50.69. As previously stated, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50, including 10 CFR 50.69, when the

exemptions will not present an undue risk to the public health and safety.

Notably, the NRC staff issued the 10 CFR 52.103(g) finding (103(g) finding) for Vogtle, Unit 3, on August 3, 2022 (package ML20290A280), and on July 31, 2023, Vogtle, Unit 3, entered commercial operation. The NRC staff issued the 103(g) finding for Vogtle, Unit 4, on July 28, 2023 (package ML22348A165 and ML22348A094), and on April 29, 2024, Vogtle, Unit 4, entered commercial operation. The NRC staff determined that SNC met all the acceptance criteria in Appendix C to the combined licenses for Vogtle, Units 3 and 4, and issued the findings that the acceptance criteria were met under 10 CFR 52.103(g). That allows SNC to operate Vogtle, Units 3 and 4, in accordance with the terms and conditions of combined license numbers NPF-91 and NPF-92, respectively.

These exemptions to 10 CFR 50.69(b)(1) would simply allow SNC to request a license amendment to voluntarily adopt 10 CFR 50.69. Any future request for a license amendment for Vogtle, Units 3 and 4, to implement the provisions in 10 CFR 50.69 would be separately reviewed independently by the NRC staff.

Therefore, these exemptions do not create any new accident precursors, and neither the probability nor the consequences of postulated accidents are increased. In conclusion, the NRC staff finds that these exemptions to 10 CFR 50.69(b)(1) do not result in any undue risk to the public health and safety because they would simply allow SNC to request a license amendment to voluntarily adopt 10 CFR 50.69 at Vogtle, Units 3 and 4.

C. The Exemptions Are Consistent With the Common Defense and Security

The exemptions from 10 CFR 50.69(b)(1) would allow SNC to request a license amendment to voluntarily adopt a risk-informed categorization and treatment of SSCs under 10 CFR 50.69 for Vogtle, Units 3 and 4. Neither the regulation nor the proposed exemptions have any relation to security issues. Therefore, the NRC staff finds that the common defense and security is not impacted by the exemptions.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The purpose of 10 CFR 50.69(b)(1) is to allow the identified categories of

licensees and applicants to request voluntary adoption of the provisions in 10 CFR 50.69, which allows adjustment of the scope of SSCs subject to certain special treatment requirements based on a risk-informed method of categorizing SSCs according to their safety significance.

As discussed above, SNC is a “holder” of a combined license under 10 CFR part 52, as opposed to an “applicant”, and, therefore, cannot request the NRC staff’s review and approval to voluntarily implement the provisions in 10 CFR 50.69 for Vogtle, Units 3 and 4. The NRC was silent in the preamble for the 10 CFR 50.69 rulemaking as it relates to the specific applicability of 10 CFR 50.69 to COL holders (69 FR 68008, November 22, 2004); subsequently, in 2015, the Commission received a petition for rulemaking (PRM-50-110) that asked for extension of the applicability to use 10 CFR 50.69 to COL holders, which, in, “*Staff Requirements—SECY-18-0106—Consideration in The Rulemaking Process of Issue Raised in Petition for Rulemaking on Applicability of Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Reactors*”, dated September 10, 2020 (ML20254A358; package ML20254A357), the Commission approved to consider the issue raised in PRM-50-110 as part of a rulemaking that was ongoing.¹ Currently, 10 CFR 50.69 is applicable to “[a] holder of a license to operate a [LWR] nuclear power plant under this part [10 CFR part 50]; [. . .] ; an applicant for a construction permit or operating license under this part [10 CFR part 50]; or an applicant for [. . .] a combined license [. . .] under part 52 of this chapter”

As relevant for Vogtle, Units 3 and 4, as discussed above, the 103(g) findings have been made, which allows SNC to operate Vogtle, Units 3 and 4, in accordance with the terms and conditions of combined license numbers NPF-91 and NPF-92, respectively. The fact that the NRC staff issued the 103(g) findings is relevant because it brings

¹ The NRC staff notes that “*Staff Requirements—SECY-22-0052—Proposed Rule: Alignment Of Licensing Processes And Lessons Learned From New Reactor Licensing*,” dated November 20, 2024 (ML24326A003), stated that: “The Commission has approved publication of a revised proposed rule in the **Federal Register** that would include the following items that were addressed in the draft proposed rule: 1. Expand the applicability of 10 CFR 50.69, ‘Risk-informed categorization and treatment of structures, systems and components for nuclear power reactors,’ to allow design certification applicants, construction permit holders, and *combined license holders* to risk-inform the categorization of structures, systems, and components.” (emphasis added).

Vogtle, Units 3 and 4, to a similar standing as part 50 licensees, which are able to request voluntary adoption of 10 CFR 50.69.

Accordingly, special circumstances exist under 10 CFR 50.12(a)(2)(ii) in that application of the regulation in these particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Notably, the Commission's findings pursuant to 10 CFR 52.103(g) confirm that the acceptance criteria of the combined license are met, which allows SNC to operate Vogtle, Units 3 and 4, in accordance with the terms and conditions of combined license numbers NPF-91 and NPF-92, respectively. Based on the above, the NRC staff finds that the special circumstances described in 10 CFR 50.12(a)(2)(ii) are present for these exemptions.

E. Environmental Considerations

With respect to the impact of the exemptions on the quality of the human environment, the NRC has determined that the issuance of the exemptions discussed herein meets the eligibility criteria for categorical exclusion from the requirement to prepare an environmental assessment or environmental impact statement, set forth in 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), the granting of exemptions from the requirements of any regulation of 10 CFR chapter I (which includes 10 CFR 50.69(b)(1)), is an action that is a categorical exclusion, provided that certain specified criteria are met. The basis for NRC's determination is provided in the following evaluation of the requirements in 10 CFR 51.22(c)(25)(i)–(vi).

Requirements in 10 CFR 51.22(c)(25)(i)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(i), the exemptions must involve no significant hazards consideration. The criteria for determining whether an action involves a significant hazards consideration are found in 10 CFR 50.92. The exemptions to 10 CFR 50.69(b)(1) would simply allow SNC to request a license amendment to voluntarily adopt a risk-informed categorization and treatment of SSCs for Vogtle, Units 3 and 4. There are no significant hazard considerations because granting the exemptions would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3)

involve a significant reduction in a margin of safety.

Requirements in 10 CFR 51.22(c)(25)(ii)

There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite. The exemptions to 10 CFR 50.69(b)(1) would simply allow SNC to request a license amendment to voluntarily adopt a risk-informed categorization and treatment of SSCs for Vogtle, Units 3 and 4, and do not involve any changes in the types or increase in the amounts of any effluents that may be released offsite.

Requirements in 10 CFR 51.22(c)(25)(iii)

There is no significant increase in individual or cumulative public or occupational radiation exposure. Since the exemptions to 10 CFR 50.69(b)(1) would simply allow SNC to request a license amendment to voluntarily adopt a risk-informed categorization and treatment of SSCs for Vogtle, Units 3 and 4, they do not contribute to any significant increase in individual or cumulative public or occupational radiation exposures.

Requirements in 10 CFR 51.22(c)(25)(iv)

There is no significant construction impact. Since the exemptions to 10 CFR 50.69(b)(1) would simply allow SNC to request a license amendment to voluntarily adopt a risk-informed categorization and treatment of SSCs for Vogtle, Units 3 and 4, they do not involve any construction impact.

Requirements in 10 CFR 51.22(c)(25)(v)

There is no significant increase in the potential for or consequences from radiological accidents. The exemptions to 10 CFR 50.69(b)(1) would simply allow SNC to request a license amendment to voluntarily adopt a risk-informed categorization and treatment of SSCs for Vogtle, Units 3 and 4, and do not impact the potential for or consequences from radiological accidents.

Requirements in 10 CFR 51.22(c)(25)(vi)(I)

The exemptions to 10 CFR 50.69(b)(1) involve other requirements of an administrative, managerial, or organizational nature because they would simply allow SNC to request a license amendment to voluntarily adopt a risk-informed categorization and treatment of SSCs for Vogtle, Units 3 and 4, pursuant to 10 CFR 50.69.

Based on the previously noted requirements, the exemptions to 10 CFR 50.69(b)(1) meet the eligibility criteria for the categorical exclusion set forth in

10 CFR 51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC staff's issuance of these exemptions.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. Also, special circumstances, pursuant to 10 CFR 50.12(a)(2)(ii), are present. Therefore, the Commission hereby grants SNC exemptions to extend the applicability of 10 CFR 50.69(b)(1) to allow SNC, a holder of a COL under part 52, to request a license amendment to voluntarily adopt a risk-informed categorization and treatment of SSCs for Vogtle, Units 3 and 4, pursuant to 10 CFR 50.69.

The exemptions are effective upon issuance.

Dated: February 10, 2026

For the Nuclear Regulatory Commission.

Aida Rivera-Varona,
Acting Director, Division of Operating
Reactor Licensing, Office of Nuclear Reactor
Regulation.

[FR Doc. 2026-02918 Filed 2-12-26; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-7027; NRC-2022-0201]

TRISO-X, LLC; Special Nuclear Material License Application for the TRISO-X Fuel Fabrication Facility; Final Environmental Impact Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a final Environmental Impact Statement (EIS) for a Special Nuclear Material License Application for the TRISO-X Fuel Fabrication Facility (FFF). TRISO-X, LLC (TRISO-X) would be authorized to possess and use special nuclear material to manufacture high-assay low enriched uranium (HALEU) fuel. The proposed fuel fabrication facility would be located on a 110-acre site at the Horizon Center in Oak Ridge, Roane County, Tennessee.

DATES: The FEIS referenced in this document was made publicly available on February 12, 2026.

ADDRESSES: Please refer to Docket ID NRC-2022-0201 when contacting the

NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2022-0201.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. The final EIS is available in ADAMS under Accession No. ML26033A130.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- **Public Library:** A copy of the final EIS for a Special Nuclear Material License Application for the TRISO-X FFF will be available for public review at the Oak Ridge Public Library, 1401 Oak Ridge Turnpike, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Jill Caverly, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-7674; email: Jill.Caverly@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 51.118 of title 10 of the *Code of Federal Regulations* (10 CFR) "Final environmental impact statement—notice of availability," the NRC is providing notice that the final EIS for a Special Nuclear Material License Application for the TRISO-X FFF is available for public inspection. The NRC issued a draft EIS for this action on September 26, 2025 (ADAMS Accession No. ML25267A128) and published a **Federal Register** (FR) notice on October 23, 2025 (90 FR 48508) to request comments on the draft EIS. On November 17, 2025, the NRC extended the public comment period for the draft EIS until December 8, 2025 (90 FR 51412). The final EIS includes responses

to comments on the draft EIS and conforming changes where appropriate.

II. Discussion

The NRC has prepared a final EIS as part of its environmental review of the TRISO-X application for a 40-year license to possess and use special nuclear material at a FFF that would be located on a 110-acre greenfield site in Oak Ridge, Roane County, Tennessee. This final EIS assesses the potential environmental impacts of the TRISO-X license application and the associated proposal to construct, operate, and decommission the FFF, as well as the no-action alternative to the proposed action.

The proposed Federal action is the issuance of a license, under 10 CFR part 70, "Domestic Licensing of Special Nuclear Material," to authorize TRISO-X to possess and use special nuclear material to manufacture HALEU fuel at a to-be-constructed FFF. The facility would produce tri-structural isotropic-based coated particles and final fuel forms using uranium enriched to less than 20 weight percent uranium-235. Issuance of a license enabling the possession and use of special nuclear material at the FFF would be for a first-of-its-kind fabrication operation in the United States.

The final EIS for TRISO-X's license application includes the NRC staff's analysis that evaluates the environmental impacts of the proposed action and the no-action alternative to the proposed action. The final EIS also contains the NRC staff's final recommendation on the action to be taken, which is based on the following factors:

- The NRC staff's review of TRISO-X's environmental report (included as part of the TRISO-X license application) and associated responses from TRISO-X to requests from the NRC staff for clarifying information;
- The NRC staff's review of comments received as part of the scoping process;
- The NRC staff's communications with Federal, State, and local agencies, as well as Tribal officials;
- The NRC staff's review of comments on the draft EIS; and
- The NRC staff's independent environmental review.

The NRC staff's final recommendation, unless safety issues mandate otherwise, is that the NRC issue the license to possess and use special nuclear material to TRISO-X.

Dated: February 9, 2026.

For the Nuclear Regulatory Commission.

Robert Sun,

Chief, Environmental Project Management, Branch 2, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2026-02920 Filed 2-12-26; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2025-2062]

State of Wyoming: NRC Staff Assessment of a Proposed Amendment to the Agreement Between the Nuclear Regulatory Commission and the State of Wyoming

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed amendment to state agreement; request for comment.

SUMMARY: As required by Section 274e. of the Atomic Energy Act of 1954, as amended (AEA), the U.S. Nuclear Regulatory Commission (NRC or Commission) is publishing the proposed Agreement for public comment (Appendix A). The NRC is also publishing the summary of a draft assessment by the NRC staff of the State of Wyoming's regulatory source material program. Comments are requested on the proposed amendment to the Agreement and its effect on public health and safety. Comments are also requested on the draft staff assessment, the adequacy of the State of Wyoming's source material program, and the adequacy of the staffing of the State's program, as discussed in this document.

DATES: Submit comments by March 2, 2026. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- **Federal Rulemaking website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2025-2062. Address questions about Docket IDs in [Regulations.gov](https://www.regulations.gov) to Bridget Curran; telephone: 301-415-1003; email: Bridget.Curran@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION**

CONTACT section of this document.

- **Mail comments to:** Office of Administration, Mail Stop: TWFN-5-A85, U.S. Nuclear Regulatory Commission, Washington, DC 20555-

0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Allyce Bolger, telephone: 301–415–0855; email: Allyce.Bolger@nrc.gov and Huda Akhavannik, telephone: 301–415–5253; email: Huda.Akhavannik@nrc.gov. Both are staff of the Office of Nuclear Material Safety and Safeguards at the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2025–2062 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2025–2062.
- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin ADAMS Public Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- *NRC’s PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2025–2062 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

SUPPLEMENTARY INFORMATION: By letter dated August 5, 2025, Governor Mark Gordon of the State of Wyoming requested that the U.S. Nuclear Regulatory Commission (NRC or Commission) amend its Agreement with the State of Wyoming as authorized by Section 274b. of the Atomic Energy Act of 1954, as amended (AEA). Under the proposed amendment to the Agreement, the Commission would discontinue, and the State of Wyoming would assume, regulatory authority over source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content. Since 2018, Wyoming’s existing Agreement allows the State to assume regulatory authority over byproduct materials as defined in Section 11e.(2) of the AEA, and source materials involved in the extraction or concentration of uranium or thorium in source material and ores at milling facilities.

II. Additional Information on Agreements Entered Under Section 274 of the AEA

Under the proposed amended Agreement, the NRC would discontinue its authority over source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content and would transfer its regulatory authority to the State of Wyoming. There is currently one NRC licensee that would be transferred to the State of Wyoming under this proposed amended Agreement. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e. of the AEA requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This document is being published in fulfillment of that requirement.

III. Proposed Amended Agreement With the State of Wyoming

Background

(a) Section 274b. of the AEA provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials and activities that involve use of these materials. The radioactive materials, sometimes referred to as “Agreement materials,” are byproduct materials as defined in Sections 11e.(1), 11e.(2), 11e.(3), and 11e.(4) of the AEA; source material as defined in Section 11z. of the AEA; and special nuclear material as defined in Section 11aa. of the AEA, restricted to quantities not sufficient to form a critical mass.

The State of Wyoming has requested authority over a subcategory of source material in this amendment to its Agreement, specifically:

(a) source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content.

(b) The proposed amended Agreement contains articles that:

(i) Specify the materials and activities over which authority was transferred in 2018 and in this amendment;

(ii) Specify the materials and activities over which the Commission will retain regulatory authority;

(iii) Continue the authority of the Commission to safeguard special nuclear material, protect restricted data, and protect common defense and security;

(iv) Commit the State of Wyoming and the NRC to exchange information as necessary to maintain coordinated and compatible programs;

(v) Provide for the reciprocal recognition of licenses;

(vi) Provide for the suspension or termination of the amended Agreement; and

(vii) Specify the effective date of the proposed amended Agreement.

The Commission reserves the option to modify the terms of the proposed amendment to the Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the proposed amended Agreement, with the effective date, will be published after the amended Agreement is approved by the Commission and signed by the NRC

Chairman and the Governor of Wyoming.

(c) The regulatory program is authorized by law under the Wyoming Environmental Quality Act, Wyoming Statutes §§ 35–11–2001 through 2004, §§ 35–11–101 *et seq.*, and §§ 16–3–101 *et seq.*, which provides the Governor with the authority to enter into an Agreement with the Commission. The State of Wyoming law contains provisions for the orderly transfer of regulatory authority over affected licenses from the NRC to the State. In a letter dated August 5, 2025, Governor Gordon certified that the State of Wyoming has a program for the control of radiation hazards that is adequate to protect public health and safety within the State of Wyoming for the materials and activities specified in the proposed amended Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. After the effective date of the amended Agreement, the license issued by the NRC would continue in effect as a State of Wyoming license until the license expires or is replaced by State-issued license.

(d) The draft staff assessment finds that the Wyoming Department of Environmental Quality's Source Material Program is adequate to protect public health and safety and is compatible with the NRC's regulatory program for the regulation of source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content.

Summary of the Draft NRC Staff Assessment of the State of Wyoming's Program for the Regulation of Source Material.

The NRC staff has examined the State of Wyoming's request for an amended Agreement with respect to the ability of the State's radiation control program to regulate source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content. The examination was based on the Commission's Policy Statement, "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement," (46 FR 7540, January 23, 1981, as amended by Policy Statements published at 46 FR 36969, July 16, 1981, and at 48 FR 33376, July 21, 1983) (Policy Statement), and the Office of Nuclear Material Safety and Safeguards Procedure SA-700, "Processing an Agreement" and its associated Handbook. The Policy Statement has 28

criteria that serve as the basis for the NRC staff's assessment of the State of Wyoming's request for an amended Agreement. The following section will reference the appropriate criteria numbers from the Policy Statement that apply to each section. Criteria 9b, 15, and 22 do not apply to the proposed Agreement since Wyoming's authority will be limited to the regulation of uranium recovery facilities and source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content.

(a) *Organization and Personnel.* The NRC staff reviewed these areas under Criteria 1, 2, 20, and 24 in the draft staff assessment. The State of Wyoming's proposed amended Agreement program for the regulation of source material is called the "Source Material Program," and will be located within the Land Quality Division in the Department of Environmental Quality along with the existing Agreement program that regulates uranium recovery facilities.

The educational requirements for the Source Material Program staff are specified in the State of Wyoming's personnel position descriptions and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members meet the requirements of a bachelor's degree in the physical, life science, or engineering; or an equivalent combination of education and experience has been substituted for the degree. All have training and work experience in radiation protection. Supervisory level staff each have at least 20 years of working experience in radiation protection.

The State of Wyoming performed an analysis of the expected workload under the proposed amended Agreement. Based on the NRC staff review of the State of Wyoming's analysis, the State has an adequate number of staff to regulate source material under the terms of the proposed amended Agreement. The State of Wyoming will employ the equivalent of 3 full-time equivalent professional and technical staff to support the Source Material Program.

The State of Wyoming has indicated that the Source Material Program has an adequate number of trained and qualified staff in place. The State of Wyoming has developed qualification procedures for license reviewers and inspectors that are similar to the NRC's procedures. The Source Material Program staff has accompanied the NRC staff on inspections of the NRC licensee in Wyoming. The Source Material Program staff is also actively

supplementing its experience through meetings, discussions, and through self-study, in-house training, and formal training.

Overall, the NRC staff concluded that the Source Material Program staff identified by the State of Wyoming to participate in the Agreement program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of source materials.

(b) *Legislation and Regulations.* The NRC staff reviewed these areas under Criteria 1–9a, 10–14, 17, 19, 21, and 23–28 in the draft staff assessment. Wyoming Statutes §§ 35–11–2001 provide the authority to enter into the amended Agreement and establish the Wyoming Department of Environmental Quality as the lead agency for the State's Source Material Program. The Department has the requisite authority to promulgate regulations under the Wyoming Statutes §§ 35–11–2002(b) for protection against radiation. Wyoming Statutes §§ 35–11–2003 and 2004 provide the Source Material Program the authority to issue licenses and orders; conduct inspections; and enforce compliance with regulations, license conditions, and orders. Wyoming Statute § 35–11–2003(d) requires licensees to provide access to inspectors.

The NRC staff verified that the State of Wyoming adopted by reference the relevant NRC regulations in parts 19, 20, 40, 61, 71, and 150 of title 10 of the *Code of Federal Regulations* (10 CFR) into the Wyoming Source Material Rules and Regulations Chapters 1–9. The State of Wyoming is currently revising its source material regulations to address NRC comments. The revised regulations, expected to be finalized by the end of 2025, were reviewed by NRC staff and address all NRC comments. Therefore, the State of Wyoming will adopt an adequate and compatible set of radiation protection regulations that apply to source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content. The NRC staff also verified that the State of Wyoming will not attempt to enforce regulatory matters reserved to the Commission.

(c) *Storage and Disposal.* The NRC staff reviewed these areas under Criteria 8, 9a, and 11 in the draft staff assessment. The State of Wyoming has adopted NRC compatible requirements for the handling and storage of radioactive material, including

regulations equivalent to the applicable standards contained in 10 CFR part 20, which address the general requirements for waste disposal, and 10 CFR part 61, which addresses waste classification and form. These regulations are applicable to all licensees covered under this proposed amended Agreement.

(d) *Transportation of Radioactive Material.* The NRC staff reviewed this area under Criteria 10 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the NRC regulations in 10 CFR part 71. Part 71 contains the requirements licensees must follow when preparing packages containing source material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting source material.

(e) *Recordkeeping and Incident Reporting.* The NRC staff reviewed this area under Criteria 1 and 11 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the sections of the NRC regulations that specify requirements for licensees to keep records and to report incidents or accidents involving the State's regulated Agreement materials specified in the proposed amended Agreement.

(f) *Evaluation of License Applications.* The NRC staff reviewed this area under Criteria 1, 7, 8, 9a, 13, 14, 20, 23, and 25 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the NRC regulations that specify the requirements to obtain a license to possess or use source material. The State of Wyoming has also developed licensing procedures and adopted NRC licensing guides for specific uses of source material for use by the program staff when evaluating license applications.

(g) *Inspections and Enforcement.* The NRC staff reviewed these areas under Criteria 1, 16, 18, 19, and 23 in the draft staff assessment. The State of Wyoming has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The State of Wyoming's source material program has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. Additionally, the State of Wyoming has also adopted procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The NRC staff reviewed this area under Criterion 23 in the draft staff assessment. The State of Wyoming is bound by requirements specified in its State law for rulemaking, issuing

licenses, and taking enforcement actions. The State of Wyoming has also adopted administrative procedures to ensure fair and impartial treatment of license applicants. The State of Wyoming law prescribes standards of ethical conduct for State employees.

(i) *Cooperation With Other Agencies.* The NRC staff reviewed this area under Criteria 25, 26, and 27 in the draft staff assessment. The State of Wyoming law provides for the recognition of existing NRC and Agreement State licenses and the State has a process in place for the transition of the active NRC license. Upon the effective date of the amended Agreement, the active NRC license for materials covered by the amended Agreement will be recognized as a Wyoming Department of Environmental Quality license.

The State of Wyoming also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license.

The State of Wyoming regulations in the Source Material Rules and Regulations Chapters 1—9 provide exemptions from the State's requirements for the NRC, and the U.S. Department of Energy contractors or subcontractors. The proposed amended Agreement commits the State of Wyoming to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed amended Agreement specifies the desirability of reciprocal recognition of licenses and commits the Commission and the State of Wyoming to use their best efforts to accord such reciprocity. Consistent with NRC requirements, the State of Wyoming would be able to recognize the licenses of other jurisdictions by general license, as appropriate.

Staff Conclusion

Section 274d. of the AEA provides that the Commission shall enter into an Agreement under Section 274b. with any State if:

(a) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed Agreement, and that the State desires to assume regulatory responsibility for such materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o. and in all other respects compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed amended Agreement, the certification of Wyoming Governor Gordon, and the supporting information provided by the Source Material Program of the Wyoming Department of Environmental Quality. Based upon this review, the NRC staff concludes that the State of Wyoming source material program satisfies the Section 274d. criteria as well as the criteria in the Commission's Policy Statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement." The NRC staff also concludes that the proposed State of Wyoming source material program to regulate source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content, as comprised of statutes, regulations, procedures, and staffing, is compatible with the Commission's program and is adequate to protect the public health and safety with respect to the materials covered by the proposed amended Agreement. Therefore, the proposed amended Agreement meets the requirements of Section 274 of the AEA.

IV. Executive Order Reviews

Executive Order (E.O.) 12866

The Office of Information and Regulatory Affairs has determined that this proposed amendment to Wyoming's Agreement is not a significant regulatory action under E.O. 12866.

E.O. 13132

This action does not have federalism implications, as defined in Executive Order 13132. It will not significantly limit the rights, roles, and responsibilities of State or local governments.

E.O. 14300

On May 23, 2025, President Donald J. Trump signed E.O. 14300, "Ordering the Reform of the Nuclear Regulatory Commission." Section 5, "Reforming and Modernizing the NRC's Regulations," requires the NRC to undertake a review and wholesale revision of its regulations and guidance documents as guided by the policies set

forth in section 2 of the E.O. The NRC is currently in the process of implementing the direction in E.O. 14300. When the NRC finalizes its rules during the implementation of E.O.

14300, the Agreement States will need to update their own regulations, as necessary, to maintain compatibility with the NRC's program within a specific timeframe.

V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document Description	Adams Accession No.
Wyoming Final Application to Amend Agreement, dated August 2025	ML25227A230 (Package).
Wyoming Final Amended Application Supplemental Information	ML25267A041 (Package).
Letter from Governor Mark Gordon, Wyoming, to Chairman Wright requesting amended agreement be established between the NRC and State of Wyoming, dated August 5, 2025.	ML25227A232.
Staff Requirements Memorandum for SECY-23-0075 "Wyoming's Proposal to Amend the Existing Agreement to Regulate the Processing of Source Material to Extract Mineral Resources Other Than the Uranium or Thorium Content," dated September 19, 2023.	ML23262B163.
SECY-23-075 "Wyoming's Proposal to Amend the Existing Agreement to Regulate the Processing of Source Material to Extract Mineral Resources Other Than the Uranium or Thorium Content," dated August 24, 2023.	ML23172A212.
Draft Assessment of the Proposed Wyoming Program	ML25237A057.
State Agreement (SA) 700 "Processing an Agreement," dated June 15, 2022	ML22138A414.
SA-700 Handbook for Processing an Agreement Procedure, dated June 17, 2022	ML22140A396.

Dated: February 2, 2026.

For the Nuclear Regulatory Commission.

Dafna Silberfeld,

Acting Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards.

Appendix A

An Amended Agreement Between the United States Nuclear Regulatory Commission and the State of Wyoming for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as "the Commission") is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (hereinafter referred to as "the Act"), to enter into an agreement with the Governor of the State of Wyoming (hereinafter referred to as "the State") providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct material as defined in Section 11e.(2) of the Act, source material involved in the extraction or concentration of uranium or thorium in source material or ores at milling facilities, and source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content; and,

Whereas, The Governor of the State of Wyoming is authorized under Wyoming Statute Section 35-11-2001 to enter into this Agreement with the Commission; and,

Whereas, The Commission entered into an Agreement with the State of Wyoming under Section 274 of the Act, which became effective on September 30, 2018 (hereinafter referred to as the "September 30, 2018 Agreement"), and provided for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Section 11e.(2) of the Act, and source materials involved in the extraction or

concentration of uranium or thorium in source material and ores at milling facilities; and,

Whereas, The Governor of the State of Wyoming submitted a letter of intent on February 21, 2023, to the Commission to pursue this amended Agreement which would allow the State to assume regulatory authority for source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content in addition to the materials covered under the September 30, 2018 Agreement; and,

Whereas, The Governor of the State of Wyoming certified on August 5, 2025, that the State has a program for the control of radiation hazards that is also adequate to protect public health and safety with respect to the materials within the State covered by this amended Agreement and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [date], that the program of the State of Wyoming for the regulation of the materials covered by this amended Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and,

Whereas, The State of Wyoming and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State of Wyoming recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Act;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State of Wyoming acting on behalf of the State that this amended Agreement

supersedes the September 30, 2018, Agreement as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct material as defined in Section 11e.(2) of the Act;

B. Source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities (hereinafter referred to as "source material associated with milling activities"); and

C. Source material recovered from any mineral resources processed primarily for purposes other than obtaining the source material content.

Article II

A. This Agreement does not provide for the discontinuance of any authority, and the Commission shall retain authority and responsibility, with respect to:

1. Byproduct material as defined in Section 11e.(1) of the Act;

2. Byproduct material as defined in Section 11e.(3) of the Act;

3. Byproduct material as defined in Section 11e.(4) of the Act;

4. Source material except for source material as defined in Article I.B. and I.C. of this Agreement;

5. Special nuclear material;

6. The regulation of the land disposal of byproduct, source, or special nuclear material received from other persons, excluding 11e.(2) byproduct material or source material described in Article I.A. and B. of this Agreement;

7. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear material and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

8. The regulation of the construction, operation, and decommissioning of any production or utilization facility or any uranium enrichment facility;

9. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

10. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material waste as defined in regulations or orders of the Commission;

11. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not to be so disposed without a license from the Commission;

12. The regulation of activities not exempt from Commission regulation as stated in 10 CFR part 150;

13. The regulation of laboratory facilities that are not located at facilities licensed under the authority relinquished under Article I.A. and B. of this Agreement; and,

14. Notwithstanding this Agreement, the Commission shall retain regulatory authority over the American Nuclear Corporation license (License No. SUA-667; Docket No. 040-04492).

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as its disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission and with ownership requirements for such material and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that

the Commission determines that such use would not endanger public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State;

e. The authority to require the Secretary of the United States Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety and other actions as the Commission deems necessary; and,

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.

Article III

With the exception of those activities identified in Article II, A.8 through A.11, this Agreement may be amended, upon application by the State and approval by the Commission to include one or more of the additional activities specified in Article II, A.1 through A.7, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct, source, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption for licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b. or 161i. of the Act to issue rules, regulations, or orders to promote the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for: (a) protection against hazards of radiation; and (b) to assure that Commission and State programs for protection against the hazards of radiation will be coordinated and compatible.

The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission

for: (a) protection against the hazards of radiation; and (b) to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations and to provide each other with the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State or upon request of the Governor of Wyoming, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. Pursuant to Section 274j. of the Act, the Commission may, after notifying the Governor, temporarily suspend all or part of this Agreement without notice or hearing if, in the judgment of the Commission, an emergency situation exists with respect to any material covered by this Agreement creating danger which requires immediate action to protect public health and safety of persons either within or outside the State, and the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act, which requires a State program to be adequate to protect the public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article IX

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity that results in production of such material, the State shall comply with the provisions of Section 274o. of the Act, if in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material.

The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity that results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and, such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

Article X

This Agreement shall supersede the September 30, 2018 Agreement and become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [City, State], in triplicate, this [date] day of [month], [year].

For the United States Nuclear Regulatory Commission.

Ho K. Nieh,
Chairman for the U.S. Nuclear Regulatory Commission.

For the State of Wyoming.

Mark Gordon,
Governor.

[FR Doc. 2026-02917 Filed 2-12-26; 8:45 am]

BILLING CODE 7590-01-P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement

Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensure that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. Title and purpose of information collection: Evidence of Marital Relationship—Living with Requirements; OMB 3220-0021.

Under Sections 2(c) or 2(d) (45 U.S.C. 231a) of the Railroad Retirement Act, an applicant must submit proof of a valid marriage to a railroad employee. In some cases, the existence of a marital relationship is not formalized by a civil or religious ceremony. In other cases, questions may arise about the legal termination of a prior marriage of the employee, spouse, or widow(er). In these instances, the RRB must secure additional information to resolve questionable marital relationships. The circumstances requiring an applicant to submit documentary evidence of marriage are prescribed in 20 CFR 219.30.

The RRB utilizes Forms G-124, Individual Statement of Marital Relationship; G-124a, *Certification of Marriage Information*; G-237, *Statement Regarding Marital Status*; G-238, *Statement of Residence*; and G-238a, *Statement Regarding Divorce or Annulment*, to secure the needed information. Forms G-124, G-237, G-238, and G-238a can be completed either with assistance from RRB personnel during an in-office interview or by mail. One response is requested of each respondent. Completion is required to obtain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (90 FR 58638 on December 17, 2025) required by 44 U.S.C 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Evidence of Marital Relationship—Living with Requirements.

OMB Control Number: 3220-0021.

Forms submitted: G-124, G-124a, G-237, G-238 and G-238a.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households; Business or other for Profit.

Abstract: Under the RRA, to obtain a benefit as a spouse of an employee annuitant or as the widow(er) of the deceased employee, an applicant must submit information to be used to determine if the marriage requirements for such benefits have been met. The collection obtains information supporting claimed common-law marriage, termination of previous marriages, and residency requirements.

Changes proposed: The RRB proposes no changes to Forms G-124, G-124a, G-237, G-238 and G-238a.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G-124 (in person)	125	15	31
G-124 (by mail)	75	20	25
G-124a	300	10	50
G-237 (in person)	75	15	19
G-237 (by mail)	75	20	25
G-238 (in person)	150	3	8
G-238 (by mail)	150	5	13
G-238a	150	10	25
Total	1,100	.....	196

2. Title and purpose of information collection: Employer Service and Compensation Reports; OMB 3220-0070.

Section 2(c) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 352) specifies the maximum normal unemployment and sickness

benefits that may be paid in a benefit year. Section 2(c) further provides for extended benefits for certain employees and for beginning a benefit year early for

other employees. The conditions for these actions are prescribed in 20 CFR 302.

All information about creditable railroad service and compensation needed by the RRB to administer Section 2(c) is not always available from annual reports filed by railroad employers with the RRB (OMB 3220–0008). When this occurs, the RRB must obtain supplemental information about service and compensation.

The RRB utilizes Form UI–41, *Supplemental Report of Service and Compensation*, and Form UI–41a, *Supplemental Report of Compensation*, to obtain the additional information about service and compensation from railroad employers. Completion of the forms is mandatory. One response is required of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (90 FR 58638 on December 17, 2025) required by 44 U.S.C 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Employer Service and Compensation Reports.

OMB Control Number: 3220–0070.

Forms submitted: UI–41 and UI–41a.

Type of request: Extension without change of a currently approved collection.

Affected public: Private Sector; Businesses or other for profits.

Abstract: The reports obtain the employee's service and compensation for a period subsequent to those already on file and the employee's base year compensation. The information is used to determine the entitlement to and the amount of benefits payable.

Changes proposed: The RRB proposes the following changes to Form UI–41:

- *Changed last sentence in the Paperwork Reduction Act Notice to “If you wish, send comments regarding the accuracy of our estimate or any other aspect of this form, including suggestions for reducing completion time, to: Railroad Retirement Board, ATTN: Bureau of Information Services/ Policy & Compliance, 844 N. Rush St., Chicago, IL 60611–1275.*

- *Changed “Return THIS FORM TO:” section at the bottom left-hand corner of the form to “RAILROAD RETIREMENT BOARD, OFFICE OF PROGRAMS, SICKNESS AND UNEMPLOYMENT BENEFITS SECTION, PO BOX 10695, CHICAGO, ILLINOIS 60610–0695, FAX: (312) 751–7185, PHONE: (312) 751–4820”.*

The RRB proposes the following changes to Form UI–41:

- *Changed second sentence at top of the form to “Completed forms can either be mailed to Railroad Retirement Board, Office of Programs, Sickness and Unemployment Benefits Section, P.O. Box 10695, Chicago, IL 60610–0695 or faxed to (312) 751–7185”.*

- *Changed last sentence in the Paperwork Reduction Act Notice to “If you wish, send comments regarding the accuracy of our estimate or any other aspect of this form, including suggestions for reducing completion time, to: Railroad Retirement Board, ATTN: Bureau of Information Services/ Policy & Compliance, 844 N Rush St., Chicago, IL 60611–1275.”*

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
UI–41	328	8	44
UI–41a	52	8	7
Total	380	.....	51

3. Title and purpose of information collection: Customer Satisfaction Monitoring; OMB 3220–0192. In accordance with Executive Order 12862, the Railroad Retirement Board (RRB) conducts a number of customer surveys designed to determine the kinds and quality of services our beneficiaries, claimants, employers and members of the public want and expect, as well as their satisfaction with existing RRB services. The information collected is used by RRB management to monitor customer satisfaction by determining to what extent services are satisfactory and where and to what extent services can be improved. The surveys are limited to data collections that solicit strictly voluntary opinions, and do not collect information which is required or regulated. The information collection,

which was first approved by the Office of Management and Budget (OMB) in 1997, provides the RRB with a generic clearance authority. This generic authority allows the RRB to submit a variety of new or revised customer survey instruments (needed to timely implement customer monitoring activities) to the Office of Management and Budget (OMB) for expedited review and approval.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (90 FR 58639 on December 17, 2025) required by 44 U.S.C 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Customer Satisfaction Monitoring.

OMB Control Number: 3220–0192.

Form(s) submitted: G–201.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: The Railroad Retirement Board (RRB) utilizes voluntary customer surveys to ascertain customer satisfaction with the RRB in terms of timeliness, appropriateness, access, and other measures of quality service. Surveys involve individuals that are direct or indirect beneficiaries of RRB services as well as railroad employers who must report earnings.

Changes proposed: The RRB proposes no changes to Form G–201.

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–201	50	2	2
Web-Site Survey	300	5	25
Periodic Survey	1,020	12	204
Focus Groups	250	120	500

Form No.	Annual responses	Time (minutes)	Burden (hours)
Total	1,620	.....	731

Additional Information or Comments: Copies of the forms and supporting documents or comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-1275 or emailed to Brian.Foster@rrb.gov.

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 this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Brian Foster,
Clearance Officer.

[FR Doc. 2026-02977 Filed 2-12-26; 8:45 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104804; File No. SR-NYSETEX-2026-02]

Self-Regulatory Organizations; NYSE Texas, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of NYSE Texas, Inc.

February 10, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 30, 2026, the NYSE Texas, Inc. ("NYSE Texas" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of NYSE Texas, Inc. ("Fee Schedule") to conform with an amendment to Rule 610 of Regulation

NMS recently approved by the Securities and Exchange Commission ("SEC" or the "Commission").³ The proposed rule change is available on the Exchange's website at www.nyse.com, and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to conform with an amendment to Rule 610 of Regulation NMS ("Reg NMS") recently approved by the Commission. The Exchange proposes to implement the fee change effective February 2, 2026.

In 2022, the Commission proposed to amend certain rules under Reg NMS after taking into account the availability of "[n]ew data processing and communications techniques [that] create the opportunity for more efficient and effective market operations"⁴ and that is in the public interest, appropriate for investor protection and the maintenance of fair and orderly markets to assure "economically efficient execution of securities transactions," "fair competition among brokers and dealers, among exchange markets," and "the practicality of brokers executing investors' orders in the best market."⁵ These changes included an amendment to Rule 610 of Reg NMS that prohibits a national securities exchange from imposing, or permitting to be imposed,

any fee, or providing, or permitting to be provided, any rebate or other remuneration for the execution of an order in an NMS stock unless such fee, rebate, or other remuneration can be determined at the time of execution.⁶ As amended, Rule 610 of Reg NMS provides that any national securities exchange that imposes a fee or provides a rebate that is based on a certain volume threshold, or establishes tier requirements or tiered rates based on minimum volume thresholds, would be required to set such volume thresholds or tiers using volume achieved during a stated period prior to the assessment of the fee or rebate.

These amendments to Rule 610 of Reg NMS were to become effective on November 3, 2025, the first business day of November 2025. On October 31, 2025, the Commission provided temporary exemptive relief to the exchanges to adjust their fee schedules to comply with the requirements of Rule 610 that exchange fees be determinable at the time of execution until the first business day of February 2026.⁷

In anticipation of the upcoming compliance date and to conform to Rule 610 of Reg NMS, the Exchange proposes to amend its Fee Schedule to add a bullet on the Fee Schedule below the heading titled "FEES, ASSESSMENTS, CREDITS AND REBATES" that would provide the following rule text:

- Unless noted otherwise, all tier calculations to determine transaction fees and credits in a billing month are based on the Participant's trading activity in the prior billing month.

As noted above, the changes proposed herein are intended to conform to Rule 610 of Reg NMS to enable market participants to determine what fee or rebate level would be applicable to any submitted order at the time of execution. The Exchange does not propose any other changes to the Fee Schedule.

⁶ See Release No. 101070, 89 FR at 81680.

⁷ See Securities Exchange Act Release No. 104172 (October 31, 2025), 90 FR 51418 (November 17, 2025) (Order Granting Temporary Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rules 610(f) and 612(d) of Regulation NMS, From Compliance With Rule 600(b)(89)(i)(F), Rule 610(c), Rule 610(d) and Rule 612 of Regulation NMS, as Amended). The lapse in appropriations began on October 1, 2025, and ended on November 12, 2025.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 101070 (September 18, 2024), 89 FR 81620 (October 8, 2024) (S7-30-22).

⁴ 15 U.S.C. 78k-1(a)(1)(B).

⁵ 15 U.S.C. 78k-1(a)(1)(c)(i), (ii), and (iv).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange proposes to amend its Fee Schedule to conform with an amendment to Rule 610 of Reg NMS. The changes proposed herein are solely to conform the Exchange's Fee Schedule to amended Rule 610 of Reg NMS. These changes are intended to enable market participants to determine what fee or rebate level would be applicable to any submitted order at the time of execution. The changes proposed herein are thus designed to enable market participants to determine what fee or rebate level would be applicable to any submitted order at the time of execution as required by the Act. The proposed rule change would provide clarity to market participants, including investors, to determine what fee or rebate level would be applicable to any submitted order at the time of execution and therefore remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that the Exchange's Fee Schedule properly reflect the requirements of Rule 610 of Reg NMS. The Exchange also believes that the proposed rule change would remove impediments to and perfects the mechanism of a free and open market by ensuring that market participants and the investing public can more easily navigate and understand the Exchange's Fee Schedule. The proposed rule change would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from the increased transparency and clarity, thereby reducing potential confusion. Finally, by providing greater determinism to the Exchange's Fee Schedule consistent with Rule 610(d) of Reg NMS, the Exchange believes that the proposed fee change is therefore reasonable. Moreover, since the proposed changes would apply equally to all Participants on an equal and non-discriminatory basis, the Exchange further believes that the proposal equitably allocates fees and credits

among market participants and is not unfairly discriminatory.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed rule change does not impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change to amend the Exchange's Fee Schedule to conform to a recent amendment to Rule 610 of Reg NMS is not intended to address competitive issues but rather is concerned solely with ensuring that the Exchange's Fee Schedule properly reflects the requirements of Rule 610 of Reg NMS.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁰ and Rule 19b-4(f)(2) thereunder¹¹ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSETEX-2026-02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSETEX-2026-02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSETEX-2026-02 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-02897 Filed 2-12-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104798; File No. SR-CboeBZX-2026-012]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule for Logical Ports

February 10, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 29, 2026, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4.

(the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment.

The text of the proposed rule change is also available on the Commission’s website (<https://www.sec.gov/rules/sro.shtml>), the Exchange’s website (https://www.cboe.com/us/options/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment. By way of background, the Exchange offers a variety of logical ports, which provide users with the ability to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,³ Purge Ports,⁴

³ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁴ Purge Ports are dedicated ports that permit a user to simultaneously cancel all or a subset of its orders in one or more symbols across multiple

Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports.⁵ The Exchange also offers corresponding Certification Logical Ports for each of the aforementioned logical port types, which provide Members and non-Members access to the Exchange’s certification environment to test proprietary systems and applications. Each logical port type has a protocol defining how messages over the logical port type must be formatted, sent, and processed.

To ensure Members and non-Members who intend to utilize updated, or new, logical port types in the live production environment manage operational risks, meet exchange requirements, and confirm their systems behave correctly, the Exchange offers weekend testing in the production environment in addition to certification environment.⁶ Weekend testing in the production environment enables Members and non-Members to simulate market conditions in the real production environment over the weekend without impacting actual market operations. Weekend testing includes opportunities for Members and non-Members to test order entry and routing, connectivity to the Exchange’s matching engines, and operational validation for the participants’ trading infrastructure. Weekend testing ensures operational readiness for the introduction of updated, or new, logical port types for the Exchange, Exchange Members, and non-Members seeking to utilize updated, or new, logical port types. A monthly fee applies for use of each logical port utilized in the live production environment as set forth in the Exchange’s Fee Schedule.

The Exchange proposes to clarify in the notes under the Logical Port Fees section of the Fee Schedule that logical port fees only apply if the corresponding logical port type is also available in the live production environment. For example, if the Exchange intends to adopt an updated protocol that has not yet been launched

logical ports by requesting the Exchange to effect such cancellation.

⁵ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange’s Multicast PITCH data feeds.

⁶ For example, the Exchange is currently in the process of migrating to Binary Order Entry Version 3 (“BOEv3”), an updated trading protocol from the existing Binary Order Entry Version 2 (“BOEv2”) supported by Logical Ports. The BOEv3 protocol is scheduled to launch in the live production environment on the Exchange at a later date. The BOEv3 protocol differs from prior versions of the BOE protocol by removing optional messaging fields, changing messaging sizing, and introducing stricter sequencing. The Exchange will offer weekend testing in the production environment in anticipation of the launch of BOEv3 protocol in the live production environment.

in the live production environment, any logical port that supports that protocol will be free during weekend testing in the production environment until such time that the updated protocol is available in the live production environment. Once any new logical port type, including a logical port that supports an updated protocol, is available in the live production environment, Members and non-Members will be assessed the corresponding monthly Logical Port Fee for the logical port as set forth in the Exchange’s Fee Schedule.

The Exchange notes that participation in weekend testing in the production environment continues to be voluntary and is not required in order to participate in the live production environment. Additionally, Members and Non-Members will not be assessed a fee until the logical port type, including a logical port to support an updated protocol, is in the live production environment.⁷ Further, the Exchange notes that other exchanges offer similar testing opportunities on predetermined weekends at discounted or no cost.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which

⁷ For example, a participant may obtain a logical port free of charge if that participant utilizes the logical port in the production environment during the designated weekend testing periods.

⁸ See e.g., Nasdaq Stock Market LLC, Saturday Testing Policy; see also MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, in addition to the Exchange's certification environment, the Exchange's weekend testing in the production environment allows Members and non-Members to test updated protocols with the corresponding logical port types in the real production environment without impacting actual market conditions. This environment enables market participants to manage operational risks, meet Exchange requirements, and confirm their systems behave correctly under the updated protocol through testing software development changes in the production environment prior to implementing them in the live trading environment. As a result, weekend testing in the production environment reduces the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. The Exchange believes this is especially true when testing an updated protocol that has not yet launched in the live production environment. As such, the Exchange believes it's reasonable to only assess the Logical Port Fees to logical port types, including logical ports to support updated protocols, that are also available in the live production environment as to not discourage the testing of updated protocols ahead of any respective launch date.

The Exchange also believes applying Logical Port Fees is reasonable once such logical port types are available in the live production environment because, while such ports will no longer be completely free, Members and non-Members will have the capability to utilize these logical ports in the live production environment. The Exchange continues to believe the weekend testing in the production environment, in addition to testing offered in the certification environment, will be sufficient for most Members and non-Members to prepare for the launch of updated protocols (with corresponding logical port types).

The Exchange believes the proposal to make clear that Logical Port Fees apply only to logical ports that are in the live production environment is equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to participate in weekend testing in the production environment and all market participants will have further clarity as to which logical ports are subject to the fees set

forth in the Exchange's Fee Schedule. The Exchange also believes the proposed change is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to avail themselves of weekend testing opportunities in the production environment for new logical port types and protocols and to become acclimated with updated connectivity offerings ahead of going live in the production environment. The Exchange believes the proposal to add this language to the notes section in the Fees Schedule also provides clarity in the rules as to when the Logical Port Fees apply and reduces potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed addition to the Fee Schedule creates an undue burden on competition because the Exchange will offer the logical ports not available in the live production environment in the weekend testing production environment free of charge. As discussed above, the use of the weekend testing in the production environment is optional and based on the business needs of each market participant. Moreover, market participants will continue to benefit from access to both the certification environment and weekend testing environment, through which the Exchange believes robust and realistic testing experiences are available. Such testing experiences may be especially critical during the time leading up to the launch of a protocol (with corresponding logical ports) in the live production environment.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's weekend testing in the production environment, which does not impact actual market operations. Additionally, the Exchange notes that it operates in a highly competitive market. Participants have numerous alternative venues that they may participate on and direct their

order flow, including 18 other options exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f) of Rule 19b-4¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2026-012 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2026–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2026–012 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026–02893 Filed 2–12–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104794; File No. SR–CboeBYX–2026–003]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule for Logical Ports

February 10, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on January 29, 2026, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/equities/regulation/rule_filings/byx/), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment. By way of background, the Exchange offers a variety of logical ports, which provide users with the ability to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,³ Purge Ports⁴, Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports.⁵ The Exchange also offers corresponding Certification Logical Ports for each of

the aforementioned logical port types, which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications. Each logical port type has a protocol defining how messages over the logical port type must be formatted, sent, and processed.

To ensure Members and non-Members who intend to utilize updated, or new, logical port types in the live production environment manage operational risks, meet exchange requirements, and confirm their systems behave correctly, the Exchange offers weekend testing in the production environment in addition to certification environment.⁶ Weekend testing in the production environment enables Members and non-Members to simulate market conditions in the real production environment over the weekend without impacting actual market operations. Weekend testing includes opportunities for Members and non-Members to test order entry and routing, connectivity to the Exchange's matching engines, and operational validation for the participants' trading infrastructure. Weekend testing ensures operational readiness for the introduction of updated, or new, logical port types for the Exchange, Exchange Members, and non-Members seeking to utilize updated, or new, logical port types. A monthly fee applies for use of each logical port utilized in the live production environment as set forth in the Exchange's Fee Schedule.

The Exchange proposes to clarify in the notes under the Logical Port Fees section of the Fee Schedule that logical port fees only apply if the corresponding logical port type is also available in the live production environment. For example, if the Exchange intends to adopt an updated protocol that has not yet been launched in the live production environment, any logical port that supports that protocol will be free during weekend testing in the production environment until such time that the updated protocol is available in the live production environment. Once any new logical port type, including a logical port that

³ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁴ Purge Ports are dedicated ports that permit a user to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

⁵ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

⁶ For example, the Exchange is currently in the process of migrating to Binary Order Entry Version 3 (“BOEv3”), an updated trading protocol from the existing Binary Order Entry Version 2 (“BOEv2”) supported by Logical Ports. The BOEv3 protocol is scheduled to launch in the live production environment on the Exchange at a later date. The BOEv3 protocol differs from prior versions of the BOE protocol by removing optional messaging fields, changing messaging sizing, and introducing stricter sequencing. The Exchange will offer weekend testing in the production environment in anticipation of the launch of BOEv3 protocol in the live production environment.

¹⁴ 17 CFR 200.30–3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

supports an updated protocol, is available in the live production environment, Members and non-Members will be assessed the corresponding monthly Logical Port Fee for the logical port as set forth in the Exchange's Fee Schedule.

The Exchange notes that participation in weekend testing in the production environment continues to be voluntary and is not required in order to participate in the live production environment. Additionally, Members and Non-Members will not be assessed a fee until the logical port type, including a logical port to support an updated protocol, is in the live production environment.⁷ Further, the Exchange notes that other exchanges offer similar testing opportunities on predetermined weekends at discounted or no cost.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, in addition to the Exchange's certification environment, the Exchange's weekend testing in the

production environment allows Members and non-Members to test updated protocols with the corresponding logical port types in the real production environment without impacting actual market conditions. This environment enables market participants to manage operational risks, meet Exchange requirements, and confirm their systems behave correctly under the updated protocol through testing software development changes in the production environment prior to implementing them in the live trading environment. As a result, weekend testing in the production environment reduces the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. The Exchange believes this is especially true when testing an updated protocol that has not yet launched in the live production environment. As such, the Exchange believes it's reasonable to only assess the Logical Port Fees to logical port types, including logical ports to support updated protocols, that are also available in the live production environment as to not discourage the testing of updated protocols ahead of any respective launch date.

The Exchange also believes applying Logical Port Fees is reasonable once such logical port types are available in the live production environment because, while such ports will no longer be completely free, Members and non-Members will have the capability to utilize these logical ports in the live production environment. The Exchange continues to believe the weekend testing in the production environment, in addition to testing offered in the certification environment, will be sufficient for most Members and non-Members to prepare for the launch of updated protocols (with corresponding logical port types).

The Exchange believes the proposal to make clear that Logical Port Fees apply only to logical ports that are in the live production environment is equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to participate in weekend testing in the production environment and all market participants will have further clarity as to which logical ports are subject to the fees set forth in the Exchange's Fee Schedule. The Exchange also believes the proposed change is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to avail themselves of weekend testing opportunities in the production

environment for new logical port types and protocols and to become acclimated with updated connectivity offerings ahead of going live in the production environment. The Exchange believes the proposal to add this language to the notes section in the Fees Schedule also provides clarity in the rules as to when the Logical Port Fees apply and reduces potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed addition to the Fee Schedule creates an undue burden on competition because the Exchange will offer the logical ports not available in the live production environment in the weekend testing production environment free of charge. As discussed above, the use of the weekend testing in the production environment is optional and based on the business needs of each market participant. Moreover, market participants will continue to benefit from access to both the certification environment and weekend testing environment, through which the Exchange believes robust and realistic testing experiences are available. Such testing experiences may be especially critical during the time leading up to the launch of a protocol (with corresponding logical ports) in the live production environment.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's weekend testing in the production environment, which does not impact actual market operations. Additionally, the Exchange notes that it operates in a highly competitive market. Participants have numerous alternative venues that they may participate on and direct their order flow, including 17 other equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues,

⁷ For example, a participant may obtain a logical port free of charge if that participant utilizes the logical port in the production environment during the designated weekend testing periods.

⁸ See e.g., Nasdaq Stock Market LLC, Saturday Testing Policy; see also MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f) of Rule 19b-4¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBYX-2026-003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-CboeBYX-2026-003. This

file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBYX-2026-003 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104813; File No. SR-NYSE-2026-07]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

February 10, 2026.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on January 30, 2026, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List ("Price List") to (1) offer a monthly rebate for Designated Market

Maker ("DMM") units for initial public offerings and transfers, and (2) modify the rate for routing to the Nasdaq Stock Market LLC ("Nasdaq") in Tape B and C securities at or above \$1.00. The Exchange proposes to implement the rule change on February 2, 2026. The proposed rule change is available on the Exchange's website at www.nyse.com, and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) offer a monthly rebate for DMM units for initial public offerings ("IPO") and transfers, and (2) modify the rate for routing to the Nasdaq in Tape B and C securities at or above \$1.00.

Background

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."⁴

While Regulation NMS has enhanced competition, it has also fostered a "fragmented" market structure where trading in a single stock can occur

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) ("Regulation NMS").

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”⁵ Indeed, cash equity trading is currently dispersed across 16 exchanges,⁶ numerous alternative trading systems,⁷ and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.⁸ Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange’s share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.⁹

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm’s reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The proposed change responds to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders and closing price orders by lowering the fee to route to Nasdaq for Tape B and C securities at or above \$1.00.

Moreover, in 2022, the Commission proposed to amend certain rules under Reg NMS after taking into account the availability of “[n]ew data processing and communications techniques [that]

create the opportunity for more efficient and effective market operations”¹⁰ and that is in the public interest, appropriate for investor protection and the maintenance of fair and orderly markets to assure “economically efficient execution of securities transactions,” “fair competition among brokers and dealers, among exchange markets,” and “the practicality of brokers executing investors’ orders in the best market.”¹¹ These changes included an amendment to Rule 610 of Reg NMS that prohibits a national securities exchange from imposing, or permitting to be imposed, any fee, or providing, or permitting to be provided, any rebate or other remuneration for the execution of an order in an NMS stock unless such fee, rebate, or other remuneration can be determined at the time of execution. As amended, Rule 610 of Reg NMS provides that any national securities exchange that imposes a fee or provides a rebate that is based on a certain volume threshold, or establishes tier requirements or tiered rates based on minimum volume thresholds, would be required to set such volume thresholds or tiers using volume achieved during a stated period prior to the assessment of the fee or rebate. These amendments to Rule 610 of Reg NMS were to become effective on November 3, 2025, the first business day of November 2025. On October 31, 2025, the Commission provided temporary exemptive relief to the exchanges to adjust their fee schedules to comply with the requirements of Rule 610 that exchange fees be determinable at the time of execution until the first business day of February 2026.¹² Going forward, transaction fees and credits in a billing month, including those applicable to DMM units, will be based on the member organization’s trading activity in the prior billing month in order to comply with the changes to Reg NMS.¹³ Given the absence of a prior billing month as a reference for IPOs and transfers, the proposal would permit DMM units to achieve rebates in the

first month of listing only for transactions in those securities.

Proposed Rule Change

The Exchange’s Price List currently sets out different monthly rebate amounts available to DMM units for adding liquidity, other than MPL Orders, for securities at or above \$1.00 depending on the CADV of the security and the DMM quoting percentage and size in any month in which the DMM meets the More Active Securities Quoting Requirement and the Less Active Securities Quoting Requirement, as well as DMM providing as a percent of the NYSE’s total intraday adding liquidity, as those terms are defined in the Price List.

The Exchange proposes to amend this section of the Price List to add a \$0.0035 rebate for DMM units when adding liquidity, other than MPL Orders, for securities at or above \$1.00 for DMM unit transactions in IPO securities and securities transferred from another marketplace. As set forth in proposed footnote * * *, the proposed rebate would only be available in the first month of listing on the Exchange of an IPO and the first month that the security transfers to the Exchange from another marketplace. The proposed footnote would also provide that reallocation of an already listed security from one DMM unit to another will not count as a transfer. The Exchange notes that the rate is in line or the same as the current rebates available to DMM units for adding liquidity, other than MPL Orders, for securities at or above \$1.00 that meet the requirements set forth in the same section of the Price List.

In addition, the Exchange proposes to modify the rate for routing securities priced at or above \$1.00 to the Nasdaq in Tape B and C securities. Currently, the Exchange charges a fee of \$0.0010 per share for executions in securities with a price at or above \$1.00 in Away Market Auctions at venues other than NYSE American. The Exchange proposes to charge a lower fee of \$0.0009 per share for executions in securities with a price at or above \$1.00 that route and execute in a Nasdaq Auction, which would exclude Nasdaq Auctions from the current \$0.0010 per share charge.

The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

⁵ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

⁶ See Cboe U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

⁷ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

⁸ See Cboe Global Markets U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share/.

⁹ See *id.*

¹⁰ 15 U.S.C. 78k-1(a)(1)(B).

¹¹ 15 U.S.C. 78k-1(a)(1)(c)(i), (ii), and (iv).

¹² See Securities Exchange Act Release No. 104172 (October 31, 2025), 90 FR 51418 (November 17, 2025) (Order Granting Temporary Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rules 610(f) and 612(d) of Regulation NMS, From Compliance With Rule 600(b)(89)(i)(F), Rule 610(c), Rule 610(d) and Rule 612 of Regulation NMS, as Amended). The lapse in appropriations began on October 1, 2025, and ended on November 12, 2025.

¹³ The Exchange will be submitting a separate rule filing amending its Price List in order to achieve compliance with these Reg NMS changes.

Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁵ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

As discussed above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁶ While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”¹⁷

The Proposed Change Is Reasonable

In light of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange’s market share relative to its competitors. The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of orders transacted on the Exchange by member organizations that are DMM units, which would benefit all market participants by offering greater price discovery and an increased opportunity to trade on the Exchange, both intraday and during the closing auction.

The Exchange believes that offering DMMs units a rebate for IPOs and assigned securities in the first month those securities trade on the Exchange is

a reasonable means to ensure that DMM unit transactions when adding liquidity during that period are incentivized in view of changes to Reg NMS that all exchange fees and rebates to be determinable at the time of execution. As noted, the Exchange will be utilizing trading and quoting activity in a prior billing month on order to determine transaction fees and credits in a billing month, which would exclude new IPO securities and securities that transfer to the Exchange from another market since there would be no prior month trading or quoting activity on the Exchange. The proposal would thus foster liquidity provision and stability in the marketplace by continuing to provide incentives for DMM units, to the benefit of all market participants. The Exchange notes that, following the first month of trading in a new listing for an IPO or transfer, the current rebates applicable to DMM units would apply.

Similarly, the Exchange believes that the proposed to lower the routing fee for orders at or above \$1.00 that route to a Nasdaq auction is reasonable because the fee would be comparable to the current fee of \$0.0005 per share for orders that route to an NYSE American auction. Moreover, the proposed fee would be consistent with or lower than fees charged on other exchanges.¹⁸ The Exchange notes that operates in a highly competitive market in which market participants can readily select between various providers of routing services with different product offerings and different pricing.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates fees and credits among market participants because all member organizations that participate on the Exchange may qualify for the proposed credits and fees on an equal basis. The Exchange believes its proposal equitably allocates its fees and credits among its market participants by fostering liquidity provision and stability in the marketplace.

The Exchange believes the proposal equitably allocates its fees among market participants because it would apply to all similarly situated member organizations. Specifically, the proposed rebate for adding liquidity in IPOs and transfers would apply equally to all member organizations that are DMMs on the Exchange. The Exchange believes the proposal is an equitable

allocation of fees because it would continue to reward DMM units for their increased risks and heightened quoting and other obligations generally and in connection with IPOs and securities transferred from another marketplace during the securities’ first listing month on the Exchange. The proposed rebate is also equitable because it would apply equally to any DMM unit. The Exchange believes that the proposal would provide an equal incentive to any member organization to maintain a DMM unit, and that the proposal constitutes an equitable allocation of fees because all similarly situated member organizations would be eligible for the same rebate.

Similarly, the Exchange believes that the proposed changes to the routing fees also represent an equitable allocation of fees because it would apply uniformly to all member organizations that route orders in securities at or above \$1.00 to a Nasdaq auction, and each such member organization would be charged the proposed lower fee when utilizing the functionality. Without having a view of member organizations’ activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed fee would result in any member organization from reducing or discontinuing its use of the routing functionality. Moreover, the proposed fee would be equitable because it is consistent with or lower than fees charged on other exchanges.¹⁹

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange’s pricing if they believe that alternatives offer them better value.

The proposal does not permit unfair discrimination because the proposed criteria would be applied to all similarly situated member organizations, who would all be eligible for the proposed rebates and lower fees on an equal and non-discriminatory basis. The Exchange notes in this regard that submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

The Exchange believes the proposed rebate for DMM units adding liquidity in IPOs and transfers during the first month of listing on and transfer to the Exchange, respectively, does not permit

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) & (5).

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (“Regulation NMS”).

¹⁷ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

¹⁸ For instance, the Nasdaq Stock Market charges from a top rate of .0008 to .0016. See <https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

¹⁹ See note 20 [sic], *supra*.

unfair discrimination because the proposed changes would apply to all similarly situated member organizations that are DMM units. The Exchange believes that offering a rebate during the first month of listing and transfer for these securities without a prior month of trading and quoting with a DMM unit that would determine the credits for that security in a billing month going forward would provide an incentive for DMM units to quote and trade these assigned securities on the Exchange during the first month of listing and transfer, and will generally allow the Exchange and DMM units to better compete for order flow, thus enhancing competition. The Exchange believes that the proposal would provide an equal incentive to any member organization to operate and maintain a DMM unit, and that the proposal would not be unfairly discriminatory because the incentive would be offered on an equal and non-discriminatory basis to all similarly situated member organizations.

The Exchange believes that its proposed routing fee is not unfairly discriminatory because the fee would be applicable to all member organizations on an equal and non-discriminatory basis. The Exchange believes it is not unfairly discriminatory as the proposal to charge a lower fee would be assessed on an equal basis to all member organizations that route orders in securities at or above \$1.00 to Nasdaq. Moreover, the proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied to all similarly situated member organizations. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed rule change would not permit unfair discrimination among member organizations because the ability to route to Nasdaq would remain available to all member organizations on an equal basis and each such participant would be charged the same fee for using the functionality.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,²⁰ the Exchange believes that the

proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²¹

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize DMM units to add liquidity to the Exchange during the first month of an IPO or transfer. Greater liquidity benefits all market participants on the Exchange by providing more execution opportunities on the Exchange and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which also benefits all market participants on the Exchange. Greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality and continuing to encourage member organizations to send orders, thereby contributing towards a robust and well-balanced market ecosystem. Moreover, the proposed fees and rebate would be available to all similarly-situated market participants, and, as such, the proposed changes would not impose a disparate burden on competition among market participants on the Exchange. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and

credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²² and Rule 19b-4(f)(2) thereunder²³ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2026-07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NYSE-2026-07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

²⁰ 15 U.S.C. 78f(b)(8).

²¹ See Regulation NMS, 70 FR at 37498-99.

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4.

post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2026–07 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026–02900 Filed 2–12–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104811; File No. SR–CBOE–2026–012]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify the Priority of Certain Orders With an All Sessions Order Instruction

February 10, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on January 29, 2026, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b–4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend

the Good-til-Cancelled and GTC (hereinafter referred to as “GTC”) and Good-til-Date and GTD (hereinafter referred to as “GTD”) Times-in-Force provided in Exchange Rule 5.6 (Order Types, Order Instructions, and Times-in-Force) and adopt a new Additional Priority Rule under Exchange Rule 5.32 (Order and Quote Book Processing, Display, Priority, and Execution). Both proposed rule changes are designed to explicitly provide that orders with an All Sessions Order Instruction are prioritized over orders with a Regular Trading Hours (“RTH”) Only or RTH and Curb Order Instruction when transitioning from the Global Trading Hours (“GTH”) trading session to the RTH trading session. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/options/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the GTC and GTD Times-in-Force⁵ provided in Exchange Rule 5.6(d) to explicitly provide that orders with an

Order Instruction⁶ of All Sessions⁷ are prioritized over orders with an Order Instruction of RTH Only⁸ or RTH and Curb⁹ when transitioning from the GTH trading session¹⁰ to the RTH trading session¹¹ and thereafter until the order

⁶ An “Order Instruction” is a processing instruction a User may apply to an order (multiple instructions may apply to a single order), subject to the restrictions set forth in Exchange Rule 5.5(c) with respect to orders and bulk messages submitted through bulk ports and any other restrictions set forth in the Rules, when entering it into the System for electronic or open outcry processing. *See* Exchange Rule 5.1(c).

⁷ An “All Sessions” order (including a bulk message) is an order a User designates as eligible to trade during all trading sessions. An unexecuted All Sessions order on the Book at the end of a GTH trading session enters the RTH Queuing Book and becomes eligible for execution during the RTH opening rotation and trading session on that same trading day, subject to a User's instructions. An unexecuted All Sessions order on the Book at the end of the RTH trading session remains on the Book and becomes eligible for execution during the Curb trading session on that same trading day, subject to a User's instructions. An unexecuted All Sessions order on the Book at the end of the Curb trading session enters the GTH Queuing Book and becomes eligible for execution during the GTH opening rotation and trading session on the next trading day, subject to a User's instructions. All Sessions Day orders on the Book at the conclusion of the Curb trading session will be canceled. A User may not designate an All Sessions order as Direct to PAR. *See* Exchange Rule 5.6(c).

⁸ An “RTH Only” order is an order (including a bulk message) a User designates as eligible to trade only during RTH or not designated as All Sessions or RTH and Curb. An unexecuted RTH Only order with a Time-in-Force of GTC or GTD on the Book at the end of an RTH trading session enters the RTH Queuing Book and becomes eligible for execution during the RTH opening rotation and trading session on the following trading day (but not during the Curb trading session on the same trading day or the GTH trading session on the following trading day), subject to a User's instructions. *See* Exchange Rule 5.6(c).

⁹ An “RTH and Curb” order is an order (including a bulk message) a User designates as eligible to trade only during RTH and Curb or not designated as All Sessions or RTH Only. An unexecuted RTH and Curb order with a Time-in-Force of GTC or GTD on the Book at the end of an RTH trading session remains in the Book and becomes eligible for execution during the Curb trading session on the same trading day, subject to a User's instructions. An unexecuted RTH and Curb order with a Time-in-Force of GTC or GTD on the Book at the end of a Curb trading session enters the RTH Queuing Book and becomes eligible for execution during the RTH opening rotation and trading session on the following trading day (but not during the GTH trading session on the following trading day), subject to a User's instructions. All RTH and Curb Day orders on the Book at the conclusion of the Curb trading session will be canceled. *See* Exchange Rule 5.6(c).

¹⁰ The terms “Global Trading Hours” and “GTH” mean the trading session consisting of the hours outside of Regular Trading Hours and Curb Trading Hours during which transactions in options may be effected on the Exchange and are set forth in Exchange Rule 5.1. *See* Exchange Rule 1.1.

¹¹ The terms “Regular Trading Hours” and “RTH” mean the trading session consisting of the regular hours during which transactions in options may be effected on the Exchange and are set forth in Exchange Rule 5.1. *See* Exchange Rule 1.1.

²⁴ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b–4(f)(6).

⁵ A “Time-in-Force” means the period of time the System holds an order or quote, subject to the restrictions set forth in Exchange Rule 5.5(c)(3) with respect to bulk messages submitted through bulk ports, for potential execution. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class, system, or trading session basis. Exchange Rule 5.33 sets forth the Times-in-Force the Exchange may make available for complex orders. *See* Exchange Rule 5.6(d).

fully executes. The Exchange also proposes to adopt a new Additional Priority Rule under Exchange Rule 5.32(a)(3)(D) which would provide that All Sessions orders at a given price have priority over RTH Only orders and RTH and Curb orders when transitioning from the GTH trading session to the RTH trading session and thereafter until the order fully executes.

By way of background, the Exchange offers three trading sessions:¹² RTH, Curb Trading Hours (“Curb”),¹³ and Global Trading Hours (“GTH”). RTH for transactions in equity options generally occurs from 9:30 a.m.¹⁴ to 4:00 p.m., Monday through Friday, as the normal business hours set forth by the primary market trading the securities underlying the options.¹⁵ The Curb session is from 4:15 p.m. to 5:00 p.m., Monday through Friday, for designated classes.¹⁶ Trading in GTH for index options occurs from 8:15 p.m. to 9:25 a.m. the next day, Monday through Friday.¹⁷

Exchange Rule 5.6 provides for Order Types,¹⁸ Order Instructions, and Times-in-Force available on the Exchange, each of which may be designated on a given order. RTH Only, RTH and Curb, and All Sessions are Order Instructions provided under Exchange Rule 5.6(c) that designate the trading session during which an order is eligible to execute. RTH Only is an order (including a bulk message) a User¹⁹ designates as eligible to trade only during RTH or not designated as All Sessions or RTH and Curb.²⁰ RTH and Curb is an order (including a bulk message) a User designates as eligible to trade only during RTH and Curb or not designated

as All Sessions or RTH Only. All Sessions is an order (including a bulk message) a User designates as eligible to trade during all trading sessions.

The Times-in-Force GTC and GTD are provided in Exchange Rule 5.6(d) and each state that “if after entry into the System, the order is not fully executed, the order (or unexecuted portion) remains available for potential display or execution (with the same timestamp) unless cancelled by the entering User, or until the option expires, whichever comes first.” Under these existing provisions, the Exchange Rules do not consider the trading session Order Instruction in determining the priority of orders with a GTC or GTD Time-in-Force.

The Exchange proposes to amend the GTC and GTD Times-in-Force provided in Exchange Rule 5.6(d) to provide that orders ranked on the book during GTH receive time priority over orders that only become eligible at the start of RTH (*i.e.*, RTH Only and RTH and Curb).²¹ Specifically, as proposed, GTC and GTD Times-in-Force provided under Exchange Rule 5.6(d) would state “if after entry into the System, the order is not fully executed, the order (or unexecuted portion) remains available for potential display or execution (with the same timestamp, except that All Sessions orders at a given price are prioritized before RTH Only and RTH and Curb orders when transitioning from the GTH trading session to the RTH trading session and thereafter until the order fully executes) unless cancelled by the entering User, or until the option expires, whichever comes first.”

The Exchange also proposes to adopt Exchange Rule 5.32(a)(3)(D) which would similarly provide that All Sessions order at a given price have priority over RTH Only orders and RTH and Curb orders when transitioning from the GTH trading session to the RTH trading session and thereafter until the order fully executes.

This approach aligns priority with trading eligibility. Orders that are available to trade earlier in the day, and thus ranked and accessible to market participants during GTH, receive priority over orders that only become available later. This prioritization reflects both market logic and System capability. All Sessions orders provide liquidity and are exposed to the market during GTH, while RTH Only and RTH

and Curb orders are not yet active or available for execution. The System does not have the ability to prioritize an order that is not yet eligible to trade ahead of an order that is already ranked and available for execution. For example, an RTH Only order with a GTD Time-in-Force entered prior to the RTH trading session would not be ranked or eligible to trade at the time of entry. In contrast, an All Sessions order with a GTD Time-in-Force entered prior to the RTH trading session would be ranked and eligible to trade immediately upon entry. Therefore, when the Exchange transitions from the GTH trading session to the RTH trading session, the All Sessions order receives priority because it was already ranked and eligible to trade, while the RTH Only order was not.²²

The proposed rule change memorializes this existing System functionality and ensures that priority is determined based on when orders become ranked and eligible to trade, rather than solely on entry timestamp.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁴ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change removes impediments to and

¹² The term “trading session” means the hours during which the Exchange is open for trading for Regular Trading Hours, Global Trading Hours or Curb Trading Hours (each of which may be referred to as a trading session), each as set forth in Exchange Rule 5.1. Unless otherwise specified in the Rules or the context otherwise indicates, all Rules apply in the same manner during each trading session. See Exchange Rule 1.1 (Definitions).

¹³ The terms “Curb Trading Hours” and “Curb” mean the trading session consisting of the hours outside of Regular Trading Hours and Global Trading Hours during which transactions in options may be effected on the Exchange and are set forth in Exchange Rule 5.1. See Exchange Rule 1.1.

¹⁴ All times referenced herein are Eastern Time, unless otherwise specifically noted.

¹⁵ Options on ETFs, ETNs, Index Portfolio Shares, Index Portfolio Receipts, and Trust Issued Receipts that the Exchange designates to remain open for trading beyond 4:00 p.m. but in no case will the RTH session continue after 4:15 p.m.

¹⁶ See Exchange Rule 5.1(d).

¹⁷ See Exchange Rule 5.1(c).

¹⁸ Order Types may be either a limit or market order. See Exchange Rule 5.6(b).

¹⁹ The term “User” means any TPH or Sponsored User who is authorized to obtain access to the System pursuant to Exchange Rule 5.5. See Exchange Rule 1.1.

²⁰ See Exchange Rule 5.1(c).

²¹ The proposed functionality applies only to RTH Only and RTH and Curb orders entered outside the RTH trading session. RTH Only and RTH and Curb orders entered during the RTH trading session would retain price and time priority as they do today.

²² The Exchange notes that in the foregoing example, if the All Sessions order does not fully execute during the RTH trading session, it would maintain its priority over RTH and Curb Orders when transitioning from the RTH trading session to the Curb trading session.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ *Id.*

perfects the mechanism of a free and open market and a national market system by providing greater clarity and transparency regarding the priority treatment of orders with GTC and GTD Times-in-Force that have different Order Instructions designating trading session eligibility. The proposed amendment explicitly provides that All Sessions orders are prioritized before RTH Only and RTH and Curb orders when transitioning from the GTH trading session to the RTH trading session and thereafter until the order fully executes, thereby aligning priority with trading eligibility and display. This approach is consistent with fundamental principles of order priority: orders that are displayed on the book and available to trade during GTH provide liquidity and are exposed to the market earlier in the trading day than orders that only become eligible to trade at the start of RTH. By prioritizing orders based on when they become ranked and eligible to trade, rather than solely on entry timestamp, the proposed rule change ensures that market participants who make their orders available for execution during GTH receive appropriate priority over orders that are not yet active or available for execution during that session.

The proposed rule change promotes just and equitable principles of trade and protects investors and the public interest by establishing clear and transparent rules that reflect the operational reality of the System. All Sessions orders are ranked and accessible to market participants during GTH, while RTH Only and RTH and Curb orders are not yet active or available for execution during that session. The System does not have the ability to prioritize an order that is not yet eligible to trade ahead of an order that is already displayed and available for execution. The proposed rule change memorializes this existing System functionality and provides market participants with clear notice of how priority is determined for orders with different trading session eligibilities when transitioning from the GTH trading session to the RTH trading session. This transparency allows market participants to make informed decisions about order entry and trading session designation, thereby promoting fair and orderly markets.

The proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed priority treatment applies uniformly to all market participants and is based on objective criteria: whether an order is designated as eligible to

trade during GTH and thus ranked on the book during that session. All market participants have equal access to designate orders as All Sessions, RTH Only, or RTH and Curb, and the proposed rules apply consistently regardless of the identity of the entering User. The prioritization of All Sessions orders over RTH Only and RTH and Curb orders when transitioning from the GTH trading session to the RTH trading session is a reasonable and non-discriminatory distinction based on the fundamental difference in when orders become available to trade and provide liquidity to the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed priority treatment applies uniformly to all market participants. All Users have equal access to designate orders with an Order Instruction of All Sessions, RTH Only, or RTH and Curb, and the proposed rules apply consistently regardless of the identity of the entering User. The prioritization of All Sessions orders over RTH Only and RTH and Curb orders when transitioning from the GTH trading session to the RTH trading session and thereafter until the order fully executes is based on objective criteria related to when orders become ranked and eligible to trade, not on the characteristics of any particular market participant. Market participants retain full discretion to choose the Order Instruction that best suits their trading objectives, and the proposed rule change simply provides transparency regarding the priority treatment that results from those choices.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change applies only to how orders are prioritized on the Exchange's book. The proposed amendment memorializes existing System functionality and provides clarity regarding priority treatment for orders with different trading session eligibilities when transitioning from the GTH trading session to the RTH trading session. To the extent that the proposed rule change

makes the Exchange a more attractive marketplace to market participants, any such competitive impact would be the result of the Exchange providing greater transparency and clarity regarding its rules, which the Exchange believes benefits all market participants and promotes fair and orderly markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²⁶ and Rule 19b-4(f)(6) thereunder.²⁷ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁸ and Rule 19b-4(f)(6)(iii) thereunder.²⁹

A proposed rule change filed under Rule 19b-4(f)(6)³⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may provide market participants with clear rule text that accurately reflects current System functionality without delay. The Exchange states that the proposed rule change does not significantly affect the protection of investors or the public interest because it memorializes existing

²⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁷ 17 CFR 240.19b-4(f)(6).

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

³⁰ 17 CFR 240.19b-4(f)(6).

³¹ 17 CFR 240.19b-4(f)(6)(iii).

System functionality; the System currently prioritizes All Sessions orders over RTH Only and RTH and Curb orders based on when orders become ranked and eligible to trade. Further, the Exchange states the proposed rule change provides greater clarity and transparency regarding the priority treatment of orders with GTC and GTD Times-in-Force that have different Order Instructions designating trading session eligibility. Finally, the Exchange states the proposed rule change does not impose any significant burden on competition because it applies uniformly to all market participants. For these reasons, and because the proposed rule change does not raise any new or novel regulatory issues, the Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.³²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings under Section 19(b)(2)(B) ³³ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2026-012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

³² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See U.S.C. 78c(f).

³³ 15 U.S.C. 78s(b)(2)(B).

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CBOE-2026-012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2026-012 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-02887 Filed 2-12-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35948; File No. 812-15541]

Wilmington Trust, N.A.

February 10, 2026.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from certain requirements of rule 3a-7(a)(4)(i) under the Act.

SUMMARY OF APPLICATION: Applicant requests an order that would permit an issuer of asset-backed securities ("ABS") that is not registered as an investment company under the Act in reliance on rule 3a-7 under the Act (an "Issuer") to appoint Applicant to act as a trustee in connection with the Issuer's ABS when any such Applicant is affiliated with an underwriter for the Issuer's ABS.

APPLICANT: Wilmington Trust, N.A.

FILING DATE: The application was filed on January 26, 2024, and amended on June 25, 2024 and December 30, 2025.

³⁴ 17 CFR 200.30-3(a)(12), (59).

HEARING OR NOTIFICATION OF HEARING:

An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretarys-Office@sec.gov and serving Applicant with a copy of the request by email, if an email address is listed for the Applicant below, or personally or by mail, if a physical address is listed for the Applicant below. The email should include the file number referenced above. Hearing requests should be received by the Commission by 5:30 p.m. Eastern time, on March 9, 2026, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at Secretarys-Office@sec.gov.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicant: Jeremiah C. Parker, jeremiah.parker@morganlewis.com.

FOR FURTHER INFORMATION CONTACT:

Stephan N. Packs, Senior Counsel, or Kaitlin C. Bottock, Assistant Director, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicant's representations, legal analysis, and conditions, please refer to Applicant's Second Amended and Restated Application, dated December 30, 2025, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/search-filings>. You may also call the SEC's Office of Investor Education and Advocacy at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-02880 Filed 2-12-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104799; File No. SR–CboeEDGA–2026–003]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule for Logical Ports

February 10, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on January 29, 2026, Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment.

The text of the proposed rule change is also available on the Commission’s website (<https://www.sec.gov/rules/sro.shtml>), the Exchange’s website (https://www.cboe.com/us/equities/regulation/rule_filings/edga/), and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment. By way of background, the Exchange offers a variety of logical ports, which provide users with the ability to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,³ Purge Ports,⁴ Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports.⁵ The Exchange also offers corresponding Certification Logical Ports for each of the aforementioned logical port types, which provide Members and non-Members access to the Exchange’s certification environment to test proprietary systems and applications. Each logical port type has a protocol defining how messages over the logical port type must be formatted, sent, and processed.

To ensure Members and non-Members who intend to utilize updated, or new, logical port types in the live production environment manage operational risks, meet exchange requirements, and confirm their systems behave correctly, the Exchange offers weekend testing in the production environment in addition to certification environment.⁶ Weekend testing in the production environment enables Members and non-Members to simulate market conditions in the real production environment over the weekend without impacting actual

market operations. Weekend testing includes opportunities for Members and non-Members to test order entry and routing, connectivity to the Exchange’s matching engines, and operational validation for the participants’ trading infrastructure. Weekend testing ensures operational readiness for the introduction of updated, or new, logical port types for the Exchange, Exchange Members, and non-Members seeking to utilize updated, or new, logical port types. A monthly fee applies for use of each logical port utilized in the live production environment as set forth in the Exchange’s Fee Schedule.

The Exchange proposes to clarify in the notes under the Logical Port Fees section of the Fee Schedule that logical port fees only apply if the corresponding logical port type is also available in the live production environment. For example, if the Exchange intends to adopt an updated protocol that has not yet been launched in the live production environment, any logical port that supports that protocol will be free during weekend testing in the production environment until such time that the updated protocol is available in the live production environment. Once any new logical port type, including a logical port that supports an updated protocol, is available in the live production environment, Members and non-Members will be assessed the corresponding monthly Logical Port Fee for the logical port as set forth in the Exchange’s Fee Schedule.

The Exchange notes that participation in weekend testing in the production environment continues to be voluntary and is not required in order to participate in the live production environment. Additionally, Members and Non-Members will not be assessed a fee until the logical port type, including a logical port to support an updated protocol, is in the live production environment.⁷ Further, the Exchange notes that other exchanges offer similar testing opportunities on predetermined weekends at discounted or no cost.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations

³ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁴ Purge Ports are dedicated ports that permit a user to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

⁵ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange’s Multicast PITCH data feeds.

⁶ For example, the Exchange is currently in the process of migrating to Binary Order Entry Version 3 (“BOEv3”), an updated trading protocol from the existing Binary Order Entry Version 2 (“BOEv2”) supported by Logical Ports. The BOEv3 protocol is scheduled to launch in the live production environment on the Exchange at a later date. The BOEv3 protocol differs from prior versions of the BOE protocol by removing optional messaging fields, changing messaging sizing, and introducing stricter sequencing. The Exchange will offer weekend testing in the production environment in anticipation of the launch of BOEv3 protocol in the live production environment.

⁷ For example, a participant may obtain a logical port free of charge if that participant utilizes the logical port in the production environment during the designated weekend testing periods.

⁸ See e.g., Nasdaq Stock Market LLC, Saturday Testing Policy; see also MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, in addition to the Exchange's certification environment, the Exchange's weekend testing in the production environment allows Members and non-Members to test updated protocols with the corresponding logical port types in the real production environment without impacting actual market conditions. This environment enables market participants to manage operational risks, meet Exchange requirements, and confirm their systems behave correctly under the updated protocol through testing software development changes in the production environment prior to implementing them in the live trading environment. As a result, weekend testing in the production environment reduces the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. The Exchange believes this is especially true when testing an updated protocol that has not yet launched in the live production environment. As such, the Exchange believes it's reasonable to only assess the Logical Port Fees to logical port types, including logical ports to support updated protocols, that are also available in the live production environment as to not discourage the testing of updated protocols ahead of any respective launch date.

The Exchange also believes applying Logical Port Fees is reasonable once

such logical port types are available in the live production environment because, while such ports will no longer be completely free, Members and non-Members will have the capability to utilize these logical ports in the live production environment. The Exchange continues to believe the weekend testing in the production environment, in addition to testing offered in the certification environment, will be sufficient for most Members and non-Members to prepare for the launch of updated protocols (with corresponding logical port types).

The Exchange believes the proposal to make clear that Logical Port Fees apply only to logical ports that are in the live production environment is equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to participate in weekend testing in the production environment and all market participants will have further clarity as to which logical ports are subject to the fees set forth in the Exchange's Fee Schedule. The Exchange also believes the proposed change is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to avail themselves of weekend testing opportunities in the production environment for new logical port types and protocols and to become acclimated with updated connectivity offerings ahead of going live in the production environment. The Exchange believes the proposal to add this language to the notes section in the Fees Schedule also provides clarity in the rules as to when the Logical Port Fees apply and reduces potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed addition to the Fee Schedule creates an undue burden on competition because the Exchange will offer the logical ports not available in the live production environment in the weekend testing production environment free of charge. As discussed above, the use of the weekend testing in the production environment is optional and based on the business

needs of each market participant. Moreover, market participants will continue to benefit from access to both the certification environment and weekend testing environment, through which the Exchange believes robust and realistic testing experiences are available. Such testing experiences may be especially critical during the time leading up to the launch of an protocol (with corresponding logical ports) in the live production environment.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's weekend testing in the production environment, which does not impact actual market operations. Additionally, the Exchange notes that it operates in a highly competitive market. Participants have numerous alternative venues that they may participate on and direct their order flow, including 17 other equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f) of Rule 19b-4¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGA-2026-003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeEDGA-2026-003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGA-2026-003 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104796; File No. SR-CBOE-2026-011]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Fees for the One-Minute Interval Intraday Open-Close Report

February 10, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 28, 2026, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to adopt fees for the One-Minute Interval Intraday Open-Close Report. The text of the proposed rule change is in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/options/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to adopt fees for its One-Minute Interval Intraday Open-Close Report, establish the Qualifying Academic Discount Program for ad hoc purchases of historical One-Minute Interval Intraday Open-Close Report, and apply the existing free trial for the Intraday Open-Close Report for the One-Minute Interval Intraday Open-Close Report.³ The Exchange recently adopted a new data product known as the One-Minute Interval Intraday Open-Close Report and the Exchange now proposes to adopt fees for this product.⁴

By way of background, the Exchange currently offers End-of-Day ("EOD") and Intraday Open-Close Data (collectively, "Open-Close Data"). EOD Open-Close Data is an end-of-day volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), price, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The EOD Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Exchange also offers Intraday Open-Close Data, which provides similar information to that of EOD Open-Close Data but is produced and updated every 10 minutes during the trading day. Data is captured in "snapshots" taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.⁵ The Intraday Open-

³ The Exchange also proposes to remove language from its Fee Schedule regarding shipping fees for hard drive files larger than 500GB. The Exchange no longer provides data in hard drive form. As such, the Exchange proposes to amend its Fee Schedule to remove language speaking to shipping fees for hard drive files as a clarifying edit.

⁴ See Securities Exchange Act Release No. 103323 (June 25, 2025), 90 FR 27884 (June 30, 2025) (SR-CBOE-2025-042).

⁵ For example, subscribers to the intraday product receive the first calculation of intraday data by approximately 9:42 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers receive the next update at 9:52 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update represents the aggregate data captured from the current "snapshot" and all previous "snapshots."

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁴ 17 CFR 200.30-3(a)(12).

Close Data provides a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume are further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Intraday Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. All Open-Close Data products are completely voluntary products, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

The Exchange recently adopted a new Intraday Open-Close Data that is the same as the existing Intraday Open-Close Data, except that it is produced and updated every minute during the trading day (the “One-Minute Intraday Open-Close Data”). The One-Minute Intraday Open-Close Data is captured in “snapshots” taken every 1 minute throughout the trading day and would be available to subscribers within five minutes of the conclusion of each one-minute period.⁶ Similar to the existing Intraday Open-Close Data, the One-Minute Intraday Open-Close Data provides a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume are further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The One-Minute Intraday Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange.

The Exchange proposes to provide in its Fee Schedule that firms may purchase One-Minute Intraday Open-Close Data on a subscription basis or by

⁶ For example, subscribers to the one-minute intraday product would receive the first calculation of intraday data by approximately 9:34 a.m. ET, which represents data captured from 9:30 a.m. to 9:31 a.m. Subscribers will receive the next update at 9:35 a.m., representing the data previously provided together with data captured from 9:31 a.m. through 9:32 a.m., and so forth. Each update will represent the aggregate data captured from the current “snapshot” and all previous “snapshots.” There may be variability in the time delivered during the day based on market activity; the Exchange expects to deliver this in intervals ranging from 2–5 minutes after the one-minute interval.

ad hoc request for a specified month (historical file).⁷ The Exchange proposes to assess a monthly fee of \$12,000 (or \$144,000 per year) for subscribing to the data feed. The Exchange also proposes to assess a fee of \$4,000 per request per month for an ad-hoc request for historical One-Minute Intraday Open-Close Data covering all Exchange-listed securities for data that is less than four years old from the date of which a subscriber requests the data.⁸ For ad hoc requests of historical One-Minute Intraday Open-Close Data that is five or more years old from the date of which a subscriber requests the data, the Exchange proposes to assess a fee of \$2,500 per request per month.⁹ An ad-hoc request can be for any number of months beginning with October 7, 2019 for which the data is available.

The Exchange also seeks to include the six-month trial period for Open-Close Data to apply to the One-Minute Intraday Open-Close Data as well. The Exchange currently permits a free trial for up to six months of Intraday Open-Close Historical Data or EOD Historical Data to both TPHs and non-TPHs who have not previously subscribed to the applicable dataset or received a free trial. The Exchange believes the proposed trial will serve as an incentive for new subscribers to start purchasing such data. Particularly, the Exchange believes it will give potential subscribers the ability to use and test the data offering before signing up for additional months. The Exchange also notes another exchange offers a free trial for new subscribers of a similar data product.¹⁰

Additionally, the Exchange proposes to adopt a fee for the external distribution of products derived from the One-Minute Intraday Open-Close Data. The Exchange currently assess a fee of \$5,000 per month to allow the unlimited external distribution of Derived Data from the Ten-Minute Interval Open-Close Data.¹¹ By way of

⁷ The Exchange propose to make clear in its fee schedule that a mid-month subscription or for an ad-hoc historical request for specific dates (*e.g.*, March 17, 2023–March 31, 2023) will be prorated. The Exchange also proposes to insert this as a clarifying update for the existing Ten-Minute Intraday and End of Day Open Close Data that is currently available.

⁸ For example, a firm that requests historical One-Minute Intraday Open-Close Data for the months of June 2025 and July 2025, would be assessed a total of \$8,000.

⁹ For example, a firm that requests One-Minute Intraday Open-Close Data from June 2018 and July 2018 would be assessed a fee of \$5,000.

¹⁰ See Nasdaq ISE, Options 7 Pricing Schedule, Section 10A, Market Data.

¹¹ See Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-CBOE-2022-023).

background, “Derived Data” is pricing data or other data that (i) is created in whole or in part from Exchange Data, (ii) is not an index or financial product, and (iii) cannot be readily reverse-engineered to recreate Exchange Data or used to create other data that is a reasonable facsimile or substitute for Exchange Data. Derived Data may be created by Distributors for a number of different purposes, as determined by the Distributor. The Exchange now proposes to adopt a fee of \$7,500 per month to allow the unlimited external distribution of Derived Data from One-Minute Intraday Open-Close Data.¹²

Lastly, the Exchange proposes to implement a similar Qualifying Academic Discount that is in place for the existing Intraday Open-Close Data to apply to the One-Minute Intraday Open-Close Data.¹³ The proposed Qualifying Academic Discount for the One-Minute Intraday Open-Close Data shall permit qualifying academic purchasers to purchase historical One-Minute Intraday Open-Close Data for \$12,000 per year for the first year and \$1,000 per month for each additional month (as opposed to the existing rate of \$3,000 per year for the first year and \$250 per month for each additional month for the existing Intraday Open-Close Data). Particularly, the Exchange believes that academic institutions and researchers provide a valuable service for the Exchange in studying and promoting the options market. Though academic institutions and researchers have need for granular options data sets, they do not trade upon the data for which they subscribe. The Exchange believes the proposed reduced fee for qualifying academic purchasers of historical One-Minute Intraday Open-Close Data will encourage and promote academic studies of its market data by academic institutions. In order to qualify for the academic pricing, an academic purchaser must be (1) an accredited academic institution or member of the faculty or staff of such an institution, (2) that will use the data in independent academic research, academic journals and other publications, teaching and classroom use, or for other bona fide educational purposes (*i.e.* academic use). Furthermore, use of the data must be limited to faculty and students of an accredited academic institution, and any commercial or profit-seeking usage is excluded. Academic pricing will not be provided to any purchaser whose

¹² The Exchange notes that this fee is in addition to the product fees for the One-Minute Intraday Open-Close Data.

¹³ See Securities Exchange Act Release No. 91394 (March 23, 2021), 86 FR 16431 (March 29, 2021) (SR-CBOE-2021-017).

research is funded by a securities industry participant. The Exchange notes that these same qualifications are in place for Qualifying Academic Discount for both the Short Trade Volume Report offered by the Exchange's affiliated equities exchanges and the existing EOD Open-Close Data and Intraday Open-Close Data, offered by the Exchange and its affiliated options exchanges.¹⁴

The Exchange notes that while the One-Minute Intraday Open-Close Data is priced higher than its existing pricing for the Intraday Open-Close Data this is to be expected, as a participant subscribing to the One-Minute Intraday Open-Close Data receives 10x the data points than a subscriber of Intraday Open-Close Data.¹⁵

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was

believed that this authority would expand the amount of data available to consumers and also spur innovation and competition for the provision of market data. The Exchange believes that the proposal to make the One-Minute Intraday Open-Close Data available for purchase would further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of One-Minute Intraday Open-Close Data. The proposed rule change would benefit investors by making the One-Minute Intraday Open-Close Data available for purchase, which as noted above, may promote better informed trading. Particularly, information regarding opening and closing activity across different option series may indicate investor sentiment, which can be helpful trading information. Subscribers to the data may be able to enhance their ability to analyze option trade and volume data on an intraday basis and create and test trading models and analytical strategies. The Exchange believes One-Minute Intraday Open-Close Data provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. The Exchange believes that market participants may find it beneficial to receive additional data based on these shorter intervals as opposed to the existing 10-minute intervals provided in the Intraday Open-Close Data. While use cases are the same as the existing 10-minute intervals currently provided, the increased frequency provides more current information and more data reporting intervals throughout the day to gain knowledge of the trading activity by origin. Of further note, the Exchange has created this proposed new report in response to customer feedback.

The Exchange believes the proposed fees are reasonable as the proposed fees reflect modest increases in price relative to the additional data points being offered in this new One-Minute Intraday Open-Close Data. As discussed above, a participant who subscribes to the One-Minute Intraday Open-Close Data receives ten times the data points that they would receive in comparison to the Intraday Open-Close Data and are only seeing an increase of four times in the cost for ten times the amount of data. Similarly, a participant who purchases the historical One-Minute Intraday Open-Close Data for the month of August 2025 receives ten times the

amount of data in contrast to a participant who purchases the historical Intraday Open-Close Data for the month of August 2025 with just 4x difference in the costs. Meaning, a participant receives ten times the data for just four times the cost. Finally, a Distributor of the Intraday Open-Close Data for Derived Data is charged \$5,000 while a Distributor of the One Minute Intraday Open-Close Data is charged \$7,500—again this permits a Distributor to distribute Derived Data based on ten times the amount of underlying data points and to only pay an increased fee of 1.5 times the fee for the Intraday Open-Close Derived Data. In summary, for each fee for the One-Minute Intraday Open-Close Data, a participant is able to receive a greater increase in the amount of data points it receives relative to the increase in the fee they would pay to receive this additional data.

Of further note, other exchanges also offer similar data product.¹⁹ Specifically, NASDAQ OMX PHLX ("PHLX") and the NASDAQ Stock Market LLC ("NASDAQ") offer the PHLX Options Trade Outline ("PHOTO") and NASDAQ Options Trade Outline ("NOTO"), respectively. PHOTO and NOTO provide similar information as that included in the proposed One-Minute Intraday Open-Close Data. Similar to the One-Minute Intraday Open-Close Data, both the PHOTO and NOTO intraday products include periodic, cumulative data for a particular trading session for a particular option series. Both reports include information regarding the aggregate number of trades to open a position, aggregate number of trades to close a position, and the origin of the trades based on the specific categories of market participants (*i.e.*, customers, broker-dealers, market makers, etc.).²⁰ The primary distinction between these reports is that the One-Minute Interval Intraday Open-Close Report is provided in one minute intervals as opposed to ten minute intervals.

The Exchange notes that while the pricing of these similar reports is lower²¹ than the proposed fees, similar

¹⁴ See *e.g.*, Securities Exchange Act Release No. 102967 (May 1, 2025), 90 FR 19343 (May 7, 2025) (SR-ChoeBYX-2025-009) and see also Securities Exchange Act Release No. 92173 (June 14, 2021), 86 FR 33399 (June 24, 2021) (SR-C2-2021-010).

¹⁵ The Exchange also notes that it has introduced clarifying edits to the existing Intraday Open-Close Data in its Fees Schedule to distinguish between the pricing for the ten-minute intraday data and the one-minute intraday data.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ *Id.*

¹⁹ See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121); See also Securities Exchange Act Release No. 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-NASDAQ-2011-144).

²⁰ *Id.*

²¹ See Price List—U.S. Derivatives Data for Nasdaq PHLX, LLC ("PHLX"), The Nasdaq Stock Market, LLC ("Nasdaq"), Nasdaq ISE, LLC ("ISE"), and Nasdaq GEMX, LLC ("GEMX"), available at <http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web>. Particularly, PHLX offers "Nasdaq PHLX Options Trade Outline (PHOTO)"

to above, a participant receives a greater increase in the amount of data relative to the increased fee of a competitor offering.²²

Furthermore, proposing fees that are excessively higher than established fees for similar data products, such as the Intraday Open-Close Data, would simply serve to reduce demand for the Exchange's data product, which, as noted, is entirely optional. Like the Exchange's Intraday Open-Close Data and similar data products offered at other exchanges, the One-Minute Intraday Open-Close Data provides insight into trading on a specific market and may likewise aid in assessing investor sentiment. Similarly, market participants may be able to analyze option trade and volume data and create and test trading models and analytical strategies using only the Intraday Open-Close Data. As such, if a market participant views the Intraday Open-Close Data as a more attractive offering for its specific business needs, then such market participant can merely choose to purchase the Exchange's the Intraday Open-Close Data.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product that is designed to aid investors by providing further insight into trading on the Exchange. The Exchange believes One-Minute Intraday Open-Close Data provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. The Exchange believes that market participants may find it beneficial to receive additional data based on these shorter intervals as opposed to the existing 10-minute intervals provided in the Intraday Open-Close Data. While use cases are the same as the existing 10-minute intervals currently provided, the increased frequency provides more current information and more data reporting intervals throughout the day to gain

and assesses \$3,000 per month for an intra-day subscription and \$1,000 per month for historical reports; Nasdaq offers the "Nasdaq Options Trade Outline (NOTO)" and assesses \$2,000 per month for an intra-day subscription and \$500 per month for historical reports; ISE offers the "Nasdaq ISE Open/Close Trade Profile" and assesses \$2,500 per month for an intra-day subscription and \$1,000 per month for historical reports; and GEMX offers the "Nasdaq GEMX Open/Close Trade Profile" and assesses \$1,500 per month for an intra-day subscription and \$750 per month for historical reports.

²² For example, if a firm subscribes to the PHOTO report and the One-Minute Interval Intraday Open-Close Report, a firm receives ten times the amount of data provided in the Exchange's One-Minute Interval Intraday Open-Close Report for only double the cost.

knowledge of the trading activity by origin. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase One-Minute Intraday Open-Close Data and would allow any interested market participant to purchase such data based on their business needs.

The Exchange believes that the proposed free trial for any TPHs or non-TPHs who have not purchased One-Minute Intraday Open-Close Data or received a free trial is reasonable because such users would not be subject to fees for up to 6 months' worth of One-Minute Intraday Open-Close Data. The Exchange believes the proposed free trial is also reasonable as it will give potential subscribers the ability to use and test the One-Minute Intraday Open-Close Data prior to purchasing additional months and will therefore encourage and promote new users to purchase the One-Minute Intraday Open-Close Data. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all TPHs and non-TPHs who have not previously purchased One-Minute Intraday Open-Close Data or received a free trial. Also as noted above, another exchange offers a free trial to new users for a similar data product.²³ Lastly, the purchase of this data product is discretionary and not compulsory.

Lastly, the Exchange believes that the discount for qualifying academic purchasers for the historical One-Minute Intraday Open-Close Data is reasonable because academic institutions are not able to monetize access to the data as they do not trade on the data set. The Exchange believes the proposed discount will allow for more academic institutions to purchase the historical One-Minute Intraday Open-Close Data, and, as a result, promote research and studies of the options industry to the benefit of all market participants. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all academic institutions that submit an application and meet the accredited academic institution and academic use criteria. As stated above, qualified academic purchasers will subscribe to the data set for educational use and purposes and are not permitted

²³ See Nasdaq ISE, Options 7 Pricing Schedule, Section 10A, Market Data.

to use the data for commercial or monetizing purposes, nor can they qualify if they are funded by an industry participant. As a result, the Exchange believes the proposed discount is equitable and not unfairly discriminatory because it maintains equal treatment for all industry participants or other subscribers that use the data for vocational, commercial or other for-profit purposes.

As noted above, the Exchange anticipates a wide variety of market participants to purchase One-Minute Intraday Open-Close Data, including but not limited to individual customers, buy-side investors and investment banks. The Exchange reiterates that the decision as to whether or not to purchase the One-Minute Intraday Open-Close Data is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the One-Minute Intraday Open-Close Data, and the Exchange is not required to make the One-Minute Intraday Open-Close Data available to all investors. Rather, the Exchange is voluntarily making One-Minute Intraday Open-Close Data available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to make available a data product for purchase that is similar to those offered by other competitor options exchanges but contains finer data reporting intervals.²⁴

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable reports that includes additional data points with lower prices to better compete with the Exchange's offerings. The Exchange operates in a highly competitive environment, and its ability to price the reports is constrained by competition among exchanges who choose to adopt similar products. The Exchange must consider this in its pricing discipline in order to compete

²⁴ See supra note 16.

for subscribers of the Exchange's market data via the reports. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's reports, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed fees apply uniformly to any purchaser in that the Exchange does not differentiate between the different market participants that may purchase the report. The proposed fees are set at a reasonable level that would allow any interested market participant to purchase such data based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁵ and paragraph (f) of Rule 19b-4²⁶ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2026-011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CBOE-2026-011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2026-011 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-02892 Filed 2-12-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104808; File No. SR-C2-2026-004]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule for Logical Ports

February 10, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 29, 2026, Cboe C2 Exchange, Inc. (the

"Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/options/regulation/rule_filings/c2/), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment. By way of background, the Exchange offers a variety of logical ports, which provide users with the ability to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f).

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

offers Logical Ports,³ Purge Ports,⁴ Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports.⁵ The Exchange also offers corresponding Certification Logical Ports for each of the aforementioned logical port types, which provide TPHs and non-TPHs access to the Exchange's certification environment to test proprietary systems and applications. Each logical port type has a protocol defining how messages over the logical port type must be formatted, sent, and processed.

To ensure TPHs and non-TPHs who intend to utilize updated, or new, logical port types in the live production environment manage operational risks, meet exchange requirements, and confirm their systems behave correctly, the Exchange offers weekend testing in the production environment in addition to certification environment.⁶ Weekend testing in the production environment enables TPHs and non-TPHs to simulate market conditions in the real production environment over the weekend without impacting actual market operations. Weekend testing includes opportunities for TPHs and non-TPHs to test order entry and routing, connectivity to the Exchange's matching engines, and operational validation for the participants' trading infrastructure. Weekend testing ensures operational readiness for the introduction of updated, or new, logical port types for the Exchange, Exchange TPHs, and non-TPHs seeking to utilize updated, or new, logical port types. A monthly fee applies for use of each logical port utilized in the live production environment as set forth in the Exchange's Fee Schedule.

The Exchange proposes to clarify in the notes under the Logical Port Fees section of the Fee Schedule that logical port fees only apply if the

corresponding logical port type is also available in the live production environment. For example, if the Exchange intends to adopt an updated protocol that has not yet been launched in the live production environment, any logical port that supports that protocol will be free during weekend testing in the production environment until such time that the updated protocol is available in the live production environment. Once any new logical port type, including a logical port that supports an updated protocol, is available in the live production environment, TPHs and non-TPHs will be assessed the corresponding monthly Logical Port Fee for the logical port as set forth in the Exchange's Fee Schedule.

The Exchange notes that participation in weekend testing in the production environment continues to be voluntary and is not required in order to participate in the live production environment. Additionally, TPHs and Non-TPHs will not be assessed a fee until the logical port type, including a logical port to support an updated protocol, is in the live production environment.⁷ Further, the Exchange notes that other exchanges offer similar testing opportunities on predetermined weekends at discounted or no cost.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

As noted above, in addition to the Exchange's certification environment, the Exchange's weekend testing in the production environment allows TPHs and non-TPHs to test updated protocols with the corresponding logical port types in the real production environment without impacting actual market conditions. This environment enables market participants to manage operational risks, meet Exchange requirements, and confirm their systems behave correctly under the updated protocol through testing software development changes in the production environment prior to implementing them in the live trading environment. As a result, weekend testing in the production environment reduces the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. The Exchange believes this is especially true when testing an updated protocol that has not yet launched in the live production environment. As such, the Exchange believes it's reasonable to only assess the Logical Port Fees to logical port types, including logical ports to support updated protocols, that are also available in the live production environment as to not discourage the testing of updated protocols ahead of any respective launch date.

The Exchange also believes applying Logical Port Fees is reasonable once such logical port types are available in the live production environment because, while such ports will no longer be completely free, TPHs and non-TPHs will have the capability to utilize these logical ports in the live production environment. The Exchange continues to believe the weekend testing in the production environment, in addition to testing offered in the certification environment, will be sufficient for most TPHs and non-TPHs to prepare for the launch of updated protocols (with corresponding logical port types).

The Exchange believes the proposal to make clear that Logical Port Fees apply only to logical ports that are in the live production environment is equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to participate in weekend testing in the production

³ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁴ Purge Ports are dedicated ports that permit a user to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

⁵ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

⁶ For example, the Exchange is currently in the process of migrating to Binary Order Entry Version 3 ("BOEv3"), an updated trading protocol from the existing Binary Order Entry Version 2 ("BOEv2") supported by Logical Ports. The BOEv3 protocol is scheduled to launch in the live production environment on the Exchange at a later date. The BOEv3 protocol differs from prior versions of the BOE protocol by removing optional messaging fields, changing messaging sizing, and introducing stricter sequencing. The Exchange will offer weekend testing in the production environment in anticipation of the launch of BOEv3 protocol in the live production environment.

⁷ For example, a participant may obtain a logical port free of charge if that participant utilizes the logical port in the production environment during the designated weekend testing periods.

⁸ See e.g., Nasdaq Stock Market LLC, Saturday Testing Policy; see also MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

environment and all market participants will have further clarity as to which logical ports are subject to the fees set forth in the Exchange's Fee Schedule. The Exchange also believes the proposed change is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to avail themselves of weekend testing opportunities in the production environment for new logical port types and protocols and to become acclimated with updated connectivity offerings ahead of going live in the production environment. The Exchange believes the proposal to add this language to the notes section in the Fees Schedule also provides clarity in the rules as to when the Logical Port Fees apply and reduces potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed addition to the Fee Schedule creates an undue burden on competition because the Exchange will offer the logical ports not available in the live production environment in the weekend testing production environment free of charge. As discussed above, the use of the weekend testing in the production environment is optional and based on the business needs of each market participant. Moreover, market participants will continue to benefit from access to both the certification environment and weekend testing environment, through which the Exchange believes robust and realistic testing experiences are available. Such testing experiences may be especially critical during the time leading up to the launch of an protocol (with corresponding logical ports) in the live production environment.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's weekend testing in the production environment, which does not impact actual market operations. Additionally, the Exchange notes that it operates in a highly

competitive market. Participants have numerous alternative venues that they may participate on and direct their order flow, including 18 other options exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f) of Rule 19b-4¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

- Send an email to rule-comments@sec.gov. Please include file number SR-C2-2026-004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-C2-2026-004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-C2-2026-004 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104800; File No. SR-CboeEDGX-2026-006]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule for Logical Ports

February 10, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 29, 2026, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/equities/regulation/rule_filings/edgx/), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment. By way of background, the Exchange offers a variety of logical ports, which provide users with the ability to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,³ Purge Ports,⁴ Multicast PITCH GRP Ports and

Multicast PITCH Spin Server Ports.⁵ The Exchange also offers corresponding Certification Logical Ports for each of the aforementioned logical port types, which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications. Each logical port type has a protocol defining how messages over the logical port type must be formatted, sent, and processed.

To ensure Members and non-Members who intend to utilize updated, or new, logical port types in the live production environment manage operational risks, meet exchange requirements, and confirm their systems behave correctly, the Exchange offers weekend testing in the production environment in addition to certification environment.⁶ Weekend testing in the production environment enables Members and non-Members to simulate market conditions in the real production environment over the weekend without impacting actual market operations. Weekend testing includes opportunities for Members and non-Members to test order entry and routing, connectivity to the Exchange's matching engines, and operational validation for the participants' trading infrastructure. Weekend testing ensures operational readiness for the introduction of updated, or new, logical port types for the Exchange, Exchange Members, and non-Members seeking to utilize updated, or new, logical port types. A monthly fee applies for use of each logical port utilized in the live production environment as set forth in the Exchange's Fee Schedule.

The Exchange proposes to clarify in the notes under the Logical Port Fees section of the Fee Schedule that logical port fees only apply if the corresponding logical port type is also available in the live production environment. For example, if the Exchange intends to adopt an updated protocol that has not yet been launched in the live production environment, any logical port that supports that protocol will be free during weekend testing in

the production environment until such time that the updated protocol is available in the live production environment. Once any new logical port type, including a logical port that supports an updated protocol, is available in the live production environment, Members and non-Members will be assessed the corresponding monthly Logical Port Fee for the logical port as set forth in the Exchange's Fee Schedule.

The Exchange notes that participation in weekend testing in the production environment continues to be voluntary and is not required in order to participate in the live production environment. Additionally, Members and Non-Members will not be assessed a fee until the logical port type, including a logical port to support an updated protocol, is in the live production environment.⁷ Further, the Exchange notes that other exchanges offer similar testing opportunities on predetermined weekends at discounted or no cost.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its

⁵ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

⁶ For example, the Exchange is currently in the process of migrating to Binary Order Entry Version 3 ("BOEv3"), an updated trading protocol from the existing Binary Order Entry Version 2 ("BOEv2") supported by Logical Ports. The BOEv3 protocol is scheduled to launch in the live production environment on the Exchange at a later date. The BOEv3 protocol differs from prior versions of the BOE protocol by removing optional messaging fields, changing messaging sizing, and introducing stricter sequencing. The Exchange will offer weekend testing in the production environment in anticipation of the launch of BOEv3 protocol in the live production environment.

⁷ For example, a participant may obtain a logical port free of charge if that participant utilizes the logical port in the production environment during the designated weekend testing periods.

⁸ See e.g., Nasdaq Stock Market LLC, Saturday Testing Policy; see also MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

³ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁴ Purge Ports are dedicated ports that permit a user to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

Members and other persons using its facilities.

As noted above, in addition to the Exchange's certification environment, the Exchange's weekend testing in the production environment allows Members and non-Members to test updated protocols with the corresponding logical port types in the real production environment without impacting actual market conditions. This environment enables market participants to manage operational risks, meet Exchange requirements, and confirm their systems behave correctly under the updated protocol through testing software development changes in the production environment prior to implementing them in the live trading environment. As a result, weekend testing in the production environment reduces the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. The Exchange believes this is especially true when testing an updated protocol that has not yet launched in the live production environment. As such, the Exchange believes it's reasonable to only assess the Logical Port Fees to logical port types, including logical ports to support updated protocols, that are also available in the live production environment as to not discourage the testing of updated protocols ahead of any respective launch date.

The Exchange also believes applying Logical Port Fees is reasonable once such logical port types are available in the live production environment because, while such ports will no longer be completely free, Members and non-Members will have the capability to utilize these logical ports in the live production environment. The Exchange continues to believe the weekend testing in the production environment, in addition to testing offered in the certification environment, will be sufficient for most Members and non-Members to prepare for the launch of updated protocols (with corresponding logical port types).

The Exchange believes the proposal to make clear that Logical Port Fees apply only to logical ports that are in the live production environment is equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to participate in weekend testing in the production environment and all market participants will have further clarity as to which logical ports are subject to the fees set forth in the Exchange's Fee Schedule. The Exchange also believes the proposed change is reasonable,

equitable and not unfairly discriminatory because it is designed to encourage market participants to avail themselves of weekend testing opportunities in the production environment for new logical port types and protocols and to become acclimated with updated connectivity offerings ahead of going live in the production environment. The Exchange believes the proposal to add this language to the notes section in the Fees Schedule also provides clarity in the rules as to when the Logical Port Fees apply and reduces potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed addition to the Fee Schedule creates an undue burden on competition because the Exchange will offer the logical ports not available in the live production environment in the weekend testing production environment free of charge. As discussed above, the use of the weekend testing in the production environment is optional and based on the business needs of each market participant. Moreover, market participants will continue to benefit from access to both the certification environment and weekend testing environment, through which the Exchange believes robust and realistic testing experiences are available. Such testing experiences may be especially critical during the time leading up to the launch of a protocol (with corresponding logical ports) in the live production environment.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's weekend testing in the production environment, which does not impact actual market operations. Additionally, the Exchange notes that it operates in a highly competitive market. Participants have numerous alternative venues that they may participate on and direct their order flow, including 17 other equities exchanges, as well as a number of alternative trading systems and other

off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f) of Rule 19b-4¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2026-006 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeEDGX-2026-006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGX-2026-006 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-02895 Filed 2-12-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104795; File No. SR-CBOE-2026-010]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Fees for the Trade-by-Trade Report

February 10, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 28, 2026, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the

proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to adopt fees for the Trade-by-Trade report. The text of the proposed rule change is in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/options/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to adopt fees for its Trade By Trade report and establish the Qualifying Academic Discount Program for ad hoc purchases of the monthly TBT Report. The Exchange recently adopted a new data product known as the Trade By Trade report ("TBT Report") and the Exchange now proposes to adopt fees for this product, including adopting a free one-month trial.³

By way of background, the TBT Report provides subscribers with comprehensive trade-by-trade level detail for each options transaction executed on the Exchange. The TBT Report will be produced and updated at the end of each trading day and be made available to subscribers overnight after midnight Eastern Time (*i.e.*, T+1), ensuring that the data is strictly historical and cannot be used to influence intraday trading decisions.

Specifically, each row in the TBT Report will represent a single trade event and will include transaction time, trading floor timestamp, underlying symbol, Options Symbolology Initiative ("OSI") details (*e.g.*, root, expiry, strike, call/put), trade size, trade price, market context indicators (*e.g.*, National Best Bid/National Best Offer, local Best Bid/Best Offer), side of the market (*i.e.*, buy or sell), transaction type (opening or closing), and origin (*i.e.*, customer, professional customer, broker-dealer, and market maker), as well as the subscribing Member's execution IDs for both Simple Book³ and Complex Order Book⁴ trades that will better allow for accurate linkage and reconstruction of trading activity.

The Exchange proposes to provide in its Fee Schedule that firms may purchase the TBT Report on a subscription basis or by ad hoc request for a specified month.⁴ The Exchange proposes to assess a monthly fee of \$12,000 (or \$144,000 per year) for subscribing to the data feed. The Exchange also proposes to introduce a fee of \$8,000 per month for ad hoc requests of the TBT Report. An ad-hoc request can be for any number of months beginning with October 7, 2019 for which the data is available.

The Exchange also seeks to include a one-month trial period for the TBT Report. In other products, such as the Intraday Open-Close Historical Data or EOD Historical Data, the Exchange currently permits a free trial for up to six months to both TPHs and non-TPHs who have not previously subscribed to the applicable dataset or received a free trial. The Exchange believes the proposed trial for the TBT Report will serve as an incentive for new subscribers to start purchasing such data. Particularly, the Exchange believes it will give potential subscribers the ability to use and test the data offering before signing up for additional months. The Exchange also notes another exchange offers a free trial for new subscribers of a similar data product.⁵

Lastly, the Exchange proposes to implement a similar Qualifying Academic Discount that is in place for the for other datasets offered by the Exchange, such as the Intraday Open-Close Data, to apply to the TBT Report.⁶ The proposed Qualifying Academic

⁴ The Exchange propose to make clear in its fee schedule that a mid-month subscription or for an ad-hoc historical request for specific dates (*e.g.*, March 17, 2023–March 31, 2023) will be prorated.

⁵ See Nasdaq ISE, Options 7 Pricing Schedule, Section 10A, Market Data.

⁶ See Securities Exchange Act Release No. 91394 (March 23, 2021), 86 FR 16431 (March 29, 2021) (SR-CBOE-2021-017).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 104415 (December 16, 2025), 90 FR 59603 (December 19, 2025) (SR-CBOE-2025-088).

Discount for the TBT Report shall permit qualifying academic purchasers to purchase historical ad hoc TBT Reports for \$24,000 per year for the first year and \$2,000 per month for each additional month. For clarity, the Exchange notes that this discount shall only apply to ad hoc requests and is not for the monthly subscription.

Particularly, the Exchange believes that academic institutions and researchers provide a valuable service for the Exchange in studying and promoting the options market. Though academic institutions and researchers have need for granular options data sets, they do not trade upon the data for which they subscribe. The Exchange believes the proposed reduced fee for qualifying academic purchasers of the TBT Report will encourage and promote academic studies of its market data by academic institutions. In order to qualify for the academic pricing, an academic purchaser must be (1) an accredited academic institution or member of the faculty or staff of such an institution, (2) that will use the data in independent academic research, academic journals and other publications, teaching and classroom use, or for other bona fide educational purposes (*i.e.*, academic use). Furthermore, use of the data must be limited to faculty and students of an accredited academic institution, and any commercial or profit-seeking usage is excluded. Academic pricing will not be provided to any purchaser whose research is funded by a securities industry participant. The Exchange notes that these same qualifications are in place for Qualifying Academic Discount for both the Short Trade Volume Report offered by the Exchange's affiliated equities exchanges and the existing EOD Open-Close Data and Intraday Open-Close Data, offered by the Exchange and its affiliated options exchanges.⁷

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirements that the rules of

an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers and also spur innovation and competition for the provision of market data. The Exchange believes that the proposal to make the TBT Report available for purchase would further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of TBT Report. The proposed rule change would benefit investors by making the TBT Report available for purchase, which as noted above, may help subscribers perform detailed transaction-level analysis, compliance checks, and historical market reconstruction. The Exchange believes the TBT Report provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading.

The Exchange believes that the TBT Report is similar to the Intraday Open-Close Data. While there are some differences between the Intraday Open-Close Data and the TBT Report (*e.g.*, timing of delivery) the utility of these reports is substantially similar. Specifically, the TBT Report and the Intraday Open-Close Data both provide information regarding options trading activity on the Exchange, which in turn, may be used by subscribers to create and test trading models and analytical strategies, and provide comprehensive insight into trading on the Exchange. The functional difference is merely the

level of granularity a subscriber may desire to view executed options transactions and the timeline on which each product is delivered—*i.e.*, on a per symbol aggregated level in 1-minute or 10-minute intervals and delivered intraday on a delayed basis (Intraday Open Close Data), or on a trade-by-trade level that is delivered on a T+1 basis (the proposed TBT Report). Importantly, by offering the TBT Report as well as the Intraday Open-Close Data, subscribers will have an additional option for historical trade data and may choose to purchase the data that best suits their business needs.¹¹

The Exchange believes the proposed fees are reasonable as the proposed fees reflect modest increases in price relative to the additional data points being offered in this new Trade by Trade Report as opposed to the One Minute Intraday Open Close Data that can be purchased on a historical basis. As noted, the TBT Report provides data on a trade by trade basis while the One Minute Intraday Open Close data only provides a snapshot every minute. A subscriber may purchase a subscription to the TBT Report for the same fee as they may purchase a subscription for the One-Minute Intraday Open Close Data—at a cost of \$12,000/month. While a subscriber for the TBT Report will not receive real-time data throughout the day, as would a subscriber for the One-Minute Intraday Open-Close Data, they will receive additional data points as the data is not based on one-minute snapshots, but on all trades.

TBT Reports may also be purchased on an ad hoc basis for a cost of \$8,000/month of data. The Exchange believes this fee is reasonable. While the cost is higher than a month of One-Minute Intraday Open Close Data (at a price of \$4,000/month) the Exchange believes this is reasonable as the TBT Report contains all trades, as opposed to one-minute snapshots that the One-Minute Intraday Open-Close Data provides. While the TBT Report is double the cost of the One-Minute Intraday Open-Close Data, it contains all trades within a given minute as opposed to a single datapoint that provides an overview of a minute.

Furthermore, proposing fees that are excessively higher than established fees for similar data products, such as the One Minute Intraday Open-Close Data, would simply serve to reduce demand for the Exchange's data product, which, as noted, is entirely optional. If a market participant views the Intraday Open-

⁷ See *e.g.*, Securities Exchange Act Release No. 102967 (May 1, 2025), 90 FR 19343 (May 7, 2025) (SR-CboeBYX-2025-009) and see also Securities Exchange Act Release No. 92173 (June 14, 2021), 86 FR 33399 (June 24, 2021) (SR-C2-2021-010).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ *Id.*

¹¹ See Securities Exchange Act Release No. 104415 (December 16, 2025), 90 FR 59603 (December 19, 2025) (SR-CBOE-2025-088).

Close Data as a more attractive offering for its specific business needs, then such market participant can merely choose to purchase the Exchange's Intraday Open-Close Data.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product that is designed to aid investors by providing further insight into trading on the Exchange. The Exchange believes the proposed TBT Report will aid subscribers in performing detailed transaction-level analysis, compliance checks, and historical market reconstruction. The TBT Report may also serve as a foundation for analytics on liquidity, price formation, and trade behavior at a trade-by-trade level.

The Exchange believes that the proposed free trial for any TPHs or non-TPHs who have not purchased the TBT Report is reasonable because such users would not be subject to fees for up to 6 [sic] months' worth of Trade by Date [sic] data. The Exchange believes the proposed free trial is also reasonable as it will give potential subscribers the ability to use and test the TBT Report prior to purchasing additional months and will therefore encourage and promote new users to purchase the TBT Report. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all TPHs and non-TPHs who have not previously purchased TBT Report or received a free trial. Also as noted above, another exchange offers a free trial to new users for a similar data product.¹² Lastly, the purchase of this data product is discretionary and not compulsory.

Lastly, the Exchange believes that the discount for qualifying academic purchasers for ad hoc requests of the TBT Report is reasonable because academic institutions are not able to monetize access to the data as they do not trade on the data set. The Exchange believes the proposed discount will allow for more academic institutions to purchase the TBT Report, and, as a result, promote research and studies of the options industry to the benefit of all market participants. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all academic institutions that submit an application and meet the accredited academic institution and academic use criteria. As stated above, qualified academic purchasers will use the data set for educational use and

purposes and are not permitted to use the data for commercial or monetizing purposes, nor can they qualify if they are funded by an industry participant. As a result, the Exchange believes the proposed discount is equitable and not unfairly discriminatory because it maintains equal treatment for all industry participants or other subscribers that use the data for vocational, commercial or other for-profit purposes.

As noted above, the Exchange anticipates a wide variety of market participants would purchase the TBT Report, including, but not limited to, individual customers, buy-side investors, and investment banks. The Exchange reiterates that the decision as to whether or not purchase the TBT Report is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the TBT Report, and the Exchange is not required to make the TBT Report available to all investors. Rather, the Exchange is voluntarily making the TBT Report available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to make available a data product for purchase that is similar to those offered by other competitor options exchanges but contains finer data reporting intervals.¹³

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable reports that includes additional data points with lower prices to better compete with the Exchange's offerings. The Exchange operates in a highly competitive environment, and its ability to price the reports is constrained by competition among exchanges who choose to adopt similar products. The Exchange must consider this in its pricing discipline in order to compete

for subscribers of the Exchange's market data via the reports. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's reports, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed fees apply uniformly to any purchaser in that the Exchange does not differentiate between the different market participants that may purchase the report. The proposed fees are set at a reasonable level that would allow any interested market participant to purchase such data based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and paragraph (f) of Rule 19b-4¹⁵ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

¹² See Nasdaq ISE, Options 7 Pricing Schedule, Section 10A, Market Data.

¹³ See Securities Exchange Act Release No. 104415 (December 16, 2025), 90 FR 59603 (December 19, 2025) (SR-CBOE-2025-088).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2026-010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-CBOE-2026-010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2026-010 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-02891 Filed 2-12-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104812; File No. SR-MEMX-2026-05]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule Concerning Equities Transaction Pricing

February 10, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on January

30, 2026, MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members³ (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). As is further described below, the Exchange proposes to: (i) increase the standard fee for executions of orders that remove liquidity from the Exchange in Tape A Securities priced at or above \$1.00 per share (such orders, "Removed Tape A Volume"); (ii) adopt a new Tape A Liquidity Removal Tier that provides a reduced fee for executions of Removed Tape A Volume; (iii) reduce the rebate provided under the Displayed Liquidity Incentive ("DLI") Tier 1; (iv) modify the required criteria under the Tape A Quoting Tier; (v) reduce the additive rebate provided under the Tape B Volume Tier 1; and (vi) amend the Notes section of the Fee Schedule to bring the Exchange's transactions fees and rebates into compliance with Regulation NMS Rule 610(d). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) increase the standard fee for executions of orders that remove liquidity from the Exchange in Tape A Securities priced at or above \$1.00 per share (such orders, "Removed Tape A Volume"); (ii) adopt a new Tape A Liquidity Removal Tier that provides a reduced fee for executions of Removed Tape A Volume; (iii) reduce the rebate provided under the Displayed Liquidity Incentive ("DLI") Tier 1; (iv) modify the required criteria under the Tape A Quoting Tier; (v) reduce the additive rebate provided under the Tape B Volume Tier 1; and (vi) amend the Notes section of the Fee Schedule to bring the Exchange's transactions fees and rebates into compliance with Regulation NMS Rule 610(d), each as further described below.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 18 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 14% of the total market share of executed volume of equities trading.⁴ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 2% of the overall market share.⁵ The Exchange in particular operates a "Maker-Taker" model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing,

⁴ Market share percentage calculated as of January 29, 2026. The Exchange receives and processes data made available through consolidated data feeds (*i.e.*, CTS and UTDF).

⁵ *Id.*

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Increase Standard Fee for Removed Tape A Volume

Currently, the Exchange charges a standard fee of \$0.0029 per share for executions of Removed Tape A Volume. The Exchange now proposes to increase the standard fee for executions of Removed Tape A Volume to \$0.0030 per share.⁶ The purpose of increasing the standard fee for executions of Removed Tape A Volume is for business and competitive reasons, as the Exchange believes that increasing such fee as proposed would generate additional revenue to offset some of the costs associated with the Exchange's current pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that despite the increase proposed herein, the proposed standard fee for executions of Removed Tape A Volume remains in line with the standard fees charged by other exchanges for executions of Removed Tape A Volume.⁷ The Exchange is not proposing to change the fee charged for executions of Removed Tape A Volume in securities priced below \$1.00 per share.

Adoption of Tape A Liquidity Removal Tier

The Exchange proposes to adopt a new tier applicable to Member participation in Tape A securities, referred to by the Exchange as the Tape

A Liquidity Removal Tier, in which the Exchange will charge a discounted fee for executions of Removed Tape A Volume for Members that qualify for the Tier by achieving certain volume criteria in Tape A securities. Under the proposed Tape A Liquidity Removal Tier, the Exchange will charge \$0.0029 per share for executions of Tape A Removed Volume for a Member that qualifies for the Tier by achieving a Tape A ADAV⁸ of at least 10,000,000 shares.⁹

The Exchange proposes to charge Members that qualify for the Liquidity Removal Tier a fee of 0.28% of the total dollar value of the transaction for executions of orders that remove liquidity from the Exchange in securities priced below \$1.00 per share, which is the same fee that would be applicable to such executions for Members that do not qualify for the Tape A Liquidity Removal Tier.

The proposed Tape A Liquidity Removal Tier is designed to encourage Members to strive for higher ADAV on the Exchange in Tape A securities in order to qualify for the discounted fee for executions of Removed Tape A Volume. As such, the proposed tier is designed to encourage Members to maintain or increase their order flow directed to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange notes that the proposed discounted fee for executions of Removed Tape A Volume applicable to Members that qualify for the Tape A Liquidity Removal Tier is comparable to, and competitive with, the fees charged for executions of liquidity-removing orders charged by at least one other exchange under similar volume-based tiers.¹⁰

DLI Tier 1

The Exchange currently offers DLI Tiers 1 and 2 under which a Member may receive an enhanced rebate for executions of orders in securities priced

at or above \$1.00 per share that add displayed liquidity to the Exchange ("Added Displayed Volume") by achieving the corresponding required criteria for each such tier. The DLI Tiers are designed to encourage Members, through the provision of an enhanced rebate for executions of Added Displayed Volume, to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day (*i.e.*, through the applicable quoting requirement¹¹) in a broad base of securities (*i.e.*, through the applicable securities requirements¹²), thereby benefitting the Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO in a broad base of securities and committing capital to support the execution of orders. Now, the Exchange proposes to modify DLI Tier 1 by reducing the rebate for executions of Added Displayed Volume under such tier.

Currently, under DLI Tier 1, the Exchange provides an enhanced rebate of \$0.0033 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving an NBBO Time of at least 50% in an average of at least 1,000 securities per trading day during the month. The Exchange now proposes to reduce the rebate for executions of Added Displayed Volume under DLI Tier 1 to \$0.0032 per share.¹³ The Exchange is not proposing to change the criteria required to qualify for DLI Tier 1.

The Exchange believes that the proposed reduction of the rebate under DLI Tier 1 (*i.e.*, by \$0.0001 per share) represents a modest reduction and that the proposed rebate under DLI Tier 1 remains commensurate with the required criteria under such tier. The purpose of reducing the rebate for executions of Added Displayed Volume

⁶ The proposed standard fee for executions of Removed Tape A Volume is referred to by the Exchange on the Fee Schedule under the existing description "Removed volume from MEMX Book, Tape A" with a Fee Code of "Ra" on execution reports.

⁷ See, *e.g.*, the Cboe EDGX equities fee schedule on its public website (available at <https://www.cboe.com/us/equities/membership/fee-schedule/edx/>), which reflects a standard fee of \$0.0030 per share for executions of orders in Tape A securities priced at or above \$1.00 per share that remove liquidity; see also the Cboe BZX equities fee schedule on its public website (available at <https://www.cboe.com/us/equities/membership/fee-schedule/bzx/>) which reflects a standard fee of \$0.0030 per share for executions of orders in Tape A securities priced at or above \$1.00 per share that remove liquidity.

⁸ As set forth on the Fee Schedule, "ADAV" means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis.

⁹ The proposed pricing for Tape A Liquidity Removal Tier will be referred to by the Exchange on the Fee Schedule under the description "Removed volume from MEMX Book, Tape A Liquidity Removal Tier 1" with a Fee Code of "Ra1" on execution reports.

¹⁰ See, *e.g.*, the NYSE Arca Equities Fees and Charges, available at: https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf, which reflects a Tape B Remove Tier that charges a discounted fee of \$0.0029 per share for executions that remove liquidity in Tape B securities.

¹¹ As set forth on the Fee Schedule, the term "quoting requirement" means the requirement that a Member's NBBO Time be at least 25%, and the term "NBBO Time" means the aggregate of the percentage of time during regular trading hours during which one of a Member's market participant identifiers ("MPIDs") has a displayed order of at least one round lot at the national best bid or the national best offer.

¹² As set forth on the Fee Schedule, the term "securities requirement" means the requirement that a Member meets the quoting requirement in the applicable number of securities per day. Currently, each of DLI Tiers 1 and 2 has a securities requirement that may be achieved by a Member meeting the quoting requirement in the specified number of securities traded on the Exchange.

¹³ The pricing for the DLI Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, DLI Tier 1" Tier with a Fee Code of "Bq1, Dq1, Jq1, or Iq1", as applicable, on execution reports.

provided under DLI Tier 1, as proposed, is for business and competitive reasons, as the Exchange believes the reduction of such rebate would decrease the Exchange's expenditures with respect to its transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity and promoting the price discovery and market quality objectives of the DLI Tiers described above. The Exchange is not proposing to change the rebate provided under such tier for executions of orders in securities priced below \$1.00 per share.

Tape A Quoting Tier

The Exchange currently offers the Tape A Quoting Tier under which a Member may receive an additive rebate of \$0.0002 per share for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders)¹⁴ in Tape A securities priced over \$1.00 per share by achieving an NBBO Time of at least 25% in an average of at least 100 Tape A securities per trading day during the month. Now, the Exchange proposes to modify the required criteria under the Tape A Quoting Tier such that a Member would now qualify for such tier by achieving an NBBO time of at least 25% in an average of at least 500 Tape A securities per trading day during the month.¹⁵ Thus, such proposed change would increase the number of Tape A securities in which a Member is required to quote at the NBBO. The Exchange is not proposing to change the amount of the additive rebate provided under the Tape A Quoting Tier.

Tape B Volume Tier 1

The Exchange currently offers Tape B Volume Tiers 1 and 2 under which a Member may receive an additive rebate for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) in Tape B securities priced over \$1.00 per share by achieving certain criteria. Currently under Tape B Volume Tier 1, the Exchange provides

an additive rebate of \$0.0005 per share for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) in Tape B securities priced over \$1.00 per share by achieving: (1) a Tape B ADAV that is equal to or greater than 0.40% of the Tape B TCV¹⁶ (excluding Retail Orders); and (2) a Non-Display ADAV¹⁷ that is equal to or greater than 8,000,000 shares. Now, the Exchange proposes to reduce the additive rebate provided under the Tape B Volume Tier 1 to \$0.0004 per share.¹⁸ The Exchange is not proposing to change the criteria required to qualify for Tape B Volume Tier 1.

The Exchange believes that the proposed reduction of the rebate under Tape B Volume Tier 1 (i.e., by \$0.0001 per share) represents a modest reduction and that the proposed rebate under Tape B Volume Tier 1 remains commensurate with the required criteria under such tier and is reasonably related to the market quality benefits that the tier is designed to achieve.

Tier/Additive Rebate Qualification

Lastly, the Exchange is proposing to add a note to the Notes section of the Fee Schedule to bring the Exchange's transaction fees and rebates into compliance with Regulation 610(d), which becomes effective on February 2, 2026.

On September 18, 2024, the Commission adopted several amendments to Regulation NMS in order to increase the transparency of exchange fees and rebates.¹⁹ New Regulation NMS Rule 610(d) provides that "[a] national securities exchange shall not impose, nor permit to be imposed, any fee or fees, or provide, or permit to be provided, any rebate or other remuneration, for the execution of an order in an NMS stock that cannot be

determined at the time of execution."²⁰ The compliance date for new Regulation NMS Rule 610(d) is the first business day of February 2026, which is Monday, February 2, 2026.²¹

Currently, unless otherwise noted on the Fee Schedule,²² the Exchange establishes certain transaction fees and rebates for equities executions that are based on tiers calculated using volume figures from trading or quoting activity in the current month. This means that the fees and rebates currently assessed by the Exchange associated with a given execution often cannot be determined at the time of execution, but rather are determined retroactively at the end of the month in which the execution occurred. Now, in order to ensure that its transaction fees and rebates are compliant with new Regulation NMS Rule 610(d), the Exchange is adding the following text to the Notes section of the Fee Schedule:

In compliance with Rule 610(d) of Regulation NMS, effective February 2, 2026, for purposes of determining quoting or transaction volumes for fee and rebate qualifications under the Tiers and Additive Rebates below, all volume figures will be derived from quoting or trading activity in the prior month. Consequently, new Members will receive the base rates in their first month of trading.

This change will ensure that all Exchange participants will be able to ascertain at the time of execution all the transaction fees and rebates associated with an execution of an order in an NMS stock at the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²³ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,²⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other

¹⁴ A "Retail Order" means an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization ("RMO"), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Exchange Rule 11.21(a).

¹⁵ The pricing for the Tape A Quoting Tier is referred to by the Exchange on the Fee Schedule under the existing description "Tape A Quoting" Tier with a Fee Code of "a" to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

¹⁶ As set forth on the Fee Schedule, "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

¹⁷ As set forth on the Fee Schedule, "Non-Displayed ADAV" means ADAV with respect to non-displayed orders (including orders subject to Display-Price Sliding that receive price improvement when executed and Midpoint Peg orders).

¹⁸ The pricing for the Tape B Volume Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description "Tape B Volume Tier 1" with a Fee Code of "b1" to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

¹⁹ See Securities Exchange Act Release No. 101070 (Sept. 18, 2024), 89 FR 81620 (Oct. 8, 2024) (File No. S7-30-22) (Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders.) ("Rule 610(d) Adopting Release").

²⁰ 17 CFR 242.610(d).

²¹ See Securities Exchange Act Release No. 104172 (October 31, 2025), 90 FR 51418 (November 17, 2025) (Order Granting Temporary Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rules 610(f) and 612(d) of Regulation NMS, From Compliance With Rule 600(b)(89)(i)(F), Rule 610(c), Rule 610(d) and Rule 612 of Regulation NMS, as Amended).

²² The Exchange currently employs this practice under Cross Asset Tier 1, and as such, is proposing to delete the note under the Cross Asset Tier pricing table on the Fee Schedule that indicates that Members that qualify for Cross Asset Tier 1 based on activity in a given month will also receive that associated Cross Asset Tier 1 rebate during the following month. Now that the Exchange will determine qualification for all tiers based on activity during the prior month, this specific note is duplicative and no longer necessary.

²³ 15 U.S.C. 78f.

²⁴ 15 U.S.C. 78f(b)(4) and (5).

persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁵

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow, including displayed, liquidity-adding and/or liquidity-removing orders to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange believes that the proposed changes to increase the standard fee charged for executions of Removed Tape A Volume is reasonable because it represents only a modest increase from the current standard fee charged for executions of Removed Tape A Volume on other exchanges.²⁶ The Exchange also believes the proposed standard fee charged for executions of Removed Tape A Volume is equitable

and not unfairly discriminatory, as such fee will apply equally to all Members of the Exchange.

The Exchange notes that volume and quoting-based incentives (such as tiers) have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits that are reasonably related to the value to an exchange’s market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the DLI Tier 1, Tape A Quoting Tier, Tape B Volume Tier 1, each as modified by the proposed changes herein, as well as the adoption of a new Tape A Liquidity Removal Tier, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers will continue to provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding or liquidity-removing order flow to the Exchange, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, because, as noted above, the Exchange believes that, after giving effect to the changes proposed herein, the enhanced rebate for executions of Added Displayed Volume under DLI Tier 1 and the additive rebates provided for applicable executions under the Tape A Quoting Tier and the Tape B Volume Tier 1, are commensurate with the corresponding required criteria under each such tiers and are reasonably related to the market quality benefits that each such tier is designed to achieve, as described above. Additionally, the Exchange believes the proposed new Tape A Liquidity Removal Tier is reasonable, in that it is comparable to pricing incentives adopted by other exchanges that provide a discounted fee for executions of removed volume for firms that achieve a specified volume threshold.²⁷

The Exchange believes that the modification made in this filing to the

transaction fees and rebates is reasonable because it attempts to preserve the current quoting and trading incentives, while bringing them into compliance with the requirements of new Regulation NMS Rule 610(d). Currently, Members are assessed certain execution fees, and paid certain execution rebates, based on tiers calculated using volume figures from trading and quoting activity in the current month. In order to bring these existing fees and rebates into compliance with new Regulation NMS Rule 610(d), the Exchange is modifying these fees and rebates so that they are based on tiers calculated using volume figures from trading and quoting activity in the immediate prior month for the relevant current month. This way all fees and rebates associated with the execution of an order in an NMS stock at the Exchange can be determined at the time of execution of said order. The Exchange believes that the modified schedule of transaction fees and rebates is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fees and rebates to all similarly situated Members.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act²⁸ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange’s statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby

²⁵ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁶ See *supra* note 7.

²⁷ See *supra* note 10.

²⁸ 15 U.S.C. 78f(b)(4) and (5).

making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁹

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow, including displayed, liquidity-adding and/or removing orders to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The Exchange does not believe that the proposed changes to increase the standard fee for executions of Removed Tape A Volume would impose any burden on intramarket competition because such changes will apply to all Members uniformly in that the proposed standard fee for such executions would be the fee applicable to all Members, and the opportunity to qualify for a discounted fee, as applicable, is available to all Members. Further, the opportunity to qualify for DLI Tier 1, and thus receive the proposed enhanced rebate for executions of Added Non-Displayed Volume under such tier, the opportunity to qualify for the modified Tape A Quoting Tier and Tape B Volume Tier 1, and thus receive the proposed additive rebate for executions of Tape A Volume and Tape B Volume, respectively, and the opportunity to qualify for the discounted fee under the newly proposed Tape A Liquidity Removal Tier, would be available to all Members that meet the associated volume or quoting requirements in any month. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 17 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 14% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, including with respect to Added, Removed, Displayed, Tape A and Tape B Volume, and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to generate additional revenue with respect to its transaction pricing and to encourage the submission of additional order flow to the Exchange through volume and quoting-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants.

The Exchange's proposal to add a note to the Fee Schedule to bring the Exchange's methods for calculating fees and rebates into compliance with new Regulation NMS Rule 610(d) will not result in any burden on competition due to the fact that such change is being made solely to comply with Regulation NMS 610(d) and not for competitive purposes.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."³⁰ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. SEC*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."³¹ Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act³² and Rule 19b-4(f)(2)³³ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the

²⁹ *Id.*

³⁰ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

³² 17 CFR 240.19b-4(f)(2).

²⁹ See *supra* note 25.

Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2026-05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-MEMX-2026-05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MEMX-2026-05 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104805; File No. SR-IEX-2026-03]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Fee Schedule To Modify the Required Criteria for the Incremental Fee Tiers

February 10, 2026.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 30, 2026, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,⁴ and Rule 19b-4 thereunder,⁵ the Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members⁶ (the "Fee Schedule")⁷ pursuant to IEX Rule 15.110(a) and (c) to modify the required criteria for the Incremental Fee Tiers. Changes to the Fee Schedule pursuant to this proposal are effective upon filing,⁸ and will be implemented on March 1, 2026.

The text of the proposed rule change is available at the Exchange's website at <https://www.iexexchange.io/resources/regulation/rule-filings> and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change

and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

IEX proposes to modify the required criteria for the Incremental Fee Tiers that are applicable to certain non-displayed trades and to make conforming and clarifying changes to the Fee Schedule.⁹ This fee change proposal is effective on filing and will be implemented on March 1, 2026.

Background

IEX first began offering Incremental Fee Tiers¹⁰ in September 2025.¹¹ The Incremental Fee Tiers are a volume-based fee incentive designed to incentivize Members to increase their non-displayed volume on the Exchange by providing Members that qualify for Incremental Fee Tier 2 an opportunity to pay a reduced fee of \$0.0001 per share¹² for certain executions of non-displayed orders.¹³ To qualify for the reduced fee, a Member's Incremental Fee eligible ADV¹⁴ in the current month must exceed its Baseline non-displayed ADV¹⁵ by at least 10,000,000.

Currently, the Baseline non-displayed ADV is calculated using a Member's

⁹ Nothing in this rule filing affects trades below \$1.00 per share ("sub-dollar trades"). Sub-dollar trades would not impact the Incremental Fee Tier calculations and would not be eligible for any of the Incremental Fee Tiers described herein.

¹⁰ See Footnote 6 to the Transaction Fees section of the Fee Schedule.

¹¹ See Trading Alert #2025-024, <https://iextrading.com/alerts/#/308>; see also Securities Exchange Act Release No. 103969 (September 15, 2025), 90 FR 45071 (September 18, 2025) (SR-IEX-2025-24) ("Incremental Fee Tier Filing").

¹² IEX's base rate for transactions that add or remove non-displayed liquidity is \$0.0010 per share.

¹³ The fee codes to which the Incremental Fee Tiers apply are "MI" (Adds non-displayed liquidity); "MIB" (Adds non-displayed liquidity in Tape B securities); "TIY" (Post Only order removes non-displayed liquidity); "TIYB" (Post Only order removes non-displayed liquidity in Tape B securities); "TI" (Removes non-displayed liquidity); and "TIB" (Removes non-displayed liquidity in Tape B securities).

¹⁴ "Incremental Fee eligible ADV" means executions with any of the Fee Code Combinations MI, MIB, TI, TIB, TIY, or TIYB. Unless otherwise specified, Incremental Fee eligible ADV refers to executions in the current month.

¹⁵ "Baseline non-displayed ADV" means executions with any of the Fee Code Combinations MI, MIB, TI, TIB, TIY, or TIYB in August 2025.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ See IEX Rule 1.160(s).

⁷ See Investors Exchange Fee Schedule, available at <https://www.iexexchange.io/resources/trading/fee-schedule>.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁴ 17 CFR 200.30-3(a)(12).

Incremental Fee eligible ADV in the month of August 2025. As reflected in the Fee Schedule, the criteria to qualify for Incremental Fee Tier 2 will expire no later than February 28, 2026.

Starting in February 2026, as provided by Commission Rule 610(d) under Regulation NMS, exchange transaction fees and rebates must be determinable at the time of the execution.¹⁶ In accordance with Rule 610(d), IEX filed a rule change with the Commission pursuant to Rule 19b-4 under the Act to make all transaction fees and rebates determinable at the time of execution.¹⁷ As specified therein, beginning February 1, 2026, Members can qualify for Incremental Fee Tier 2 in the current month if their Incremental Fee eligible ADV in the immediately preceding month exceeded their Baseline non-displayed ADV by at least 10,000,000. Concurrently, starting in February 2026, Members will have two options for calculating trading fees for Incremental Fee Tier 2, each of which achieves fee determinism.¹⁸ The two options are described in detail in the Fee Determinism Filing; notably, both options use the Baseline non-displayed ADV as a cap on the volume of Incremental Fee eligible ADV that will be charged the \$0.0001 reduced per share fee.¹⁹

Proposal

Given the expiration of the current criteria to qualify for Incremental Fee Tier 2 at the end of February 2026, starting on March 1, 2026, IEX proposes to replace the current criteria for qualifying for Incremental Fee Tier 2 with a new process for determining the Baseline non-displayed ADV and criteria to qualify for Incremental Fee Tier 2, as described below. IEX proposes that these criteria will expire no later than February 28, 2027.

As proposed, starting March 1, 2026, the Baseline non-displayed ADV for Members that were trading on the Exchange for at least the past year will be each Member's average of the three months from March 2025 to February 2026 with the lowest Incremental Fee eligible ADV. Each Member's Baseline non-displayed ADV will be calculated after the market close on the last trading day in February 2026 (because February 2026 could be one of the three months averaged together to calculate the

Baseline non-displayed ADV) and will be used to determine both a Member's eligibility for Incremental Fee Tier 2 in the following month, as well as in the calculations of the fees charged to the Member for March 2026. And on a going forward basis, until these eligibility criteria expire in February 2027, a Member's qualification for Incremental Fee Tier 2 in the current month will be based on its Incremental Fee eligible ADV in the prior month as compared to its Baseline non-displayed ADV.

IEX also proposes to increase the threshold volume by which Members must exceed their Baseline non-displayed ADV to qualify for Incremental Fee Tier 2 from 10,000,000 to 15,000,000 Incremental Fee eligible ADV. This proposed increase is designed to reflect recent higher trading volumes in securities priced at or above \$1.00. The Exchange believes that the proposed change to the threshold volume requirement will continue to incentivize Members to grow their non-displayed volume on the Exchange. Moreover, IEX notes that increased volume on the Exchange contributes to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

The following example demonstrates how this will work:

Example 1

- Member A's Incremental Fee eligible ADV in the twelve months between March 2025 to February 2026 is: 10,000,000 for the month of March 2025; 15,000,000 for the month of April 2025; 36,000,000 for the months of May 2025 to January 2026; and 35,000,000 for the month of February 2026.
- At the end of February 2026, IEX determines Member A's Baseline non-displayed ADV to be 20,000,000 (the average of the three lowest volume months, *i.e.*, 10,000,000 in March 2025; 15,000,000 in April 2025; and 35,000,000 in February 2026).
- Member A qualifies for Incremental Fee Tier 2 in March 2026 because its prior month Incremental Fee eligible ADV of 35,000,000 is at least 15,000,000 greater than its Baseline non-displayed ADV of 20,000,000.
- Member A's Incremental Fee eligible ADV in March 2026 is 35,000,000.
- Member A qualifies for Incremental Fee Tier 2 in April 2026 because its prior month Incremental Fee eligible ADV of 35,000,000 is at least 15,000,000 greater than its Baseline non-displayed ADV of 20,000,000.

For Members that began trading on the Exchange after March 1, 2025, starting March 1, 2026, as proposed, the Baseline non-displayed ADV for each Member will be the average of the Incremental Fee eligible ADV of the Member's first three full months of trading on the Exchange. And, as noted

above, on a going forward basis, until the eligibility criteria expire in February 2027, a Member's qualification for Incremental Fee Tier 2 in the current month will be based on its Incremental Fee eligible ADV in the prior month as compared to the Baseline non-displayed ADV. The following example demonstrates how this will work:

- Member B began trading on the Exchange on November 15, 2025. Thus, Member B was not previously eligible for the reduced Incremental Fee Tier 2 fee because it did not have a Baseline non-displayed ADV for August 2025.
- Member B's Incremental Fee eligible ADV in December 2025 was 10,000,000, in January 2026 was 15,000,000, and in February 2026 was 35,000,000.
- At the end of February 2026, IEX determines Member B's Baseline non-displayed ADV to be 20,000,000 (the average of the first three full months of trading on the Exchange).
- Member B qualifies for Incremental Fee Tier 2 in March 2026 because its prior month Incremental Fee eligible ADV of 35,000,000 is at least 15,000,000 greater than its Baseline non-displayed ADV of 20,000,000.
- Member B's Incremental Fee eligible ADV in March 2026 is 25,000,000.
- Member B does not qualify for Incremental Fee Tier 2 in April 2026 because its prior month Incremental Fee eligible ADV of 25,000,000 is not at least 15,000,000 greater than its Baseline non-displayed ADV of 20,000,000.

The Fee Schedule contains examples of how these Members' fees would be calculated depending on whether a Member that qualifies for Incremental Fee Tier 2 were to elect Incremental Fee Tier Option 1 or Option 2, as well as for a Member that does not qualify.

IEX believes that this proposed process for determining the Baseline non-displayed ADV will fairly and equitably allow both current and new Exchange Members a means of qualifying for the Incremental Fee Tier 2 reduced fee for non-displayed trading. IEX notes that this proposal benefits not only newer Members of the Exchange (*i.e.*, Members that began trading after August 2025) by providing the opportunity to qualify for the reduced Incremental Fee Tier 2 fee, but also benefits future new Members, who will have an "on-ramp" for establishing a Baseline non-displayed ADV after three months of trading on the Exchange, thereby allowing them to potentially benefit from the reduced fee sooner (as opposed to waiting for a rule filing to establish a new baseline month).

Conforming and Clarifying Changes

First, to reflect the above-described changes, IEX proposes to update the definition of "Baseline non-displayed ADV" in the Definitions subheading of

¹⁶ See 17 CFR 242.610(d).

¹⁷ See Trading Alert #2025-039, <https://iextrading.com/alerts/#/326>; see also Securities Exchange Act Release No. 104541 (January 5, 2026), 91 FR 737 (January 8, 2026) (SR-IEX-2025-39) ("Fee Determinism Filing").

¹⁸ See Fee Determinism Filing, *supra* note 17.

¹⁹ *Id.*

the Transaction Fees section of the Fee Schedule. Currently, Baseline non-displayed ADV “means executions of Incremental Fee eligible ADV in August 2025.” IEX proposes to delete the quoted text in the above sentence, and to update the definition to read:

- “Baseline non-displayed ADV” is calculated as follows:
 - The Baseline non-displayed ADV is calculated by taking the average of the Member’s Incremental Fee eligible ADV in the three months with the lowest Incremental Fee eligible ADV between March 1, 2025 and February 28, 2026.
 - For Members that joined IEX after March 1, 2025, the Baseline non-displayed ADV is calculated by taking the average of the Member’s Incremental Fee eligible ADV in its first three full months of trading on the Exchange.

Second, IEX proposes to amend the “Required Criteria” in the Incremental Fee Tier Calculation Table to replace 10,000,000 with 15,000,000 as the threshold value to qualify for Incremental Fee Tier 2 (the same change will be made to the Tier 1 and Tier 2 rows).

Third, IEX proposes to amend the second sentence in footnote “a” to the Incremental Fee Tier Fee Calculation Table to replace the expiration date for the criteria of February 28, 2026 with a new expiration date of February 28, 2027.

Fourth, for purposes of clarity, IEX proposes to define the term TAV, which is used as part of the Incremental Fee Tier Option 2 fee calculations. Thus, in the first bullet under “Incremental Fee Tier Option 2”, IEX proposes to add a parenthetical after the words “total shares traded” that reads “(total actual volume or “TAV”))”.

IEX also proposes to update some of the language in the examples for Incremental Fee Tier Option 1 and 2 to make the examples more generally applicable (removing specific reference months), and to no longer make reference to the pre-February 2026 fees that were not determinable at the time of the execution. Specifically, IEX proposes making the following changes to the table of examples for Option 1:

- Rename the column heading that reads “August 2025 Vol. (Baseline non-displayed ADV)” to read “Baseline non-displayed ADV”
- Rename the column heading that reads “Jan. 2026 ADV*” to read “Prior Month ADV”
- Rename the column heading that reads “Feb. 2026 ADV*” to read “Month 1 ADV”
- Rename the column heading that reads “Mar. 2026 ADV*” to read “Month 2 ADV”
- Delete the column showing “January Fees”
- Rename the column heading that reads “February Fees” to read “Month 1 Fees”

- Rename the column heading that reads “March Fees” to read “Month 2 Fees”
- In the Example 1 row, under the new column heading “Prior Month ADV*”, change the value from 30mm to 35mm. With this change, Example 1 will still reflect a Member that qualifies for Incremental Fee Tier 2 based on its Incremental Fee Eligible ADV being at least 15,000,000 greater than its Baseline non-displayed ADV.
- In the Example 1 row, under the new column heading “Month 1 Fees”, change the value from \$0.0007 to \$0.00061 per share. This change reflects that the blended average rate for Month 1 is now calculated by averaging the base rate of \$0.0010 per share for 20,000,000 and the reduced fee of \$0.0001 per share for 15,000,000 (because the Prior Month ADV was changed from 30,000,000 to 35,000,000). In the footnotes to the table, change references to “January” to refer to the “Prior Month”, change references to “February” to refer to “Month 1”, and change references to “March” to refer to “Month 2”
- In the second footnote to the table, change the Incremental Fee eligible ADV from 30,000,000 to 35,000,000 and the blended rate from \$0.0007 to \$0.00061 per share, to reflect the changes to Example 1 described above
- In the third footnote to the table, delete the first sentence, because the text is now duplicative of the text in footnote 2. In the second sentence, in order to consistently apply terms defined in the Fee Schedule, replace the word “volumes” with “Incremental Fee eligible ADV” and replace the word “baseline” with “Baseline non-displayed ADV by at least 15,000,000.”

And IEX proposes making the following changes to the table of examples for Option 2:

- Rename the two column headings that read “August 2025 ADV*” to read “Baseline non-displayed ADV”
- Rename the column heading that reads “Jan. 2026 ADV*” to read “Prior Month ADV”
- Rename the column heading that reads “February 2026 (19 Trading Days)” to read “Month 1 (19 Trading Days)”
- Rename the column heading that reads “February 2026 Fees” to read “Month 1 Fees”
- Rename the column heading that reads “Feb. 2026 ADV*” to read “Month 1 ADV”
- Rename the column heading that reads “March 2026 (22 Trading Days)” to read “Month 2 (22 Trading Days)”
- Rename the column heading that reads “March 2026 Fees” to read “Month 2 Fees”
- In the Example 1 row, under the new column heading “Prior Month ADV*”, change the value from 30mm to 35mm. With this change, Example 1 will still reflect a Member that qualifies for Incremental Fee Tier 2 based on its Incremental Fee Eligible ADV being at least 15,000,000 greater than its Baseline non-displayed ADV.
- In the Example 2 row, under the new column heading “Month 2 (22 Trading Days) Baseline Volume***”, amend the cell that currently reads “N/A (Feb 2026 ADV did not exceed Aug. 2025 ADV by at least 10mm)” to read “N/A (Month 1 ADV did not exceed

Baseline ADV by at least 15mm)”. With this change, Month 2 of Example 2 will still reflect a Member that does not qualify for Incremental Fee Tier 2 based on its Incremental Fee Eligible ADV not being at least 15,000,000 greater than its Baseline non-displayed ADV.

As noted above, the Exchange is not proposing to change the fees applicable to executions of and with orders with an execution price below \$1.00 per share.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)²⁰ of the Act in general and furthers the objectives of Sections 6(b)(4)²¹ of the Act, in particular, in that it is designed to not be unfairly discriminatory and to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

First, as described in the Purpose section, this proposed fee change will continue to make IEX’s fees determinable at the time of execution, as required by Rule 610(d) of Regulation NMS.

IEX also believes that this proposal provides for the equitable allocation of reasonable fees among its Members and is not designed to be unfairly discriminatory because the proposed new approach to calculating a Member’s Baseline non-displayed ADV is designed to address the different “states” of Members’ usage. For example, longer-term Members have an established volume level on the Exchange, and taking an average of those Members’ three lowest volume months between March 2025 and February 2026 allows those Members to set an appropriate baseline that such Members must exceed to qualify for the Incremental Fee Tier 2 reduced fee.

Similarly, IEX believes that taking the average of a new Member’s first three full months of trading on the Exchange to calculate their Baseline non-displayed ADV is fair and equitable because it allows the Members time to “ramp up” their trading on the Exchange and to set a Baseline non-displayed ADV that is high enough to allow the Member to pay the reduced fee for a meaningful volume of its Incremental Fee eligible ADV, while setting the Baseline non-displayed ADV at an appropriate baseline that the Member may reasonably be able to exceed to qualify for the reduced fee.

IEX believes this approach to setting the Baseline non-displayed ADV will

²⁰ 15 U.S.C. 78f.

²¹ 15 U.S.C. 78f(b)(4).

balance the two purposes of the Baseline non-displayed ADV (as both a barrier to overcome for qualification and a threshold that caps the benefit of the lower fee) in a fair and equitable manner that may incentivize Members to increase non-displayed trading activity on the Exchange, to the benefit of all market participants.

Additionally, IEX believes that its proposal to increase the threshold volume Members must satisfy to qualify for Incremental Fee Tier 2 reflects a reasonable pricing structure, made for business and competitive reasons in response to increasing market volumes. The Exchange further believes the proposed increase to the threshold volume requirement to qualify for Incremental Fee Tier 2 will continue to incentivize Members to grow their non-displayed volume on the Exchange. And increased volume on the Exchange contributes to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

Further, IEX notes that this fee proposal is equitable and not designed to permit unfair discrimination because all similarly situated Members will be treated the same. Thus, IEX does not believe that any aspect of this proposal raises new or novel issues not already considered by the Commission.

Additionally, IEX believes that the proposed conforming and clarifying changes to the IEX Fee Schedule set forth in the Purpose section further the purposes of the Act because they provide greater clarity and consistency to the Fee Schedule, thereby reducing the potential for confusion of any market participants. The Exchange believes that the proposed conforming and clarifying changes will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule, and are therefore consistent with the protection of investors and the public interest.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Within that context, the proposed changes to the Incremental Fee Tier structure are designed to keep IEX's non-displayed trading prices competitive with those of other exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not

necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if fee schedules at other venues are viewed as more favorable. Consequently, the Exchange believes that the degree to which IEX fees could impose any burden on competition is extremely limited and does not believe that such fees would burden competition between Members or competing venues. Moreover, as noted in the Statutory Basis section, the Exchange does not believe that the proposed changes raise any new or novel issues not already considered by the Commission.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees are assessed on Members, these fees are not based on the type of Member entering the orders that match, but rather on the Member's own trading activity. Further, the proposed fee change is intended to encourage market participants to bring increased order flow to the Exchange, which benefits all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)²² of the Act.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²³ of the Act to determine whether the proposed rule

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2026-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-IEX-2026-03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-IEX-2026-03 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-02898 Filed 2-12-26; 8:45 am]

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²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 15 U.S.C. 78s(b)(2)(B).

²⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104792; File No. SR–CboeBZX–2026–013]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule for Logical Ports

February 10, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on January 29, 2026, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment.

The text of the proposed rule change is also available on the Commission’s website (<https://www.sec.gov/rules/sro.shtml>), the Exchange’s website (https://www.cboe.com/us/equities/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment. By way of background, the Exchange offers a variety of logical ports, which provide users with the ability to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,³ Purge Ports,⁴ Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports.⁵ The Exchange also offers corresponding Certification Logical Ports for each of the aforementioned logical port types, which provide Members and non-Members access to the Exchange’s certification environment to test proprietary systems and applications. Each logical port type has a protocol defining how messages over the logical port type must be formatted, sent, and processed.

To ensure Members and non-Members who intend to utilize updated, or new, logical port types in the live production environment manage operational risks, meet exchange requirements, and confirm their systems behave correctly, the Exchange offers weekend testing in the production environment in addition to certification environment.⁶ Weekend testing in the production environment enables Members and non-Members to simulate market conditions in the real production environment over the weekend without impacting actual

market operations. Weekend testing includes opportunities for Members and non-Members to test order entry and routing, connectivity to the Exchange’s matching engines, and operational validation for the participants’ trading infrastructure. Weekend testing ensures operational readiness for the introduction of updated, or new, logical port types for the Exchange, Exchange Members, and non-Members seeking to utilize updated, or new, logical port types. A monthly fee applies for use of each logical port utilized in the live production environment as set forth in the Exchange’s Fee Schedule.

The Exchange proposes to clarify in the notes under the Logical Port Fees section of the Fee Schedule that logical port fees only apply if the corresponding logical port type is also available in the live production environment. For example, if the Exchange intends to adopt an updated protocol that has not yet been launched in the live production environment, any logical port that supports that protocol will be free during weekend testing in the production environment until such time that the updated protocol is available in the live production environment. Once any new logical port type, including a logical port that supports an updated protocol, is available in the live production environment, Members and non-Members will be assessed the corresponding monthly Logical Port Fee for the logical port as set forth in the Exchange’s Fee Schedule.

The Exchange notes that participation in weekend testing in the production environment continues to be voluntary and is not required in order to participate in the live production environment. Additionally, Members and Non-Members will not be assessed a fee until the logical port type, including a logical port to support an updated protocol, is in the live production environment.⁷ Further, the Exchange notes that other exchanges offer similar testing opportunities on predetermined weekends at discounted or no cost.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations

³ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁴ Purge Ports are dedicated ports that permit a user to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

⁵ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange’s Multicast PITCH data feeds.

⁶ For example, the Exchange is currently in the process of migrating to Binary Order Entry Version 3 (“BOEv3”), an updated trading protocol from the existing Binary Order Entry Version 2 (“BOEv2”) supported by Logical Ports. The BOEv3 protocol is scheduled to launch in the live production environment on the Exchange at a later date. The BOEv3 protocol differs from prior versions of the BOE protocol by removing optional messaging fields, changing messaging sizing, and introducing stricter sequencing. The Exchange will offer weekend testing in the production environment in anticipation of the launch of BOEv3 protocol in the live production environment.

⁷ For example, a participant may obtain a logical port free of charge if that participant utilizes the logical port in the production environment during the designated weekend testing periods.

⁸ See e.g., Nasdaq Stock Market LLC, Saturday Testing Policy; see also MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, in addition to the Exchange's certification environment, the Exchange's weekend testing in the production environment allows Members and non-Members to test updated protocols with the corresponding logical port types in the real production environment without impacting actual market conditions. This environment enables market participants to manage operational risks, meet Exchange requirements, and confirm their systems behave correctly under the updated protocol through testing software development changes in the production environment prior to implementing them in the live trading environment. As a result, weekend testing in the production environment reduces the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. The Exchange believes this is especially true when testing an updated protocol that has not yet launched in the live production environment. As such, the Exchange believes it's reasonable to only assess the Logical Port Fees to logical port types, including logical ports to support updated protocols, that are also available in the live production environment as to not discourage the testing of updated protocols ahead of any respective launch date.

The Exchange also believes applying Logical Port Fees is reasonable once

such logical port types are available in the live production environment because, while such ports will no longer be completely free, Members and non-Members will have the capability to utilize these logical ports in the live production environment. The Exchange continues to believe the weekend testing in the production environment, in addition to testing offered in the certification environment, will be sufficient for most Members and non-Members to prepare for the launch of updated protocols (with corresponding logical port types).

The Exchange believes the proposal to make clear that Logical Port Fees apply only to logical ports that are in the live production environment is equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to participate in weekend testing in the production environment and all market participants will have further clarity as to which logical ports are subject to the fees set forth in the Exchange's Fee Schedule. The Exchange also believes the proposed change is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to avail themselves of weekend testing opportunities in the production environment for new logical port types and protocols and to become acclimated with updated connectivity offerings ahead of going live in the production environment. The Exchange believes the proposal to add this language to the notes section in the Fees Schedule also provides clarity in the rules as to when the Logical Port Fees apply and reduces potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed addition to the Fee Schedule creates an undue burden on competition because the Exchange will offer the logical ports not available in the live production environment in the weekend testing production environment free of charge. As discussed above, the use of the weekend testing in the production environment is optional and based on the business

needs of each market participant. Moreover, market participants will continue to benefit from access to both the certification environment and weekend testing environment, through which the Exchange believes robust and realistic testing experiences are available. Such testing experiences may be especially critical during the time leading up to the launch of an protocol (with corresponding logical ports) in the live production environment.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's weekend testing in the production environment, which does not impact actual market operations. Additionally, the Exchange notes that it operates in a highly competitive market. Participants have numerous alternative venues that they may participate on and direct their order flow, including 17 other equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f) of Rule 19b-4¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2026-013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeBZX-2026-013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2026-013 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-02889 Filed 2-12-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104806; File No. SR-FINRA-2025-005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Partial Amendment No. 1, To Amend the FINRA Capital Acquisition Broker ("CAB") Rules

February 10, 2026.

I. Introduction

On June 4, 2025, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend certain FINRA capital acquisition broker rules ("CAB Rules"). Specifically, the proposed rule change, as modified by Partial Amendment No. 1, would amend the CAB Rules to: (1) permit capital acquisition brokers ("CABs") to qualify, identify, solicit, or act as placement agents or finders³ on behalf of an issuer or institutional investor buyer in connection with a sale of newly issued unregistered securities to an expanded scope of institutional investors; (2) permit CABs to qualify, identify, solicit, or act as placement agents or finders in connection with a change of control of a privately held company, regardless of whether the CAB acts on behalf of a seller or a buyer; (3) permit CABs, in limited circumstances, to qualify, identify, solicit, or act as placement agents or finders on behalf of an institutional investor that seeks to sell or buy unregistered securities; (4) permit CAB associated persons to participate in private securities transactions, subject to the requirements of FINRA Rule 3280 (Private Securities Transactions of an Associated Person); (5) codify existing FINRA guidance on CAB compensation; and (6) replace a reference to a withdrawn SEC no-action letter with a reference to a corresponding Exchange Act provision.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ This order may refer to these activities collectively as "acting as a placement agent or finder."

⁴ See Exchange Act Release No. 103216 (Jun. 10, 2025), 90 FR 25396 (Jun. 16, 2025) (File No. SR-FINRA-2025-005) ("Notice"); Exchange Act Release No. 104097 (Sep. 26, 2025), 90 FR 47017 (Sep. 30, 2025) (File No. SR-FINRA-2025-005) ("Notice of Partial Amendment No. 1").

The proposed rule change was published for comment in the **Federal Register** on June 16, 2025.⁵ The public comment period closed on July 7, 2025. The Commission received comment letters related to this filing.⁶ On July 17, 2025, FINRA consented to extend until September 12, 2025, the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁷ On September 11, 2025, the Commission published an order instituting proceedings to determine whether to approve or disapprove the proposed rule change.⁸

On September 24, 2025, FINRA responded to the comment letters received in response to the Notice⁹ and filed a partial amendment to the proposed rule change ("Partial Amendment No. 1").¹⁰ On September 26, 2025, the Commission published a notice of filing of Partial Amendment No. 1.¹¹ On December 3, 2025, FINRA consented to an extension of the time period in which the Commission must approve or disapprove the proposed rule change to February 11, 2026.¹² This order approves the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter, the "proposed rule change" unless otherwise specified).

II. Description of the Proposed Rule Change

A. Background

FINRA adopted the CAB Rules in 2017 to provide a tailored regulatory framework for member firms (hereinafter, "members" or "member firms") that elect CAB status.¹³ FINRA member firms eligible for CAB status are

⁵ See Notice.

⁶ The comment letters are available at <https://www.sec.gov/comments/sr-finra-2025-005/srfinra2025005.htm>.

⁷ See letter from Joseph Savage, Vice President and Associate General Counsel, FINRA (dated Jul. 17, 2025), <https://www.finra.org/sites/default/files/2025-07/sr-finra-2025-005-extension1.pdf>.

⁸ Exchange Act Release No. 103945 (Sep. 11, 2025), 90 FR 44747 (Sep. 16, 2025) (File No. SR-FINRA-2025-005) ("OIP").

⁹ See letter from Lisa Horrigan, Associate General Counsel, FINRA (dated Sep. 24, 2025), <https://www.sec.gov/comments/sr-finra-2025-005/srfinra2025005-662647-1977754.pdf> ("FINRA Response").

¹⁰ Partial Amendment No. 1 is available on FINRA's website at <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2025-005>.

¹¹ Notice of Partial Amendment No. 1.

¹² See letter from Joseph Savage, Vice President and Associate General Counsel, FINRA (dated Dec. 3, 2025), <https://www.finra.org/sites/default/files/2025-12/SR-FINRA-2025-005-Extension-2.pdf>.

¹³ Notice at 25397.

¹⁴ 17 CFR 200.30-3(a)(12).

generally those that limit their activities to acting as placement agents for the sale of unregistered securities to institutional investors, acting as intermediaries in connection with the change of control of privately held companies, and advising companies and private equity funds on capital raising and corporate restructuring.¹⁴ CABs are not permitted to engage in broader broker-dealer activities, such as accepting customers' trading orders, carrying customer accounts, handling customers' funds or securities, or engaging in proprietary trading or market-making.¹⁵ In light of the limitations on CABs' functions, the CAB Rules impose "fewer restrictions" and "less extensive supervisory requirements" on CABs as compared to the FINRA rules applicable to non-CAB member firms.¹⁶ FINRA stated that 44 member firms elected CAB status in 2017, and as of the end of 2024, that number had grown to 65 member firms.¹⁷

B. The Proposed Rule Change

FINRA stated that it "determined to amend the CAB Rules as part of its efforts to ensure that FINRA rules are effective and efficient, and its rules relating to the capital-raising process support efficient capital formation."¹⁸ Based on its experience with implementing the CAB Rules, engagement with member firms,¹⁹ and the subsequent adoption of Regulation Best Interest²⁰ and Form CRS,²¹ FINRA stated that the current CAB Rules include limitations on CABs' activities that may be unnecessarily restrictive and have unintended consequences.²²

For example, FINRA stated that, notwithstanding a growth in unregistered securities offerings in

recent years, it believes that registered broker-dealers, such as CABs, participate in only a fraction of such offerings.²³ FINRA stated that issuers and intermediaries that are not registered as broker-dealers conduct the rest of these private placements, and for that reason, investors lack the benefits associated with broker-dealer regulation and oversight in these transactions.²⁴

FINRA stated that the proposed rule change may encourage non-CAB members and firms that are eligible for an exemption from broker-dealer registration "to elect CAB status, thereby benefitting these firms and investors alike."²⁵ FINRA stated that the proposed rule change would address certain limitations in multiple CAB Rules,²⁶ as well as codify existing FINRA guidance on CAB compensation²⁷ and update rule text to reflect a subsequent Exchange Act amendment.²⁸ This order addresses each proposed rule change in turn.

1. Sales of Newly Issued Unregistered Securities

The CAB Rules currently permit a CAB to, among other things, qualify, identify, solicit, or act as a placement agent or finder on behalf of an issuer in connection with the sale of newly issued, unregistered securities to institutional investors.²⁹ The proposed rule change would broaden these permissible activities in two ways.

First, the proposed rule change would expand the definition of institutional investor for purposes of the CAB Rules.³⁰ The proposed rule change would add "eligible employee" to the list³¹ of persons and entities that qualify

as an "institutional investor" for purposes of the CAB Rules.³² Under the proposed rule change, an "eligible employee" would mean, "with respect to an issuer for which the [CAB] has provided services to the issuer or a person that controls the issuer"³³ permitted under [CAB Rule 016(c)(1)(F) or (G)]": (1) "any 'Knowledgeable Employee,' as defined in Investment Company Act Rule 3c-5 ('Rule 3c-5')"³⁴ with respect to services provided to an issuer that is a Covered Company as defined in Rule 3c-5³⁵ or services

1940; and (7) any person acting solely on behalf of any such institutional investor."

³² Notice at 25399; see Proposed CAB Rules 016(i)(8), 016(m). The proposed rule change would also make two technical amendments to CAB Rule 016(i): (1) it would remove a duplicate "any" in CAB Rule 016(i)(7); and (2) it would relocate the word "and" to appear before the new, eighth item on the definition's list. Notice at 25401 n.44.

³³ As originally proposed in the Notice, proposed CAB Rule 016(m) would have defined "eligible employee" "with respect to an issuer for which the capital acquisition broker has provided services to the issuer or a control person permitted under subparagraphs (F) or (G) of Rule 016(c)(1)." *Id.* at 25399–25400 & Exhibit 5 (emphasis added). Partial Amendment No. 1 would delete the term "control person" in proposed CAB Rule 016(c)(1)(F)(ii), and it would replace "control person" with "person that controls the issuer" in proposed CAB Rule 016(m). Notice of Partial Amendment No. 1 at 47020.

³⁴ Rule 3c-5 defines "Knowledgeable Employee" as any natural person, with respect to a Covered Company, who is: "(i) [a]n Executive Officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the Covered Company or an Affiliated Management Person of the Covered Company; or (ii) [a]n employee of the Covered Company or an Affiliated Management Person of the Covered Company (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of such Covered Company, other Covered Companies, or investment companies the investment activities of which are managed by such Affiliated Management Person of the Covered Company, provided that such employee has been performing such functions and duties for or on behalf of the Covered Company or the Affiliated Management Person of the Covered Company, or substantially similar functions or duties for or on behalf of another company for at least 12 months." 17 CFR 270.3c-5(a)(4) (emphasis in original).

³⁵ Rule 3c-5 defines a "Covered Company" as any company that would be an investment company but for the exclusion provided by Investment Company Act Section 3(c)(1) or 3(c)(7). 17 CFR 270.3c-5(a)(2), (a)(5) and (a)(6). Investment Company Act Section 3(c)(1) generally excludes from the definition of "investment company" "[a]ny issuer whose outstanding securities . . . are beneficially owned by not more than one hundred persons . . . and which is not making and does not presently propose to make a public offering of its securities" (hereinafter, "Section 3(c)(1) fund"). 15 U.S.C. 80a-3(c)(1). Investment Company Act Section 3(c)(7) generally excludes from the definition of "investment company" "[a]ny issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and which is not making and does not

Continued

¹⁴ *Id.* at 25396; see also CAB Rule 016(c) (identifying the limited functions of a CAB).

¹⁵ Notice at 25396 (citing CAB Rule 016(c)(2)).

¹⁶ *Id.* at 25396.

¹⁷ *Id.*

¹⁸ *Id.* at 25398.

¹⁹ In 2017, for example, FINRA created the Capital Acquisition and Placement Broker Committee, which comprised of both individuals registered with CABs and individuals registered with non-CAB broker-dealers with similar business models, to make recommendations about policies and rules that impact CABs and non-CABs with similar business models. Notice at 25398. In 2020, FINRA also published a regulatory notice to solicit comment on multiple proposed amendments "to make [the CAB Rules] more useful to CABs without reducing investor protection." FINRA Reg. Notice 20-04 at 1 (Jan. 30, 2020), <https://www.finra.org/sites/default/files/2020-01/Regulatory-Notice-20-04.pdf>; see Notice at 25398.

²⁰ See Exchange Act Rule 15l-1, 17 CFR 240.15l-1.

²¹ See Exchange Act Rule 17a-14, 17 CFR 240.17a-14.

²² Notice at 25398.

²³ *Id.* at 25397–98.

²⁴ *Id.* at 25398.

²⁵ *Id.*

²⁶ *Id.* at 25398–25403.

²⁷ *Id.* at 25403.

²⁸ *Id.*

²⁹ CAB Rule 016(c)(1)(F)(i).

³⁰ Notice at 25399.

³¹ CAB Rule 016(i) defines "institutional investor" as any: "(1) bank, savings and loan association, insurance company or registered investment company; (2) governmental entity or subdivision thereof; (3) employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans; (4) qualified plan, as defined in Section 3(a)(12)(C) of the Exchange Act, or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans; (5) other person (whether a natural person, corporation, partnership, trust, family office or otherwise) with total assets of at least \$50 million; (6) person meeting the definition of 'qualified purchaser' as that term is defined in Section 2(a)(51) of the Investment Company Act of

provided to an Affiliated Management Person³⁶ of such Covered Company as defined in Rule 3c-5³⁷; and (2) “the president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of an issuer that is not a Covered Company as defined in Rule 3c-5.”³⁷

FINRA stated that the CAB Rules’ current definition of “institutional investor” includes qualified purchasers, as defined in the Investment Company Act, but does not include Knowledgeable Employees.³⁸ FINRA stated that Rule 3c-5 “permits Knowledgeable Employees of private funds and certain of their affiliates to invest in such funds to the same extent as other qualified purchasers, even if an employee does not fall within” the “qualified purchaser” definition.³⁹ FINRA further stated that including Knowledgeable Employees within the scope of “eligible employee” would align the scope of persons to whom a CAB may sell private fund securities under the CAB Rules with the scope of investors permitted to invest in Section 3(c)(7) funds.⁴⁰

In addition, FINRA stated that expanding the definition of institutional investor to include certain specified officers, directors, or employees of an issuer that is not a Covered Company would permit CABs “to act as a placement agent or finder in connection with sales to persons who hold similar

positions to Knowledgeable Employees at issuers that are not private funds.”⁴¹ FINRA further stated that “it is common for officers, directors, and other employees of issuers that are not private funds to invest in those companies’ securities, either through stock options that are paid to such persons as compensation or as part of a private offering of securities.”⁴²

FINRA also stated that the proposed expansion of the definition of “institutional investor” to include “eligible employees” “will not materially impact investor protection” and is “consistent with CABs’ limited institutional business model” because “‘eligible employees’ do not raise the same investor protection concerns as retail investors.”⁴³ Specifically, FINRA stated that eligible employees “are likely to understand and appreciate any risks and limitations associated with investing in the issuer’s securities” and that they “likely have the expertise and knowledge about the issuer, and the resources to retain counsel and financial advisers, if necessary, to evaluate a potential investment.”⁴⁴ FINRA also stated that, to the extent a CAB offers services or recommends a securities transaction to an eligible employee who qualifies as a retail customer under Regulation Best Interest or a retail investor for purposes of Form CRS, those investor protections would apply.⁴⁵

Second, the proposed rule change would provide that a CAB may represent “an issuer or institutional investor buyer in connection with a sale of [newly issued], unregistered securities to institutional investors.”⁴⁶ CAB Rule 016(c)(1)(F)(i) currently limits a CAB to the representation of issuers in such transactions. FINRA stated that “allowing a CAB also to act on behalf of an institutional investor buyer in connection with the sale of newly issued unregistered securities is consistent with CABs’ limited institutional business model and would not materially impact investor protection.”⁴⁷

2. Change-of-Control Transactions

The CAB Rules currently permit a CAB to, among other things, qualify, identify, solicit, or act as a placement agent or finder “on behalf of an issuer or a control person in connection with a change of control of a privately held company.”⁴⁸

FINRA stated that CAB Rule 016(c)(1)(F)(ii) was, in part, modeled on the 2014 SEC staff-issued no-action letter relating to merger and acquisition brokers (“M&A Brokers”) (the “M&A Brokers Letter”).⁴⁹ In 2022, Congress amended the Exchange Act to include a new registration exemption (the “M&A Brokers Exemption”) for M&A Brokers, as defined in the statute, that provides relief similar to that in the M&A Brokers Letter.⁵⁰ Upon effectiveness of the statutory exemption, SEC staff withdrew the M&A Brokers Letter.⁵¹ In light of differences between CAB Rule 016(c)(1)(F)(ii) and the M&A Brokers Exemption, FINRA proposed changes, as described below, to “more closely align” CAB Rule 016(c)(1)(F)(ii) and the M&A Brokers Exemption.⁵² FINRA stated that these changes are appropriate because CAB Rule 016(c)(1)(F)(ii) overlaps with CAB Rule 016(c)(1)(G), which “permits CABs to engage in merger and acquisition transactions to the same extent as exempt broker-dealers under the M&A Brokers Exemption.”⁵³ For this reason, FINRA stated that CAB Rule 016(c)(1)(F)(ii) “should more closely align with the terms and conditions of the M&A Brokers Exemption to avoid having potentially confusing or conflicting requirements under the CAB Rules.”⁵⁴

First, CAB Rule 016(c)(1)(F)(ii) only permits a CAB to act on behalf of an issuer or control person in connection with a change of control of a privately

at that time propose to make a public offering of such securities” (hereinafter, “Section 3(c)(7) fund”). 15 U.S.C. 80a-3(c)(7). For purposes of determining the number of beneficial owners of a Section 3(c)(1) fund and whether the outstanding securities of a Section 3(c)(7) fund are “owned exclusively by qualified purchasers,” Rule 3c-5 excludes any securities beneficially owned by a “person who at the time such securities were acquired was a Knowledgeable Employee” of such fund. 17 CFR 270.3c-5(b)(1).

³⁶ Rule 3c-5 defines “Affiliated Management Person” as “an affiliated person, as such term is defined in section 2(a)(3) of the [Investment Company Act], that manages the investment activities of a Covered Company.” 17 CFR 270.3c-5(a)(1).

³⁷ Proposed CAB Rule 016(i)(8), 016(m).

³⁸ Notice at 25400; CAB Rule 016(i). The term “qualified purchaser” includes, among others, any natural person, family-owned company or specified trust that owns not less than \$5,000,000 in investments, and any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than \$25,000,000 in investments. See 15 U.S.C. 80a-2(a)(51).

³⁹ Notice at 25400; see 17 CFR 270.3c-5(b).

⁴⁰ Notice at 25400.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 25399–25400. The CAB Rules do not define “retail investor.” Notice at 25398 n.27. For purposes of this Order, and unless otherwise stated, a “retail investor” is any investor that does not qualify as an “institutional investor” under the CAB Rules. See *id.*

⁴⁴ *Id.* at 25400.

⁴⁵ *Id.* at 25400–01.

⁴⁶ Proposed CAB Rule 016(c)(1)(F)(i) (emphasis added); see Notice of Partial Amendment No. 1.

⁴⁷ Notice of Partial Amendment No. 1 at 47018.

⁴⁸ CAB Rule 016(c)(1)(F)(ii).

⁴⁹ See letter from David Blass, Chief Counsel and Associate Director, Division of Trading and Markets, Securities and Exchange Commission (dated Jan. 31, 2014), <https://www.sec.gov/divisions/marketregr/mr-noaction/2014/ma-brokers.pdf> (stating that the staff would not recommend enforcement action to the Commission under Section 15(a) of the Exchange Act if, under certain specified circumstances, an M&A Broker, as defined in the no-action letter, were to effect securities transactions solely in connection with the transfer of ownership of a privately held company without registering as a broker-dealer).

⁵⁰ 15 U.S.C. 78o(b)(13); see Notice at 25403; Notice of Partial Amendment No. 1 at 47019.

⁵¹ See letter from Emily Westerberg Russell, Chief Counsel and Associate Director, Division of Trading and Markets, Securities and Exchange Commission (dated Mar. 29, 2023), <https://www.sec.gov/divisions/marketregr/mr-noaction/2014/ma-brokers-013114.pdf>.

⁵² Notice of Partial Amendment No. 1 at 47019.

⁵³ *Id.*

⁵⁴ *Id.*

held company.⁵⁵ The M&A Brokers Exemption, however, does not refer to a “control person”; instead, it uses the defined term “control.”⁵⁶ The M&A Brokers Exemption also permits an M&A Broker to “represent both buyers and sellers, and to the extent the M&A [B]roker represents both the buyer and seller in the same transaction, the M&A [B]roker must provide clear written disclosure as to the parties it represents and obtain written consent from both parties to the joint representation.”⁵⁷ To address these differences, the proposed rule change would eliminate the reference to “control person” and, consistent with the definition of “control” in the M&A Brokers Exemption,⁵⁸ define “control” as “the power, *directly or indirectly*, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.”⁵⁹ In addition, the proposed rule change would provide that a CAB may qualify, identify, solicit, or act as a placement agent or finder in connection with a change of control of a privately held company, *regardless of whether the CAB acts on behalf of a seller or buyer*.⁶⁰ FINRA stated that a CAB “should be permitted to represent both the buyer and seller in a transaction involving a change of control of a privately held company.”⁶¹ Because “such joint representation could present conflicts of interest for the CAB,” the proposed rule change also would

provide that a CAB “may represent both the buyer and the seller in the same transaction under [CAB Rule 016(c)(1)(F)(ii)] after providing clear written disclosure as to the parties the [CAB] represents and obtaining written consent from both parties to the joint representation.”⁶² FINRA stated that this proposed rule text mirrors similar language in the M&A Brokers Exemption, which “addresses the same potential conflicts of interest . . . and imposes the same disclosure and consent requirements.”⁶³

Second, CAB Rule 016(c)(1)(F) creates a presumption of control based on circumstances as they exist prior to a transaction.⁶⁴ The M&A Brokers Exemption, however, “consider[s] whether control exists *upon completion of the transaction*.”⁶⁵ To address this difference, the proposed rule change would provide that “[c]ontrol will be presumed to exist if, upon completion of the transaction, the buyer or group of buyers⁶⁶ has the right to vote or the power to sell or direct the sale of 25% or more of a class of voting securities or in the case of a partnership or limited liability company has the right to receive upon dissolution or has contributed 25% or more of the capital.”⁶⁷

3. Secondary Transactions

The CAB Rules currently prohibit a CAB from acting as a placement agent or finder “in connection with secondary transactions involving unregistered securities, except when the transaction is in connection with the change of ownership or control of a [privately held] company.”⁶⁸ The proposed rule change would broaden the circumstances in which a CAB could participate in a secondary transaction.⁶⁹

Specifically, the proposed rule change would permit CABs to qualify, identify, solicit, or act as a placement agent or finder on behalf of an institutional investor that seeks to sell or buy unregistered securities, “provided that: (i) the seller and buyer⁷⁰ of such securities are both institutional investors; and (ii) the sale of such securities qualifies for an exemption from registration under the Securities Act.”⁷¹

FINRA stated that this proposed rule change is “appropriately tailored to allow CABs to offer a wider range of services to their clients while remaining consistent with the purpose of the CAB Rules and CABs’ limited institutional business model.”⁷² Specifically, FINRA stated that CABs would only be permitted to act as an intermediary with respect to such transactions where both the buyer and seller are institutional investors.⁷³ This limitation, FINRA stated, “would help mitigate any concerns that CABs would be acting as a placement agent or finder in connection with the secondary sale of unregistered securities to individuals who lack the knowledge and expertise to understand the risks and limitations of such securities or lack the resources to employ a person with such knowledge and expertise.”⁷⁴ FINRA also stated that Regulation Best Interest, Form CRS, and CAB Rule 211 (Suitability) offer additional layers of investor protection to the extent a CAB participates in a secondary transaction in circumstances that would trigger the application of these rules.⁷⁵ FINRA also stated that “CABs still would be subject to CAB [R]ules prohibiting any communication concerning the unregistered securities or the CAB’s services from including false, exaggerated, unwarranted, promissory or misleading statement[s] or claim[s].”⁷⁶ In addition, FINRA stated that “CABs would still be subject to FINRA’s core supervisory requirements, and would be subject to FINRA rules

⁵⁵ *Id.*; CAB Rule 016(c)(1)(F)(ii). FINRA also stated that this proposed rule change is appropriate for “similar reasons” to those offered for the proposed changes to permit CABs to represent buyers—in addition to issuers or sellers—in connection with a sale of newly issued, unregistered securities and in secondary market transactions. Notice of Partial Amendment No. 1 at 47019.

⁵⁶ Notice of Partial Amendment No. 1 at 47019; see 15 U.S.C. 78o(b)(13)(E)(ii) (defining “M&A Broker”), (b)(13)(iv)(I)(aa) (defining “control”).

⁵⁷ Notice of Partial Amendment No. 1 at 47019; see 15 U.S.C. 78o(b)(13)(B)(vi) (The exemption does not apply to a broker that “[r]epresents both the buyer and the seller in the same transaction without providing clear written disclosure as to the parties the broker represents and obtaining written consent from both parties to the joint representation.”).

⁵⁸ The M&A Brokers Exemption defines “control” as “the power, *directly or indirectly*, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.” Notice of Partial Amendment No. 1 at 47019 (emphasis in original); see 15 U.S.C. 78o(b)(13)(E)(ii).

⁵⁹ Proposed CAB Rule 016(c)(1)(F)(ii)a. (emphasis added); see Notice of Partial Amendment No. 1 at 47019. The proposed rule change would relocate the definition of “control” to new subparagraph a. of Proposed CAB Rule 016(c)(1)(F)(ii). Notice at 47019 n.17.

⁶⁰ Proposed CAB Rule 016(c)(1)(F)(ii) (emphasis added); see Notice of Partial Amendment No. 1 at 47019.

⁶¹ Notice of Partial Amendment No. 1 at 47019.

⁶² *Id.*; Proposed CAB Rule 016(c)(1)(F)(ii)b.

⁶³ Notice of Partial Amendment No. 1 at 47019; see 15 U.S.C. 78o(b)(13)(B)(vi).

⁶⁴ CAB Rule 016(c)(1)(F) (“Control will be presumed to exist if, *before the transaction*, the person has the right to vote or the power to sell or direct the sale of 25% or more of a class of voting securities or in the case of a partnership or limited liability company has the right to receive upon dissolution or has contributed 25% or more of the capital.” (emphasis added)).

⁶⁵ Notice at 47019 (emphasis in original); see 15 U.S.C. 78o(b)(13)(E)(ii).

⁶⁶ As stated above, the proposed rule change would eliminate the defined term “control person” and replace it with the defined term “control,” consistent with the M&A Brokers Exemption. Proposed CAB Rule 016(c)(1)(F)(ii)a. With the elimination of the term “control person,” the proposed rule change would make a corresponding amendment to replace “person” with “buyer or group of buyers,” consistent with the M&A Brokers Exemption. *Id.*; see 15 U.S.C. 78o(b)(13)(E)(ii).

⁶⁷ Proposed CAB Rule 016(c)(1)(F)(ii)a.

⁶⁸ Notice at 25401.

⁶⁹ See *id.*

⁷⁰ As originally proposed in the Notice, the proposed rule change would have used the term “purchaser” in proposed CAB Rule 016(c)(1)(H)(i). See Notice at 25401 & Exhibit 5. FINRA stated that Partial Amendment No. 1 would replace “purchaser” with “buyer” to promote consistency throughout proposed CAB Rule 016(c). Notice of Partial Amendment No. 1 at 47019 n.11.

⁷¹ Proposed CAB Rule 016(c)(1)(H).

⁷² Notice at 25401; see Notice of Partial Amendment No. 1 at 47018.

⁷³ Notice at 25401. As stated above, the proposed rule change would expand the definition of “institutional investor” to include “eligible employees.” *Id.*; see *supra* Part II(B)(1).

⁷⁴ Notice at 25401.

⁷⁵ See *id.*

⁷⁶ *Id.* (citing CAB Rule 221).

restricting borrowing from or lending to customers.”⁷⁷

4. Private Securities Transactions

CAB Rule 328 currently prohibits any person associated with a CAB from participating in any manner in a private securities transaction, which is defined as “any securities transaction outside the regular course or scope of an associated person’s employment with a member, including, though not limited to, new offerings of securities which are not registered with the Commission.”⁷⁸ In contrast, FINRA Rule 3280 permits associated persons of non-CAB member firms to participate in private securities transactions, so long as they comply with certain obligations.⁷⁹ The proposed rule change would eliminate the prohibition for CABs, and it would permit associated persons of CABs to participate in private securities transactions to the same extent as associated persons of non-CAB member firms, subject to compliance with FINRA Rule 3280.⁸⁰

FINRA stated that, at the time it adopted the CAB Rules in 2017, it “believed that an associated person of a CAB should not be engaged in selling securities away from the CAB[,] and a CAB should not have to oversee and review such transactions, given its limited business model.”⁸¹ However, FINRA stated that it now believes it is “appropriate to amend the CAB Rules to permit [private securities transactions] to remedy the challenges and unintended consequences presented by the original prohibition.”⁸² Specifically, FINRA stated that the prohibition’s impact on CABs and firms that might have otherwise considered registering with FINRA as a CAB was not intended at the time the CAB Rules were adopted, and that it is unnecessarily restrictive.⁸³ For example, FINRA stated that some firms have declined to elect CAB status because of the “inability of their

associated persons to act as supervised persons of registered investment advisers (‘RIAs’) if they participate in private securities transactions.”⁸⁴

Further, FINRA stated that expanding the range of activities in which CABs can participate may help support capital formation without materially impacting investor protection.⁸⁵ Specifically, FINRA stated that although this proposed rule change would expand the scope of permissible activities for CABs and their associated persons, it also would expand the CAB’s related supervisory responsibilities regarding those permissible activities.⁸⁶ In particular, where the CAB approves its associated person’s participation in a transaction for which the person will receive selling compensation, the CAB would be required to record the transaction on its books and records and supervise the person’s participation in the transaction as if the transaction were executed on behalf of the member.⁸⁷ Thus, the proposed rule change would require both CABs and non-CAB member firms to adhere to “the same risk controls and compliance procedures” related to private securities transactions.⁸⁸

5. Compensation

The CAB Rules do not currently address whether a CAB may receive equity securities as compensation for its services.⁸⁹ In 2019, FINRA issued an interpretative letter indicating that “CABs may be compensated in the form of securities issued by a privately held CAB client, rather than in cash, provided that the receipt, exercise or subsequent sale of such securities will not cause the CAB to engage in activities prohibited under CAB Rule 016(c)(2) (Definitions).”⁹⁰ The proposed rule change would codify this interpretation, permitting a CAB to receive compensation in the form of equity securities of a privately held issuer on behalf of which the CAB provided services permitted under Rule 016(c)(1),⁹¹ provided that the receipt,

exercise or subsequent sale of such securities will not cause the CAB to engage in any activity prohibited under CAB Rule 016(c)(2).⁹²

6. M&A Brokers Exemption

CAB Rule 016(c)(1)(G) currently permits a CAB to “effect[] securities transactions solely in connection with the transfer of ownership and control of a [privately held] company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company, to a buyer that will actively operate the company or the business conducted with the assets of the company, *in accordance with the terms and conditions of an SEC rule, release, interpretation or ‘no-action’ letter* that permits a person to engage in such activities without having to register as a broker or dealer pursuant to Section 15(b) of the Exchange Act.”⁹³ FINRA stated that this rule was designed to “allow CABs to engage in merger and acquisition activities to the same extent as unregistered persons who were relying on the M&A Brokers Letter”⁹⁴ before it was superseded by the M&A Brokers Exemption.⁹⁵

The proposed rule change would update CAB Rule 016(c)(1)(G) to reflect the subsequent promulgation of the M&A Brokers Exemption.⁹⁶ Specifically, the proposed rule change would permit a CAB to “effect[] securities transactions solely in connection with the transfer of ownership and control of a [privately held] company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company, to a buyer that will actively operate the company or the business conducted with the assets of the company, in accordance with the terms and conditions of *Section 15(b)(13) of the Exchange Act or any provision of an SEC rule, release, interpretation or ‘no-action’ letter* that permits a person to engage in *the same or materially similar* activities without having to register as a broker or dealer pursuant to Section

⁷⁷ *Id.* (citing CAB Rules 311, 324).

⁷⁸ CAB Rule 328 (cross-referencing FINRA Rule 3280(e) for the definition of a private securities transaction). The definition of private securities transactions also excludes the following: “transactions subject to the notification requirements of Rule 3210, transactions among immediate family members (as defined in FINRA Rule 5130), for which no associated person receives any selling compensation, and personal transactions in investment company and variable annuity securities.” FINRA Rule 3280(e)(1).

⁷⁹ FINRA Rule 3280. FINRA Rule 3280 imposes certain notice, approval, and supervision requirements where an associated person of a FINRA member firm seeks to participate in a private securities transaction.

⁸⁰ Proposed CAB Rule 328.

⁸¹ Notice at 25402.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*; see FINRA Rule 3280(c).

⁸⁸ Notice at 25402.

⁸⁹ Letter from Joseph P. Savage, FINRA, to Jonathan D. Wiley, The Forbes Securities Group (dated May 30, 2019) (“Forbes Letter”), <https://www.finra.org/rules-guidance/guidance/interpretive-letters/jonathan-d-wiley-forbes-securities-group>; see Notice at 25403.

⁹⁰ Notice at 25403; see Forbes Letter, *supra* note 89.

⁹¹ As originally proposed in the Notice, the proposed rule change would have referred to “paragraphs (c)(1) of Rule 016.” Notice at 25403 & Exhibit 5. FINRA stated that Partial Amendment

No. 1 would replace “paragraphs (c)(1) of Rule 016” with “Rule 016(c)(1)” to “correct the inadvertent plural form used in the original proposed text” and promote consistency with the subsequent reference to a proposed rule in the same sentence. Notice of Partial Amendment No. 1 at 47020.

⁹² Proposed CAB Rule 511.

⁹³ CAB Rule 016(c)(1)(G) (emphasis added).

⁹⁴ Notice at 25403; see M&A Brokers Letter, *supra* note 49.

⁹⁵ See *supra* Part II(B)(2).

⁹⁶ See Notice at 25403.

15(b) of the Exchange Act.”⁹⁷ FINRA stated that this proposed rule change would clarify that CABs may effect M&A transactions to the same extent as an exempt M&A Broker under the M&A Brokers Exemption.⁹⁸

III. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters, and FINRA’s response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.⁹⁹ As discussed in more detail below, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.¹⁰⁰

A. Sales of Newly Issued Unregistered Securities

As noted above, the CAB Rules currently permit a CAB to, among other things, qualify, identify, solicit, or act as a placement agent or finder on behalf of an issuer in connection with a sale of newly issued, unregistered securities to institutional investors.¹⁰¹ As originally proposed, the proposed rule change would have broadened this permissible activity by expanding the definition of institutional investor to include any “eligible employee,” as defined in proposed CAB Rule 016(m).¹⁰² Under the proposed rule change, an “eligible employee” would mean: (1) any Knowledgeable Employee, as defined in Rule 3c–5, with respect to services provided to an issuer that is a Covered Company as defined in Rule 3c–5 or services provided to an Affiliated Management Person of such Covered Company as defined in Rule 3c–5; and (2) the president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making

function, or any other person who performs similar policy-making functions, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of an issuer that is not a Covered Company as defined in Rule 3c–5.¹⁰³

Commenters generally supported the proposed rule change.¹⁰⁴ One of these commenters, however, recommended that FINRA provide interpretive guidance or amend the proposed rule change to clarify that a CAB may—in addition to acting as a placement agent or finder on behalf of an issuer—also act as a placement agent or finder on behalf of an institutional investor buyer.¹⁰⁵ This commenter stated that FINRA’s historical statements about CAB Rule 016(c)(1)(F) do not include any “policy rationale for limiting CABs to one side of primary [private-placement] transactions or a specific intent to do so.”¹⁰⁶ In addition, this commenter stated that “there is no material investor protection or other policy rationale for limiting CABs to acting as agent on the issuer/seller side of the market for institutional investor private placements.”¹⁰⁷

In response, FINRA agreed and stated that “allowing a CAB also to act on behalf of an institutional investor buyer in connection with the sale of newly issued unregistered securities is consistent with CABs’ limited institutional business model and would not materially impact investor protection.”¹⁰⁸ For this reason, FINRA amended the proposed rule change “to allow CABs to represent institutional investor buyers in connection with sales of [newly issued] unregistered securities.”¹⁰⁹ Specifically, the proposed rule change, as modified by

Partial Amendment No. 1, would provide that a CAB may qualify, identify, solicit, or act as a placement agent or finder on behalf of an issuer or *institutional investor buyer* in connection with a sale of newly issued, unregistered securities to institutional investors.¹¹⁰

No commenters directly addressed Partial Amendment No. 1.

The proposed expansion of the definition of “institutional investor” to include any “eligible employee,” as defined in proposed CAB Rule 016(m), is reasonably designed to provide a limited expansion of the scope of permissible CAB activities without materially impacting investor protection. As discussed above, the proposed expansion of the term “institutional investor” to include such eligible employees is reasonable because they are likely to understand and appreciate any risks and limitations associated with investing in the issuer’s securities and are likely have expertise and knowledge about the issuer.

In addition, the proposed expansion to permit CABs to represent an institutional investor buyer in connection with the sale of newly issued, unregistered securities is reasonably designed to expand the scope of permissible CAB activities without materially impacting investor protection. It is reasonable for FINRA to conclude that there is no policy reason to limit CABs to the representation of issuers in sales of newly issued, unregistered securities to institutional investors. Institutional investors are likely to have the expertise or resources necessary to understand and appreciate the risks and limitations associated with private-placement investments. In addition, Regulation Best Interest, Form CRS, and CAB Rule 211 (Suitability) help to ensure investor protection to the extent a CAB participates in a transaction in circumstances that would trigger the application of these rules.

For these reasons, the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Change-of-Control Transactions

The proposed rule change would amend CAB Rule 016(c)(1)(F)(ii) to provide that a CAB may qualify, identify, solicit, or act as a placement agent or finder in connection with a change of control of a privately held company, *regardless of whether the CAB*

⁹⁷ Proposed CAB Rule 016(c)(1)(G) (emphasis added).

⁹⁸ Notice at 25403.

⁹⁹ In approving this rule change, the Commission has considered the rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰⁰ 15 U.S.C. 78o–3(b)(6).

¹⁰¹ CAB Rule 016(c)(1)(F)(i).

¹⁰² Notice at 25399 & Exhibit 5; see Proposed CAB Rules 016(i)(8), 016(m).

¹⁰³ Proposed CAB Rule 016(m).

¹⁰⁴ Letter from the Managing Director, Egwele & Company, dated Jun. 14, 2025, <https://www.sec.gov/comments/sr-finja-2025-005/srfinra2025005-613087-1796094.html> (“Egwele Letter”) (stating that it fully supports the proposed rule change and sees several benefits, including the opportunity to generate new business and the ability to better retain and attract talent); letter from Jeffrey L. Robins, Debevoise & Plimpton LLP, dated July 7, 2025, <https://www.sec.gov/comments/sr-finja-2025-005/srfinra2025005-621228-1824474.pdf> (“Debevoise Letter”) (stating that it and its client “strongly support” the proposed rule change, agreeing that it would make the CAB Rules more useful); see letter from Matthew Hoffman, Chief Compliance Officer, Cascadia Capital, LLC, dated Dec. 10, 2025, <https://www.sec.gov/comments/sr-finja-2025-005/srfinra2025005-2113354.htm> (“Cascadia Letter”) (expressing support for amendments to CAB Rule 328 without offering a specific position on the rest of the proposed rule change).

¹⁰⁵ Debevoise Letter at 1–2.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 3.

¹⁰⁸ Notice of Partial Amendment No. 1 at 47018.

¹⁰⁹ FINRA Response at 3.

¹¹⁰ Proposed CAB Rule 016(c)(1)(F)(i).

*acts on behalf of a seller or buyer.*¹¹¹ The proposed rule change would also permit joint representation of both a buyer and a seller in connection with a change of control of a privately held company, subject to a disclosure and consent requirement;¹¹² modify the definition of “control”;¹¹³ and modify the presumption for the existence of control.¹¹⁴ FINRA stated that the proposed changes are “consistent with CABs’ limited institutional business model and would not materially impact investor protection.”¹¹⁵ FINRA also stated that it proposed both modifications to “more closely align” CAB Rule 016(c)(1)(F)(ii) and the M&A Brokers Exemption “to avoid having potentially confusing or conflicting requirements under the CAB Rules.”¹¹⁶

No commenters directly addressed this proposed rule change.

The proposed rule change is reasonably designed to promote consistency among related regulatory obligations and to provide investor protection in the context of CABs’ limited activities and their associated tailored regulatory regime. Because CAB Rule 016(c)(1)(F)(ii) addresses transactions similar to those permitted under CAB Rule 016(c)(1)(G) and the M&A Brokers Exemption, the proposed rule change’s modifications would help to promote consistency of terminology, scope, and obligations among these related provisions. Specifically, the proposed rule change would align CAB Rule 016(c)(1)(F)(ii) with the M&A Brokers Exemption by: (1) permitting CABs to represent both the buyer and seller in connection with a change of control of a privately held company; and (2) adopting the M&A Brokers Exemption’s definition of “control,” presumption of control, and disclosure and consent requirement for any joint representation. For these reasons, the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

C. Secondary Transactions

As originally proposed in the Notice, the proposed rule change would have permitted CABs to qualify, identify, solicit, or act as a placement agent or finder on behalf of an institutional investor that seeks to sell unregistered

securities that it owns, provided that: (1) the purchaser of such securities is an institutional investor; and (2) the sale of such securities qualifies for an exemption from registration under the Securities Act.¹¹⁷

Commenters generally supported the proposed rule change.¹¹⁸ One of these commenters recommended that FINRA issue interpretive guidance or amend the proposed rule change to provide that a CAB may—in addition to acting as a placement agent or finder on behalf of an issuer—also act as a placement agent or finder on behalf of an institutional investor buyer.¹¹⁹ Specifically, this commenter stated that “it would be consistent with the amended definition of ‘capital acquisition broker’ for a CAB to act as a [private-placement] agent or finder in connection with the sale of . . . securities by an institutional investor to another institutional investor . . . where [] the CAB is engaged as the agent of an institutional investor acting as buyer to find and/or solicit potential issuers or institutional investor sellers.”¹²⁰ This commenter stated that FINRA’s articulated basis for the proposed rule change does not justify a limitation to institutional investor sellers.¹²¹ For that reason, this commenter stated that this limitation appears “both unnecessary and potentially unintentional.”¹²² In addition, this commenter stated that “there is no material investor protection or other policy rationale for limiting CABs to acting as agent on the issuer/seller side of the market for institutional investor private placements.”¹²³

In response, FINRA stated that it agrees that “allowing a CAB also to act on behalf of an institutional investor buyer in connection with secondary transactions of unregistered securities is consistent with CABs’ limited institutional business model and would not materially impact investor protection.”¹²⁴ For this reason, FINRA amended the proposed rule change to allow CABs to represent institutional investor buyers in connection with secondary transactions of unregistered securities.¹²⁵ Specifically, the proposed rule change, as modified by Partial Amendment No. 1, would permit CABs to qualify, identify, solicit, or act as a placement agent or finder on behalf of

an institutional investor that seeks to sell or buy unregistered securities, provided that: (1) the seller and buyer of such securities are both institutional investors; and (2) the sale of such securities qualifies for an exemption from registration under the Securities Act.¹²⁶

No commenters directly addressed Partial Amendment No. 1.

The proposed rule change is reasonably designed to expand the scope of permissible CAB activities without materially impacting investor protection. Specifically, the proposed rule change would expand the scope of permissible CAB activities to include qualifying, identifying, soliciting, or acting as a placement agent or finder on behalf of an institutional investor in connection with the purchase or sale of unregistered securities between institutional investors where the sale of such securities qualifies for an exemption from registration under the Securities Act. FINRA reasonably concluded that there is no policy reason to limit CABs’ participation in transactions involving institutional investors to only the sale of newly issued, unregistered securities. Institutional investors are likely to have the expertise or resources necessary to understand and appreciate the risks and limitations associated with private-placement investments. In addition, Regulation Best Interest, Form CRS, and CAB Rule 211 (Suitability) help to ensure investor protection to the extent a CAB participates in a secondary transaction in circumstances that would trigger the application of these rules. For these reasons, the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

D. Private Securities Transactions

Proposed CAB Rule 328 would eliminate the prohibition on any associated person of a CAB participating in any manner in a private securities transaction.¹²⁷ Specifically, the proposed rule change would permit associated persons of CABs to participate in private securities transactions to the same extent as non-CAB member firms, subject to the requirements of FINRA Rule 3280.¹²⁸

Commenters generally supported the proposed rule change.¹²⁹ One

¹¹¹ Proposed CAB Rule 016(c)(1)(F)(ii).

¹¹² Proposed CAB Rule 016(c)(1)(F)(ii)b.

¹¹³ Proposed CAB Rule 016(c)(1)(F)(ii)a.

¹¹⁴ *Id.*

¹¹⁵ Notice of Partial Amendment No. 1 at 47019–20; see FINRA Response at 3.

¹¹⁶ Notice of Partial Amendment No. 1 at 47019.

¹¹⁷ See Notice at 25401 & Exhibit 5.

¹¹⁸ Egwele Letter; Debevoise Letter; Cascadia Letter.

¹¹⁹ Debevoise Letter at 1–2.

¹²⁰ *Id.*

¹²¹ *Id.* at 3.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Notice of Partial Amendment No. 1 at 47018.

¹²⁵ FINRA Response at 3.

¹²⁶ Proposed CAB Rule 016(c)(1)(H).

¹²⁷ Proposed CAB Rule 328.

¹²⁸ *Id.*

¹²⁹ Egwele Letter; Debevoise Letter; Cascadia Letter.

supportive commenter stated that the current prohibition is “unnecessarily restrictive” as it prevents a CAB associated person from making the same “simple, non-compensated co-investment” that a non-CAB associated person could make under FINRA Rule 3280.¹³⁰ This commenter further stated that eliminating the current prohibition would align the treatment of private securities transactions among CABs and non-CAB member firms.¹³¹

The proposed rule change is reasonably designed to expand the scope of permissible activities for CABs and their associated persons without materially impacting investor protection. The proposed rule change would eliminate an existing prohibition that prevents CAB associated persons from participating in private securities transactions but would subject those transactions to the same notice, approval, and supervision obligations as those imposed on other non-CAB member firms. For these reasons, the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

E. Compensation

The proposed rule change would codify existing FINRA guidance by providing that a CAB may receive compensation in the form of equity securities of a privately held issuer on behalf of which the CAB provided services permitted under Rule 016(c)(1), provided that the receipt, exercise or subsequent sale of such securities will not cause the CAB to engage in any activity prohibited under CAB Rule 016(c)(2).¹³²

Commenters generally supported the proposed rule change.¹³³

The proposed rule change, which codifies existing guidance, is reasonably designed to promote compliance and increase transparency regarding permissible forms of CAB compensation. For these reasons, the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

F. M&A Brokers Exemption

The proposed rule change would permit a CAB to “effect[] securities transactions solely in connection with the transfer of ownership and control of a [privately held] company through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company, to a buyer that will actively operate the company or the business conducted with the assets of the company, in accordance with the terms and conditions of *Section 15(b)(13) of the Exchange Act or any provision of an SEC rule, release, interpretation or ‘no-action’ letter that permits a person to engage in the same or materially similar activities without having to register as a broker or dealer pursuant to Section 15(b) of the Exchange Act.*”¹³⁴

Commenters generally supported the proposed rule change.¹³⁵

The proposed rule change is reasonably designed to promote clarity and transparency by updating the CAB Rules to reflect subsequent regulatory developments. Current CAB Rule 016(c)(1)(G) was drafted to incorporate the M&A Brokers Letter, which SEC staff subsequently withdrew after Congress promulgated the M&A Brokers Exemption.¹³⁶ The proposed rule change would update the CAB Rules to directly reference the M&A Brokers Exemption, thereby reflecting the current regulatory landscape and expressly providing that CABs may engage in the same activities as those permitted under the M&A Brokers Exemption. For these reasons, the proposed rule change is reasonably designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest.¹³⁷

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act¹³⁸ that the proposed rule change (SR–FINRA–2025–005) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³⁹

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104803; File No. SR–CboeEDGA–2026–001]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

February 10, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on January 28, 2026, Cboe EDGA Exchange, Inc. (“Exchange” or “EDGA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) proposes to amend its Fee Schedule to add language to bring the Fee Schedule into compliance with Regulation NMS Rule 610(d), which becomes effective on February 2, 2026. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission’s website (<https://www.sec.gov/rules/sro.shtml>), the Exchange’s website (https://www.cboe.com/us/equities/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

¹³⁰ Cascadia Letter.

¹³¹ *Id.*

¹³² Proposed CAB Rule 511; see Forbes Letter, *supra* note 89.

¹³³ Egwele Letter; Debevoise Letter; Cascadia Letter.

¹³⁴ Proposed CAB Rule 016(c)(1)(G) (emphasis added).

¹³⁵ Egwele Letter; Debevoise Letter; Cascadia Letter.

¹³⁶ See *supra* Part II(B)(2).

¹³⁷ 15 U.S.C. 78o–3(b)(6).

¹³⁸ 15 U.S.C. 78s(b)(2).

¹³⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("EDGA Equities") to add language to bring the Fee Schedule into compliance with Regulation NMS Rule 610(d), which becomes effective on February 2, 2026. The Exchange proposes to implement these changes effective February 2, 2026.

On September 18, 2024, the Commission adopted several amendments to Regulation NMS in order to increase the transparency of exchange fees and rebates.³ As part of these amendments, the Commission adopted Regulation NMS Rule 610(d), which provides that "[a] national securities exchange shall not impose, nor permit to be imposed, any fee or fees, or provide, or permit to be provided, and rebate or other remuneration, for the execution of an order in an NMS stock that cannot be determined at the time of execution."⁴ On October 31, 2025, the Commission granted temporary exemptive relief from compliance with Regulation NMS Rule 610(d).⁵ The compliance date for Regulation NMS Rule 610(d) is the first business day of February 2026, which is Monday, February 2, 2026.

Currently, the Exchange establishes certain transaction fees and rebates for equities executions that are based on

tiers calculated using volume figures from trading or quoting activity in the current month. This means that the fees and rebates at the Exchange associated with a given equities execution often cannot be determined at the time of execution, but only retroactively at the end of the month in which an execution occurred. In order to ensure that its transaction fees and rebates for equities executions are consistent with Regulation NMS Rule 610(d), the Exchange proposes to add the following language to the "General Notes" section of its Fee Schedule:

- In compliance with Regulation NMS Rule 610(d), effective February 2, 2026, unless otherwise indicated, all volume figures will be derived from quoting or trading activity in the prior month. Consequently, all new Members will receive the base rates in their first month of trading.

This change will ensure that all Exchange participants will be able to ascertain at the time of execution all the transaction fees and rebates associated with the execution of an order of an NMS stock at the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)⁹ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges

among its Members and other persons using its facilities.

The Exchange believes the addition of the text under the "General Notes" section of the Fee Schedule provides for the equitable allocation of reasonable dues, fees and other charges among its Members because it allows the Exchange to preserve its current quoting and trading incentives while also complying with Regulation NMS Rule 610(d). Currently, Members are assessed certain transaction fees and paid certain transaction rebates based on tiers calculated using volume figures from trading and quoting activity in the current month. In order to comply with Regulation NMS Rule 610(d), the Exchange is adding language that provides that all transaction fees and transaction rebates shall be calculated using volume figures from trading and quoting activity in the prior month (unless otherwise indicated). As such, all transaction fees and transaction rebates associated with the execution of an order in an NMS stock at the Exchange can be determined at the time of execution of such order. All existing fees and rebates remain otherwise unchanged.

The Exchange believes that its modified Fee Schedule is not unfairly discriminatory because the Exchange will apply its revised transaction fee and transaction rebate calculations equally to all Members, in that all Members will receive transaction fees and transaction rebates based on the previous month's volume and quotation activity. Therefore, all Members will be able to determine relevant transaction fees and transaction rebates at the time of execution of an NMS stock on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

³ See Securities Exchange Act Release No. 101070 (September 18, 2024), 89 FR 81620 (October 8, 2024), File No. S7-30-22, Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders ("Rule 610(d) Adopting Release").

⁴ 17 CFR 242.610(d).

⁵ See Securities Exchange Act Release No. 104172 (October 31, 2025), 90 FR 51418 (November 17, 2025), File No. S7-30-22, Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders ("Temporary Exemptive Relief").

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ *Id.*

⁹ 15 U.S.C. 78f(b)(4).

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the Exchange's proposal will apply to all Members equally in that all Members are subject to Regulation NMS Rule 610(d) and will be able to determine their applicable transaction fees and transaction rebates based on tiers by utilizing the previous month's trading and quoting activity.

Next, the Exchange believes the proposed rule changes do not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 15% of the market share.¹⁰ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."¹¹ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of

where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."¹² Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and paragraph (f) of Rule 19b-4¹⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGA-2026-001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeEDGA-2026-001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR-CboeEDGA-2026-001 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104810; File No. SR-CBOE-2026-015]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule for Logical Ports

February 10, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 29, 2026, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁰ See <https://www.cboe.com/en/markets/us/equities/market-statistics/> (last accessed January 26, 2026).

¹¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹² *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/options/regulation/rule_filings/cboe/), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment. By way of background, the Exchange offers a variety of logical ports, which provide users with the ability to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,³ Purge Ports,⁴ Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports.⁵ The Exchange also offers corresponding Certification Logical Ports for each of

the aforementioned logical port types, which provide TPHs and non-TPHs access to the Exchange's certification environment to test proprietary systems and applications. Each logical port type has a protocol defining how messages over the logical port type must be formatted, sent, and processed.

To ensure TPHs and non-TPHs who intend to utilize updated, or new, logical port types in the live production environment manage operational risks, meet exchange requirements, and confirm their systems behave correctly, the Exchange offers weekend testing in the production environment in addition to certification environment.⁶ Weekend testing in the production environment enables TPHs and non-TPHs to simulate market conditions in the real production environment over the weekend without impacting actual market operations. Weekend testing includes opportunities for TPHs and non-TPHs to test order entry and routing, connectivity to the Exchange's matching engines, and operational validation for the participants' trading infrastructure. Weekend testing ensures operational readiness for the introduction of updated, or new, logical port types for the Exchange, Exchange TPHs, and non-TPHs seeking to utilize updated, or new, logical port types. A monthly fee applies for use of each logical port utilized in the live production environment as set forth in the Exchange's Fee Schedule.

The Exchange proposes to clarify in the notes under the Logical Port Fees section of the Fee Schedule that logical port fees only apply if the corresponding logical port type is also available in the live production environment. For example, if the Exchange intends to adopt an updated protocol that has not yet been launched in the live production environment, any logical port that supports that protocol will be free during weekend testing in the production environment until such time that the updated protocol is available in the live production environment. Once any new logical port type, including a logical port that supports an updated protocol, is available in the live production

environment, TPHs and non-TPHs will be assessed the corresponding monthly Logical Port Fee for the logical port as set forth in the Exchange's Fee Schedule.

The Exchange notes that participation in weekend testing in the production environment continues to be voluntary and is not required in order to participate in the live production environment. Additionally, TPHs and Non-TPHs will not be assessed a fee until the logical port type, including a logical port to support an updated protocol, is in the live production environment.⁷ Further, the Exchange notes that other exchanges offer similar testing opportunities on predetermined weekends at discounted or no cost.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

As noted above, in addition to the Exchange's certification environment, the Exchange's weekend testing in the production environment allows TPHs and non-TPHs to test updated protocols with the corresponding logical port

³ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁴ Purge Ports are dedicated ports that permit a user to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

⁵ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

⁶ For example, the Exchange is currently in the process of migrating to Binary Order Entry Version 3 ("BOEv3"), an updated trading protocol from the existing Binary Order Entry Version 2 ("BOEv2") supported by Logical Ports. The BOEv3 protocol is scheduled to launch in the live production environment on the Exchange at a later date. The BOEv3 protocol differs from prior versions of the BOE protocol by removing optional messaging fields, changing messaging sizing, and introducing stricter sequencing. The Exchange will offer weekend testing in the production environment in anticipation of the launch of BOEv3 protocol in the live production environment.

⁷ For example, a participant may obtain a logical port free of charge if that participant utilizes the logical port in the production environment during the designated weekend testing periods.

⁸ See e.g., Nasdaq Stock Market LLC, Saturday Testing Policy; see also MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

types in the real production environment without impacting actual market conditions. This environment enables market participants to manage operational risks, meet Exchange requirements, and confirm their systems behave correctly under the updated protocol through testing software development changes in the production environment prior to implementing them in the live trading environment. As a result, weekend testing in the production environment reduces the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. The Exchange believes this is especially true when testing an updated protocol that has not yet launched in the live production environment. As such, the Exchange believes it's reasonable to only assess the Logical Port Fees to logical port types, including logical ports to support updated protocols, that are also available in the live production environment as to not discourage the testing of updated protocols ahead of any respective launch date.

The Exchange also believes applying Logical Port Fees is reasonable once such logical port types are available in the live production environment because, while such ports will no longer be completely free, THPs and non-TPHs will have the capability to utilize these logical ports in the live production environment. The Exchange continues to believe the weekend testing in the production environment, in addition to testing offered in the certification environment, will be sufficient for most TPHs and non-TPHs to prepare for the launch of updated protocols (with corresponding logical port types).

The Exchange believes the proposal to make clear that Logical Port Fees apply only to logical ports that are in the live production environment is equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to participate in weekend testing in the production environment and all market participants will have further clarity as to which logical ports are subject to the fees set forth in the Exchange's Fee Schedule. The Exchange also believes the proposed change is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to avail themselves of weekend testing opportunities in the production environment for new logical port types and protocols and to become acclimated with updated connectivity offerings ahead of going live in the production environment. The Exchange believes the

proposal to add this language to the notes section in the Fees Schedule also provides clarity in the rules as to when the Logical Port Fees apply and reduces potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed addition to the Fee Schedule creates an undue burden on competition because the Exchange will offer the logical ports not available in the live production environment in the weekend testing production environment free of charge. As discussed above, the use of the weekend testing in the production environment is optional and based on the business needs of each market participant. Moreover, market participants will continue to benefit from access to both the certification environment and weekend testing environment, through which the Exchange believes robust and realistic testing experiences are available. Such testing experiences may be especially critical during the time leading up to the launch of an protocol (with corresponding logical ports) in the live production environment.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's weekend testing in the production environment, which does not impact actual market operations. Additionally, the Exchange notes that it operates in a highly competitive market. Participants have numerous alternative venues that they may participate on and direct their order flow, including 18 other options exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory

intervention in determining prices, products, and services in the securities markets. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f) of Rule 19b-4¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2026-015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-CBOE-2026-015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2026-015 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-02886 Filed 2-12-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35945; File No. 812-15896]

LibreMax Asset-Backed Income Fund and LibreMax Capital, LLC

February 10, 2026.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of an application for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c), and 18(i) of the Act, pursuant to sections 6(c) and 23(c) of the Act for certain exemptions from rule 23c-3 under the Act, and pursuant to section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and asset-based distribution and/or service fees with respect to certain classes.

APPLICANTS: LibreMax Asset-Backed Income Fund and LibreMax Capital, LLC.

FILING DATES: The application was filed on September 12, 2025, and amended on February 4, 2026.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by

emailing the SEC's Secretary at Secretaries-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. The email should include the file number referenced above. Hearing requests should be received by the Commission by 5:30 p.m., Eastern time, on March 9, 2026, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any fact bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at Secretaries-Office@sec.gov.

ADDRESSES: The Commission: Secretaries-Office@sec.gov. Applicants: Alyssa M. Bernard, Secretary, LibreMax Asset-Backed Income Fund, 615 East Michigan Street, Milwaukee, WI 53202; Frank Bruttomesso, General Counsel and COO, LibreMax Capital, LLC, 601 Lexington Avenue, 30th Floor, New York, NY 10022; Deborah Bielicke Eades, Joseph M. Mannon, Vedder Price P.C., 222 N LaSalle Steet, Chicago, Illinois 60600.

FOR FURTHER INFORMATION CONTACT: Jacob D. Krawitz, Senior Special Counsel, or Kaitlin C. Bottock, Assistant Director, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended and restated application, dated February 4, 2026, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, <https://www.sec.gov/search-filings>. You may also call the SEC's Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-02881 Filed 2-12-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104807; File No. SR-CBOE-2026-016]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Its Rules Relating to Designated Primary Market-Makers ("DPMs") and DPM Appointments in Global Trading Hours and Curb Sessions

February 10, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 30, 2026, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to modify rules pertaining to Designated Primary Market-Makers ("DPMs") to (1) clarify the Exchange may appoint DPMs to Global Trading Hours ("GTH") and Curb Trading Hours ("Curb") sessions and that DPMs may be the same across multiple trading sessions or different (or no DPM) for an option class in Regular Trading Hours ("RTH"), GTH, and/or Curb sessions; (2) provide that DPM obligations and participation entitlements will apply to GTH and Curb sessions; and (3) make certain administrative changes. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/options/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

DPMs are Trading Permit Holders ("TPHs") that are approved by the Exchange to function in appointed securities as a Market-Maker.³ The Exchange proposes to amend certain Cboe Rules regarding DPM appointments. Specifically, the Exchange proposes to (1) clarify the Exchange may appoint DPMs to GTH and Curb sessions and that DPM appointments for an option class may differ by trading session⁴ while acknowledging that a trading session may not have a DPM;⁵ (2) provide that heightened DPM quoting obligations and participation entitlements apply during GTH and Curb sessions; and (3) make certain administrative changes.

First, the Exchange proposes to amend Cboe Rules 1.1 and 3.53 to update requirements and administrative processes for DPMs to explicitly state that the Exchange may appoint DPMs for all trading sessions (*i.e.*, RTH, GTH,⁶ and Curb⁷), and that DPMs may be the same or different across trading sessions. Pursuant to the definition of DPM in Cboe Rule 1.1 and the provisions of Cboe Rule 5.52(h), the Exchange may determine DPM appointments for classes (including that a DPM may not be appointed for a class). Pursuant to Cboe Rule 1.5, if Cboe Rules permit the Exchange to

make a determination (including on a class-by-class basis), the Exchange may make that determination on a trading session-by-trading session basis. Therefore, Cboe Rules permit the Exchange to determine DPM appointments for all trading sessions, and the Exchange may appoint the same DPM for all trading sessions or may appoint different DPMs on a trading session-by-trading session basis. The proposed rule change merely explicitly states this in Cboe Rules. The Exchange proposes to update the definition of DPM in Cboe Rule 1.1 to state that (1) the Exchange designates DPMs per trading session, (2) On-Floor DPM is a term applicable to RTH sessions (as the floor operates only during RTH), (3) a DPM's request to function as an Off-Floor DPM is applicable to RTH sessions, and (4) DPMs that are appointed for a GTH or Curb session are considered Off-Floor DPMs within Cboe Rules (since those sessions are electronic only).

To further codify that the Exchange may appoint DPMs by trading session, the Exchange proposes to amend Cboe Rule 3.53, which establishes certain processes for DPMs, including selection and termination processes for DPMs. Specifically, the Exchange proposes to amend Cboe Rule 3.53(d) to state that the Exchange has the authority to specify the trading session(s) for a DPM appointment as a possible condition on an approval. Furthermore, since it may be necessary to facilitate trading in a specified extended hours trading session without a DPM when a DPM appointment is terminated, the Exchange proposes to amend Cboe Rule 3.53(f) to confirm that a DPM may not be designated for a GTH or Curb session when the existing DPM for such session is terminated. This proposed change acknowledges and aligns with Cboe Rule 5.50(l), which provides that a class may be designated for trading without a DPM (during any or all trading sessions, as determined by the Exchange).

By amending these Cboe Rules to explicitly state the Exchange may designate a DPM by trading session, the Exchange recognizes that a DPM appointed for a class in RTH may not intend to participate in GTH or Curb sessions. Consequently, the Exchange proposes to amend Cboe Rules to clarify the Exchange's authority to designate different DPMs for RTH, GTH, and/or Curb sessions. This addresses the possibility that a DPM for a class in one trading session may not want the DPM role in other trading sessions. The Exchange believes having the ability to appoint different DPMs for different trading sessions may help bolster

market liquidity in each trading session in which the Exchange chooses to appoint a DPM as it will not impose a DPM appointment to a TPH in a trading session(s) during which it chooses to not operate. In other words, a DPM in RTH, for example, will not be obligated to assume the DPM role in another session only to maintain its DPM appointment in the session it wants. Also, a DPM will not be required to relinquish its DPM appointment in a class for one trading session because it does not operate as the DPM in another trading session for the option class.

Second, the Exchange proposes to amend its Rules to address DPM participation entitlements and quoting obligations during GTH and Curb sessions. The Exchange proposes to amend Cboe Rule 5.54(a) to provide that the obligations of DPMs that currently apply during RTH will also apply during to GTH and Curb, and compliance with the heightened continuous quoting obligations will be measured across all trading sessions for which a DPM has an appointment. As the Exchange historically has appointed LMMs to GTH (and Curb) but not DPMs, Cboe Rule 5.54(a) limits application of a DPM's obligations to RTH. If the Exchange determines to appoint a DPM to GTH and/or Curb, the Exchange believes it is appropriate for these obligations in Cboe Rule 5.54(a), including the continuous quoting obligation in subparagraph (1), to apply to DPMs during those trading sessions in the same manner as they do during RTH when the DPM has an appointment during those trading sessions. With respect to how a DPM's compliance with continuous quoting obligations is measured, the proposed rule change amends Cboe Rule 5.54(a)(1) to provide that this will occur across trading sessions for which the DPM has an appointment.

The Exchange notes this is consistent with existing Cboe EDGX Exchange, Inc. ("EDGX") Rules regarding DPMs. Specifically, pursuant to EDGX Rule 22.3(a), if a Market Maker selects an appointment in an option class, that appointment applies during both GTH and RTH and thus, the Market-Maker would have an appointment to make markets in the option class during both GTH and RTH on EDGX.⁸ Similarly, EDGX Rule 22.2(e) provides that a Market-Maker may request the Exchange appoint it as DPM to a class for all trading sessions. As EDGX Rules do not contain a heightened continuous

³ See Rule 1.1 (definition of DPM).

⁴ The term "trading session" means the hours during which the Exchange is open for trading for Regular Trading Hours, Global Trading Hours or Curb Trading Hours (each of which may be referred to as a trading session), each as set forth in Rule 5.1. Unless otherwise specified in the Rules or the context otherwise indicates, all Rules apply in the same manner during each trading session. See Rule 1.1 (Definitions).

⁵ See Rule 5.50(l), which states that the Exchange may designate a class for trading without a DPM.

⁶ Except under unusual conditions as may be determined by the Exchange or the Holiday hours set forth in Rule 5.1(d), Global Trading Hours are from 8:15 p.m. (previous day) to 9:25 a.m. on Monday through Friday. See Rule 5.1(c).

⁷ Except under unusual conditions as may be determined by the Exchange, or the Holiday hours set forth in Rule 5.1(e), Curb Trading Hours are from 4:15 p.m. to 5:00 p.m. on Monday through Friday. See Rule 5.1(d).

⁸ See also Securities Exchange Act Release No. 34-85797; (May 7, 2019), 84 FR 20920 (May 13, 2019) (SR-CboeEDGX-2019-027).

quoting obligation for DPMs as the Exchange's Rules do,⁹ the only continuous quoting obligation to which DPMs are subject is the standard obligation applicable to all Market-Makers.¹⁰ EDGX Rule 22.6(d) explicitly provides that Market-Maker continuous quoting obligations (and thus DPM continuous quoting obligations) apply to the class for an entire trading day, including both trading sessions of RTH and GTH (there is no Curb session in the EDGX Rules). Consequently, since the Market-Maker continuous quoting obligation set forth in EDGX Rule 22.6(d) is the continuous quoting obligation for DPMs on EDGX and is measured across all trading sessions, and since EDGX Rules state that DPM appointments apply to all trading sessions for a class, the continuous quoting obligations applicable to a DPM on EDGX apply across all trading sessions. This approach is also currently used for Market-Maker obligations in extended trading hour sessions.¹¹

Although measuring a DPM's continuous quoting obligation for the entire trading day will increase the quoting requirement for the DPM because of the increase of trading time for which quotes must be provided, the DPM can meet the increased obligation through activity in RTH, GTH, and Curb.¹² Since Cboe Rule 5.54(a) provides that DPM obligations require continuous quoting in a DPM's appointed classes, the Exchange calculates DPM compliance with quoting obligations across all of a DPM's option classes in totality rather than on a class-by-class basis. To illustrate how the proposed rule change will apply the quoting obligation across trading sessions, when applicable, the following example assumes that a DPM is appointed to 10 classes, nine of which are equity option classes that trade in RTH only and the remaining option class is an index option that trades in RTH, GTH, and Curb. Each option class has 100 series. For the nine equity option classes, each one trades for 405 minutes (24,300 seconds) in RTH in a trading day. To include this trading time

in the calculation to determine compliance, the RTH time is multiplied by the number of series (in this case, 100), resulting in 40,500 minutes (2,430,000 seconds) per each class. The Index option will trade for 790 minutes (47,400 seconds) in GTH, 45 minutes (2,700 seconds) in Curb, and 405 minutes (24,300 seconds) in RTH, for a total of 1,240 minutes (74,400 seconds). To include this trading time in the calculation to determine compliance, the total time is multiplied by 100 series, resulting in 124,000 minutes (7,440,000 seconds). To determine compliance with the 90% continuous quoting obligation in Cboe Rule 5.54, the total trading times will be combined, resulting in 29,310,000 seconds ((2,430,000 seconds × 9 classes) + 7,440,000 seconds) and multiplied by 90% to equal 26,379,000 seconds that the DPM must provide continuous quoting. To meet this quoting obligation, the DPM could quote 100% of the equity classes (21,870,000 seconds) and would be required to quote the index class for 4,509,000 seconds (which is 67% of that trading session) to meet the overall 90% requirement obligation. Alternatively, if the DPM only quoted 100% of the index class in GTH and Curb (5,010,000 seconds combined), the DPM would still be required to quote the equity option classes for 21,369,000 (which is 97.70% of the RTH trading session for equities) to meet the 90% requirement overall. Additionally, if the DPM quoted 100% of the index class in GTH, RTH, and Curb (7,440,000 seconds total), the DPM would still be required to quote the equity option classes for 18,939,000 (which is 72.84% of the RTH trading session for equities) to meet the 90% requirement overall.

As Cboe Rule 5.54 already provides that DPM quoting obligations apply collectively to all of a DPM's appointed classes,¹³ the Exchange believes that applying the continuous quoting requirements for DPMs collectively across all classes and trading sessions is a fair and efficient way for the Exchange and market participants to evaluate compliance with the continuous quoting obligation. Applying the continuous quoting requirements collectively across all classes and trading sessions rather than on a class-by-class and trading session-by-trading session basis is beneficial to DPMs by providing some flexibility to choose which series in their appointed classes they will continuously quote—increasing the

continuous quoting in the series of one class while allowing for a decrease in the continuous quoting in the series of another class. This flexibility, however, does not diminish the DPM's obligation to continuously quote in a significant percentage of series for a significant part of the trading day. This flexibility is especially important for classes that have relatively few series and may prevent a DPM from reaching the continuous quoting obligation when failing to quote 90% of the trading day in more than one series in an appointed class. The Exchange believes that the proposed rule change will not diminish, and may in fact increase, market making activity on the Exchange, by applying continuous quoting obligations in a reasonable manner, which is in alignment with rules already in place on another options exchange. The Exchange does not anticipate that DPM quoting will routinely decrease and notes that, as illustrated in the examples above, that DPM obligation is expected to remain above the standard Market-Maker obligation requiring continuous quoting during 60% of the trading day. By requiring that a DPM meet its continuous quoting obligations across all trading sessions in which it is appointed as the DPM (and collectively across classes, as is the case today), a DPM might meet its obligations on a given day even if it falls below obligation requirements in one trading session if the DPM surpasses obligations requirements in another session because the total activity across trading sessions for a DPM will be used to determine compliance with continuous quoting obligation requirements. Additionally, this approach is intended to help reduce the rigidity of quoting requirements for a DPM of multiple sessions if trading activity is less in one of the sessions. The Exchange believes that applying the existing DPM obligations for RTH trading to GTH and Curb trading sessions will promote active markets in these extended trading hours sessions. Furthermore, applying such obligations across multiple trading sessions if a DPM is appointed to more than one trading session for a class will help foster liquid markets while providing flexibility to DPMs to meet their obligations. The Exchange does not believe that determining compliance with quotation obligations across trading sessions will result in less liquidity in RTH. To the contrary, the Exchange anticipates that DPMs may utilize activity in RTH to meet any shortfalls in quoting obligations that a DPM may experience in GTH or Curb. The Exchange has observed that trading

⁹ See Cboe Rule 5.54(a) which requires that a DPM provide continuous electronic quotes 90% of the time as applicable.

¹⁰ See EDGX Rule 22.6(d) requires that a Market-Maker enter continuous bids and offers 60% of the time as applicable.

¹¹ See Rule 5.52(d)(2)(E), which states that Market-Maker obligations will apply across trading sessions and that if a Market-Maker has an appointment in a class that is open for trading during multiple trading sessions, the Exchange will determine a Market-Maker's compliance with the continuous electronic quoting requirement across the trading day.

¹² See note 8 *supra*.

¹³ See Rule 5.54(a)(2), which states that compliance with DPM quoting obligation applies to all of a DPM's appointed classes collectively.

characteristics during RTH are typically different than those during extended hours trading sessions in that extended sessions have lower trading levels, reduced liquidity, and fewer participants. Therefore, the Exchange believes it is appropriate to extend to DPMs this flexibility across trading sessions to meet continuous quoting requirements.

The Exchange also proposes to amend Cboe Rule 5.32 to permit the Exchange to apply the DPM participation entitlement during GTH and Curb. Cboe Rule 5.32(a) provides the Exchange with authority to determine which allocation algorithm and priority overlays, including the DPM participation entitlement, will apply on a class-by-class basis. As noted above, pursuant to Cboe Rule 1.5, if Cboe Rules permit the Exchange to make a determination (including on a class-by-class basis), the Exchange may make that determination on a trading session-by-trading session basis. Therefore, Cboe Rules currently permit the Exchange to determine what allocation algorithm and priority overlays it may apply to RTH, GTH, and Curb. However, Cboe Rules do not permit the DPM participation entitlement to apply during GTH and Curb. As the Exchange may determine to appoint DPMs during GTH and Curb going forward, the Exchange proposes to permit it to be able to apply the DPM participation entitlement during those trading sessions in the same manner it can during RTH. Given that a DPM will be subject to heightened continuous quoting obligations during GTH and Curb, as discussed above, the Exchange proposes to permit it to apply the DPM participation entitlement as a priority overlay during those trading sessions, as it is able to do during RTH. Specifically, the Exchange proposes to amend Cboe Rule 5.32(a)(2)(B)(iv) to state that DPM participation entitlements may apply during GTH and Curb sessions. Pursuant to Cboe Rule 5.32(a)(2)(B), the Exchange may apply one or more of the participation entitlements provided in the rule,¹⁴ and the proposed addition to Cboe Rule 5.32(a)(2)(B)(iv) provides that the Exchange may apply participation entitlements in the same manner during GTH and Curb. The Exchange believes that applying the existing participation

entitlements for RTH to GTH and Curb sessions will appropriately incentivize Market-Maker participation in the extended trading hours sessions for which they are appointed to help provide market liquidity during such sessions.

Finally, as an administrative change, the Exchange proposes to amend Cboe Rule 5.50(b), which establishes cutoff times by trading sessions for submission of Market-Maker appointment requests to remove specific time requirements from the Rules. Although such cutoff times were previously added to Cboe Rules, relocation of these time requirements will enhance the Exchange's ability to react to future advancements in technology that may allow the Exchange to provide more time to Market-Makers to submit appointment requests. Consequently, the Exchange believes this type of technical detail should be maintained in the Exchange's technical specifications rather than Cboe Rules and therefore proposes to replace these specific cutoff times currently provided in Cboe Rules with a statement that such deadlines will be specified in the Exchange's technical specifications.¹⁵ This change aligns with Cboe Rule 1.5(a) which states that the Exchange will announce determinations to TPHs via various means of communication, including specifications. By relocating cutoff times from the Rules to technical specifications documentations, the Exchange will have the ability to adjust times more quickly in the future. Notice of these cutoff times and any subsequent changes to them will be provided via technical specification documentation as required by Cboe Rule 1.5(a). In the event that technology advances allow the Exchange to process requests with less notice, the Exchange may modify the cutoff times in the technical specifications and provide Market-Makers more time to meet deadlines. Furthermore, removing the specific time requirements in Cboe Rule 5.50 will align the rule's structure to Cboe Rule 5.54(a)(6) which provides that the Exchange may determine time requirements but does not include the details of such time requirements within Cboe Rules. The Exchange believes this proposed change will therefore provide greater consistency within Cboe Rules.

As an additional administrative change, the Exchange also proposes to amend Cboe Rule 5.50(l) to return language to the provision that was inadvertently removed from the Rules in

a rule change connected to the System migration that took place in 2019.¹⁶ The proposed rule change merely adds back to the rule language that states that if the Exchange determines to list SPX or VIX on a group basis, it will have the authority to change the eligible categories of Market-Maker participants for each group.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change to clarify in Cboe Rules that the Exchange may appoint DPMs to all trading sessions and on a trading session-by-trading session basis will remove impediments to and perfect the mechanism of a free and open market and protect investors, as such changes add transparency and clarity to Cboe Rules. In explicitly stating that DPM appointment designations may apply to one or multiple trading session(s), the Exchange recognizes that not all DPMs may intend to trade in all available trading sessions for an option class, and designation of different DPMs for a class by trading session may be appropriate to help provide market liquidity. The Exchange may designate a DPM for RTH and another for GTH or Curb based on DPM expressed interest in specific trading session(s), or, as indicated in

¹⁴ See Rule 5.32(a)(2)(B), which states that if a DPM has a quote at the highest bid or lowest offer, it will receive the greater of (i) the number of contracts it would receive pursuant to the applicable base allocation algorithm and (ii) 50% of the contracts if there is one other non-Priority Customer, 40% of the contracts if there are two non-Priority Customers, or 30% of the contracts if there are three or more non-Priority Customers with orders or quotes on the Book at that price.

¹⁵ See Rule 1.5(a), which states that the Exchange will announce determinations to TPHs via various means of communication, including specifications.

¹⁶ See Securities Exchange Act Release No. 34-87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-CBOE-2019-059).

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ *Id.*

Cboe Rule 5.50(l), the Exchange may list for trading a class without a DPM during a trading session. As noted above, this flexibility is already permitted under Cboe Rules. The flexibility to designate different DPMs provides the Exchange with the ability to appoint dedicated liquidity providers in all trading sessions to make active markets, which ultimately benefits investors.

Furthermore, the Exchange believes the proposed rule change to apply DPM participation entitlements and obligations to GTH and Curb sessions as well as measuring compliance with the heightened continuous quoting obligations across trading sessions for DPMs with appointments for more than one trading session in a class will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change will ultimately apply the same obligations to DPMs during GTH and Curb as are currently applied to DPMs during RTH. Additionally, the proposed rule change will provide the Exchange with the same flexibility to apply the DPM participation entitlement during GTH and Curb in the same manner it is applied during RTH. The Exchange believes being able to apply the DPM participation entitlement during GTH and Curb may help incentivize Market-Maker participation in GTH and Curb sessions, balanced with the heightened continuous quoting obligations that will apply during those trading sessions.

While the proposed rule change increases the total time a DPM must quote if it is appointed to GTH and/or Curb, this increase is de minimis given that a DPM's compliance with its continuous quoting obligation is based on all classes in which it has an appointment in the aggregate across trading sessions. A Market-Maker may choose to express interest in becoming a DPM during GTH and/or Curb. The Exchange believes that the slight additional burden of extending the continuous quoting obligation to the GTH and Curb trading sessions for DPMs' appointments in those trading sessions is outweighed by the benefits to investors that may result from that liquidity. The proposed rule change also continues to maintain a balance of DPM benefits and obligations, as the continuous quoting obligation and DPM participation entitlement that will apply during GTH and Curb are the same as those that apply today during RTH. Ultimately, the proposed rule change is intended to facilitate DPM involvement

in GTH and Curb sessions and is intended to facilitate tighter spreads, increase trading opportunities, and overall enhanced market quality to the benefit of all market participants. As discussed above, measuring compliance with DPM continuous quoting obligations across trading sessions is consistent with current EDGX Rules.

The Exchange notes if a DPM in a class during RTH does not seek to become the DPM in that class during GTH or Curb, this proposed rule change has no impact on that DPM's obligations, as the proposed change would only require additional quoting time for DPMs appointed to a class in multiple trading sessions. If a DPM in a class during RTH wants to be DPM in that class during other trading sessions, and the Exchange makes such appointment, the Exchange believes it is appropriate for that DPM to be subject to the same obligations during those additional trading sessions it is during RTH.

Last, the Exchange believes that the largely administrative changes proposed for Cboe Rule 5.50 that would (1) remove specific time requirements from the rules and (2) return inadvertently deleted rule text are intended to remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors consistent with the Act. By moving Market-Maker application cutoff times from the rules to the Exchange's technical specification documentation, the Exchange will have the flexibility to change times in response to technology advances or future changes in trading times. By returning language inadvertently deleted regarding the Exchange's authority to change the eligible categories of Market-Maker participants for each group, the proposed change clarifies the manner in which the Exchange may function.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change to clarify the Exchange's ability to appoint DPMs to all trading session and on a trading session-by-trading session basis explicitly state what is permissible today under current Rules, as discussed

above. These Rules will continue to apply in the same manner to all TPHs. The proposed rule change to apply DPM quoting obligations to GTH and Curb (and measure compliance with the continuous quoting obligation across trading sessions) and permit the Exchange to apply the DPM participation entitlement in GTH and Curb, will apply equally to all DPMs (and in the same manner as they do today to DPMs during RTH). While the proposed rule change increases the total time a DPM must quote if it is appointed to GTH and/or Curb, this increase is de minimis given that a DPM's compliance with its continuous quoting obligation is based on all classes in which it has an appointment in the aggregate across trading sessions. A Market-Maker may choose to express interest in becoming a DPM during GTH and/or Curb. As noted above, if a DPM in a class during RTH does not want to be DPM (or is not appointed as DPM) in that class during GTH or Curb, this proposed rule change has no impact on the DPM. The Exchange believes that the slight additional burden of extending the continuous quoting obligation to the GTH and Curb trading sessions for DPMs' appointments in those trading sessions is outweighed by the benefits to investors that may result from that liquidity. The proposed rule change also continues to maintain a balance of DPM benefits and obligations, as the continuous quoting obligation and DPM participation entitlement that will apply during GTH and Curb are the same as those that apply today during RTH. Additionally, the proposed changes to move time requirements to technical specification documents and add back inadvertently removed content are not for competitive purposes and are generally administrative changes to support market function. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the proposed rule changes apply only to DPMs at the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal**

Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2026-016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CBOE-2026-016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2026-016 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-02883 Filed 2-12-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104809; File No. SR-CboeEDGX-2026-007]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule for Logical Ports

February 10, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 29, 2026, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/options/regulation/rule_filings/edgx/), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to clarify that Logical Port Fees apply only if the corresponding logical port type is available in the live production environment. By way of background, the Exchange offers a variety of logical ports, which provide users with the ability to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,³ Purge Ports,⁴ Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports.⁵ The Exchange also offers corresponding Certification Logical Ports for each of the aforementioned logical port types, which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications. Each logical port type has a protocol defining how messages over the logical port type must be formatted, sent, and processed.

To ensure Members and non-Members who intend to utilize updated, or new, logical port types in the live production environment manage operational risks, meet exchange requirements, and confirm their systems behave correctly, the Exchange offers weekend testing in the production environment in addition to certification environment.⁶ Weekend testing in the production environment enables Members and non-Members to simulate market conditions in the real production environment over the weekend without impacting actual

³ Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁴ Purge Ports are dedicated ports that permit a user to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

⁵ Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

⁶ For example, the Exchange is currently in the process of migrating to Binary Order Entry Version 3 ("BOEv3"), an updated trading protocol from the existing Binary Order Entry Version 2 ("BOEv2") supported by Logical Ports. The BOEv3 protocol is scheduled to launch in the live production environment on the Exchange at a later date. The BOEv3 protocol differs from prior versions of the BOE protocol by removing optional messaging fields, changing messaging sizing, and introducing stricter sequencing. The Exchange will offer weekend testing in the production environment in anticipation of the launch of BOEv3 protocol in the live production environment.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁰ 17 CFR 200.30-3(a)(12).

market operations. Weekend testing includes opportunities for Members and non-Members to test order entry and routing, connectivity to the Exchange's matching engines, and operational validation for the participants' trading infrastructure. Weekend testing ensures operational readiness for the introduction of updated, or new, logical port types for the Exchange, Exchange Members, and non-Members seeking to utilize updated, or new, logical port types. A monthly fee applies for use of each logical port utilized in the live production environment as set forth in the Exchange's Fee Schedule.

The Exchange proposes to clarify in the notes under the Logical Port Fees section of the Fee Schedule that logical port fees only apply if the corresponding logical port type is also available in the live production environment. For example, if the Exchange intends to adopt an updated protocol that has not yet been launched in the live production environment, any logical port that supports that protocol will be free during weekend testing in the production environment until such time that the updated protocol is available in the live production environment. Once any new logical port type, including a logical port that supports an updated protocol, is available in the live production environment, Members and non-Members will be assessed the corresponding monthly Logical Port Fee for the logical port as set forth in the Exchange's Fee Schedule.

The Exchange notes that participation in weekend testing in the production environment continues to be voluntary and is not required in order to participate in the live production environment. Additionally, Members and Non-Members will not be assessed a fee until the logical port type, including a logical port to support an updated protocol, is in the live production environment.⁷ Further, the Exchange notes that other exchanges offer similar testing opportunities on predetermined weekends at discounted or no cost.⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations

thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, in addition to the Exchange's certification environment, the Exchange's weekend testing in the production environment allows Members and non-Members to test updated protocols with the corresponding logical port types in the real production environment without impacting actual market conditions. This environment enables market participants to manage operational risks, meet Exchange requirements, and confirm their systems behave correctly under the updated protocol through testing software development changes in the production environment prior to implementing them in the live trading environment. As a result, weekend testing in the production environment reduces the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. The Exchange believes this is especially true when testing an updated protocol that has not yet launched in the live production environment. As such, the Exchange believes it's reasonable to only assess the Logical Port Fees to logical port types, including logical ports to support updated protocols, that are also available in the live production environment as to not discourage the testing of updated protocols ahead of any respective launch date.

The Exchange also believes applying Logical Port Fees is reasonable once

such logical port types are available in the live production environment because, while such ports will no longer be completely free, Members and non-Members will have the capability to utilize these logical ports in the live production environment. The Exchange continues to believe the weekend testing in the production environment, in addition to testing offered in the certification environment, will be sufficient for most Members and non-Members to prepare for the launch of updated protocols (with corresponding logical port types).

The Exchange believes the proposal to make clear that Logical Port Fees apply only to logical ports that are in the live production environment is equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to participate in weekend testing in the production environment and all market participants will have further clarity as to which logical ports are subject to the fees set forth in the Exchange's Fee Schedule. The Exchange also believes the proposed change is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to avail themselves of weekend testing opportunities in the production environment for new logical port types and protocols and to become acclimated with updated connectivity offerings ahead of going live in the production environment. The Exchange believes the proposal to add this language to the notes section in the Fees Schedule also provides clarity in the rules as to when the Logical Port Fees apply and reduces potential confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed addition to the Fee Schedule creates an undue burden on competition because the Exchange will offer the logical ports not available in the live production environment in the weekend testing production environment free of charge. As discussed above, the use of the weekend testing in the production environment is optional and based on the business

⁷ For example, a participant may obtain a logical port free of charge if that participant utilizes the logical port in the production environment during the designated weekend testing periods.

⁸ See e.g., Nasdaq Stock Market LLC, Saturday Testing Policy; see also MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

needs of each market participant. Moreover, market participants will continue to benefit from access to both the certification environment and weekend testing environment, through which the Exchange believes robust and realistic testing experiences are available. Such testing experiences may be especially critical during the time leading up to the launch of an protocol (with corresponding logical ports) in the live production environment.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's weekend testing in the production environment, which does not impact actual market operations. Additionally, the Exchange notes that it operates in a highly competitive market. Participants have numerous alternative venues that they may participate on and direct their order flow, including 18 other options exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and paragraph (f) of Rule 19b-4¹³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2026-007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeEDGX-2026-007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGX-2026-007 and should be submitted on or before March 6, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-02885 Filed 2-12-26; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before March 16, 2026.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection request by selecting "Small Business Administration"; "Currently Under Review," then select the "Only Show ICR for Public Comment" checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at Shauniece.Carter@sba.gov; or from www.reginfo.gov/public/do/PRAMain.

SUPPLEMENTARY INFORMATION: This is a new collection for the U.S. Small Business Administration's (SBA) Regional Innovation Cluster (RIC) Program. This data collection is an online form to be completed by small business and partner organization members of RICs funded through SBA. The form enables SBA to track membership of RICs.

Through the RIC Program, the SBA invests regional clusters—geographic concentrations of interconnected companies, specialized suppliers, academic institutions, service providers, and associated organizations with a specific industry focus—throughout the United States that span a variety of industries, ranging from energy and manufacturing to advanced defense technologies. The standardized membership information will enable SBA to more rigorously track small business support across individual RICs and the overall program.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f).

¹⁴ 17 CFR 200.30-3(a)(12).

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

PRA Number: New data collection.

(1) *Title:* Regional Innovation Cluster Membership Onboarding Form.

Description of Respondents: Small business concerns and partner organizations who are members of Regional Innovation Clusters.

Total Estimated Annual Responses: 3,250.

Total Estimated Annual Hour Burden: 344.5.

Shauniece Carter,

Agency Clearance Officer.

[FR Doc. 2026-02879 Filed 2-12-26; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21440 and #21441; California Disaster Number CA-20040]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of an Administrative declaration of a disaster for the state of California dated February 10, 2026.

Incident: Oakland Apartment Fire.

DATES: Issued on February 10, 2026.

Incident Period: January 19, 2026.

Physical Loan Application Deadline Date: April 13, 2026.

Economic Injury (EIDL) Loan

Application Deadline Date: November 10, 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 and 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 Administrator's disaster declaration, applications for disaster loans may be

submitted online using the MySBA Loan Portal <https://lending.sba.gov> or in person at other locally announced locations. For further assistance please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

The following areas have been determined to be adversely affected by the disaster:

Primary County: Alameda.

Contiguous Counties:

California: Contra Costa, San

Francisco, San Joaquin, San Mateo, Santa Clara, Stanislaus.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Private Non-Profit Organizations with Credit Available Elsewhere	3.625
Private Non-Profit Organizations without Credit Available Elsewhere	3.625
<i>For Economic Injury:</i>	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Private Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 214405 and for economic injury is 214410.

The state which received an SBA Administrative declaration is California.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2026-02924 Filed 2-12-26; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

Mountain Ventures, Inc., License No. 04/04-0145; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under Section 309 of the

Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company license number 084/04-0145 issued to *Mountain Ventures, Inc.*, said license is hereby declared null and void.

Paul Salgado,

Director, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2026-02904 Filed 2-12-26; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21438 and #21439; Mississippi Disaster Number MS-20019]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Mississippi and the Mississippi Band of Choctaw Indians

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of the Presidential declaration of a major disaster for Public Assistance Only for the state of Mississippi and the Mississippi Band of Choctaw Indians (FEMA-4899-DR), dated February 6, 2026.

Incident: Severe Winter Storm.

DATES: Issued on February 6, 2026.

Incident Period: January 23, 2026 through January 27, 2026.

Physical Loan Application Deadline Date: April 7, 2026.

Economic Injury (EIDL) Loan

Application Deadline Date: November 6, 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 and 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 February 6, 2026, Private Non-Profit organizations providing essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal <https://lending.sba.gov> or in person at other locally announced locations. For further assistance please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955. If you are

deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Alcorn, Bolivar, Calhoun, Carroll, Grenada, Holmes, Humphreys, Issaquena, Leflore, Montgomery, Sharkey, Sunflower, Warren, Washington, Webster, Yazoo.

Tribal Regions: Mississippi Band of Choctaw Indians.

The Interest Rates are:

	Percent
For Physical Damage:	
Private Non-Profit Organizations with Credit Available Elsewhere	3.625
Private Non-Profit Organizations without Credit Available Elsewhere	3.625
For Economic Injury:	
Private Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 21438B and for economic injury is 214390.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority:13 CFR 123.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2026–02925 Filed 2–12–26; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2025–0023]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Bureau of the Fiscal Service, Department of the Treasury (Fiscal Service). Under this matching program, Fiscal Service will disclose ownership of Savings Securities data to SSA. This disclosure will provide SSA with information necessary to verify an individual's self-certification of his or her financial status to determine eligibility for low-income subsidy assistance in the Medicare Part D prescription drug benefit program

established under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

DATES: The deadline to submit comments on the proposed matching program is March 16, 2026.

The matching program will be applicable on April 2, 2026, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2025–0023 so that we may associate your comments with the correct notice.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. **Internet:** We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at <https://www.regulations.gov>. Use the *Search* function to find docket number SSA–2025–0023 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. **Fax:** Fax comments to (833) 410–1631.

3. **Mail:** Matthew Ramsey, Head of Privacy and Disclosure Policy, Law and Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing Matthew.Ramsey@ssa.gov. Comments are also available for public viewing on the Federal eRulemaking portal at <https://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT:

Interested parties may submit general questions about the matching program to Andrea Huseth, Division Director, Privacy and Disclosure Policy, Law and Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, at telephone: (410) 965–6868, or send an email to Andrea.Huseth@ssa.gov.

SUPPLEMENTARY INFORMATION: This matching notice covers the re-establishment of a matching program that is set to expire between SSA and Fiscal Service, which supports SSA's efficient administration of the low-income subsidy assistance in the Medicare Part D prescription drug benefit program

Matthew Ramsey,

Head of Privacy and Disclosure Policy, Law and Policy.

PARTICIPATING AGENCIES:

SSA and Fiscal Service.

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

The legal authority for the matching agreement between SSA and Fiscal Service that this matching notice covers is Section 1860D–14 of the Social Security Act (Act) (42 U.S.C. 1395w–114), which requires SSA to verify the eligibility of individuals who seek to be considered as Extra Help eligible individuals under the Medicare Part D prescription drug benefit program and who self-certify their income, resources, and family size.

PURPOSE(S):

The matching agreement sets forth the terms and conditions under which Fiscal Service will disclose ownership of Savings Securities data to SSA. This disclosure will provide SSA with information necessary to verify an individual's self-certification of his or her financial status to determine eligibility for low-income subsidy assistance in the Medicare Part D prescription drug benefit program established under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173).

CATEGORIES OF INDIVIDUALS:

The individuals whose information is involved in the matching program are those individuals who apply for low-income subsidy assistance in the Medicare Part D prescription drug benefit program established under the MMA.

CATEGORIES OF RECORDS:

SSA will provide to Fiscal Service a finder file with the Social Security number (SSN) for each individual for whom SSA requests Savings Securities ownership information. When a match occurs on an SSN, Fiscal Service will disclose the following to SSA: the denomination of the security; the serial number; the series; the issue date of the

security; the current redemption value; and the return date of the finder file.

SSA will disclose to Fiscal Service a finder file with the SSN for each individual for whom it requests Savings Securities registration information. Fiscal Service bases the query on the SSN associated with the account and reports any subsequent account holdings. When a match occurs on an SSN, Fiscal Service will disclose the following to SSA: the purchase amount; the account number and confirmation number; the series; the issue date of the security; the current redemption value; and the return date of the finder file.

SYSTEMS OF RECORDS:

SSA will disclose to Fiscal Service a finder file consisting of SSNs extracted from SSA's Medicare Database (MDB) File System, 60–0321, fully published at 71 FR 42159 (July 25, 2006), as amended at 72 FR 69723 (December 10, 2007) and 83 FR 54969 (November 1, 2018). The MDB File System is a repository of Medicare applicant and beneficiary information related to Medicare Part A, Part B, Medicare Advantage Part C, and Medicare Part D.

Fiscal Service will match the SSNs from SSA's finder file with the SSNs in Fiscal Service system of records notice .014 (United States Securities and Access), fully published at 85 FR 11776 (February 27, 2020). System of records notice .014 (United States Securities and Access) is derived from legacy BPD systems of records notices .002 (United States Savings-Type Securities), .003 (United States Securities (Other than Savings-Type Securities)), and .008 (Retail Treasury Securities Access Application).

[FR Doc. 2026–02950 Filed 2–12–26; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2025–2535]

Agency Information Collection

Activities: Requests for Comments; Clearance of a Reinstated Information Collection: Pilot Certification and Qualification Requirements for Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our

intention to request Office of Management and Budget (OMB) approval to reinstate an information collection that expired in December 2025. The collection involves FAA review of Airline Transport Pilot (ATP) Certification Training Program (CTP) submissions to determine whether the program complies with the applicable requirements. It also involves FAA review of educational institutions' applications for authority to certify its graduates meet the minimum regulatory requirements.

DATES: Written comments should be submitted by April 14, 2026.

ADDRESSES: Please send written comments:

By Electronic Docket:
www.regulations.gov (Enter docket number into search field).

By mail: Shannon Salinsky, 8700 Freepoint Parkway, Suite 200, Irving, TX 75063.

By fax: 817–821–1915.

FOR FURTHER INFORMATION CONTACT:

Christopher Morris by email at: chris.morris@faa.gov.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0755.

Title: Pilot Certification and Qualification Requirements for Air Carrier Operations.

Form Numbers: 8700–1.

Type of Review: Renewal of an information collection.

Background: FAA aviation safety inspectors (ASIs) review the Airline Transport Pilot (ATP) Certification Training Program (CTP) submissions to determine whether the program complies with the applicable requirements of 14 CFR 61.156. The programs that comply with the minimum requirements receive approval to begin offering the course to applicants for an ATP certificate with a multiengine class rating or an ATP certificate obtained concurrently with an airplane type rating. FAA ASIs also review educational institutions' application for authority to certify that graduates meet the minimum

requirements of 14 CFR 61.160. The institutions that receive letters of authorization for their degree programs are authorized to place a certifying statement on a graduate's transcript indicating he or she is eligible for a restricted-privileges ATP certificate.

Respondents: 5,523.

Frequency: 1 Time per Year.

Estimated Average Burden per

Response: 14 minutes.

Estimated Total Annual Burden: 1,329 Hours.

Issued in Washington, DC, on February 11, 2026.

D.C. Morris,

Aviation Safety Analyst, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2026–02958 Filed 2–12–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2026–0925]

Agency Information Collection

Activities: Requests for Comments; Clearance of a New Approval of Information Collection: FAA Request Form for CUAS Coordination

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 11, 2026. The collection involves data for Counter-Unmanned Aircraft System Deployment. The information to be collected will be used to process interagency and local law enforcement CUAS deployment packages and/or is necessary because FAA coordination is federally mandated.

DATES: Written comments should be submitted by March 3, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:
Kenneth.seveur@faa.gov; phone: (202) 267-7624

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120-XXXX.

Title: FAA Request Form for CUAS Coordination.

Form Numbers: NA.

Type of Review: New information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 11, 2026. Interagency CUAS Application Data Collection IAW 10 U.S.C. 130i, 6 U.S.C. 124n, and 50 U.S.C. 2661. Secretary of Defense, Secretary of the Attorney General, the Secretary of Energy, State Local, Tribal, and Territorial Law Enforcement (SLTT) must coordinate with the Secretary of Transportation for certain Title 18 protections under 10 U.S.C. 130i, 6 U.S.C. 124n, and 50 U.S.C. 2661 authorities respectively. This data collection supports these laws.

Respondents: Representatives from the DOD, DOJ, DOE, and SLTTs.

Frequency: As Needed.

Estimated Average Burden per Response: 1 Hour.

Estimated Total Annual Burden: 100 Hours.

Issued in: Washington, DC, on 2/11/2026.

Kenneth P. Seveur,

Air Traffic Control Specialist, Systems Operations Security, FAA, Air Traffic Organization, Systems Operations Security (AJR-263).

[FR Doc. 2026-02954 Filed 2-12-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2010-0124]

Notice of Petition for Extension of Waiver of Compliance

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This document provides the public notice that Railtown 1897 State Historic Park (RT 1897) petitioned FRA for an extension of relief from certain regulations concerning stenciling and reflectorization of rail cars.

DATES: FRA must receive comments on the petition by March 16, 2026. FRA will consider comments received after that date to the extent practicable.

ADDRESSES:

Comments: Comments related to this docket may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT:
Caleb Rogers, Railroad Safety Specialist, FRA Motive Power & Equipment Division, telephone: 202-493-6322, email: caleb.rogers@dot.gov.

SUPPLEMENTARY INFORMATION: Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter received December 19, 2025 RT 1897 petitioned FRA for an extension of a special approval pursuant to 49 CFR part 215 (Railroad Freight Car Safety Standards), and a waiver of compliance from certain provisions of the Federal railroad safety regulations contained in parts 215 and 224 (Reflectorization of Rail Freight Rolling Stock). The relevant Docket Number is FRA-2010-0124.

Specifically, RT 1897 requests to extend the previous special approval pursuant to § 215.203, *Restricted cars*, in this docket for one car, SRY 7, that is more than 50 years from the date of original construction. RT 1897 also seeks extended relief from § 215.303, *Stenciling of restricted cars*, and the reflectorization requirements of part 224. In support of its request, RT 1897 explains that the car will be used in excursion trains and occasional special trains for film and photo work on track owned by the Sierra Northern Railway. RT 1897 states that the waiver relief “would contribute to a more positive

interpretive experience” for visitors as well as “safe and reliable historic and interpretive operations for film and photo work.” In its petition, RT 1897 describes the inspections conducted and states that SRY 7 is in “excellent mechanical condition.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

Communications received by March 16, 2026 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Privacy Act

Anyone can search the electronic form of any written communications and comments received into any of FRA's dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2026-02970 Filed 2-12-26; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****[Docket Number FRA–2005–21613]****Notice of Petition for Extension of Waiver of Compliance**

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This document provides the public notice that the Association of American Railroads (AAR) petitioned FRA for an extension of relief from certain regulations concerning air brake system maintenance intervals.

DATES: FRA must receive comments on the petition by March 16, 2026. FRA will consider comments received after that date to the extent practicable.

ADDRESSES:

Comments: Comments related to this docket may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT:

Steven Zuiderveen, Railroad Safety Specialist, FRA Motive Power & Equipment Division, telephone: 202–493–6337, email: steven.zuiderveen@dot.gov.

SUPPLEMENTARY INFORMATION: Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated December 19, 2025 AAR petitioned FRA for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 229 (Railroad Locomotive Safety Standards). FRA assigned the petition Docket Number FRA–2005–21613.

AAR requests extended relief from 49 CFR 229.29, *Air brake system calibration, maintenance, and testing*, applicable to New York Air Brake CCB–

1, CCB–2, and CCB–26; Wabtec Railway Electronics EPIC–3102D2 and EPIC–2; and FastBrake electronic air brake systems, for the extension of time intervals for level two and level three locomotive air brake system maintenance. In its petition, AAR states that the waiver should be extended “given its longstanding and successful history” and based on its safety record. AAR notes that FRA published a Notice of Proposed Rulemaking on July 1, 2025 to codify the provisions of this waiver, but AAR is petitioning for extended relief as the final rule has not yet been published.¹ In addition, AAR requests that FRA grant a unified extension to all AAR member railroads that are currently participating in this waiver.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

Communications received by March 16, 2026 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Privacy Act

Anyone can search the electronic form of any written communications and comments received into any of FRA’s dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov.

¹ <https://www.federalregister.gov/documents/2025/07/01/2025-12168/amendments-to-brake-system-maintenance-and-inspection-requirements>.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2026–02969 Filed 2–12–26; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION**Office of the Secretary of Transportation****[Docket No.: DOT–OST–2026–0628]****Intelligent Transportation Systems Program Advisory Committee**

AGENCY: Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Notice; solicitation of nominations for membership.

SUMMARY: The Department solicits nominations for membership to serve on the Intelligent Transportation Systems Program Advisory Committee (ITSPAC), which is intended to provide information, advice, and recommendations to the Secretary of Transportation on matters relating to Intelligent Transportation Systems (ITS) program needs, objectives, plans, approaches, contents, and progress.

DATES: The deadline for nominations for Committee members must be received on or before March 16, 2026.

ADDRESSES: All nomination materials should refer to the docket number above and be submitted by one of the following methods:

- *Federal Rulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building 5th Floor, Room W12–213, Washington, DC 20590–0001.

- *Hand Delivery:* 1200 New Jersey Avenue SE, West Building 5th Floor, Room W12–213, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Robert Sheehan, Program Manager, Intelligent Transportation Systems Joint Program Office, itspac@dot.gov.

SUPPLEMENTARY INFORMATION: The Intelligent Transportation Systems Program Advisory Committee (ITSPAC) was established by the Secretary on August 10, 2023 in accordance with 23 U.S.C. 515(h)(1) as amended by sections 13008 and 25001 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58) (November 16, 2021). ITSPAC is operated in accordance with the Federal

Advisory Committee Act, 5 U.S.C. ch. 10. The purpose of ITSPAC is to provide advice and recommendations to the Secretary on matters relating to ITS.

In particular, ITSPAC will be responsive to specific assignments and may conduct studies, inquiries, and workshops as the Secretary may authorize or direct. At a minimum, ITSPAC will be expected to perform the following duties:

A. Provide input into the development of ITS aspects of the U.S. DOT Strategic Plan under 49 U.S.C. 6503; and

B. Review, at least annually, areas of ITS programs and research being considered for funding by the Department, to determine:

(i) Whether these activities are likely to advance either the state-of-the-practice or state-of-the-art in ITS;

(ii) Whether ITS technologies are likely to be deployed by users, and if not, to determine the barriers to deployment; and

(iii) The appropriate roles for Government and the private sector in investing in the programs, research, and technologies being considered.

The Committee is continuing and will be subject to renewal every two years. The Committee is expected to meet not less frequently than twice each year. Unless otherwise required by law or approved by the Secretary, all meetings will be held virtually.

In this notice, the Department is soliciting nominations for membership to the Committee. The Committee shall report to the Secretary through the Intelligent Transportation Systems Joint Program Office, and shall comprise no more than 25 members, representing a balance between metropolitan and rural interests, and include at a minimum:

A. A representative from a State highway department;

B. A representative from a local highway department who is not from a metropolitan planning organization;

C. A representative from a State, local, or regional transit agency;

D. A representative from a State, local, or regional wildlife, land use, or resource management agency;

E. A representative from a metropolitan planning organization;

F. A representative of a national transit association;

G. A representative of a national, State, or local transportation agency or association;

H. A private sector user of intelligent transportation system technologies;

I. A private sector developer of intelligent transportation system technologies, which may include emerging vehicle technologies;

J. An academic researcher with expertise in computer science or another information science field related to intelligent transportation systems, and who is not an expert on transportation issues;

K. An academic researcher who is a civil engineer;

L. An academic researcher who is a social scientist with expertise in transportation issues;

M. An academic researcher who is a biological or ecological scientist with expertise in transportation issues;

N. A representative from a nonprofit group representing the intelligent transportation system industry;

O. A representative from a public interest group concerned with safety;

P. A representative of a labor organization;

Q. A representative of a mobility-providing entity;

R. An expert in traffic management;

S. A representative from a public interest group concerned with the impact of the transportation system on land use and residential patterns;

T. A representative from a public interest group concerned with the impact of the transportation system on terrestrial and aquatic species and the habitat of those species; and

U. Members with expertise in planning, safety, telecommunications, and operations;

V. An expert in cybersecurity; and

W. An automobile manufacturer.

Members are appointed by the Secretary of Transportation. Members will serve three year terms but may be reappointed, and may serve until a new member is appointed. Past members of the Committee are welcome to apply. The Department is interested in ensuring membership is balanced fairly in terms of the points of view represented and the functions to be performed by the Committee.

Process and Deadline for Submitting Nominations: Qualified individuals can self-nominate or be nominated by any individual or organization. To be considered for ITSPAC, nominators should submit the following information:

(1) Name, title, and relevant contact information (including phone, fax, and email address) of the individual requesting consideration;

(2) A letter of support from a company, union, trade association, academic, or nonprofit organization on letterhead containing a brief description why the nominee should be considered for membership;

(3) Short biography of nominee, including professional and academic credentials;

(4) An affirmative statement that the nominee meets all Committee eligibility requirements.

Please do not send company, trade association, or organization brochures or any other information. Materials submitted should total two pages or less. Should more information be needed, DOT staff will contact the nominee, obtain information from the nominee's past affiliations, or obtain information from publicly available sources, such as the internet.

Nominations must be received before March 16, 2026. Nominees selected for appointment to the Committee will be notified by return email and by a letter of appointment.

Issued in Washington, DC, on February 11, 2026.

Robert Sheehan,

Program Manager, Intelligent Transportation Systems Joint Program Office.

[FR Doc. 2026-02930 Filed 2-12-26; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons and vessels that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. The vessels placed on the SDN List have been identified as property in which a blocked person has an interest.

DATES: This action was issued on February 10, 2026. See **SUPPLEMENTARY INFORMATION** for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202-622-2420; Assistant Director for Licensing, 202-622-2480; Assistant Director for Sanctions Compliance, 202-622-2490 or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions

programs are available on OFAC's website: <https://ofac.treasury.gov>.

Notice of OFAC Action

On February 10, 2026, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are

blocked under the relevant sanctions authority listed below.

Individuals

BILLING CODE 4810-AL-P

1. MAGED, Mohamed Nayef (Arabic: محمد نايف ماجد) (a.k.a. MAJED, Mohamed), 13 Kherbet Selm, Bent Jbeil, Lebanon; DOB 30 Sep 1989; nationality Lebanon; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: AL-QARD AL-HASSAN ASSOCIATION).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism," 66 FR 49079, 3 CFR, 2001 Comp., p. 786, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041, 3 CFR, 2019 Comp., p. 356 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL-QARD AL-HASSAN ASSOCIATION, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. BORISOV, Andrey Viktorovich, 21-2-264 Yasnogorskaya Str., Moscow 117463, Russia; DOB 18 Mar 1978; POB Moscow, Russia; nationality Russia; Additional Sanctions Information - Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 530156715 (Russia) expires 17 Aug 2021; alt. Passport 764083448 (Russia) expires 12 Mar 2031; National ID No. 4505484392 (Russia) (individual) [SDGT] (Linked To: HIZBALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

BILLING CODE 4810-AL-C

Entities

1. JOOD SARL (a.k.a. "JUD"), 423/6, Chiyah, Baabda, Lebanon; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 03 Jun 2025; Organization Type: Wholesale of jewelry, watches, precious stones, and precious metals; Registration Number 2078233 (Lebanon); alt. Registration Number 6007003 (Lebanon) [SDGT] (Linked To: HIZBALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. BRILLIANCE MARITIME VENTURES S.A., 21st Floor, Global Plaza Building, Calle 50, Panama City, Panama; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by

Executive Order 13886; Organization Established Date 13 Apr 2023; RUC #155736037-2-2023 (Panama); Identification Number IMO 6402222 [SDGT] (Linked To: HIZBALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. PLATINUM GROUP INTERNATIONAL DIS TICARET LIMITED SIRKETI, Ayazaga Mah., Azerbaijan Cad. 2B No: 3K Ic Kapi No:

35 Sariyer, Istanbul, Turkey; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 20 Aug 2024; Commercial Registry Number 1034157 (Turkey) [SDGT] (Linked To: HIZBALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

4. SEA SURF SHIPPING LIMITED, Ibrahim Koray Sokak 20/6, Aydıntepe Mah., 99500 Tuzla, Istanbul, Turkey; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Identification Number IMO 6477625 [SDGT] (Linked To: HIZBALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

On February 10, 2026, OFAC also identified the following vessels as property in which a blocked person has an interest under the relevant sanctions authority listed below.

Vessels

1. BRILLIANCE Bulk Carrier Panama flag; Additional Sanctions Information—Subject to Secondary Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Year of Build 1999; Vessel Registration Identification IMO 9450715 (vessel) [SDGT] (Linked To: BRILLIANCE MARITIME VENTURES S.A.).

Identified as property in which BRILLIANCE MARITIME VENTURES S.A., a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

2. LARA General Cargo St. Kitts & Nevis flag; Additional Sanctions Information—Subject to Secondary

Sanctions Pursuant to the Hizballah Financial Sanctions Regulations; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Year of Build 2000; Vessel Registration Identification IMO 9221475 (vessel) [SDGT] (Linked To: SEA SURF SHIPPING LIMITED).

Identified as property in which SEA SURF SHIPPING LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2026–02913 Filed 2–12–26; 8:45 am]

BILLING CODE 4810–AL–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on “the national security implications of the economic relationship between the United States and the People’s Republic of China.” Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on March 2, 2026 on “Part of Your World: U.S.-China Competition Under the Sea.”

DATES: The hearing is scheduled for Monday, March 2, 2026 at 9:15 a.m.

ADDRESSES: Members of the public will be able to attend in person at or near the U.S. Capitol and adjacent Congressional office buildings (specific building and room number to be announced) or view a live webcast via the Commission’s website at www.uscc.gov. Visit the Commission’s website for updates to the hearing location or possible changes to the hearing schedule. Reservations are not required to view the hearing online or in person.

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Jameson Cunningham, 444 North Capitol Street NW, Suite 602, Washington, DC 20001; telephone: 202–624–1496, or via email at jcunningham@uscc.gov. Reservations are not required to attend the hearing.

ADA Accessibility: For questions about the accessibility of the event or to

request an accommodation, please contact Jameson Cunningham via email at jcunningham@uscc.gov. Requests for an accommodation should be made as soon as possible, and at least five business days prior to the event.

SUPPLEMENTARY INFORMATION:

Background: This is the second public hearing the Commission will hold during its 2026 reporting cycle. The hearing will examine how China is challenging long-standing U.S. advantages in the undersea domain and the implications of these developments for U.S. security and interests in the Indo-Pacific. The hearing will examine China’s evolving strategies for the undersea domain, its current undersea capabilities, and assess how the application of emerging technologies will challenge U.S. efforts to maintain undersea superiority. The hearing will also explore China’s expanding activities involving undersea critical infrastructure and deep-sea resources—including submarine cables and seabed mining—and how Beijing may seek to leverage these domains for commercial and national security advantages.

The hearing will be co-chaired by Chair Randall Schriver and Vice Chair Michael Kuiken. Any interested party may file a written statement by March 2, 2026 by transmitting it to the contact above. A portion of the hearing will include a question and answer period between the Commissioners and the witnesses.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: February 11, 2026.

Christopher P. Fioravante,

Deputy Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2026–02946 Filed 2–12–26; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS**[OMB Control No. 2900–0721]****Agency Information Collection Activity Under OMB Review: Examination for Housebound Status or Permanent Need for Regular Aid and Attendance****AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.**ACTION:** Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent by March 16, 2026.

ADDRESSES: To submit comments and recommendations for the proposed information collection, please type the following link into your browser: www.reginfo.gov/public/do/PRAMain, select “Currently under Review—Open for Public Comments”, then search the list for the information collection by Title or “OMB Control No. 2900–0721.”

FOR FURTHER INFORMATION CONTACT:

VA PRA information: Dorothy Glasgow, 202–461–1084, VAPRA@va.gov.

SUPPLEMENTARY INFORMATION:

Title: Examination for Housebound Status or Permanent Need for Aid and Attendance (VA Form 21–2680).

OMB Control Number: 2900–0721.
<https://www.reginfo.gov/public/do/PRASearch>.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–2680 is used to determine eligibility for the aid and attendance and/or housebound benefits. The purpose of this examination is to record manifestations and findings pertinent to the question of whether the claimant is housebound (confined to the home or immediate premises) or in need of the regular aid and attendance of another person. The report should be in sufficient detail for the VA decision makers to determine the extent that disease or injury produces physical or

mental impairment, that loss of coordination or enfeeblement affects the ability: to dress and undress; to feed themselves; to attend to the wants of nature; or keep themselves ordinarily clean and presentable. Findings should be recorded to show whether the claimant is blind or bedridden. Whether the claimant seeks housebound or aid and attendance benefits, the report should reflect how well they ambulate, where they go, and what they are able to do during a typical day. Without this information, entitlement to these benefits cannot be determined.

No changes have been made to this form. The respondent burden has increased due to the estimated number of receivables averaged over the past year.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at insert citation date: 90 FR 57131, December 9, 2025.

Affected Public: Private Sector.
Estimated Annual Burden: 56,294 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.
Estimated Number of Respondents: 112,587 per year.

Authority: 44 U.S.C. 3501 *et seq.*

Dorothy Glasgow,

Acting, VA PRA Clearance Officer, Office of Information Technology/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2026–02938 Filed 2–12–26; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS**[OMB Control No. 2900–0525]****Agency Information Collection Activity under OMB Review: VA MATIC ENROLLMENT/CHANGE****AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.**ACTION:** Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for

review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent by March 16, 2026.

ADDRESSES: To submit comments and recommendations for the proposed information collection, please type the following link into your browser: www.reginfo.gov/public/do/PRAMain, select “Currently under Review—Open for Public Comments”, then search the list for the information collection by Title or “OMB Control No. 2900–0525.”

FOR FURTHER INFORMATION CONTACT: VA PRA information: Dorothy Glasgow, (202) 461–1084, VAPRA@va.gov.

SUPPLEMENTARY INFORMATION:

Title: VA MATIC ENROLLMENT/CHANGE (VA Form 29–0165).

OMB Control Number: 2900–0525
<https://www.reginfo.gov/public/do/PRASearch>.

Type of Review: Extension without change of a currently approved collection.

Abstract: The form is used by the insured to enroll or change the account number and/or bank from which a VA MATIC deduction was previously authorized. The information requested is authorized by law, 38 U.S.C. 1908.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 90 FR 57285 on December 10, 2025.

Affected Public: Individuals or Households.

Estimated Annual Burden: 417.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dorothy Glasgow,

Acting, VA PRA Clearance Officer, Office of Information Technology, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2026–02945 Filed 2–12–26; 8:45 am]

BILLING CODE 8320–01–P

**DEPARTMENT OF VETERANS
AFFAIRS****[OMB Control No. 2900–0784]****Agency Information Collection
Activity: NCA PreNeed Burial Planning****AGENCY:** National Cemetery Administration, Department of Veterans Affairs.**ACTION:** Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the National Cemetery Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent by March 16, 2026.

ADDRESSES: To submit comments and recommendations for the proposed

information collection, please type the following link into your browser: www.reginfo.gov/public/do/PRAMain, select “Currently under Review—Open for Public Comments”, then search the list for the information collection by Title or “OMB Control No. 2900–0784.”

FOR FURTHER INFORMATION CONTACT: VA PRA information: Dorothy Glasgow, (202) 461–1084, VAPRA@va.gov.

SUPPLEMENTARY INFORMATION:

Title: NCA PreNeed Burial Planning.
OMB Control Number: 2900–0784.

Type of Review: Revision of a currently approved collection.

Abstract: This information (VA Form 40–10007) is needed to collect information from Veterans and service members who wish to determine their eligibility for burial in a VA national cemetery prior to their time of need for planning purposes. The data will be used for this purpose. The burden increased since the previous approval due to an increase in the number of respondents and responses. The number of respondents increased to 50,000 from the previous approval of 47,400 in 2023. Due to more respondents and an increase in the hourly wage rate, the cost to respondents increased from

\$442,558 to \$524,667 resulting in an increase of \$82,109 in respondent cost. The cost to the Federal Government increased due to the annual responses increasing since the previous approval.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at: 90 FR 57285, December 10, 2025.

Affected Public: Individuals and households.

Estimated Annual Burden: 16,667 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 50,000.

Authority: 44 U.S.C. 3501 *et seq.*

Lanea Haynes,

Acting, VA PRA Clearance Officer, (Alt) Office of Information Technology, Data Governance Analytics Department of Veterans Affairs.

[FR Doc. 2026–02979 Filed 2–12–26; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

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Friday,

No. 30

February 13, 2026

Part II

Department of Homeland Security

U.S. Customs and Border Protection

19 CFR Parts 4, 10, 11, et al.

Electronic Bond Transmission; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Parts 4, 10, 11, 12, 18, 19, 24, 54, 112, 113, 118, 122, 123, 125, 127, 128, 132, 133, 134, 141, 142, 144, 146, 147, 148, 149, 151, 162, 163, 190, 191

[USCBP–2026–0199]

RIN 1685–AA24 (formerly RIN 1515–AE49)

Electronic Bond Transmission

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed rule; request for comments.

SUMMARY: U.S. Customs and Border Protection (CBP) collects bonds from parties engaging in transactions or activities with CBP to adequately protect the revenue of the United States and ensure compliance with U.S. statutes and regulations. This document proposes to amend the CBP regulations to require that most bonds be transmitted to CBP electronically via a specialized system by the surety securing the bond, or by the principal on a bond secured by cash in lieu of surety. The changes proposed in this document further centralize and streamline CBP's bond program.

DATES: Comments on the proposed rule must be received on or before April 14, 2026.

ADDRESSES: You may submit comments, identified by docket number, through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP–2026–0199.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents and submitted comments, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For questions regarding bond policy, contact Sharolyn McCann, Director, Commercial Operations, Revenue and Entry Division, Trade Policy and Programs,

Office of Trade, at otbond@cbp.dhs.gov or (202) 384–8935. For operational questions, contact Kara Welty, Chief, Revenue Protection Branch, Revenue Division, Office of Finance, at KARA.N.WELTY@CBP.DHS.GOV or (202) 875–3284.

SUPPLEMENTARY INFORMATION:

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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this notice of proposed rulemaking. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports the recommended change.

II. Background

As more fully discussed below, this document proposes amendments to title 19 of the Code of Federal Regulations (CBP regulations), to require that bonds be transmitted to CBP using a specified electronic data interchange (EDI) or by email. Pursuant to these proposed amendments, all bonds, bond amendments, and terminations must be transmitted electronically to CBP, and CBP proposes to eliminate paper bonds. Bonds secured by a surety must be transmitted by the surety or the surety's

authorized agent. Bonds secured by cash in lieu of surety must be transmitted by the principal on the bond. Under the proposed regulations, all bond processing will be centralized at CBP's Revenue Division, Office of Finance, in Indianapolis, Indiana.

Section 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1623), gives CBP broad authority to require a bond, by regulation or specific instruction, where CBP deems it necessary to protect the revenue or ensure compliance with any provision of law, regulation, or instruction that CBP is authorized to enforce. 19 U.S.C. 1623(a). 19 U.S.C. 1623(b)(1) permits CBP to prescribe the conditions and form of bonds and the manner in which the bond may be filed with or, pursuant to an authorized electronic data interchange system, transmitted to CBP. 19 U.S.C. 1623(b)(1). In 19 CFR part 113, CBP has promulgated regulations exercising this authority, detailing requirements for the execution and filing of bonds required by Chapter I of title 19 of the Code of Federal Regulations. These regulations outline a paper-based bond process designed to complement other paper-based processes in title 19. In keeping with other automation and centralization efforts, CBP is proposing to replace the paper-based bond process set forth in the regulations with an electronic bond process.

A. Development of the Automated Commercial Environment and Electronic Filing

Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993), commonly known as the Customs Modernization Act or Mod Act, amended the Tariff Act of 1930 to provide for electronic filing, among other things. Subtitle B of title VI established the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. Section 631 in Subtitle B of the Mod Act created sections 411 through 414 of the Tariff Act of 1930 (19 U.S.C. 1411–1414). These sections define and list the existing and planned components of the NCAP (section 411), promulgate program goals (section 412), provide for the implementation and evaluation of the program (section 413), and provide for Remote Location Filing (section 414). Paragraph (a) of Section 411, which lists the existing and planned components of the NCAP, includes the electronic filing of bonds as a planned component. 19 U.S.C. 1411(a)(2)(D). Paragraph (b) of Section 411 authorizes the Secretary of the Treasury to “require

the electronic submission of information described in subsection (a),” by regulation.

Section 647 of the Mod Act amended section 623(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1623(b)(1)) to give CBP the authority to prescribe “the manner in which the bond may be filed with or, pursuant to an authorized electronic data interchange system, transmitted” to CBP. In addition, section 647 of the Mod Act amended section 623(d) of the Tariff Act (19 U.S.C. 1623(d)) to provide that “[a]ny bond transmitted to the Customs Service pursuant to an authorized electronic data interchange system shall have the same force and effect and be binding upon the parties thereto as if such bond were manually executed, signed, and filed.”

Pursuant to these mandates, CBP has modernized the business processes essential to securing U.S. borders, facilitating the flow of legitimate shipments, and targeting illicit goods. The key automated system behind these initiatives is the Automated Commercial Environment (ACE), the successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing that streamlines business processes, facilitates growth in trade, ensures cargo security, and fosters participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and stakeholders. The ability to meet these objectives depends on successfully modernizing CBP’s business functions and the information technology that supports those functions, including the development of modernized bond processes and an electronic system to support and streamline those processes.

ACE is the backbone of CBP trade data processing and risk management activities and provides a single, centralized access point to connect CBP, other International Trade Data System (ITDS) agencies, and the trade community. In 2015, CBP published an interim final rule amending the CBP regulations to reflect the designation of ACE as the CBP-authorized EDI system for processing of commercial trade data. Automated Commercial Environment (ACE) Filings for Electronic Entry/Entry Summary (Cargo Release and Related Entry), 80 FR 61278 (Oct. 13, 2015). That interim final rule became effective on November 1, 2015.

In preparation for the development and deployment of an automated bond program, CBP has engaged in regular outreach with stakeholders, including sureties, surety agents, customs brokers, trade groups and partner government

agencies, with a view to obtaining meaningful feedback on existing systems and operations in order to build a mutually beneficial automated bond system.

B. Centralization and Modernization of Bond Processes

Concurrently with CBP’s efforts to develop modernized electronic processes, CBP also engaged stakeholders on streamlining bond processes. In 2011, the Department of Homeland Security’s Office of the Inspector General (OIG) conducted an audit of CBP’s single transaction bond (STB) program, and found deficiencies in bond retention, accuracy and completion, and valuation, as well as problems with cargo being released prior to execution of bonds. See “Efficacy of Customs and Border Protection’s Bonding Process,” OIG 11–92, dated June 27, 2011, available for viewing at <https://www.govinfo.gov/app/details/GOVPUB-HS-PURL-gpo15744> (last visited December 10, 2025). The OIG recommended centralization and automation of the STB program, and CBP adopted this objective as a CBP mission priority.

The transition to electronic bond processing allowed CBP to develop and implement centralized filing procedures with the Office of Finance. In 2015, CBP centralized the filing, review and approval of continuous bonds at CBP’s Revenue Division. Customs and Border Protection’s Bond Program, 80 FR 70154 (Nov. 13, 2015). In that final rule, CBP amended part 113 of the CBP regulations to require continuous bonds to be filed with the Revenue Division and allow STBs to be filed with either the Revenue Division or the port. The rule also allowed STBs and continuous bonds to be filed by email or facsimile, in addition to the existing paper bond form, known as the CBP Form 301, and required that notice of bond termination be sent to the Revenue Division and centralize surety oversight in the Revenue Division.

C. The eBond System in ACE

The culmination of these efforts to automate and centralize bond processing is the development of the eBond system. In early 2014, CBP began building the eBond system, an EDI for the transmission of bond data. The eBond system harmonizes and enhances CBP bond processes pertaining to transmission, validation, maintenance, retention, and periodic review of all bonds collected by CBP, and establishes a single electronic repository for the centralization of those bonds within the Revenue Division.

On November 28, 2014, CBP published a notice in the **Federal Register** (Announcement of eBond Test, 79 FR 70881), announcing an NCAP test of the eBond system, designed to evaluate the functionality of the system, its impact on trade, and CBP’s ability to protect the revenue and enforce applicable laws.¹ The eBond test was conducted pursuant to 19 CFR 101.9(b), which provides for the testing of NCAP programs. See Treasury Decision (T.D.) 95–21. The test began on January 3, 2015.

Pursuant to the test, participating sureties were invited to transmit electronic bonds, riders, and terminations to ACE through the eBond EDI. The test notice also provided procedures for email transmission of bonds and related documents to the Revenue Division, for manual input into ACE. The test required that all bonds and riders transmitted pursuant to the test be transmitted by the surety obligated on the bond or an authorized surety agent.

CBP published two subsequent notices modifying and extending the eBond test program in the **Federal Register**. In the second test notice, CBP modified the eBond test to allow conversion of continuous bonds executed outside the test into eBonds, clarified that principals and sureties are identified in eBond by their respective filing numbers rather than names, and amended the test requirements for termination of a bond in eBond. eBond Test Modifications and Clarifications, 80 FR 899 (Jan. 7, 2015). The third test notice extended the test period indefinitely. Extension of National Customs Automation Program; eBond Test, 83 FR 12403 (Mar. 21, 2018).

CBP has evaluated the eBond test and found it to be successful. Nearly all bonds transmitted to CBP in 2023 were transmitted pursuant to the test, rather than filed in paper or emailed pursuant to the procedures outlined in the regulations.² Electronic transmission of bonds benefits importers, sureties, and CBP by reducing paper processing, expediting cargo release, expanding bond transmission capabilities beyond regular CBP business hours, and enhancing traceability for audit purposes. Sureties benefit through increased oversight and control over

¹ The Mod Act authorizes the Commissioner of CBP to conduct limited test programs to evaluate planned components of the NCAP. Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993).

² Out of 599,342 bonds transmitted to CBP in 2023, only 37 were submitted to the Revenue Division by email or mail.

bonds on which they are obligated and the ability to receive real-time updates from ACE and through the ACE Portal. Finally, CBP benefits from decreased burdens associated with paper and increased opportunity for oversight.

The current regulations in part 113 envision a bonding process that includes the submission of a paper bond application and approval of that application by CBP. This application and approval process is both burdensome for CBP to administer and incompatible with the modernized eBond process developed for ACE. CBP is proposing changes to part 113 of the CBP regulations to replace this paper process with the electronic eBond process tested pursuant to the NCAP. Pursuant to the proposed regulations, ACE will be the EDI system authorized by the Commissioner for the electronic transmission of bond information (eBond system), and the eBond test will be ended at the time the proposed regulations are finalized. For those bonds not suitable for transmission via EDI, CBP will require email transmission to the Revenue Division. In the event of an ACE outage, CBP will follow the downtime procedures found on the CBP website at <https://www.cbp.gov/document/technical-documentation/ace-cbp-downtime-policy-trade>. The processes for transmission of bonds via EDI and email are outlined in Sections II.E. and II.F., below.

D. Effect of Transmission of a Bond, Bond Amendment, or Termination

The transmission of bond data via EDI or by email memorializes the agreement of the principals and sureties on the bond to be bound by the terms and conditions of the transmitted bond, bond amount adjustment, rider, or termination. In accordance with 19 U.S.C. 1623(d), and consistent with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*, in place of signatures memorializing the parties' intent to be bound, the transmission of a bond, bond amount adjustment, rider, or termination to CBP pursuant to the proposed regulations constitutes a binding representation to CBP of the surety's authority to bind all sureties and principals on the bond, bond amount adjustment, rider, or termination. In addition, transmission to CBP affirms the agreement of all sureties and principals on the bond to the terms and conditions of the transmitted bond, bond amount adjustment, rider, or termination. A bond, bond amount adjustment, rider, or termination transmitted via EDI or email has the

same force and effect, and is binding upon the principal and surety thereto, as if such bond, bond amount adjustment, rider, or termination had been manually executed, signed, and filed in paper with CBP.

Likewise, the transmission of a bond secured by cash in lieu of surety by email memorializes the agreement of all principals on the bond to be bound by the terms and conditions of the transmitted bond. In accordance with 19 U.S.C. 1623(d), and consistent with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, *et seq.*, in place of signatures memorializing the parties' intent to be bound, the principal's transmission to CBP of a bond secured by cash in lieu of surety is a binding representation of the transmitting principal's authority to bind itself and all other principals identified in the bond, and constitutes the agreement of all principals on the bond to be bound by the transmitted bond.

Identification or use of a bond by the principal or other authorized user to secure an activity or transaction reaffirms that the principal intends to be bound by the terms and conditions of the bond, including all riders thereto. These certifications are provided in proposed § 113.12, and are further explained in Section III, below.

E. Overview of Transmission of Bonds, Bond Amendments, and Terminations via the eBond EDI

Bonds Transmitted via EDI

The eBond EDI is built around the transmission of electronic bond data to CBP by the surety obligated on the bond. A bond transmitted via eBond is an electronic bond contract between the principal and the surety with CBP as the beneficiary, comprised of data elements required by the eBond system. These required data elements consist of a subset of the Office of Management and Budget (OMB)-approved information collected on the CBP Form 301. Because ACE is built to reduce or eliminate repeated collection of the same data elements, information already available in ACE is not re-collected as part of the eBond transmission.

All bonds, amendments, and terminations transmitted via EDI must be transmitted to CBP by the surety obligated on that bond or by the authorized surety agent. Filing requirements for eBond are detailed in the Customs and Trade Automated Interface Requirements (CATAIR) document, which provides conventional trade interface information for electronic bond data functionality in

ACE. The CATAIR provides the input and output EDI record formations for the electronic transmission of bonds to CBP (record layouts). The input record layouts describe the data elements required by the automated EDI interface. The output record layouts describe a response to filing as generated and returned by the automated EDI interface. CBP has posted these technical specifications on the CBP website at the following link: <https://www.cbp.gov/trade/ace/catair>. Any updates to the technical formats will be posted at the above link. The trade community is encouraged to subscribe to the Cargo Systems Messaging Service (CSMS) at <https://www.cbp.gov/trade/automated/cargo-systems-messaging-service> to receive timely notifications regarding ACE, including any future changes or updates to these technical specifications.

The required data elements are enumerated in detail in proposed § 113.21, and in the description of that provision, in Section III, below. The surety has the option of submitting additional data elements, such as the surety's internal reference number for the bond and the identification codes for any "secondary notify parties" for the bond. A "secondary notify party" is a party, identified by the surety, who will receive status notifications regarding the bond.

ACE will accept any bond data properly transmitted through the eBond system. Upon acceptance, the system will return a message to the surety and any secondary notify parties identifying the CBP-assigned bond number. A single transaction bond is available to secure an activity or transaction upon the bond's acceptance by ACE. For term bonds, including continuous bonds, the surety must identify the effective date on which the bond may be used by the principal or authorized user to secure activities or transactions. The effective date must be on or after the date the bond is transmitted to CBP and accepted by ACE. The surety may select an effective date for a term bond, including a continuous bond, so long as the selected date is no more than 60 calendar days after the date the bond is transmitted to CBP. A single transaction bond is effective for the transaction it secures, regardless of the date of the transaction.

An appropriate bond must be effective in eBond before the commencement of the activity or transaction it secures. Thus, as an example, a bond securing entry must be accepted by the eBond system prior to transmission of the related entry or entry summary. When the related entry or entry summary is

transmitted, ACE will validate the existence of the bond in eBond before accepting transmission of the entry or entry summary. The bond is then linked in ACE to the relevant transaction.

CBP will conduct sufficiency reviews of all bonds transmitted to CBP to ensure that the amount and type of bond are sufficient to protect the revenue and ensure compliance with all applicable laws and regulations. This sufficiency review is discussed in more detail in proposed § 113.13, and in the explanation of that provision in Section III of this document.

Bond Amendments Transmitted via EDI

CBP will permit limited amendments to bonds after transmission to CBP. Only those changes expressly provided for in proposed § 113.23 will be permitted. To effect any other change, the surety must terminate the existing bond and replace that bond with a new bond.

For STBs transmitted via EDI with Activity Code 1, which are bonds for basic importation and entry, CBP will permit the surety to adjust the amount of the bond following transmission of the bond, so long as that adjustment is transmitted within 10 business days of the date of entry.³ To ensure the protection of the revenue and legal compliance, transmission of a bond amount adjustment to CBP constitutes the surety's and the principal's agreement that the amended bond amount will only limit their liability if it was calculated and transmitted using reasonable care, as that term is used in 19 U.S.C. 1484 for importations and entries. Absent reasonable care, the bond amount in effect prior to transmission of the bond amount adjustment would remain in effect. The failure to use reasonable care may result in penalties or other enforcement actions permitted by law. Transmission of a bond amount adjustment to CBP would also constitute the surety's and the principal's agreement that CBP may immediately prohibit either the surety or the principal, or both, from being party to future bond amount adjustments to any bond, if necessary to protect the revenue or to ensure legal compliance.

CBP would also permit transmission of five bond riders, as described in proposed § 113.24: the user addition rider, the user deletion rider, the addition of a reconciliation rider, the removal of a reconciliation rider, and

the U.S. Virgin Islands rider. The user addition and user deletion riders would allow the surety to add and delete authorized users on an existing bond. An authorized user is a person, business firm, government agency, or other organization that is authorized to obligate the bond in the principal's name. The authorized user must be an unincorporated unit of an identified principal or a trade or business name used by an identified principal in its business. An authorized user may use the bond to cover activities or transactions to the same extent as the principal on the bond, and any such activities or transactions will be considered to be the activities or transactions of the bond principal.

The reconciliation rider would allow the principal and surety to utilize the bond to cover all reconciliations elected pursuant to 19 U.S.C. 1484(b) on entries secured by the identified bond, and certifies that all conditions set out in § 113.62 are applicable to the identified bond. The surety may also remove the reconciliation rider via EDI.

The U.S. Virgin Islands rider would memorialize agreement by the principal and surety that the words "United States," whenever used in the terms and conditions of the identified bond, include the U.S. Virgin Islands, and that activities or transactions of the principal in the U.S. Virgin Islands are covered by the identified bond as if they occurred in the United States.⁴

Riders amending a bond transmitted via the eBond EDI would also be required to transmit to CBP via EDI. The data elements required in the transmission of a rider are described in proposed § 113.24, and further explained in the explanation of that provision in Section III below. Except for the amendments made pursuant to the bond rider, the surety and principal would agree that all other terms and conditions of the identified bond remain unchanged. Identification or use of a bond amended by a rider by the principal or other authorized user to secure an activity or transaction reaffirms that the principal intends to be

bound by the terms and conditions of the bond and the rider. These terms and conditions include certifications, which are provided in proposed § 113.12, and are further explained in Section III, below.

ACE will accept any bond rider properly transmitted through the eBond system. Upon acceptance, the system will return a message to the surety and any secondary notify parties. Reconciliation and U.S. Virgin Islands bond riders are effective upon acceptance by the eBond system. Sureties must identify an effective date for a bond rider adding an authorized user, identifying the date on which the added user may begin using the bond. The effective date for the user addition rider must be on or after the transmission date of the rider, and no more than 60 calendar days after the date the rider is transmitted to CBP. Similarly, sureties must identify an effective date for a bond rider deleting an authorized user, identifying the date on which the user is no longer authorized to use the bond. The effective date for a user deletion rider must be at least 10 business days after the transmission date of the user deletion rider.

Termination of Bonds via EDI

CBP will permit sureties to terminate bonds via EDI or by email to the Revenue Division. Principals wishing to terminate a bond must send notice of termination by email to the Revenue Division. The surety may terminate the bond with or without the consent of the principal, but must provide the principal notice of the termination, as detailed in proposed § 113.27. The surety must transmit the effective date of the termination to CBP, and that termination date must be at least 15 calendar days after the date of the electronic notice of termination.

F. Overview of Transmission of Bonds, Riders, and Terminations by Email to the Revenue Division

Bonds Transmitted by Email

In order to effectively implement the streamlined procedures developed for bonds, CBP has adapted the process for email transmission of bonds to mirror the requirements for bonds transmitted via EDI. A bond transmitted by email is an electronic bond contract between principal and surety with CBP as beneficiary, comprised of the same data elements required by the eBond system. These required data elements consist of a subset of the OMB-approved information collected on the CBP Form 301. With the exception of bonds

³ The activity code is the CBP-assigned number identifying the terms and conditions for a bond securing a particular activity or transaction. Activity Code 1 bonds are importer or broker bonds. The terms and conditions for bonds with Activity Code 1 are set forth in 19 CFR 113.62.

⁴ A U.S. Virgin Islands rider is required because the U.S. Virgin Islands is outside the customs territory of the United States. The customs territory of the United States includes only the States, the District of Columbia, and Puerto Rico. See 19 CFR 101.1 and General Note 2 of the Harmonized Tariff Schedule of the United States (HTSUS). This rider is only needed for the U.S. Virgin Islands because the Secretary of the Treasury administers the customs laws of the U.S. Virgin Islands through CBP. See 19 CFR 7.2(c). The other insular possessions of the United States other than Puerto Rico, including Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, are not governed by the Tariff Act of 1930, as amended, or by the CBP regulations.

secured by cash in lieu of surety, all bonds transmitted by email to the Revenue Division must be sent by the surety obligated on the bond or by the authorized surety agent. Bonds secured by cash in lieu of surety must be transmitted to the Revenue Division by the principal on the bond. All bonds transmitted to the Revenue Division by email are manually added to the eBond system and are effective only after they have been successfully added to the eBond system. Upon acceptance by the eBond system, the system will return a message to the surety and any secondary notify parties on the bond, identifying the CBP-assigned bond number. In addition, a CBP Form 301, annotated with the CBP-assigned bond number, will be sent by email to the surety. If requested by the surety, CBP will mail a CBP Form 301, annotated with the CBP-assigned bond number, to the principal. Principals transmitting a bond secured by cash in lieu of surety via email will not receive automated messages from ACE; a copy of the CBP Form 301, annotated with the CBP-assigned bond number, will be mailed to such parties.

Formatting requirements for bonds sent by email to the Revenue Division are posted on the CBP website at the following link: <https://www.cbp.gov/trade/priority-issues/revenue/bonds/bond-centralization-program>. Any updates to the requirements will be posted at the above link. Bonds transmitted via email must adhere to these formatting requirements, and include, as an attachment to the email, a CBP Form 301 containing the data elements required by proposed § 113.21. The data elements collected in bond transmissions sent by email are a subset of the information collected on the CBP Form 301. The surety has the option of submitting additional data elements, such as the identification codes for any “secondary notify parties” for the bond. A “secondary notify party” is a party, identified by the surety, who will receive status notifications regarding the bond.

For term bonds, including continuous bonds, the bond transmitted via email must identify the effective date on which the bond may be used by the principal or authorized user to secure activities or transactions. The effective date for a term bond transmitted by email must be at least ten business days after the date the bond is received by CBP. The surety may elect an effective date for a term bond, including a continuous bond, so long as the selected day is no more than 60 calendar days after the date the bond is transmitted to CBP. A single transaction bond is

effective for the transaction it secures, regardless of the date of the transaction.

An appropriate bond must be effective and in the eBond system before the commencement of the activity or transaction it secures. For example, a bond securing entry must be in eBond prior to transmission of the related entry or entry summary. When the related entry or entry summary is transmitted, ACE will validate the existence of the bond in eBond before accepting transmission of the entry or entry summary. The bond is then linked in ACE to the relevant transaction.

CBP will conduct sufficiency reviews of all bonds transmitted to CBP to ensure that the amount and type of bond are sufficient to protect the revenue and ensure compliance with all applicable laws and regulations. This sufficiency review is discussed in more detail in proposed § 113.13, and in the overview of that provision in Section III, below.

Bond Riders Transmitted by Email

For bonds transmitted by email, CBP will permit only amendments made by bond rider, as provided for in proposed § 113.23. To effect any other change, the surety must terminate the existing bond and replace that bond with a new bond.

As with bonds transmitted by EDI, CBP will permit email transmission of the five bond riders listed in proposed § 113.24 and described in Section II.E. *supra*: the user addition rider, the user deletion rider, the addition of a reconciliation rider, the removal of a reconciliation rider, and the U.S. Virgin Island rider. Riders amending a bond that was transmitted by email to the Revenue Division must also be transmitted to CBP by email to the Revenue Division. The information required in a rider transmitted by email is the same as the information required for a rider transmitted by EDI. This information is described in proposed § 113.24, and further explained in the description of that provision in Section III, below.

All riders properly transmitted to the Revenue Division by email will be added to the eBond system. Upon acceptance, the system will return a message to the surety and any secondary notify parties. The effective dates for bond riders transmitted by email will be the same as the effective dates of bonds transmitted by EDI, and are explained in Section III, below.

Termination of Bonds by Email

CBP will permit sureties to terminate continuous bonds via EDI or by email to the Revenue Division. Principals wishing to terminate a continuous bond must send notice of termination by

email to the Revenue Division. The surety may terminate the bond with or without the consent of the principal, but must provide the principal notice of the termination, as detailed in proposed § 113.27. The principal or surety must identify the effective date of the termination in the notice to CBP. That termination date must be at least 15 calendar days after the date of the notice of termination.

III. Explanation of Proposed Amendments to CBP Regulations

A. Proposed Amendments to Part 113

CBP is proposing amendments to part 113, in accordance with the new procedures described above. CBP is proposing to amend the scope provision at § 113.0 to reflect the proposed electronic bond process, removing reference to the submission of a bond application and subsequent approval by CBP. Instead, the scope provision will reflect the transmission of bond information, and CBP’s subsequent review for sufficiency.

Proposed Amendments to Subpart A

CBP is proposing amendments to Subpart A to define terms used throughout part 113 and to clarify the transition from bonds executed under the current regulations to bonds transmitted electronically pursuant to the proposed regulations. The proposed amendments are as follows.

First, CBP proposes to move the existing authority provision in § 113.1 to a revised § 113.2, and to add a new “Definitions” section for § 113.1. The proposed § 113.1 will define the following terms:

- **Activity code:** a CBP-assigned number identifying a set of terms and conditions for a bond securing a particular activity or transaction.
- **Authorized user:** an unincorporated unit, trade name, or business name of the identified principal on the bond who is authorized to obligate a bond in the principal’s name, and must have a CBP filing identification number identical to that of the principal on the bond, except that the optional two-digit suffix code may differ as allowed in 19 CFR 24.5. To make the regulations easier to read and understand, the singular term “authorized user” is used generally and, unless the context indicates otherwise, includes and applies to several “authorized users” (and the plural usage includes the singular), consistent with the Dictionary Act (1 U.S.C. 1).
- **Bond:** a contract between principal and surety, or an agreement by a principal secured by cash in lieu of

surety (even when the cash is not required to be deposited with CBP), securing the principal's performance of one or more obligations imposed by the U.S. Government with CBP or another party as beneficiary. A bond is comprised of the elements required under proposed part 113, and includes any amendments made to the bond in accordance with proposed part 113.

- *Bond amount adjustment*: a retroactive amendment of a single transaction bond's amount or limit of liability, made in accordance with § 113.23 of proposed part 113.
- *Bond rider*: a prospective amendment of a bond, made in accordance with proposed part 113.
- *Consolidated Bond*: a bond (single transaction or term) assuring compliance with two or more provisions of law, regulations, or instructions that CBP is authorized to enforce.

- *Continuous Bond*: a term bond with a bond period of one year, that renews automatically for a new one-year period beginning on the anniversary of the effective date of the bond and continuing for each succeeding one-year period, unless terminated sooner by the principal or surety, or cancelled by CBP, in accordance with the regulations in proposed part 113. Each one-year period of a continuous bond, or partial-year period if the bond is terminated sooner, constitutes a separate period of liability in the amount of the bond for the transactions or activities that occur within the period.

- *Electronic Data Interchange (EDI)*: eBond or any other CBP-authorized functionality that allows filers to transmit data electronically to, and receive electronic messaging from, CBP and the CBP-authorized EDI system.

- *Electronic Data Interchange (EDI) system*: the Automated Commercial Environment (ACE) or any other established mechanism approved by the Commissioner of CBP through which information can be transferred electronically.

- *Principal*: a person, business firm, government agency, or other organization, as identified by a CBP filing identification number, as detailed in § 24.5 of this title, engaged in a transaction or activity for which CBP requires a bond, including the officers, employees, contractors, and/or agents of such person, business firm, government agency, or other organization. To make the regulations easier to read and understand, the singular term "principal" is used generally and, unless the context indicates otherwise, includes and applies to several "principals" (and the plural usage

includes the singular), consistent with the Dictionary Act (1 U.S.C. 1).

- *Revenue Division*: the centralized office within the CBP Office of Finance responsible for bond processing and retention for all continuous and single transaction bonds.

- *Single Transaction Bond (STB)*: a bond securing one transaction or activity covered by a single activity code.

- *Surety*: a company listed in Treasury Circular 570 as an acceptable surety on Federal bonds or as an acceptable reinsurance company for such bonds, and the officers, employees, and/or agents (including surety agents) of such company. To make the regulations easier to read and understand, the singular term "surety" is used generally and, unless the context indicates otherwise, includes and applies to several "sureties" (and the plural usage includes the singular), consistent with the Dictionary Act (1 U.S.C. 1).

- *Surety agent*: a person, business firm, or other organization granted power of attorney by a surety pursuant to 19 CFR 113.37 to transact business on behalf of the surety. To make the regulations easier to read and understand, the singular term "surety agent" is used generally and, unless the context indicates otherwise, includes and applies to several "surety agents" (and the plural usage includes the singular), consistent with the Dictionary Act (1 U.S.C. 1).

- *Term bond*: a bond securing one or more transactions or activities with the same activity code over a defined period of time.

- *Void*: invalidating an STB transmitted to CBP via EDI before that single transaction bond has been used to secure an activity or transaction. Once voided, that single transaction bond will no longer be available to secure any activity or transaction. Only the surety may void an STB.

In revising the rest of subpart A, CBP proposes to consolidate the authority provision currently in § 113.1, which details the powers of the Commissioner of CBP relating to bonds, and that the Commissioner may authorize the Director, Revenue Division or the port director to require bonds or other security, with existing § 113.2. CBP would update the introductory text of proposed § 113.2 to clarify that the Commissioner may also authorize the Center director to require bonds or other security. CBP also proposes to modernize the language in § 113.2 by replacing the word "penalty" and the words "penalty for violation" with the word "amount" in proposed paragraphs

(a) and (d) and making technical amendments to proposed paragraph (c) to replace the words "he" and "his" with the word "Commissioner" to make clearer who the references are referring to. Next, CBP proposes clarifying amendments to § 113.3, regarding the liability of the principal and the surety by adding a reference to transactions or activities that occur prior to termination of the bond, and noting CBP's authority to relieve liability on a terminated bond. Currently, § 113.4 provides an explanation for bonds and carnets. CBP proposes to remove the definition for "CBP bond" from § 113.4, as a new definition for "bond" has been proposed in § 113.1, obviating the need for clarification in § 113.4.

Lastly, CBP proposes to add two new provisions in subpart A. First, in § 113.5, CBP proposes to add a new provision specifying CBP authority to require a bond by specific instruction. The language of the proposed § 113.5 is modeled on the existing language in § 113.14, which CBP proposes to remove and replace with a new provision. Second, CBP proposes to add a new provision in § 113.6 detailing the treatment of existing bonds once the final rule implementing the new regulations is effective. All new bonds transmitted to CBP on or after the effective date of the final rule will be subject to the amended regulations in part 113. An STB filed with or transmitted to CBP prior to the effective date of the final rule will remain subject to the terms and conditions that were in place on the date that the bonds were executed. Thus, STBs will be subject to the prior regulations or eBond test requirements in place on the date of execution.

For term bonds, including continuous bonds, the proposed rule outlines a rolling transition from bonds under the existing regulations to bonds under the new regulations, beginning with the effective date of the final rule. Principals may continue to secure transactions or activities with a term bond executed prior to the effective date of the final rule until the end of that bond's latest bond period (e.g., the end of the latest one-year period in the case of continuous bonds). Term bonds filed with or transmitted to CBP prior to [insert effective date of Final Rule here] will remain subject to the terms and conditions that were in place on the date that the bonds were executed. Term bonds will also be subject to the prior regulations or eBond test requirements in place on the date of execution. At the end of the bond's latest bond period, the bond will be deemed insufficient to secure any new transaction or activity.

In order for principals to secure further transactions or activities with a term bond, their surety must transmit a new term bond to CBP on or after the effective date of the final rule. This rolling transition period is intended to align with the bond period for term bonds, to ensure that principals are not required to obtain a new term bond prior to the end of the current bond period for a bond executed prior to the effective date of the final rule. On and after the one-year anniversary of the effective date of the final rule, all new transactions or activities must be secured with bonds under the new regulations.

Proposed Amendments to Subpart B

Currently, subpart B describes a paper-intensive process for submission of bonds to CBP. For STBs, the existing process requires the submission of either a bond application or a sufficient bond with the entry or entry summary, to be approved by either the port or the Revenue Division. For continuous bonds, the existing process requires the submission of a bond application to the Revenue Division, to be approved by the Revenue Division. CBP proposes to amend the provisions in subpart B by replacing the existing process with new regulations consistent with electronic transmission of bonds and bond amendments. The proposed changes are as follows.

First, CBP proposes to change the heading of subpart B to “Transmission, Sufficiency, and Retention of Bonds” to reflect the new contents of the subpart.

In § 113.11, CBP proposes to replace the existing provisions detailing bond application requirements with new requirements for electronic bond transmission. Proposed § 113.11(a) would require that all bonds secured by a surety be transmitted by that surety, or by a surety agent authorized to transmit bonds on behalf of that surety, unless otherwise permitted by CBP. The bond transmission would also be required to meet the new electronic filing requirements laid out in proposed subpart C of part 113. Proposed § 113.11(b) would require that all bonds secured by a surety be transmitted to CBP via EDI, unless specifically required to be transmitted by email pursuant to proposed § 113.11(c) or when otherwise agreed by CBP. Under this proposed provision, a bond transmitted via EDI is active and available to secure a transaction once the eBond system has accepted the transmission.

Proposed § 113.11(c) would require email transmission for specific bonds, or in particular circumstances where

transmission by EDI is not possible. As described in more detail in Section II.F. above, bonds emailed to CBP pursuant to proposed § 113.11(c) would become active and available to secure a transaction once CBP has added the bond to the eBond system. While CBP would aim to add the bond to the eBond system in an expedited manner, the effective date for a term bond transmitted by email must be at least ten business days after the date the bond is received by CBP since it could possibly take up to ten business days for the bond to be added to the eBond system. CBP proposes to require email transmission of the following:

- Neutrality bond (Activity Code 9, bond terms and conditions found in current and proposed § 113.71);
- Intellectual Property Rights (IPR) bond (Activity Code 15, terms and conditions found in current and proposed § 113.70);
- Any bond with two or more sureties, pursuant to proposed § 113.37(d)(1), unless all sureties on the bond share the same ACE filer code;
- Any re-insurance agreement, pursuant to proposed § 113.37(d)(2);
- Cash in lieu of surety pursuant to current and proposed § 113.40. Such bonds must be transmitted by the principal on the bond.
- Bonds without surety or cash deposit. Such bonds must be transmitted by the principal on the bond.
- Any other bond that cannot be transmitted via EDI.

Upon adoption of these proposed changes, CBP will no longer accept paper bonds. All bonds would be required to be transmitted to CBP electronically via the eBond EDI or, unless otherwise specified, by email to the Revenue Division.

Next, CBP proposes to remove the existing provisions in § 113.12, which outline CBP’s bond approval process, because CBP will no longer use this process. CBP proposes to add a new provision in § 113.12, replacing the signature and seal requirements that are part of the paper process currently in part 113 with new certification requirements complementing the proposed electronic process.

Under the paper bond process currently in the regulations, the parties to the bond contract must sign the CBP Form 301 and apply a seal before filing the form with CBP. In the new electronic process, the certifications in proposed § 113.12 would replace these requirements. The transmission of a bond to CBP by the surety and the principal’s use of that bond, as amended by any bond riders or bond amount

adjustments, to secure an activity or transaction, constitute acknowledgment of the legally binding nature of the bond. Therefore, proposed paragraph (a) states that transmission of a bond, bond rider, or bond amount adjustment to CBP constitutes binding representation by the surety or surety agent that the surety or surety agent has the authority to bind both the surety and principal identified on the bond, bond rider, or bond amount adjustment. In addition, transmission to CBP would constitute the certification of the surety or surety agent that both the surety and the principal have the legal capacity to enter into a contract. Transmission would also represent agreement that both the surety and principal agree to be bound by the transmitted bond, bond rider, or bond amount adjustment, including all terms and conditions pertaining to that bond, bond rider, or bond amount adjustment.

Lastly, transmission of a bond rider or bond amount adjustment would represent the agreement of the surety and principal on the bond to be bound by the terms and conditions of the identified bond, as amended by the transmitted bond rider or bond amount adjustment. Except for the amendments made pursuant to the bond rider or bond amount adjustment, the surety and principal would agree that all other terms and conditions of the identified bond remain unchanged.

Proposed paragraph (b) enumerates similar conditions for bonds without a surety, which are transmitted to CBP by email pursuant to proposed § 113.11. Transmission of the bond or bond rider to CBP by the principal would constitute binding representation by the transmitting principal that it has the authority to bind itself and all other principals identified in the bond or bond rider, and that all identified principals have the legal capacity to enter into a contract. In addition, transmission represents agreement that all principals agree to be bound by the transmitted bond or bond rider, including all terms and conditions pertaining to that bond or bond rider. Lastly, transmission of a bond rider would represent agreement of all principals on the bond to be bound by the terms and conditions of the identified bond, as amended by the transmitted bond rider. Except for the amendments made pursuant to the bond rider, the principals would agree that all other terms and conditions of the identified bond remain unchanged.

Proposed paragraph (c) states that the principal’s or any authorized user’s use of a bond to secure an activity or transaction constitutes reaffirmation by

the principal that it has the legal capacity to enter into a contract and agrees to be bound by the terms and conditions of the identified bond, and any associated amendments.

In the current regulations, § 113.13 details requirements imposed by CBP to ensure that the amount of a bond is sufficient to protect the revenue and ensure compliance with applicable laws, regulations, and instructions. CBP proposes to expand this provision to consider the sufficiency of the bond more generally, including not only the amount of the bond, but also the type of bond or other security. Under the existing regulatory procedures, CBP has the opportunity to consider and approve or deny a continuous bond application before any activity can be conducted using that bond. Because the proposed amendments would eliminate this procedure, CBP is proposing to amend § 113.13 to include review of both the amount of the bond and the type of the bond when conducting a sufficiency review. This ensures that CBP can require additional security where necessary to protect the revenue and ensure compliance with applicable laws, regulations, and instructions. Therefore, CBP proposes to retitle § 113.13 as “Sufficiency of bond.”

This document proposes minor amendments to § 113.13(a), which generally sets the minimum amount for any bond at \$100. CBP is proposing amendments clarifying that fractional parts of a dollar will be rounded up to the next dollar rather than disregarded and replacing the reference to “CBP bond” with “bond.”

In § 113.13(b), CBP is proposing minor amendments to the guidelines for determining the sufficiency of a bond. CBP proposes to amend the introductory paragraph, by removing references to the amount of the bond, since CBP will consider more than just the amount of the bond in determining sufficiency. CBP also proposes to state that CBP “may” consider any of the listed factors, as not all factors are relevant to every bond, and CBP has long operated under an interpretation of this provision as discretionary, even with its existing language. Additionally, CBP proposes to clarify that the record of any authorized user on the bond may be considered in determining whether the amount of the bond is sufficient. In § 113.13(b)(2), CBP proposes to consider the prior record of the principal in complying with CBP demands for information or documents when determining whether a bond is sufficient. The proposed changes would replace the word “commitments” in § 113.13(b)(5) with the word “obligations” to be consistent with

terminology used elsewhere in part 113. Lastly, in § 113.13(b)(6), CBP proposes to remove the reference to information contained in a bond application, which will no longer exist, and instead state that CBP may consider any other relevant information in determining the bond needed to protect the revenue and ensure compliance.

CBP proposes to combine existing § 113.13(c) and (d), which provide for periodic sufficiency review and CBP’s ability to require additional security as separate CBP responsibilities, into proposed paragraph (c), *review of bond*, to expand CBP’s review of the bond to include not only the amount of the bond, but also the type of bond or other security. While proposed paragraph (d) maintains the same heading as existing § 113.13(d), proposed paragraph (d) would set forth the form the additional security, which is required by CBP for the principal’s transaction(s) or activity(ies) and authorized user’s transaction(s) or activity(ies), may take. CBP further proposes to clarify the procedures and timing for remedying an insufficient bond. This is intended to clarify CBP’s existing authority to determine that a bond or other security is insufficient, and to ensure that the insufficiency is remedied before further transactions or activities can occur. CBP proposes to amend § 113.13(c) to include review of all aspects of the bond securing the principal’s transactions or activity and any authorized user’s transactions or activity, not just the amount of the bond. CBP proposes to rephrase “periodic” review as “regular” review, as CBP is gradually increasing its ability to review bonds on file for sufficiency. Because CBP has added electronic notice capabilities for sureties and other parties to the bond, CBP proposes to provide electronic notice of insufficiency. Electronic notice has the advantage of being instantaneous, allowing the parties to the bond to remedy any insufficiency rapidly. CBP will retain the ability to provide notice of insufficiency in writing, for those parties unable to receive electronic notice.

Upon receipt of a notice of insufficiency, the principal and surety must transmit additional security to CBP before further transactions or activity can take place. Such additional security is described in proposed § 113.13(d). In general, principals and sureties would have 15 calendar days to remedy any insufficiency. This would remain unchanged from the current regulations. However, as described in existing § 113.13(d), where CBP determines that the bond presents an immediate risk to the revenue or

enforcement of applicable laws and regulations, CBP will notify the principal and surety that additional security is required in a shorter timeframe to protect the revenue and ensure compliance with applicable laws and regulations. CBP may require the immediate provision of additional security in such cases. CBP proposes to move this requirement to proposed § 113.13(c).

If the principal wishes to challenge CBP’s sufficiency determination, the principal must make a written submission to CBP demonstrating that the bond is sufficient, as provided in proposed § 113.13(c). The notice of insufficiency would provide contact information for that submission. CBP would consider the principal’s written submission and notify the principal and surety of any change to the sufficiency determination in writing or electronically via email. Pursuant to proposed § 113.13(c), until a sufficient bond or other security has been provided, CBP may reject, suspend, or otherwise prevent the principal or any authorized user from further transactions or activities.

Proposed § 113.13(d) delineates the remedies for insufficiency. First, CBP proposes to permit a surety to increase the amount of an existing STB with Activity Code 1 that was transmitted via EDI, if the increase is transmitted to CBP within 10 business days of the date of entry. This procedure is explained in further detail in proposed § 113.23(b). CBP also proposes that a continuous bond deemed to be insufficient must be terminated and replaced with a new bond of an amount and type deemed sufficient by CBP. CBP would also be permitted to require one or more additional bonds to secure a transaction, or may require other security, as dictated by the risks of the particular transaction or activity to be secured.

CBP proposes to add § 113.13(e) to establish the joint and several liability of principal and sureties for obligations arising under all bonds that secure the same transaction or activity. In other words, this paragraph would specify that where a principal identifies only a single transaction bond to secure a transaction or activity, CBP may hold the principal and the sureties on all other bonds securing the same transaction or activity jointly and severally liable for any obligations (e.g., penalty, duty, tax or other charge) arising under the bonds. This would be true regardless of whether the bonds have the same surety and even if one or more of the bonds are not identified by the principal as securing the transaction

or activity at the time it occurs.⁵ This provision protects the revenue by ensuring that adequate assets are available to pay assessed charges. However, as delineated in proposed § 113.13(d), importers would still retain the ability to provide additional security in the manner most appropriate for the importer.

The existing § 113.14 provides that, if it is determined that none of the conditions in subpart G of part 113 is applicable to the contemplated transaction or activity, CBP may draft bond conditions to cover that transaction or activity. This provision, permitting a “specific instruction” bond, has been incorporated into proposed § 113.5. In its place, CBP is proposing to add a new provision, detailing CBP’s authority to restrict the use of a continuous bond, and to instead require only single transaction bonds or other security.

Under the existing bond procedures, CBP has the authority to approve or deny any application for a continuous bond. The proposed regulations replace this oversight process with a new provision in § 113.14, whereby CBP may require a principal who has demonstrated an unwillingness or inability to perform its obligations under part 113, on one or more bonds, to secure future transactions with single transaction bonds. This restriction could be imposed for a temporary period, or as a permanent termination of the principal’s ability to conduct business using a continuous bond. Before instituting such restrictions, CBP would provide notice of the proposed restrictions, the basis for imposing such restrictions, and the date the restrictions will take effect. The principal would have 30 calendar days to respond. If the principal does not respond within 30 calendar days, CBP’s limitations would take effect on the date indicated in the notice. If the principal responds to the notice provided pursuant to paragraph (b) of § 113.14, then, within 30 calendar days of CBP’s receipt of the response, the appropriate CBP officer would review the response and make a final decision as to whether the proposed limitation would go into effect. Notice of the final decision would be provided to the principal and the surety on any existing continuous bond, and any

limitations imposed will take effect at least five business days after the date of the notice of final decision.

Additionally, paragraph (d) would retain the restriction permitting each principal to hold only one continuous bond for a particular activity, originally found in § 113.12(b).

Finally, CBP proposes to amend § 113.15 regarding retention of bonds. Because all bonds will be transmitted to the Revenue Division unless otherwise specified, either by EDI or by email, CBP proposes to remove the current provision, providing that bonds approved by a port director will be retained at the port office, and bonds approved by the Revenue Division will be retained by the Revenue Division. Rather, CBP would retain a record of all bonds, bond riders, and bond amount adjustments transmitted to CBP in ACE, regardless of the method of transmission. Notwithstanding CBP’s retention of these records, the absence of a bond, bond rider, or bond amount adjustment from CBP records, regardless of the reason for its absence, would not release any party from liability under the bond, bond rider, or bond amount adjustment if the bond, bond rider, or bond amount adjustment otherwise exists. CBP would continue to transmit bonds containing the agreement to pay court costs (condemned goods), the terms and conditions of which are in § 113.72, to the United States attorney, as required by section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608).

3. Proposed Amendments to Subpart C

Subpart C to part 113 currently details bond requirements. CBP proposes to update the requirements in § 113.21, which details the information required on a bond. The proposed revisions include changing the title of the provision to “Information required in the bond transmission” to reflect electronic bond transmission, as opposed to the filing of a paper CBP Form 301. The existing information requirements in § 113.21 include identifying information for principals and sureties, identifying information for bond users without distinct legal status from the principal, the date of execution, and the amount of the bond.⁶ In this document, CBP proposes to update and expand those requirements, to accommodate the electronic data

transmitted to the eBond system. ACE is designed to minimize or eliminate repeated collection of the same data elements. As a result, the eBond transmission does not require transmission of the name or address of a principal, authorized user, surety, or surety agent.

Thus, the proposed § 113.21(a) requires that bonds and riders transmitted to CBP identify principals, authorized users, and sureties as follows:

- **Principal:** the bond transmission would be required to identify all principals on the bond, by the filing identification number, as detailed in 19 CFR 24.5, for each principal.

- **Authorized Users:** if additional parties are authorized to obligate the bond, the bond transmission would be required to identify them by the filing identification number, as detailed in 19 CFR 24.5, for each user. The filing identification number for an authorized user would be required to be related to the filing identification number of the identified principal on the bond, as detailed in 19 CFR 24.5.

- **Surety:** each surety obligated on the bond would be required to be identified by its CBP-assigned three-digit surety code, pursuant to proposed § 113.37. The transmission would also be required to include the surety-assigned identification number for the surety agent on the bond, pursuant to § 113.37(c)(1). Lastly, if two or more sureties are identified on the bond, the transmission would be required to comply with § 113.37(d), including the provision of the total value of each surety’s liability on the bond, in whole U.S. dollars.

CBP proposes to expand § 113.21(b) to require bonds to contain the following information, which corresponds to data elements required by the eBond test and on the CBP Form 301:

- **Type:** The type of bond being transmitted, *i.e.*, STB or continuous bond.

- **Designation:** The bond designation type corresponding to the purpose of the transmission—new bond, additional STB, substitution bond (pursuant to § 142.4(b)(2)), superseding bond (pursuant to § 142.4(b)(1)), STB bond amount adjustment, bond rider, void an unobligated STB, or termination of an existing bond.

- **Activity Code:** The activity code identifying the terms and conditions in the bond, as agreed by both principal and surety. For regulatory bonds in Subpart G, this rule proposes to identify in the regulations the activity code corresponding to the terms and conditions of each bond.

⁵ See *United States v. Am. Home Assurance Co.*, 113 F. Supp. 3d 1297, 1306–09 (Ct. Int’l Trade 2015), *aff’d* under Fed. Cir. R. 36, 776 Fed. Appx. 712 (Sep. 6, 2019) (finding that both the surety issuing the continuous bond for an entry and the surety issuing the single transaction bonds for the same entry are equally liable with respect to each entry for the payment of duties, as the sureties’ obligations were identical).

⁶ In addition, § 113.21 currently includes provisions limiting the use of abbreviations and requiring strike throughs in all blank spaces. 19 CFR 113.21(d)–(e). CBP has determined that these provisions are no longer needed given the shift to the electronic submission of bonds as the identities of all parties would be known and there is no paper-based form with blank spaces at issue.

- *Amount*: The amount of the bond, stated in whole U.S. dollars.

- *Date of execution*: The date the bond is transmitted to CBP via EDI or by email.

- *Effective date of a continuous bond*: This is the first date on which the bond may be obligated, subject to the provisions of § 113.26. Because an STB is effective for the identified transaction, regardless of the date, the effective date for STBs would not be required.

- *Transaction identification information*: For an STB, the number identifying the particular transaction the bond is intended to secure. This could be the entry number, the Importer Security Filing (ISF) transaction number, the seizure case number, the bill of lading number, or the carrier and voyage identification. The entry type code is also required for bonds with Activity Codes: 1, 1A, 6, 7, 8, 12, or 16.

Currently, § 113.22 requires witnesses to the signatures of each party to a bond. Because bonds submitted consistent with § 113.11 would not need signatures, witnesses would no longer be required for these bonds. Therefore, CBP proposes to remove and reserve § 113.22 in its entirety.

CBP proposes to update § 113.23, which addresses changes made to existing bonds and lists requirements for changes to paper bonds. CBP proposes to rename the provision to “Amendments made to the bond,” and to remove the provisions related to paper bonds, which are no longer needed in the new electronic environment. In their place, CBP proposes to permit two types of changes to existing bonds: riders, as described in proposed § 113.24, and the bond amount adjustment for STBs transmitted by a surety via EDI with Activity Code 1. To effect any other change to the bond, the surety or principal would need to terminate the existing bond, and replace it with a new bond containing the change.

CBP proposes to enumerate the requirements for the bond amount adjustment in § 113.23(b). The bond amount adjustment may only be transmitted to CBP via EDI on or before the tenth business day after the date of entry. Transmission of a bond amount adjustment to CBP would constitute the surety’s and the principal’s agreement that the amended bond amount will only limit their liability if it was calculated and transmitted using reasonable care, as that term is used in 19 U.S.C. 1484. Otherwise, the bond amount in effect prior to transmission of the bond amount adjustment would remain in effect. Failure to use reasonable care may also result in

penalties or other legal consequences permitted by law. In addition, the transmission of a bond amount adjustment to CBP would also constitute the surety’s and the principal’s agreement that CBP may immediately prohibit either the surety or the principal, or both, from being party to future bond amount adjustments to any bond, if necessary to protect the revenue or to ensure legal compliance.

CBP proposes to update § 113.24, which addresses bond riders and their requirements. CBP would remove riders and requirements applicable only to paper bonds, including riders effecting changes to the name of the principal or addresses on the bond. As noted previously, CBP would no longer collect this information as part of the bond or bond rider transmission. CBP proposes to replace the bond riders allowing addition or deletion of trade names and unincorporated divisions of a corporate principal with new bond riders allowing the addition or deletion of authorized users. In the electronic environment, CBP proposes to accept five types of bond rider: the authorized user addition bond rider; the authorized user deletion bond rider; the addition of the reconciliation bond rider; the removal of the reconciliation bond rider; and the U.S. Virgin Islands bond rider.⁷ The terms for each of these riders are laid out in proposed § 113.24(a).

Proposed § 113.24(b) would require that a bond rider be filed using the same method of transmission as the bond it amends. Thus, if the bond was filed via EDI, a bond rider amending that bond would be required to be filed via EDI. Proposed § 113.24(c) lists the information that must be provided to CBP in the bond rider. This information would include the execution date of the bond rider, which is the date the bond rider is transmitted to CBP, and the bond number identifying the bond being amended by the bond rider. In addition, proposed § 113.24(c) lists required information that is specific to the type of bond rider being transmitted. This information would include:

- For a user addition rider, the CBP identification number for the added user and the effective date of the bond rider, which is the date the new user may begin to obligate the bond. Effective dates are covered in more detail in proposed § 113.26.

- For a user deletion rider, the CBP identification number for the user to be removed, and the effective date of the

⁷ A U.S. Virgin Islands bond rider may not be removed. Instead, the principal must terminate the existing bond with the rider and obtain a new bond without the rider.

bond rider, which is the date the user may no longer use the bond. Effective dates are covered in more detail in proposed § 113.26.

CBP proposes to remove existing § 113.25, as seals will not be required for electronically transmitted bonds.

CBP proposes to update § 113.26, which describes the effective dates for bonds and bond riders. CBP first proposes to replace references to the paper bond application process with references to the electronic bond process, including email transmission. Next, CBP proposes to reorganize the provision, to address effective dates for bonds in paragraph (a) and effective dates for bond riders in paragraph (b). CBP proposes to consolidate the general provision in existing § 113.26(a) with the continuous bond provision in existing § 113.26(c), forming a new provision addressing the effective date of term bonds in § 113.26(a)(1). CBP proposes to retain procedures allowing the party transmitting the bond to select the effective date for a term bond, and permit transmission of a term bond up to 60 calendar days prior to the effective date of the bond. Bonds transmitted to CBP via email would be required to have an effective date at least ten days after the date CBP receives the bond, to allow time for CBP to process the bond. The proposed electronic process does not require an effective date for STBs. An STB identifies a particular transaction for bond coverage, and therefore, CBP proposes to state in § 113.26(a)(2) that an STB is effective for the full transaction identified, regardless of the date of the transaction or the date of transmission of the bond.

In proposed paragraph (b)(1), CBP states the conditions for the effective date for a bond rider transmitted via EDI. CBP proposes to permit the party transmitting the bond rider to select the effective date of a user addition bond rider, so long as the date selected is on or after the effective date of the bond and is no more than 60 calendar days after the date the bond rider is successfully transmitted to CBP. Similarly, the party transmitting the bond rider would be able to select the effective date for a user deletion bond rider, so long as the date selected is at least ten calendar days after the effective date of the bond and is no more than 60 calendar days after the date the bond rider is successfully transmitted to CBP. Additionally, for U.S. Virgin Islands bond riders and reconciliation bond riders, the bond rider would be effective on the date the bond rider is transmitted to CBP.

Similarly, proposed paragraph (b)(2) states the conditions for the effective

date for a bond rider transmitted via email. CBP proposes to permit the party transmitting a bond rider via email to select the effective date of a user addition bond rider, so long as the date selected is on or after the effective date of the bond and is at least ten business days but no more than 60 calendar days after the date of the email. However, if the bond rider email is not received at least ten business days before the requested date, or if no date is indicated in the email request, the bond rider would be effective at close of business on the tenth business day after CBP receives the email. Similarly, the party transmitting a bond rider via email could select the effective date for a user deletion bond rider, so long as the date selected is at least ten business days before the effective date of the bond and is no more than 60 calendar days after the date of the email. However, if the bond rider email is not received at least ten business days before the requested date, or if no date is indicated in the email, the bond rider would be effective at close of business on the tenth business day after CBP receives the email. Finally, for U.S. Virgin Islands bond riders and reconciliation bond riders, the bond rider would be effective on or after the date indicated in the bond rider email, so long as that date is on or after the effective date of the bond and is at least ten business days but no more than 60 calendar days after the date of the bond rider email. However, if the bond rider email is not received at least ten business days before the requested date, or if no date is indicated in the email, the bond rider would be effective at close of business on the tenth business day after CBP receives the email.

In § 113.27, describing effective dates for the termination of a bond, CBP is proposing amendments to reflect the new electronic processes for termination. In paragraph (a), voiding a single transaction bond, CBP proposes to permit a surety to void an STB as long as the bond has not been obligated. Voiding an STB constitutes the surety's and principal's agreement that the bond has not been used to secure any activity or transaction, and that the void was transmitted using reasonable care. If these conditions are not met, the STB remains in effect.

In paragraph (b), CBP proposes the procedures for terminating a bond. In paragraph (b)(1), termination by principal, CBP proposes to require that all termination requests from a principal on the bond be transmitted to the Revenue Division by email. Termination would be effective on the date requested, so long as that date is at least

15 calendar days after the date the request is transmitted by email to CBP. If no termination date is requested, or if the request is not received 15 calendar days ahead of the requested date, then the termination would be effective on the fifteenth calendar day after the termination request is transmitted by email to CBP.

In paragraph (b)(2), termination by surety, CBP proposes amendments to the paragraph detailing termination of a bond by the surety. The proposed amendments would require a surety wishing to terminate a bond to notify both CBP and the principal of the termination. The surety would be required to provide notice of termination to the principal at the same time the notice of termination is transmitted to CBP. The notice of termination could be transmitted by a surety to CBP via EDI or by email to the Revenue Division. The surety would be required to specify the date the termination is to be effective, and that effective date must be at least 15 calendar days after the date the notice of termination is transmitted to CBP, unless the surety can establish, to the satisfaction of the Director of the Revenue Division, good cause for earlier termination of the bond.

4. Proposed Amendments to Subpart D

CBP is proposing to amend the provisions in subpart D to part 113, which provides specific provisions regarding principals and sureties. In § 113.30, CBP proposes to replace references to the paper bond process with references to electronic bond transmission. CBP proposes to clarify § 113.31(a), which prohibits a party from acting as both principal and surety on a bond, by utilizing the term "principal," as defined in proposed § 113.1, in place of the words "same person, partnership, or corporation" and by expressly stating that the principal may not act as surety on its own bond, except where the bond is secured by cash in lieu of surety pursuant to § 113.40. CBP further proposes to amend § 113.31(b), by expanding the provision to cover bonds, bond riders, and bond amount adjustments, and by removing existing paragraph (b)(2), which permits a person to act as both surety and attorney in fact for the principal. As discussed below, CBP proposes to remove § 113.35, which permits individuals to act as sureties, and, as a result, paragraph (b)(2) would not be needed.

In § 113.32, which outlines requirements for partnerships acting as principals, CBP proposes to amend paragraph (a) to replace requirements

for execution of partnership bonds with requirements for transmission of partnership bonds. Under the proposed regulations, CBP would no longer collect names or require signatures. Instead, CBP proposes to require that partnership bonds be transmitted using the partnership's CBP identification number, consistent with proposed § 113.21.

CBP is proposing to revise the requirements in § 113.33 applicable to corporate principals. In § 113.33(a), CBP proposes to replace the requirement that the name of a corporation executing a paper bond as principal be placed on the bond with a new requirement that the CBP identification number of the principal be transmitted to CBP as part of the bond transmission, consistent with proposed § 113.21. CBP proposes to remove existing paragraphs (b)–(d), which list requirements for the execution of a paper bond. Existing paragraph (e), with requirements for subsidiaries named as co-principals, would become the new paragraph (b). This paragraph currently states that the requirements of § 113.33 are applicable to each corporate subsidiary joined as a principal on the bond. CBP proposes to amend this paragraph to state, instead, that the requirements of part 113, in their entirety, are applicable to all principals on a bond. CBP further proposes to remove a reference to signing the paper bond, and to add a new sentence stating that, pursuant to § 113.12, the principal's use of a bond to secure an activity or transaction constitutes re-affirmation by the principal that it intends to be bound by the terms and conditions of the identified bond.

In § 113.34, CBP is proposing to remove the existing provision regarding co-principals, and to add a new provision in its place regarding bonds with multiple principals or with authorized users. Replacing the word "co-principals" is intended to make it clear that all principals on a bond are equal. CBP proposes to add a new paragraph (a), stating that all principals are jointly and severally liable for the transactions of any principal on the bond, and of any authorized user of the bond. Principals cannot be added to or removed from the bond by rider; a principal may only be added to or removed from a bond by terminating the existing bond and transmitting a new bond. CBP proposes to add a new paragraph (b) stating that authorized users may be added to or deleted from a bond by rider, pursuant to § 113.23, and that authorized users are not liable for the transactions of other principals or authorized users on the bond.

CBP proposes to remove § 113.35 and § 113.36, which list requirements for individuals acting as sureties on a bond, and one member of a partnership acting as individual surety for another partner, respectively. CBP proposes to eliminate individual sureties for customs bonds, as they impose an administrative burden on the agency in ascertaining the financial responsibility of the individual, and the acceptance of a bond secured by an individual surety presents a risk to the revenue. Eliminating these two provisions, which both allow individual sureties, would limit sureties securing customs bonds to those corporate sureties listed in Treasury Circular 570 and identified to CBP pursuant to § 113.37. Alternatively, principals may elect to secure their transactions and activities with cash in lieu of surety, pursuant to § 113.40.

CBP proposes to rename § 113.37 from “Corporate sureties” to “Surety requirements,” because the elimination of individual sureties means that all sureties are corporate sureties. In § 113.37(a), CBP proposes to make minor edits in keeping with the change from “corporate sureties” to “surety requirements,” such as replacing references to “corporation” with “surety,” where appropriate. CBP proposes to replace the paper-based requirements for providing a surety’s name on the bond in § 113.37(b), with new electronic requirements. These requirements include the surety’s acquisition of a three-digit surety code from the Revenue Division, and the transmission of that surety code with each bond issued by that surety, as detailed in § 113.21. In addition, each surety will be required to establish and maintain an ACE Portal account.⁸

In § 113.37(c), CBP proposes to remove the paper requirements for identification of the agent or attorney acting for the surety on a bond, as proposed § 113.21(a)(2)(ii) now details the electronic requirement. Instead, § 113.37(c) has been revised to include all requirements with respect to power of attorney and identification of surety agents, including those requirements currently found in existing §§ 113.37(d), (f) and (g). Under proposed § 113.37(c), a power of attorney must be transmitted to CBP using the ACE Portal, replacing the requirement in existing § 113.37(g), that a power of attorney be transmitted on CBP Form 5297 by email, fax, or mail. The contents of that power of attorney include: (1) the surety’s three-

digit code; (2) the name and physical address of the agent; (3) the nine-digit alphanumeric identification number assigned to the agent by the surety (currently required by § 113.37(d)); and (4) the dollar amount of the surety agent’s authority to obligate the surety on each bond. The power of attorney remains in effect until revoked by the surety in the ACE Portal. Such revocations have immediate effect. Permissible changes to the power of attorney are limited to changes to the name or address of the grantee. Any other change requires the surety to revoke the existing power of attorney in the ACE Portal and replace it with a new power of attorney.

As noted above, the surety-agent identification provision in existing § 113.37(d) has been moved to § 113.37(c) in the proposed regulations. CBP proposes to eliminate § 113.37(e), as it pertains to signatures and seals that will no longer be required in the electronic environment. CBP proposes to make existing § 113.37(f), which covers requirements for bonds with two or more sureties, the new § 113.37(d). CBP has amended the provision to clarify the requirements applicable to coinsurance and the requirements applicable to reinsurance agreements. With respect to coinsurance, CBP is proposing amendments in § 113.37(d)(1), replacing references to the paper process with references to the electronic process, including the transmission of each surety’s limit of liability for the bond pursuant to §§ 113.11 and 113.12. CBP further proposes to remove requirements for the signature of an “Authorized CBP Officer” and all seals, as these requirements are not consistent with the new electronic bond process.

With respect to reinsurance agreements, consistent with § 223.11 of title 31, Bureau of the Fiscal Service Regulations (31 CFR 223.11), CBP has added a new paragraph § 113.37(d)(2) with requirements for transmission to CBP. Pursuant to these requirements, each surety must limit its liability to a definite specified amount, in terms, transmitted with the bond pursuant to 19 CFR 113.11. In addition, reinsurance agreements must be executed consistent with 31 CFR 223.11 and transmitted to CBP pursuant to 19 CFR 113.11.

In § 113.38, CBP has revised the existing provision addressing delinquent sureties. The proposed revisions expand the scope of the provision by adding new consequences for a surety’s nonperformance or default, including a new type of interest charge for sureties who do not timely comply with their bond obligations,

whether acting as principal or surety. CBP is expanding these consequences in response to the unwillingness of some principals and sureties to comply with their bond obligations in a timely manner and the administrative burden this has created for CBP. *See, e.g., United States v. American Home Assurance Co.*, 100 F. Supp. 3d 1364 (Ct. Int’l Trade 2015), *aff’d*, 857 F.3d 1329 (Fed. Cir. 2017). CBP’s intent is to create a more robust spectrum of legal consequences so that each defaulting party can be better addressed with one or more appropriate consequences enforced by CBP. As a result, CBP proposes to rename the provision as “Consequences of surety nonperformance or default.”

CBP proposes to redesignate existing paragraph (a) as paragraph (b), adding a new paragraph (a). CBP further proposes to combine existing paragraphs (b) and (c) to create a new paragraph (c). In proposed § 113.38(a), which corresponds to a new bond condition for all bonds proposed in § 113.61(a)(5), CBP proposes to assess interest on certain unpaid amounts due to CBP under a bond, excluding penalties secured by a bond. This new form of interest will not be assessed on other debts owed to CBP under a bond when the principal or surety timely pays the full debt amount (*i.e.*, within the applicable period set forth in 19 CFR 24.3(e)). The interest provided for under § 113.38(a) will begin to accrue from the date the debt is due. Interest will be charged until the full balance is paid. The interest rates and procedures are determined according to 19 CFR 24.3a(c). For instance, in the case of any late payment, the payment received will first be applied to the delinquency interest charged under § 113.38(a), and then to payment of the unpaid balance due under the bond.

The goal of this new form of contractually-based delinquency interest is to ensure that the United States receives the full amount of the contractually-based debts on the date that they are due, or on the date that notice thereof has been given, whichever is later. For that reason, liability for this contractually-based interest will not be limited by the bond amount, and payment thereof will not be charged to the bond, consistent with the decisions of federal courts and commonly-accepted principles of general suretyship law. *See, e.g., United States v. U.S. Fid. & Guar. Co.*, 236 U.S. 512, 530–31 (1915) (parties are liable for interest accruing beyond the limit of their bonds “for such an amount as accrued from their own default in unjustly withholding payment after

⁸ Instructions on how companies may apply for an ACE Secure Data Portal account can be found at: <https://www.cbp.gov/trade/automated/getting-started/portal-applying>.

being notified of the default”) (citations omitted); *Ins. Co. of N. America v. United States*, 951 F.2d 1244, 1246 (Fed. Cir. 1991) (“[I]f a surety delays payment beyond proper notification of liability, interest accrues on the debt. This interest may cause the surety’s obligation to exceed the penal sum of the bond.”) (citing Arthur Adelbert Stearns, *The Law of Suretyship* 283–84 (James L. Elder ed., 5th ed. 1973); 1 George W. Brandt, *The Law of Suretyship and Guaranty* 271–72 (1905)).

This new contractually-based delinquency interest will complement the other forms of interest CBP already assesses or collects. CBP currently assesses or collects interest on a variety of statutory-based or regulatory-based debts, such as when duties, taxes, and fees are due after liquidation of an entry. See 19 U.S.C. 1505; 19 CFR 24.3a(b). CBP also collects a special additional six percent interest when CBP must pursue collection of a bond debt through litigation. See 19 U.S.C. 580; Interest Charges on Certain Delinquent Accounts, 51 FR 34954, 34956 (Oct. 1, 1986) (“If Customs must sue the debtor under a bond, it is entitled to recover the principal amount of the debt, plus interest assessed for the late payment, plus an additional amount of 6 percent assessed under 19 U.S.C. 580.”). However, CBP has generally only collected regular compensatory interest on a bond debt when it has sought an award of such interest under equitable or common law theories in the federal courts. The proposed contractually-based delinquency interest will take the place of this equitable or common law interest, and make it available to CBP in the ordinary course of administratively collecting bond debts and without the need to resort to litigation.

CBP proposes to expand the existing provisions in proposed § 113.38(b) and (c). In conjunction with the proposed regulations, CBP is centralizing determinations regarding nonperformance and default in the Revenue Division. Therefore, port and Center directors believing that a bond obligation has been breached and that limits on one or more of the bonding parties are appropriate will refer the matter to the Revenue Division for adjudication pursuant to new (b) or (c).

The proposed § 113.38(b) covers the effects of surety nonperformance or default as principal on a bond. Under the proposed regulation, a surety failing to perform its obligations or defaulting as a principal on a bond will not be accepted as a surety on any other bond.

In proposed § 113.38(c), CBP proposes a new procedure to impose limitations

on a surety that has defaulted or failed to perform its obligations as a surety on a bond. Such limitations may include:

- *Required email transmission*: requiring the surety to transmit all bonds via email (barred from EDI transmission);
- *Dollar amount limitations*: limiting the surety’s ability to underwrite bonds above a certain dollar amount or limiting the aggregate amount of the surety’s active bonds at any one time;
- *Time limitations*: limiting the surety’s ability to underwrite bonds on a daily, weekly, monthly, or some other periodic basis;
- *Volume limitations*: limiting the total number of active bonds a surety may underwrite at any one time;
- *Bond type limitations*: restricting the surety’s ability to transmit continuous bonds, and permitting only the transmission of STBs, or requiring the transmission of a continuous bond;
- *Transaction or activity limitations*: limiting the activity codes for which a surety may underwrite a bond;
- *Geographic limitations*: limiting a surety to underwriting bonds for activities or transactions in specific locations or ports of entry;
- *Commodity limitations*: limiting a surety to underwriting bonds for activities or transactions involving specific merchandise or commodities (e.g., bonds for steel products only);
- *Temporary suspension of a surety*: CBP will accept no new bonds from this surety for a defined period of time;
- *Permanent termination of a surety*: CBP will no longer accept new or renewed bonds from this surety.

Before imposing any of these limitations, CBP will provide notice to the surety. That notice will explain the basis for the limitations, provide a description of the proposed limitations, and identify the date the limitations will take effect, which will be at least 30 calendar days from the date of the notice. The surety will have 30 calendar days to respond to the notice. If the surety fails to respond, the limitations will be imposed on the date indicated in the notice.

If the surety does respond, CBP will have 30 calendar days to review and make a final decision regarding the proposed limitations. In any instance where the proposed limitation is a temporary suspension or permanent termination of the surety’s ability to act as a surety on bonds required by CBP, the final decision will be made by the Commissioner of CBP or the Commissioner’s delegate. CBP may impose the limitations as proposed, impose lesser limitations, or withdraw the proposed limitations at this stage. A

“less restrictive limitation” is a reduction in the noticed limitation itself. For example, where the notice proposed a dollar amount limitation of \$1 million in bonds per day, the reviewing official could impose a lesser limitation of \$10 million in bonds per day. CBP will provide notice of the final decision to the surety, and any limitations imposed will take effect no earlier than five business days from the date of the notice of final decision. Notice of the final decision will also be provided to the public, by publication in the *Customs Bulletin*.

CBP is proposing clarifying amendments to § 113.39, which covers the procedures to remove a surety from Treasury Department Circular 570.⁹ These amendments include adding the Center directors to the list of people who may identify a surety that has failed to pay a valid demand, updating “Revenue Division personnel” or “officer” to specify the Director, Revenue Division, and updating the name of the office receiving the report showing the unsatisfactory performance by the surety of the bond obligation(s) and determining whether further action against the surety is warranted to specify the “Executive Director, Financial Operations, Office of Finance.” This change from the Executive Director of Regulations and Rulings to the Executive Director of Financial Operations ensures that the office within CBP with the greatest oversight of sureties is providing the recommendation to the Department of the Treasury. CBP proposes to insert the word “relevant” in paragraph (a)(3), (4), and (5) to more accurately reflect administrative practice and the scope of the information required in 113.39(a). The practice of including only the relevant notices, demands, correspondence, and facts sent to the surety increases efficiency and avoids undue administrative burdens and an unnecessarily voluminous administrative record. Additionally, these proposed amendments provide greater transparency about the intended scope of the evidence. CBP also proposes amendments to the text of paragraph (b) to be more consistent with the language of 31 CFR part 223.

In § 113.40, CBP is proposing amendments to the existing requirements for cash in lieu of surety on a bond. First, CBP proposes to

⁹ Treasury Department Circular 570 is a list of companies certified by the U.S. Treasury to underwrite and issue surety bonds for federal contracts. The list is published annually by the Bureau of the Fiscal Service. The latest list is available online at <https://www.fiscal.treasury.gov/surety-bonds/list-certified-companies.html>.

eliminate the acceptance of obligations of the United States in lieu of bond. This is intended to reflect current practice by the trade community, as CBP has not received a bond secured by an obligation of the United States in many years. Eliminating the option to provide such obligations as security reduces the burden on CBP to maintain a process for tracking and securing these obligations. Second, CBP is proposing edits to paragraph (a) to provide for transmission via email of the bond information, pursuant to § 113.11. CBP proposes to remove existing paragraph (b), as a consequence of eliminating the acceptance of obligations of the United States, and to redesignate existing paragraph (c) as the new paragraph (b), with minor amendments for clarity. CBP proposes to add a new paragraph (c), stating that CBP will release cash deposited in lieu of surety upon the expiration of all applicable statutes of limitations for claims made against the bond secured by cash in lieu of surety. This will result in a refund to the bond principal, subject to CBP's set off rights as provided in 19 CFR 24.72.

5. Proposed Amendments to Subpart F

CBP is proposing to amend § 113.51, by making the existing provision paragraph (a), adding the definition of cancellation of a bond to the new paragraph (a), and adding a new paragraph (b). Cancellation of a bond is the process by which CBP relinquishes the right to enforce the terms and conditions of a bond, either because the principal has satisfied the terms and conditions secured by the bond, or because the principal has satisfied alternative terms and conditions as agreed to by CBP. CBP also proposes to clarify that the authority of the Commissioner of CBP to cancel bonds does not include the authority to cancel an International Trade Commission (ITC) exclusion order bond or any charge that may have been made against such a bond to indemnify a complainant pursuant to section 337 of the Tariff Act of 1930 as provided in 19 CFR 113.74 and Appendix B to title 19.

New paragraph (b) will address cancellation of a bond for the deferral of duty on large yachts imported for sale at U.S. boat shows. When using paper bonds, under certain circumstances, CBP is required to return the bond to the importer, which entails CBP physically returning and handing back the paper bond, to indicate that CBP does not intend to enforce this bond. These paper-based procedures for the "return" of a bond are not consistent with electronic bond processing, therefore, CBP is proposing to cancel such bonds

to indicate that CBP does not intend to enforce the bond.¹⁰ The statutory authority governing this procedure is 19 U.S.C. 1484b, which provides explicitly for the cancellation of the bond when certain conditions are met. Additional regulations are found in 19 CFR 4.94a. Pursuant to these authorities, CBP proposes to state in § 113.51(b), that the large yacht bond will be cancelled upon: (1) completion of entry and deposit of duties, if the yacht is neither sold, nor exported within six months after importation; (2) completion of entry and deposit of duties following sale of the yacht; or (3) exportation of the yacht and provision of notice to CBP.

6. Proposed Amendments to Subpart G

CBP proposes to renumber the existing § 113.61 to be § 113.60, and to update that provision to reflect the electronic transmission of bonds to CBP. The proposed revisions state that the terms and conditions in an electronically transmitted bond are represented by the activity code selected for that bond. The terms and conditions for each bond in subpart G would be updated to identify the corresponding activity code for that bond.

CBP is proposing a new § 113.61, outlining terms and conditions that are applicable to all bonds. The first four of these are derived from language currently found on CBP Form 301. Generally, the principal and surety agree: (1) to bind themselves (jointly and severally) to the United States in the amount(s) set forth in the bond; (2) that any charge against the bond by any authorized user on the bond is as though it were made by the principal; (3) that they are bound to the same extent as if they executed a separate bond covering each set of conditions incorporated by reference to the CBP regulations into the bond; and (4) if the surety fails to appoint an agent under 31 U.S.C. 9306, the surety consents to service on the Clerk of the U.S. Court of International Trade or any United States District Court, in which suit is brought on the bond. In addition, CBP proposes to add a new condition in proposed § 113.61(a)(5), incorporating the proposed delinquency interest provision in § 113.38(a), and the principals' and sureties' agreement to pay such interest, into the bond itself. In proposed § 113.61(a)(6), CBP proposes to add a new condition specifically for term bonds that renew automatically, including continuous bonds that renew

automatically for a new one-year period beginning on the anniversary of the effective date of the bond and continue for each succeeding one-year period, unless terminated or cancelled sooner. For such bonds, the new condition would state that the principal and surety agree that the terms and conditions applicable to each new bond period would be those terms and conditions required by CBP on the renewal date at the start of the new bond period (*e.g.*, the anniversary of the effective date of the bond for continuous bonds). In other words, by allowing the bond to renew automatically, the principal and surety would agree that the bond's terms and conditions are updated to reflect the CBP regulations and/or CBP requirements at the start of each new bond period. Thus, any amendments to the CBP regulations affecting the terms and conditions of the bond would not be incorporated into the bond until the start of the next bond period, if the principal and surety allow the bond to renew automatically. CBP intends for this proposed new condition to minimize the need to render existing term bonds insufficient when CBP changes the bond regulations, which has, in the past, led to many bonds being terminated and replaced. CBP believes that proposed § 113.61(a)(6) would create more transparency and consistency for principals and sureties when they execute and administer bonds. CBP invites comments on this proposed new condition from principals, sureties, and other interested stakeholders.

CBP also proposes to add a provision at proposed § 113.61(b) stating that additional terms and conditions for each bond are identified by the activity code transmitted with the bond, with the selection of an activity code constituting the agreement of the principal and surety to be bound by the terms and conditions in the corresponding regulation. Finally, CBP proposes to clarify in a new § 113.61(c) that the terms and conditions required by CBP for a specific bond control if they conflict with provisions of proposed § 113.61(a). For example, the International Trade Commission (ITC) exclusion order bond required by CBP binds the principal and surety to the complainant in an ITC case instead of to the United States.

CBP proposes to update the terms and conditions for the bonds in subpart G, enumerated in §§ 113.62 through 113.75, to provide the corresponding activity code for each bond, and to identify consolidated bonds. Further, CBP proposes to update § 113.62 to

¹⁰ As discussed further below, CBP also proposes to move the terms and conditions for the large yacht bond from current Appendix C to part 113 to revised § 113.75.

clarify that an active continuous bond is obligated at the time entry is filed.

CBP also proposes to amend § 113.74, which, along with Appendix B to part 113, provides the bond conditions for the ITC exclusion order bond (Activity Code 12) to indemnify a complainant under Section 337, Tariff Act of 1930, as amended. CBP proposes to expand this provision to include the transmission and execution requirements for the ITC exclusion order bond. Because the ITC exclusion order bond cannot currently be transmitted through the eBond system, CBP proposes to retain the current requirements for transmission of the ITC exclusion order bond. Proposed paragraph (b) requires that a copy of the bond be transmitted to the Center or the port of entry, along with the entry, by the principal on the bond. Consistent with the proposed definition of “principal” in 19 CFR 113.1, the bond may be transmitted by the importer or the importer’s licensed customs broker. This bond may be transmitted via the Document Image System (DIS) (which permits upload through email or EDI) or via email to the port of entry or the Center, whereupon the port of entry or the Center will complete the upload process into DIS. Because the bond is not transmitted by the surety, the principal will still be responsible for transmitting a copy of the fully executed bond, including all required signatures, seals, and witnesses. These requirements are found in paragraphs (c) and (d) of proposed § 113.74.

In addition, CBP proposes to amend § 113.75, which provides for the bond for deferral of entry completion and duty deposit on large yachts imported for sale. CBP proposes to expand this provision to include the terms and conditions formerly enumerated in Appendix C; Appendix C will be removed and reserved. Similarly, CBP proposes to add a new § 113.76 to include the terms and conditions for the Airport Customs Security Area bond that are currently enumerated in Appendix A; Appendix A will be removed and reserved. Likewise, CBP proposes to add a new § 113.77 to include the terms and conditions for the Importer Security Filing Bond that are currently found in Appendix D; Appendix D will be removed and reserved. Although these three bonds are being moved from the Appendices to individual regulatory provisions, the terms and conditions for each bond remain the same.

B. Technical and Conforming Amendments to Title 19

As a consequence of the revisions to bond procedures in part 113, CBP is

proposing conforming changes throughout Title 19 of the CFR. CBP proposes to replace references to the filing of a paper Customs Bond form, CBP Form 301, with references to the new electronic bond process in proposed part 113. As a result of the centralization of bond processing and transmission of bond information to the Revenue Division, CBP proposes amendments to reflect that responsibility for setting bond amounts will no longer reside exclusively with port directors. Further, CBP proposes to change references to the port director’s bond authority to reference CBP’s bond authority more generally. In several provisions, CBP proposes to replace references to a “single entry” bond with a reference to the “single transaction” bond, as defined and used in the proposed changes to part 113. CBP is further proposing to amend various provisions in Title 19 to replace references to the withdrawal, discontinuance, or return of a bond, with reference to the cancellation of the bond, consistent with the procedures proposed in subpart F of part 113. These technical amendments are described below.

Lastly, CBP proposes nomenclature changes made necessary by the transfer of the legacy U.S. Customs Service of the Department of the Treasury to the Department of Homeland Security (DHS) and DHS’s subsequent renaming of the agency as U.S. Customs and Border Protection on March 31, 2007. See 72 FR 20131 (Apr. 23, 2007).

Part 4

In part 4, CBP proposes the following amendments:

- *§ 4.3 Vessels required to enter; place of entry.* In paragraph (b)(2), CBP proposes to replace the reference to the CBP Form 301 with a reference to the transmission requirements in part 113. CBP also proposes to change “single entry” bond to “single transaction” bond. Lastly, CBP proposes to change references to the port director’s authority to set the amount of the bond to “CBP” to reflect the centralization of these procedures.

- *§ 4.10 Request for overtime services.* CBP proposes to replace the reference to the CBP Form 301 with a reference to the transmission requirements in part 113, and to change “Customs” to “CBP” where appropriate.

- *§ 4.14 Equipment purchases for, and repairs to, American vessels.* In paragraph (c), CBP proposes to replace the reference to the CBP Form 301 with a reference to the transmission requirements in part 113, to change “single entry” bond to “single

transaction” bond, clarify that “number” refers to a “bond number,” and to replace references to paper filing requirements with references to the new electronic transmission procedures.

- *§ 4.30 Permits and special licenses for unloading and lading.* In paragraph (c) and paragraph (i)(2), CBP proposes to replace references to the CBP Form 301 with a reference to the transmission requirements in part 113, and to change “Customs” to “CBP” where appropriate.

- *§ 4.32 Vessels in distress; landing of cargo.* In paragraph (b), CBP proposes to replace the reference to the CBP Form 301 with a reference to the transmission requirements in part 113. CBP also proposes to change references to the port director’s authority to set the amount of the bond to “CBP” to reflect the centralization of these procedures.

- *§ 4.33 Diversion of cargo.* In paragraphs (c) introductory text, (c)(2), and (d), CBP proposes to change references to the port director’s authority to set the amount of the bond to “CBP” to reflect the centralization of these procedures, and to change “Customs” to “CBP” where appropriate. CBP also proposes changing “shall” to “must” and “will”, as appropriate, to incorporate plain language into the CBP regulations consistent with CBP’s policies.

- *§ 4.34 Prematurely discharged, overcarried, and undelivered cargo.* In paragraph (g), CBP proposes to replace the reference to the CBP Form 301 with a reference to the transmission requirements in part 113, and to change “Customs” to “CBP” where appropriate.

- *§ 4.75 Incomplete manifest; incomplete or missing Electronic Export Information (EEI); bond.* In paragraph (a), CBP proposes to replace the reference to the CBP Form 301 with a reference to the transmission requirements in part 113. CBP also proposes technical amendments to replace the word “his” with the word “master’s” to make clearer whose vessel is being referenced.

- *§ 4.85 Vessels with residue cargo for domestic ports.* In paragraph (a), CBP proposes to replace the reference to the CBP Form 301 with a reference to the transmission requirements in part 113, and to change “Customs” to “CBP” where appropriate. CBP also proposes a minor technical change to remove the reference to bond requirements at subsequent ports of entry to align with the new electronic process.

- *§ 4.88 Vessels with residue cargo for foreign ports.* In paragraph (a), CBP proposes to replace the reference to the CBP Form 301 with a reference to the transmission requirements in part 113.

• *§ 4.94a Large yachts imported for sale.* CBP proposes amendments to paragraphs (a)(1) through (4) and (b) through (d) to change “single entry” bond to “single transaction” bond; replace references to the bond conditions moved from Appendix C to § 113.75; replace references to the paper process with references to the electronic process in part 113; change “Customs” to “CBP” where appropriate; and to make both the Director, Revenue Division, and the Center director responsible for setting the bond amount. CBP also proposes to make a minor technical change to include the phrase “any applicable successor subheading” in paragraphs (c) and (d) following subheading 8903.91.00 and 8903.92.00 of the Harmonized Tariff Schedule of the United States to cover recent changes made to the Harmonized Tariff Schedule of the United States.¹¹

Part 10

• *§ 10.24 Documentation.* CBP proposes to amend paragraph (f) to replace references to the paper process with references to the electronic process in part 113.

• *§ 10.31 Entry; bond.* CBP proposes to revise paragraph (f) to replace references to the paper process with references to the electronic process in part 113, to remove the reference to modification of the paper bond, and to make changes consistent with the shared responsibility of the Director, Revenue Division, and the Center director for setting the bond amount. CBP also proposes to change “Customs” to “CBP” where appropriate.

• *§ 10.41a Lift vans, cargo vans, shipping tanks, skids, pallets, and similar instruments of international traffic; repair components.* CBP proposes amendments to paragraph (c), to replace references to the paper bond process with references to the electronic bond process in part 113, and to change “Customs” to “CBP” where appropriate.

• *§ 10.41b Clearance of serially numbered substantial holders or outer containers.* CBP proposes amendments to paragraphs (b)(3) and (i) to replace references to the paper process with references to the electronic process in part 113.

• *§ 10.49 Articles for exhibition; requirements on entry.* CBP proposes

amendments to paragraphs (a) and (c) to replace references to the paper process with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate.

• *§ 10.59 Exemption from customs duties and internal-revenue tax.* CBP proposes amendments to paragraph (e) to replace references to the paper process with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate. CBP also proposes to remove the numbers in paragraph (e) to clarify the paragraph structure.

• *§ 10.60 Forms of withdrawals; bond.* CBP proposes amendments to paragraphs (c) and (g), to replace references to the paper process with references to the electronic process in part 113.

• *§ 10.61 Withdrawal permit.* CBP proposes to replace references to the paper process with references to the electronic process in part 113.

• *§ 10.64 Crediting or cancellation of bonds.* CBP proposes amendments to paragraph (a) to replace references to the paper process with references to the electronic process in part 113.

• *§ 10.65 Cigars and cigarettes.* CBP proposes amendments to paragraph (c)(3) to replace references to the paper process with references to the electronic process in part 113.

• *§ 10.66 Articles exported for temporary exhibition and returned; horses exported for horse racing and returned; procedure on entry.* CBP proposes amendments to paragraph (b) to replace references to the paper process with references to the electronic process in part 113. CBP also proposes to change “Customs” to “CBP” where appropriate.

• *§ 10.67 Articles exported for scientific or educational purposes and returned; procedure on entry.* CBP proposes amendments to paragraph (b) to replace references to the paper process with references to the electronic process in part 113.

• *§ 10.71 Purebred animals; bond for production of evidence; deposit of estimated duties; stipulation.* CBP proposes amendments to paragraphs (a) and (e) to replace references to the paper process with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate. CBP also proposes to change the word “his” to the word “passenger’s” and the word “him” to the words “port director” to make clearer who the regulation refers to.

• *§ 10.80 Remission of duty; withdrawal; bond.* CBP proposes to replace references to the paper process with references to the electronic process

in part 113 and to change “Customs” to “CBP” where appropriate.

• *§ 10.81 Use in any port.* CBP proposes amendments to paragraph (b) to replace references to the paper process with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate.

• *§ 10.83 Bond; cancellation; extension.* CBP proposes amendments to paragraph (a) to replace references to the paper process with references to the electronic process in part 113, and to make changes consistent with the shared responsibility of the Director, Revenue Division, and the Center director regarding bonds.

• *§ 10.90 Master records and metal matrices.* CBP proposes amendments to paragraph (c) to replace references to the paper process with references to the electronic process in part 113.

Part 11

• *§ 11.12 Labeling of wool products to indicate fiber content.* CBP proposes amendments to paragraph (c) to replace references to the paper process with references to the electronic process in part 113, and to make changes consistent with the shared responsibility of the Director, Revenue Division, and the Center director in setting the bond amount.

• *§ 11.12a Labeling of fur products to indicate composition.* CBP proposes amendments to paragraph (c) to replace references to the paper process with references to the electronic process in part 113, and to make changes consistent with the shared responsibility of the Director, Revenue Division, and the Center director in setting the bond amount.

• *§ 11.12b Labeling textile fiber products.* CBP proposes amendments to paragraph (c) to replace references to the paper process with references to the electronic process in part 113, and to make changes consistent with the shared responsibility of the Director, Revenue Division, and the Center director in setting the bond amount.

Part 12

• *§ 12.3 Release under bond; liquidated damages.* CBP proposes amendments to paragraphs (a) and (b), to replace references to the paper process with references to the electronic process in part 113, and to change references to the port director’s authority to set the amount of the bond to “CBP” to reflect the centralization of these procedures.

• *§ 12.8 Inspection; bond; release.* CBP proposes amendments to paragraph (a) to replace references to the paper process with references to the electronic

¹¹ The Harmonized System (HS) is amended approximately every five years by the World Customs Organization, with the U.S. International Trade Commission responsible for aligning the HTSUS with the HS’s amendments. 19 U.S.C. 3005. On January 1, 2022, the latest amendments entered into force, adding and removing tariff headings to the HS, including removing subheadings 8903.91.00 and 8903.92.00.

process in part 113. Additionally, CBP proposes a minor technical correction to replace a reference to “customs” to “CBP”.

- **§ 12.12 Release under bond.** CBP proposes amendments to replace references to the paper process with references to the electronic process in part 113 and to change “Customs” to “CBP” where appropriate.

- **§ 12.16 Joint regulations of the Secretary of the Treasury and the Secretary of Agriculture.** CBP proposes amendments to paragraph (c) to replace references to the paper process with references to the electronic process in part 113.

- **§ 12.26 Importations of wild animals, fish, amphibians, reptiles, mollusks, and crustaceans; prohibited and endangered and threatened species; designated ports of entry; permits required.** CBP proposes amendments to paragraph (e) to replace references to the paper process with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate.

- **§ 12.39 Imported articles involving unfair methods of competition or practices.** CBP proposes amendments to paragraph (b)(2) to change “single entry” bond to “single transaction” bond, consistent with the terminology in part 113, and amendments to paragraph (b)(2)(i) to replace references to the paper process with references to the electronic process in part 113. CBP also proposes in paragraph (e) to replace the name “Office of International Trade” with “Office of Trade” to accurately reflect the name of the office.

- **§ 12.73 Importation of motor vehicles and motor vehicle engines.** CBP proposes amendments to paragraph (j) to replace references to the paper process with references to the electronic process in part 113, remove references to the consignee or surety to be consistent with part 113, and to change “single entry” bond to “single transaction” bond, consistent with the terminology used in part 113.

- **§ 12.74 Importation of nonroad and stationary engines, vehicles, and equipment.** CBP proposes amendments to paragraph (c)(1) to replace references to the paper process with references to the electronic process in part 113, and remove references to the consignee or surety to be consistent with part 113. CBP also proposes amendments to paragraph (c)(2) to change “single entry” bond to “single transaction” bond, consistent with the terminology used in part 113.

- **§ 12.80 Federal motor vehicle safety standards.** CBP proposes amendments to paragraph (e)(1) to

replace references to the paper process with references to the electronic process in part 113. CBP also proposes amendments to paragraph (e)(2) to change “single entry” bond to “single transaction” bond, consistent with the terminology used in part 113.

- **§ 12.85 Coast Guard boat and associated equipment safety standards.** CBP proposes amendments to paragraph (e)(1) to replace references to the paper process with references to the electronic process in part 113, and to change references to the port director’s authority to set the amount of the bond to “CBP” to reflect the centralization of these procedures. CBP also proposes amendments to paragraph (e)(3) to change “single entry” bond to “single transaction” bond, consistent with the terminology used in part 113.

- **§ 12.91 Electronic products offered for importation under the Act.** CBP proposes to amend paragraph (d) to change “single entry” bond to “single transaction” bond; replace references to the paper process with references to the electronic process in part 113; change “Customs” to “CBP” where appropriate; and change references to the port director’s authority to set the amount of the bond to “CBP” to reflect the centralization of these procedures. CBP also proposes changing the word “his” to “Secretary’s” to make clearer who the regulation refers to. CBP also proposes changing “shall” to “must” and “will”, as appropriate, to incorporate plain language into the CBP regulations consistent with CBP’s policies.

- **§ 12.104f Temporary disposition of materials and articles.** CBP proposes amendments to replace references to the paper process with references to the electronic process in part 113. CBP also proposes changing the word “he” to the words “the Secretary” to make clearer who the regulation refers to.

- **§ 12.115 Release under bond of shipment detained for examination.** CBP proposes amendments to replace references to the paper process with references to the electronic process in part 113.

- **§ 12.123 Procedure after detention.** CBP proposes amendments to paragraph (b) to replace references to the paper process with references to the electronic process in part 113.

Part 18

- **§ 18.1 In-bond application and entry; general rules.** CBP proposes amendments to paragraph (e) to replace references to the paper process with references to the electronic process in part 113.

- **§ 18.3 Transfers.** CBP proposes amendments to paragraph (d) to replace

references to the paper process with references to the electronic process in part 113.

- **§ 18.20 General rules.** CBP proposes amendments to paragraph (d) to replace references to the paper process with references to the electronic process in part 113. CBP also proposes changing the words “he or she” to the words “port director” to make clearer who the regulation refers to.

- **§ 18.25 Direct exportation.** CBP proposes amendments to paragraph (e) to replace references to the paper process with references to the electronic process in part 113, and to change “single entry” bond to “single transaction” bond, consistent with the terminology used in part 113.

Part 19

- **§ 19.2 Applications to bond.** CBP proposes amendments to paragraphs (c) and (e) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113. CBP also proposes to change “class” to “Class” in paragraph (c) to ensure internal consistency within the section, and to change “he” to “the proprietor” in paragraph (e) for increased clarity.

- **§ 19.13 Requirements for establishment of warehouse.** CBP proposes amendments to paragraph (c) to replace references to the paper process with references to the electronic process in part 113.

- **§ 19.14 Materials for use in manufacturing warehouse.** CBP proposes amendments to paragraphs (b) and (d) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 19.15 Withdrawal for exportation of articles manufactured in bond; waste or byproducts for consumption.** CBP proposes amendments to paragraph (g)(1) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 19.17 Application to establish warehouse; bond.** CBP proposes amendments to paragraph (e) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 19.40 Establishment, relocation or alteration of container stations.** CBP proposes amendments to paragraph (a) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change references to the port director’s authority to set the amount of the bond to “CBP” to reflect the centralization of these procedures.

Part 24

- **§ 24.11 Notice to importer or owner of increased or additional duties, taxes, fees and interest.** CBP proposes amendments to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 24.16 Overtime services; overtime compensation and premium pay for Customs Officers; rate of compensation.** CBP proposes to amend the section heading to replace “Customs” with “CBP,” and to amend paragraph (c)(1) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113; to change references to the port director’s authority to set the amount of the cash deposit to “CBP” to reflect the centralization of these procedures; to change “Customs” to “CBP” where appropriate; and to change references to the port director’s authority to set the amount of the bond to “CBP” to reflect the centralization of these procedures. CBP also proposes to amend paragraphs (c)(2) and (3) to replace “Customs Form” with “CBP Form.”

Part 54

- **§ 54.6 Proof of intent; bond; proof of use; liquidation.** CBP proposes amendments to paragraph (b) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate.

Part 112

- **§ 112.11 Carriers which may be authorized.** CBP proposes amendments to paragraph (a)(4)(ii) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 112.12 Application for authorization.** CBP proposes amendments to paragraph (a) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change references to the port director’s authority to set the amount of the bond to “CBP” to reflect the centralization of these procedures. CBP also proposes amendments to paragraph (b)(3) to align with the electronic process in part 113.

- **§ 112.14 Discontinuance of carrier bonds.** CBP proposes to replace the word “Discontinuance” in the section header with “Termination,” in keeping with the terminology used throughout title 19, and to add cross-references to the termination and cancellation provisions in part 113 (§§ 113.27 and 113.51, respectively).

- **§ 112.22 Application for license.** CBP proposes amendments to paragraph (a) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate. CBP proposes to add the bond requirement found in paragraph (a)(1) to the introductory text, to remove paragraph (a)(1), and to redesignate paragraphs (a)(2) and (a)(3) as (a)(1) and (a)(2), respectively. Additionally, CBP proposes to change “he” to “the applicant” for increased clarity.

- **§ 112.25 Bonded carriers.** CBP proposes amendments to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 112.49 Temporary identification cards.** CBP proposes amendments to paragraph (d) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change references to the port director’s authority to set the amount of the bond to “CBP” to reflect the centralization of these procedures. CBP also proposes changing the word “his” to the word “an” employee to make clearer who the regulation refers to.

Part 118

- **§ 118.11 Contents of application.** CBP proposes amendments to paragraph (e) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to include a reference to the conditions for a custodial bond found in § 113.63. Because the electronic bond process does not call for an application to be submitted to CBP, CBP proposes to eliminate the second sentence in paragraph (e) that provides the option of submitting a bond application to CBP that is included with the application to operate a Centralized Examination Station.

Part 122

- **§ 122.38 Permit and special license to unlade and lade.** CBP proposes amendments to paragraphs (d), (e), and (f) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate.

- **§ 122.74 Incomplete (pro forma) manifest.** CBP proposes amendments to paragraphs (a)(1)–(2) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 122.81 Application.** CBP proposes amendments to paragraph (b)

to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 122.82 Bond requirements.** CBP proposes amendments to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change references to the port director’s authority to set the amount of the bond to “CBP” to reflect the centralization of these procedures.

- **§ 122.117 Requirements for transit air cargo transport.** CBP proposes amendments to paragraphs (a)(1)(ii), (a)(2), and (c)(4)(ii) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 122.182 Security provisions.** CBP proposes amendments to the introductory text to paragraph (c)(1) to replace references to the bond conditions moved from Appendix A to § 113.76, and to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

Part 123

- **§ 123.8 Permit or special license to unlade or lade a vessel or vehicle.** CBP proposes amendments to paragraph (c) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

Part 125

- **§ 125.42 Cancellation of liability.** CBP proposes amendments to remove references to the paper process and the CBP Form 301.

Part 127

- **§ 127.37 Insufficient proceeds.** CBP proposes amendments to paragraph (a) to remove references to the paper process and the CBP Form 301.

Part 128

- **§ 128.22 Bonds.** CBP proposes amendments to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate.

Part 132

- **§ 132.14 Special permits for immediate delivery; entry of merchandise before presenting entry summary for consumption; permits of delivery.** CBP proposes amendments to paragraphs (a)(4)(i)(C) and (a)(4)(ii)(B) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113,

and to change “Customs” to “CBP” where appropriate.

Part 133

- **§ 133.21 Articles suspected of bearing counterfeit marks.** CBP proposes amendments to paragraphs (b)(5), (c)(2), and (f) to replace references to the paper process with references to the electronic process in part 113.

- **§ 133.25 Procedure on detention of articles subject to restriction.** CBP proposes amendments to paragraph (c) to replace references to the paper process with references to the electronic process in part 113.

- **§ 133.26 Demand for redelivery of released merchandise.** CBP proposes amendments to remove a reference to the CBP Form 301.

- **§ 133.42 Infringing copies or phonorecords.** CBP proposes amendments to paragraphs (b)(5), (c)(2), and (f) to replace references to the paper process with references to the electronic process in part 113.

- **§ 133.46 Demand for redelivery of released articles.** CBP proposes amendments to remove a reference to the CBP Form 301, and to change “Customs” to “CBP” where appropriate.

- **§ 113.47 Articles suspected of violating the Digital Millennium Copyright Act.** CBP proposes amendments to paragraphs (b)(5), (c)(2) and (f) to replace references to the paper process with references to the electronic process in part 113.

- **§ 113.48 Demand for redelivery of released articles.** CBP proposes amendments to remove a reference to the CBP Form 301.

Part 134

- **§ 134.53 Examination packages.** CBP proposes amendments to paragraph (a)(2), to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, to change references to the Center director’s authority to accept a bond to “CBP” to reflect the centralization of these procedures, and to change “Customs” to “CBP” throughout § 134.53 where appropriate.

Part 141

- **§ 141.4 Entry required.** CBP proposes amendments to paragraph (d) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 141.15 Bond for production of bill of lading or air waybill.** CBP proposes amendments to paragraph (a) to change references to the port director’s authority to accept a bond to “CBP” to reflect the centralization of

bond procedures, and to change “Customs” to “CBP” where appropriate. CBP also proposes to change the word “he” to the words “port director” to make clearer who the regulation refers to. CBP also proposes amendments to paragraph (b) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 141.18 Entry by nonresident corporation.** CBP proposes amendments to paragraph (b) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 141.19 Declaration of entry.** CBP proposes amendments to paragraph (b)(2)(ii), to remove references to the paper process and the CBP Form 301.

- **§ 141.20 Actual owner’s declaration and superseding bond of actual owner.** CBP is proposing amendments to paragraphs (a)(1)–(2), (b), and (c) to change “Customs” to “CBP” where appropriate, to change “single entry” bond to “single transaction” bond, consistent with the terminology used in part 113, and to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113. CBP also proposes technical amendments to make clearer references to the noun. CBP is proposing further amendments in paragraphs (b) and (c) to clarify that the actual owner must be listed as the principal on the bond.

- **§ 141.41 Surety on Customs bonds.** CBP is proposing amendments replacing references to the paper process, and clarifying that this provision addresses power of attorney to act as an agent for a surety.

- **§ 141.61 Completion of entry and entry summary documentation.** CBP proposes amendments to paragraph (e)(2) to replace references to the paper process with references to the electronic process in part 113.

- **§ 141.66 Bond for missing documentation.** CBP proposes amendments to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 141.91 Entry without required invoice.** CBP proposes amendments to paragraph (d) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 141.92 Waiver of invoice requirements.** CBP proposes amendments to paragraph (c) to remove references to the CBP Form 301.

- **§ 141.112 Liens for freight, charges, or contribution in general average.** CBP proposes amendments to

paragraph (g) to replace references to CBP Form 301 with references to the electronic process in part 113, and to make clearer references to the noun. CBP also proposes to change “Customs” to “CBP” in paragraphs (b), (c), (e)(1) and (h) where appropriate.

Part 142

- **§ 142.4 Bond requirements.** CBP proposes amendments to paragraphs (a), (b), and (c)(1) to change “Customs” to “CBP” where appropriate, to change “single entry” bond to “single transaction” bond, consistent with the terminology used in part 113, and to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 142.19 Release of merchandise under the entry summary.** CBP proposes amendments to the introductory text and paragraphs (a) and (b) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- **§ 142.21 Merchandise eligible for special permit for immediate delivery.** CBP proposes amendments to paragraphs (a), (b)(2), (e)(1), (f)(2) and (i) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate.

Part 144

- **§ 144.2 Liability of importers and sureties.** CBP proposes amendments to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate. CBP also proposes technical amendments to make clearer references to the noun.

- **§ 144.13 Bond requirements.** CBP proposes amendments to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to replace references to the Center Director with CBP, as the entity responsible for setting the bond amount.

- **§ 144.14 Removal to warehouse.** CBP proposes amendments to the introductory text to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate.

- **§ 144.21 Conditions for transfer.** CBP proposes amendments to the introductory text to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate.

- *§ 144.23 Endorsement in blank.* CBP proposes amendments to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate. CBP also proposes technical amendments to make clearer references to the noun.

- *§ 144.24 Transferee’s bond.* CBP proposes amendments to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- *§ 144.25 Deposit of forms.* CBP proposes amendments to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate.

- *§ 144.41 Entry for rewarehouse.* CBP proposes amendments to paragraph (d) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate.

Part 146

- *§ 146.6 Procedure for activation.* CBP proposes amendments to paragraphs (d) and (e) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate. CBP also proposes changing the word “his” to the words “the port director’s” to make clearer who the regulation refers to.

- *§ 146.7 Zone changes.* CBP proposes amendments to paragraphs (d) and (f) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- *§ 146.67 Transfer of merchandise for exportation.* CBP proposes amendments to paragraph (b) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

- *§ 146.69 Supplies, equipment, and repair material for vessels or aircraft.* CBP proposes amendments to paragraph (a) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change “Customs” to “CBP” where appropriate.

Part 147

- *§ 147.3 Bond required.* CBP proposes amendments to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to also make it possible for the Director,

Revenue Division, and the Center director to be responsible for setting the bond amount.

Part 148

- *§ 148.52 Exemption for household effects used abroad.* CBP proposes amendments to paragraph (c) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

Part 149

- *§ 149.5 Eligibility to file an Importer Security Filing, authorized agents.* CBP proposes amendments to paragraph (b) to replace references to the bond conditions moved from Appendix D in part 113 to § 113.77, and to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

Part 151

- *§ 151.7 Examination elsewhere than at place of arrival or public stores.* CBP proposes amendments to paragraph (d) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, and to change “Customs” to “CBP” in paragraphs (a)-(c) where appropriate.

- *§ 151.12 Accreditation of commercial laboratories.* CBP proposes amendments to paragraphs (f)(1)(vii) and (g)(2)(vi) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, to change “Customs” to “CBP” where appropriate, and to make the Director, Revenue Division, the port director, and the Executive Director, Laboratories & Scientific Services responsible for setting the bond amount.

- *§ 151.13 Approval of commercial gaugers.* CBP proposes amendments to paragraphs (d)(1)(vii) and (e)(2)(vi) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113, to change “Customs” to “CBP” where appropriate, and to make the Director, Revenue Division, the port director, and the Executive Director, Laboratories & Scientific Services responsible for setting the bond amount.

Part 162

- *§ 162.47 Claim for property subject to summary forfeiture.* CBP proposes amendments to paragraph (b) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113. CBP also proposes to modernize the language of this

provision by replacing the words “penal sum” with the word “amount.”

Part 190

- *§ 190.92 Accelerated payment.* CBP proposes amendments to paragraphs (d) and (e)(3) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

Part 191

- *§ 191.92 Accelerated payment.* CBP proposes amendments to paragraphs (d) and (e)(3) to replace references to the paper process and the CBP Form 301 with references to the electronic process in part 113.

IV. Statutory and Regulatory Requirements

A. Executive Orders 12866, 13563 and 14192

Executive Orders 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 both costs and benefits, of reducing costs, of harmonizing rules, and of 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 new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.” CBP estimates that during the period of analysis 2015–2029, this proposed rule would result in annualized net cost savings ranging from \$3.53 million (discounted 2024 U.S. dollars) using a three percent discount rate to \$3.48 million (discounted 2024 U.S. dollars) using a seven percent discount rate. For the purposes of Executive Order 14192 accounting, CBP estimates that the perpetual time horizon present value of cost savings from this proposed rule would be \$54.8 million, and the annualized value of cost savings would be \$3.84 million using a seven percent discount.

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, if finalized, is

expected to be an Executive Order 14192 deregulatory action. The following is the economic analysis for this proposed rule.

Purpose of the Rule

This proposed rule requires sureties issuing customs bonds to use an electronic data interchange (EDI) to submit the bonds to CBP, except in certain prescribed instances where email is acceptable.¹² Generally, sureties would use eBond, an electronic system for filing customs bonds.¹³ This proposed rule requires that all bonds, riders, terminations, and changes to power of attorney be transmitted electronically to CBP by the surety or the surety's authorized filer.¹⁴ CBP has also established a central repository for all bonds within the Office of Finance's Revenue Division, helping to eliminate errors in bond execution and reduce legal risks. Implementing eBond reduces paper processing, expedites cargo release, enhances the traceability of bonds for audit purposes, and allows for bonds to be filed outside of business hours. Overall, eBond increases

efficiency in the bonding process for CBP, sureties, and importers.

Background

To import goods for commercial purposes, an importer may be required to procure a customs bond securing importation and entry (an "import bond"), which ensures compliance with various laws, and protects the revenue.¹⁵ The process of importing and entering goods takes time and has several steps from the initial entry filing to liquidation. To facilitate trade, CBP allows importers to secure their transactions with an import bond so that goods may be released before duties, taxes, and fees are fully assessed and paid. In Fiscal Year (FY) 2023, CBP processed 36.7 million entries and collected almost \$92.3 billion in duties.¹⁶ Duties collected in FY 2023 were at a 17.5 percent decrease from FY 2022, and were paid on \$3.33 trillion worth of imported goods.

A customs bond is a financial guarantee between a principal and a surety company.¹⁷ The surety issues the bond with CBP as the direct beneficiary. For an import bond, the importer is the

principal. If CBP is unable to collect monies owed from the principal, the surety is liable for the amount of the bond and the surety may then use any legal means to seek reimbursement from the principal/importer.

There are two basic types of customs bonds: single transaction bonds (STBs) and continuous bonds. STBs cover a single transaction or activity while continuous bonds apply to all transactions or activities of the same type, by a single principal, in a one-year time period. The minimum amount for a customs bond of any type is \$100, except when law or regulation expressly allows a smaller amount. Generally, the principal may use either a single transaction or continuous bond to secure its customs activity or transaction. The type of transaction or activity to be secured is identified by an "activity code." Each activity code has a different minimum amount for continuous bonds. See Table 1 for the number of bonds and total amount of bond coverage by activity code for the one-year period ending in January 2025. Table 1 indicates that the majority of customs bonds are importer bonds.

TABLE 1—BONDS OUTSTANDING SUMMARY FOR FEBRUARY 1, 2024, THROUGH JANUARY 31, 2025¹⁸

Activity code	Activity code name	Single transaction bonds		Continuous bonds	
		Count	Total amount	Count	Total amount
1	Importer/Broker	386,535	\$8,212,145,904	254,103	\$27,315,420,000
1A	Drawback	7,934	1,374,977,252	1,431	5,881,731,600
1A1	Combo 1 & 1A	0	0	2	210,000
2	Custodian of Bonded Merchandise	N/A	N/A	7,018	615,965,000
3	International Carrier	324	59,339,063	8,379	1,211,290,000
3A	Instruments of International Traffic	N/A	N/A	965	34,247,000
3A3	Combo 3 & 3A	0	0	30	16,540,000
4	Foreign Trade Zone (FTZ)	N/A	N/A	1,369	588,040,000
5	Public Gauger	0	0	37	1,720,000
6	Wool & Fur Products Labeling Acts Importation ..	0	0	N/A	N/A
7	Bill of Lading	0	0	N/A	N/A
8	Detention of Copyrighted Material	0	0	N/A	N/A
9	Neutrality	0	0	N/A	N/A
10	Court Cost for Condemned Goods	252	122,136	0	0
11	Airport Security Bond	N/A	N/A	1,700	84,563,000
12	International Trade Commission (ITC)	0	0	0	0
14 *	In-Bond Export Consolidation (IBEC)	N/A	N/A	0	0
15	Intellectual Property Rights (IPR)	0	0	35	505,500

¹² Exemptions allowing for or requiring the use of bonds sent via email are listed in proposed 19 CFR 113.11(c). Transmission by the surety is required unless otherwise permitted by CBP. These exceptions account for approximately 0.01 percent of all bonds active as of January 2024. Source: CBP's Automated Commercial Environment (ACE) database.

¹³ In 2015, CBP designated the Automated Commercial Environment (ACE) as the CBP-authorized EDI system for processing commercial trade data. 80 FR 61278 (October 13, 2015). The eBond system is a part of ACE. For simplicity, throughout this analysis, eBond refers to the CBP-authorized EDI.

¹⁴ Except where the bond is secured by cash in lieu of surety, pursuant to 19 CFR 113.40, and for bonds to indemnify a complainant under Section

337 of the Tariff Act of 1930, as provided for in 19 CFR 113.74.

¹⁵ Generally, a bond securing the importation transaction is required for formal entry of goods valued over \$2,500. Other bonds, such as a bond required for informal entry of goods, can have a lower monetary threshold but are much less common. Additionally, importers may elect to use cash in lieu of a surety. While a bond secured by cash in lieu of surety serves to secure the transaction in the same way as a bond secured by a surety, the importer paying a cash deposit does not use a surety. Cash-in-lieu is very rare, accounting for only 0.002 percent of import bonds. Data provided by CBP Revenue Division on February 26, 2025.

¹⁶ Customs and Border Protection, "FY 2023 CBP Trade Fact Sheet" June 2024 (most recent available

publication). https://www.cbp.gov/sites/default/files/2024-06/cbp_fy_2023_trade_fact_sheet_06.2024.pdf. Accessed March 27, 2024.

¹⁷ The proposed regulations define a surety as a company listed in Treasury Circular 570 as an acceptable surety on Federal bonds or as an acceptable reinsurance company for such bonds, and the officers, employees, and/or agents (including surety agents) of such company. See proposed 19 CFR 113.1.

¹⁸ Bond totals reflect all bonds on file in CBP systems during the period from February 2024 to January 2025, including continuous bonds created in other years. Data provided by CBP's Revenue Division subject matter expert on February 26, 2025.

TABLE 1—BONDS OUTSTANDING SUMMARY FOR FEBRUARY 1, 2024, THROUGH JANUARY 31, 2025¹⁸—Continued

Activity code	Activity code name	Single transaction bonds		Continuous bonds	
		Count	Total amount	Count	Total amount
16	Importer Security Filing (ISF)	90,944	909,440,000	87	3,930,000
17	Marine Terminal Operator	N/A	N/A	39	4,500,000
19	User Fee Facility	0	0	1	4,100,000
20	Vehicle Export Consolidator	0	0	0	0
	Total	485,989	10,556,024,355	275,196	35,762,762,100

N/A = Activity Code does not apply.

* Source: ACE Reports.

Generally, single transaction import bond amounts are calculated as the value of the merchandise, plus estimated taxes, duties, and fees. Generally, continuous import bond amounts are calculated based on the amount of taxes, duties, and fees paid by the particular importer (and any authorized users on the bond) during the prior 12 months.¹⁹ If the importer did not make payments in the prior 12 months, the importer must provide to CBP a statement of the duties and taxes it estimates would accrue during the next 12 month period.²⁰

CBP began a National Customs Automation Program (NCAP) test for eBond in 2015, allowing participating sureties to file customs bonds electronically.²¹ CBP also published a final rule in the **Federal Register**, which centralized the filing of continuous bonds at the Revenue Division, and allowed both STBs and continuous bonds to be filed by email or facsimile to the Revenue Division, in addition to paper bond filing.²² The final rule retained the ability for STBs to be filed on paper at the port.

In the years before the 2015 eBond test, and for those not participating in eBond after 2015, a paper import bond was required to be filed by the importer or a licensed customs broker using CBP Form 301 with either the port director of the requisite port or the Director of the Revenue Division of CBP.²³ Before

the eBond test or for those not participating, the customs broker or importer filing an import bond could reach out to a surety each time a bond was needed at entry. However, the processing times involved meant that, in practice, sureties would give the broker executed bonds with the importer information and amount left blank. When a bond was needed for entry, the broker added the amount and importer information and filed the bond with CBP, leaving the surety without the chance to decline to issue the bond. The practice of filing by brokers and importers left sureties without enough information to adequately assess their risk position and without an opportunity to decline to issue the bond. Although this method was not the one envisioned in the CBP bond regulations, it was generally adopted for efficiency and competitiveness in a fast-moving and geographically spread-out trade environment.

For import STBs, the bond application requires the value and nature of the merchandise. In practice, STBs were often filed at the port of entry where port personnel review and process the form manually. Before the introduction of ACE and eBond, and depending on operational priorities, the forms were sometimes processed with the entry at cargo release or after entry summary, such that cargo was released without CBP receiving an STB. Records were created and stored at the ports, so sureties rarely had consistent information and sometimes had limited involvement in reviewing the STBs, making risk management particularly difficult.²⁴ CBP had no centralized office responsible for overseeing, storing, or administering STBs, while continuous bonds were centralized to the Revenue Division in 2015. The majority of import STBs are now filed in ACE via eBond, pursuant to the

eBond NCAP test, though some bonds are still filed and stored at the ports. This proposed rule centralizes the filing of STBs with the Revenue Division. The use of eBond and resulting centralization of STB processing and storage would mitigate some of the risks for sureties and afford better protection of the revenue for CBP.

The information submitted in the paper bond application for continuous import bonds includes the general nature of the merchandise, as well as an estimate of the total amount of customs duties and taxes due to CBP for all merchandise imported by the principal(s) and authorized user(s) in the previous 12 months. The estimate is then used to calculate the bond amount. In the event that the principal(s) and authorized user(s) did not import any merchandise in the previous 12 months, a statement of the estimated duties and taxes for the next 12-month period is required. Processing for continuous bonds differs from STBs and is centralized. Continuous bonds were entered manually into the Automated Commercial System (ACS), the precursor to ACE, and are now entered into ACE itself, when not filed via eBond, by personnel in the Revenue Division.

eBond is an automated system providing for the transmission of electronic bond contracts, in lieu of paper bonds.²⁵ The eBond system allows only sureties or their authorized agent, rather than other parties to the transaction, to submit both STBs and continuous bonds electronically and without the use of a paper CBP Form 301. The electronic nature of eBond and the fact that it is usable outside of business hours eliminates many processing delays. As of 2024, as part of the eBond NCAP test, 99% of bonds are filed via eBond (see Table 2).²⁶ For those importers or sureties not yet using the eBond system, paper continuous

¹⁹ CBP notes that when estimating the bond amount the importer should also include forecasted amounts to cover up to 12 months into the future to avoid getting insufficiency notices and encountering bond stacking liability.

²⁰ CBP notes that if no imports were made during the preceding year, the bond amount is set based on the duties, taxes, and fees which the principal, co-principal, or user estimates will accrue on imports during the next 12-month period. In no event can the bond amount be less than \$50,000.

²¹ 79 FR 70881 (November 28, 2014).

²² 80 FR 70154, 70155 (November 13, 2015).

²³ CBP has also been accepting CBP Form 301s via email since approximately 2004. Although the bonds are sent by email, for the purposes of being entered into ACE, they are treated the same way as paper forms. As of 2024, the majority of bonds not submitted via eBond are submitted via email.

²⁴ Industrial Economics, Inc. Report for CBP, "Customs Bonds; eBond Baseline Analysis," dated August 9, 2019. The document is available in the docket.

²⁵ 79 FR 70881 (November 28, 2014).

²⁶ Bond information provided by CBP's Revenue Division subject matter expert on March 5, 2020.

bonds can still be submitted via mail or email to the Revenue Division, pursuant to the regulations, though as of January 1, 2015, 99% of all continuous bonds

not submitted with eBond were submitted via email.²⁷ Bond information from the paper application which has been sent by mail or email is

then input into the eBond system as part of processing.

TABLE 2—BONDS FILED ANNUALLY FROM 2015–2024

Year	Number of bonds transmitted via eBond	Number of bonds input by CBP	Total bonds filed
2015	185,805	5,594	191,399
2016	432,453	2,657	435,110
2017	586,511	1,283	587,794
2018	555,006	93	555,099
2019	570,139	110	570,249
2020	537,781	99	537,880
2021	589,775	57	589,832
2022	604,916	117	605,033
2023	599,305	37	599,342
2024	571,982	39	572,021
Total	5,233,673	10,086	5,243,759

* Source: ACE.

The eBond system allows sureties to electronically transmit bond information into ACE. By doing so, the bond can be linked to the transaction or activity it secures. The eBond system allows bonds to be submitted at any time, including outside of CBP's business hours. So long as all required data elements are submitted, an eBond can be used immediately, eliminating delays due to mailing, correction of errors or omitted data elements, and data entry.

Costs of the Rule

Pre-Regulatory Costs

CBP built the eBond system in preparation for the eBond test in 2015. In addition, the processing of continuous bonds was centralized to the Revenue Division in 2015, so CBP is already prepared to implement eBond. Because eBond is a part of ACE, the costs to develop the system are not tracked separately, but CBP estimates these pre-regulatory and pre-test costs to have been approximately \$3,600,000, based on the estimated labor costs attributed to this development.²⁸ Because this information was provided in 2020 dollars, CBP adjusted the estimate for inflation and estimates that the cost to develop and implement eBond in ACE was approximately \$4,257,058 in 2024 U.S. dollars.²⁹ The eBond system was developed and paid for in preparation for the 2015 eBond

test. As they are related to this rule, CBP reports these in the total costs in this analysis, for transparency purposes. However, CBP considers these are sunk costs that cannot be avoided by forgoing the rule.

Set-Up Costs

To use eBond, a surety must obtain a filer code from CBP, which is separate from the surety code all sureties must already have. There is no fee for a filer code, but it may take a week or so for CBP to provide due to internal coordination among CBP offices. Once the surety has a code, it may file bonds via eBond, the CBP-approved EDI. Sureties must have an ACE account/profile before securing their filer code. However, sureties generally already have ACE accounts for other activities and would not need to establish a new account to use eBond.

Ongoing System Maintenance Costs

The eBond system is a part of core ACE development, and as a result, its maintenance costs are not tracked separately.³⁰ ACE development and maintenance are ongoing and would take place regardless of whether or not eBond were implemented. As a result, CBP does not consider eBond maintenance a significant additional cost to CBP.

Costs to Sureties

As stated above, to use eBond a surety must have a filer code and an ACE account. The vast majority of sureties already have an ACE account and using eBond does not require any additional programming or software. They may obtain a filer code, which is separate from the surety code provided by the Revenue Division, by applying to CBP. It may take up to a week for CBP to provide the filer code due to coordination requirements between offices. Once the surety has its filer code, using eBond is the same as filling in a CBP Form 301, but electronic. Instead of typing information into the form and sending it by email to the Revenue Division, the surety would fill in the electronic fields and submit the information into ACE, where the system validates and stores the data submitted, and the information can be retrieved for review by CBP. Whereas with a form sent by email, Revenue Division employees would process the form and manually input the information into ACE, eBond allows bond information to be automatically added to ACE. So long as the eBond system does not detect any errors, such as missing information or an incorrectly entered filer code, the bond is usable immediately. Because sureties generally have an ACE account already and because eBond does not require additional information relative to the CBP Form 301, CBP does not

²⁷ A small number of STBs continued to be submitted on paper at the ports.

²⁸ This estimate is based on the original estimate obtained for system development costs to CBP and was reported in undiscounted, 2020 dollars. Source: Email correspondence with CBP's Office of Trade

Transformation on June 19, 2020, based on ACE development budget information.

²⁹ CBP used the GDP implicit price deflator change from 2020 Q1 to 2024 Q1 which was approximately 18.25%. CBP multiplied this percent change by the 2020 cost estimate to reflect the cost estimate in 2024 U.S. dollars. CBP referenced the

GDP implicit price deflator from the Federal Reserve Bank of St. Louis Economic Research Data located publicly here: <https://fred.stlouisfed.org/series/GDPDEF>.

³⁰ Information provided by CBP's Office of Trade Transformation subject matter expert on June 15, 2020.

believe sureties would face additional costs to submit bond information.

Delinquency Interest

The proposed rule institutes delinquency interest to be paid by the surety in the event that the surety fails to pay any amount due to CBP under the surety's bond, excluding liquidated damages and penalties assessed against the bond principal, within 30 days of the date CBP notifies the surety of the amount due.³¹ Interest would accrue by 30-day periods. Although some sureties and importers would likely face increased costs due to this additional interest, CBP typically only includes costs of remaining in compliance with regulations in the analysis, not the costs that result from failing to comply with established regulations. Improving enforcement with existing regulations is a benefit of the rule, not a cost.

Cost Savings of the Rule

Automation of Bond Processing in ACE

Paper bonds are filled out and sent in or filed by sureties and must be manually entered into the eBond system by CBP personnel.³² Upon receipt, CBP reviews the paper bonds checking for errors, and if there are no errors, CBP transcribes each individual form into the eBond system. CBP estimates that typically reviewing a bond requires CBP personnel about five minutes and transcribing the paper bond into eBond takes about another five minutes.³³ Although it only takes around ten minutes for CBP to review and transcribe each individual form into the eBond system, the volume of forms received each day leads to delays in the processing of paper bonds. For instance, in the scenario that a paper bond is submitted, and no errors are identified during CBP review, it can take up to five

days from when the surety submits the paper bond to when CBP actually transcribes the paper bond into the eBond system. Additionally, if errors are identified on the paper bond during CBP review, the filer must correct them, and CBP must re-process the form, which further delays the processing of the paper bond into the eBond system. Transcribing a paper bond is inherently vulnerable to errors and processing delays. Bonds are only reviewed and transcribed during business hours, and manual entry by CBP personnel can lead to transcription errors.

Processing for continuous bonds was centralized at the Revenue Division in 2015, though the regulations still require bonds outside the eBond test to be sent using paper, email, or facsimile, and the information in those transmissions must be transcribed into the eBond system. For STBs, bonds can be filed at the port or with the Revenue Division. If the bond is filed at the port, manual processing may take more time due to operational priorities there. Delays may also occur in finding and retrieving documents for sufficiency review and other activities after bonds are in use. Industry participants noted that problems with processing lags and transcription errors were prevalent when using paper or forms sent via email.³⁴ Since the beginning of the eBond test in 2015, the vast majority of bonds have been filed via eBond, which has alleviated many of these concerns (see Table 2 above for the number of bonds filed via eBond vs. paper during the test period).

When a surety submits a bond through eBond, the system immediately rejects the bond if it encounters certain errors or missing information. The surety can make corrections and re-submit the bond as soon as it would

like. This functionality significantly reduces processing times. When paper bonds had to be submitted, returned, and re-submitted, processing could take up to 15 days, most of which is wait time rather than active processing time. With eBond, for both the voluntary test period and regulatory period, these simple corrections can be made immediately. This also reduces the burden for CBP, as employees would no longer need to review bonds for completeness and correctness before processing, or work with sureties to fill in all necessary information, a process which can take up to 15 days. Additionally, CBP personnel no longer need to transcribe bond information into ACE for bonds transmitted via eBond, saving about five minutes per bond submitted. During the voluntary test period from 2015–2024,³⁵ sureties filed 5,233,673 bonds via the eBond system (see Table 2 above). To estimate the time savings to CBP from automating the bond transcribing processing, CBP multiplied the number of bonds filed each year by the time savings per bond of five minutes (0.083 hours). In total, CBP expects that during the test period CBP experienced a total time savings of 436,139 hours or on average 43,614 hours annually. To estimate the cost savings, CBP multiplied the time savings each year by the average hourly loaded wage rate for a CBP trade and revenue employee (\$85.50).³⁶ CBP estimates that during the test period, CBP's total cost savings from no longer having to manually transcribe paper bonds or those sent by email into ACE was approximately \$37.3 million or on average \$3.7 million annually. Table 3 displays CBP's estimates for the time and cost savings from 2015–2024 from the eBond test.

TABLE 3—ESTIMATED TIME AND COST SAVINGS TO CBP DURING THE TEST PERIOD, 2015–2024

[Time in hours, cost savings in undiscounted 2024 U.S. dollars]

Year	Number of bonds transmitted via eBond	Time savings per bond	Total time savings	Wage rate	Total cost savings
2015	185,805	0.083	15,484	\$85.51	\$1,324,015
2016	432,453	0.083	36,038	85.51	3,081,588
2017	586,511	0.083	48,876	85.51	4,179,380
2018	555,006	0.083	46,251	85.51	3,954,880

³¹ Proposed 19 CFR 113.38.

³² As stated above, before eBond, importers often filled in STBs pre-signed by the surety, though sureties filled out continuous bonds.

³³ Paperwork Reduction Act Supporting Statement for CBP Form 301, accessed on March 27, 2025, publicly available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202009-1651-004. According to this supporting statement CBP assumes that CBP staff incur a ten-minute time burden to review and process CBP Form 301s. CBP

assumes that automating the bond transcribing process saves CBP staff half (five minutes of time savings) of the ten-minute time burden listed in the supporting statement because they no longer need to manually transcribe bonds into ACE, but staff still incur a time burden to conduct sufficiency reviews.

³⁴ Industrial Economics, Inc. Report for CBP, "Customs Bonds; eBond Baseline Analysis," dated August 9, 2019. The document is available in the docket.

³⁵ Note that the eBond voluntary test period will continue until the proposed rule goes into effect and is bounded by the year 2024 only for purposes of analysis.

³⁶ CBP bases this wage on the FY 2024 salary, benefits, premium pay, non-salary costs and awards of the national average of CBP Trade and Revenue positions, which is equal to a GS–11, Step 1. Source: Email correspondence with CBP's Office of Finance on July 17, 2024.

TABLE 3—ESTIMATED TIME AND COST SAVINGS TO CBP DURING THE TEST PERIOD, 2015–2024—Continued
[Time in hours, cost savings in undiscounted 2024 U.S. dollars]

Year	Number of bonds transmitted via eBond	Time savings per bond	Total time savings	Wage rate	Total cost savings
2019	570,139	0.083	47,512	85.51	4,062,715
2020	537,781	0.083	44,815	85.51	3,832,138
2021	589,775	0.083	49,148	85.51	4,202,638
2022	604,916	0.083	50,410	85.51	4,310,531
2023	599,305	0.083	49,942	85.51	4,270,548
2024	571,982	0.083	47,665	85.51	4,075,848
Total	5,233,673	.....	436,139	.....	37,294,282

* Totals may not sum due to rounding.

To determine the number of bonds that would be transmitted via eBond in future years, CBP used the growth in eBond transmissions during the test period. CBP used the number of eBond transmissions for the years 2019 through 2024 to estimate that, on average, the annual increase of bonds submitted through eBond was around 0.06 percent.³⁷ CBP used this average annual increase (0.06 percent) to estimate the number of bonds that would be filed through eBond in future years. Table 4 displays CBP's projections for the number of bonds that would be filed under the terms of the proposed rule for the five-year regulatory period of this analysis from 2025 to 2029. During the regulatory period CBP anticipates that approximately 2.87 million bonds would be transmitted via eBond or, on average, 573,091 annually.

TABLE 4—PROJECTED NUMBER OF BONDS FILED VIA EBOND 2025–2029

Year	Number of bonds
2025	572,351
2026	572,721
2027	573,091
2028	573,461
2029	573,831
Total	2,865,454

To estimate the time savings to CBP from eBond during the regulatory period, CBP multiplied the estimated number of bonds filed each year by the estimated time savings to CBP trade and revenue employees per bond submitted, five minutes (0.083 hours). In total, CBP expects that during the regulatory period CBP would experience a total time savings of 238,788 hours or, on average, 47,758 hours annually. To estimate the cost savings, CBP multiplied the time savings each year by the average hourly loaded wage rate for a CBP trade and revenue employee (\$85.51). CBP estimates that during the

regulatory period total cost savings to CBP employees from no longer having to manually transcribe bonds into ACE would be approximately \$20.4 million or on average \$4.1 million annually. Table 5 displays CBP's estimates for the number of bonds filed through eBond, and the transcription time and cost savings to CBP employees over the regulatory period of analysis. In the scenario that CBP identifies an error during review of a paper bond, the bond must be sent back to the surety to be corrected, resubmitted and then reviewed again by CBP. The additional time burdens associated in such a scenario would be eliminated for bonds submitted via eBond. However, CBP was unable to estimate the time savings from this type of scenario being eliminated because CBP does not track how often paper bonds must be corrected and resubmitted. CBP requests comments on how often paper bonds required corrections and needed to be resubmitted to CBP, and the associated time burdens with making these corrections.

TABLE 5—ESTIMATED CBP TIME AND COST SAVINGS DURING THE REGULATORY PERIOD, 2025–2029
[Time in hours, cost savings in undiscounted 2024 U.S. dollars]

Year	Number of bonds	Time savings per bond	Total time savings	Wage rate	Total cost savings
2025	572,351	0.083	47,696	\$85.51	\$4,078,480
2026	572,721	0.083	47,727	85.51	4,081,113
2027	573,091	0.083	47,758	85.51	4,083,749
2028	573,461	0.083	47,788	85.51	4,086,385
2029	573,831	0.083	47,819	85.51	4,089,024
Total	2,865,454	.....	238,788	.....	20,418,751

* Totals may not sum due to rounding.

³⁷ CBP used the number of bonds transmitted via eBond from 2019 through 2024 and calculated a

compounded annual growth rate of around 0.06 percent: $((571,982/570,139)^{(1/5)} - 1)$. CBP

anticipates that this growth rate will be relatively constant in future years.

Benefits of the Rule

Improved Tracking, Awareness and Reduced Processing Delays

In addition to the cost savings CBP anticipates, there are potential benefits to sureties as a result of this proposed rule. Although continuous bond processing was centralized at the Revenue Division in 2015, STBs could still be filed at the port. The use of eBond centralizes STB filing, allowing importers, sureties, and CBP to keep better track of the number and value of STBs in use.³⁸ With the proposed rule in place, STBs would no longer be filed on paper at the ports, but would be transmitted via eBond.³⁹ With greater centralization and better tracking, sureties are more aware of their liability exposure and can better manage their risk. CBP would also benefit from improved traceability of bonds and greater efficiency in retrieving and managing bond records.

The eBond system also significantly reduces or eliminates processing delays.

So long as the required data elements are all submitted through eBond and ACE accepts the bond, the bond is available to secure a transaction or activity, including outside of CBP business hours. Without eBond, processing can take up to 15 days if information is left off or if errors need to be corrected, and bonds can only be accepted during business hours when CBP personnel are available to process them. Although processing of bonds submitted on paper, by email, or by facsimile takes only about five minutes when there are no errors or data omissions, CBP personnel must work through all the bonds they receive, whereas eBond can process a bond in seconds, depending on system traffic. Eliminating this waiting period does not constitute a time savings and CBP is unable to monetize the benefit of avoiding it, but the immediate certainty that a bond has been accepted and processed is an important benefit for importers and sureties. As CBP is unable to monetize this benefit, CBP is

limited to quantifying it at a delay savings of 5–15 days.

Improved Enforcement Efforts

CBP also anticipates that this proposed rule would help CBP enforce existing regulations. Increased use of eBond would help improve enforcement efforts by allowing CBP to charge additional interest on late payments. CBP expects that charging this additional interest on late payments will incentivize sureties to provide the proper payment amounts on time, therefore improving compliance with existing regulations.

Unquantified Costs, Cost Savings and Benefits From Proposed Rule

This proposed rule makes a number of other changes to the bonding requirements that have both costs, cost savings and benefits to CBP and trade members, but which CBP is unable to estimate due to lack of data. See Table 6 for a summary of the qualitative costs and benefits of the rule.

TABLE 6—SUMMARY OF THE QUALITATIVE COSTS AND BENEFITS OF eBOND IMPLEMENTATION

Proposed regulation	Change	Cost	Cost savings/benefit
113.11(a)	All bonds, riders, terminations and changes to power of attorney must be transmitted electronically to CBP by the surety or the surety's authorized filer (elimination of Form 5297 for Power of Attorney).	Brokers accustomed to filing STBs must now go through the surety directly.	Better risk management and more likely payment of assessed duties; sureties prefer an electronic option to a paper bond.
113.15	All bond processing and retention centralized at CBP's Revenue Division, Office of Finance.	.....	Increased efficiency and improved administration by CBP; greater traceability of bonds
	Filing anytime .....	.....	Increased efficiency for sureties and principals.
113.13	More regular sufficiency reviews; more comprehensive criteria for reviews.	.....	Increased efficiency for CBP; greater protection of the revenue; more clarity for sureties.
113.12; 113.22 (removed); 113.25 (removed).	Witnesses, seals, and signatures are no longer required; use of electronic certification.	None	Increased efficiency and reduced costs for sureties.
113.24	Clarity on permissible riders	None (all permitted riders listed in the proposed regulations and elimination of existing requirements for execution of a rider).	Easier and more efficient; all information in one place.

Cost Savings of an Electronic Option

As stated above, the electronic nature of eBond allows sureties and CBP to avoid the back and forth of correcting errors and collecting omitted information. An electronic system for bond filing also has widespread support among sureties. Email became an option for bond submission in the early 2000s

and by 2015, 99 percent of non-eBond bonds were submitted via email. Although eBond would be mandatory for the majority of bonds, CBP expects that sureties would willingly adopt the changes as they are beneficial to them, and the majority already have by participating in the test. Sureties are generally supportive of eBond, and 10 surety agents participate in the eBond

test, representing 93 surety companies voluntarily participating in the eBond test.⁴⁰ These participating sureties and companies represent the majority of active sureties and surety companies. There are some sureties and surety companies not yet participating, but because most were not actively filing bonds in 2024, CBP cannot accurately

³⁸ The majority of STBs are already filed via eBond as part of the NCAP test, though data limitations at the ports prevent CBP from calculating the exact number of STBs filed at ports. The proposed regulations align the regulations with

practice and require the few STBs still filed at ports to move to eBond.

³⁹ Exemptions allowing for or requiring the use of bonds sent via email are listed in proposed 19 CFR 113.11(c). Bonds sent via email will also be

transmitted to and processed by the Revenue Division, not filed at any port.

⁴⁰ Information on surety agents and companies provided by CBP Revenue Division subject matter expert on February 26, 2025.

track their numbers or predict when they might need to use eBond.

Centralization of All Bond Processing and Retention

The centralization of both processing and retention of bonds to the Revenue Division would increase organization and traceability of bonds. This allows for better risk management by sureties and CBP, easier sufficiency reviews and audits, and better enforcement by CBP.

Filing Anytime

The implementation of eBond allows sureties to file bonds at any time, including outside of CBP business hours. Bonds are then active as soon as they are accepted by the system, generally within a few minutes or seconds. This time savings is one of the primary factors leading to surety support of the program.

Sufficiency Review

Sufficiency review refers to the process by which CBP reviews bonds to determine that the bonds are of sufficient value to adequately secure the transactions or activities they cover. In determining whether a bond is sufficient, CBP may consider the prior payment record of the principal and any authorized user, the prior record of the principal in responding to CBP demands, the value and nature of the merchandise, the degree of supervision required by CBP for the transaction or activity, and the principal's prior record in honoring bond obligations.⁴¹ The proposed rule provides increased clarity in the timing of the notification process surrounding sufficiency review of bonds. By further defining the timing and method of sufficiency review notifications, sureties would have a greater understanding of the process and benefit from better and clearer communication from CBP. CBP would also benefit from better oversight.

Witnesses, Signatures, and Seals

Principals and sureties would no longer be required to provide seals, signatures, or witnesses on bonds. Only the surety or the surety's agent may file bonds with eBond, and the filer is required to provide its filer code as proof of identity, eliminating the need for witnesses, signatures, and seals, and saving time and coordination for the surety.

Riders and Terminations

The ability to modify or terminate a bond depends on the role of each entity in the transaction or activity. The principal and the surety may agree to make certain changes at certain times in the life cycle of a bond. The surety may make these updates via the eBond system. Although the importer or its broker can view bond activity via their ACE account, they cannot make changes. Still, with eBond, changes and terminations can be made much more quickly, so that more goods are properly bonded at all times.

The Role of Brokers

As stated above, before eBond, the customs broker or importer filing an import bond could reach out to a surety each time a bond was needed at entry. However, the processing times involved meant that, in practice, sureties would instead give the broker executed bonds with the importer information and amount left blank. When a bond was needed for entry, the broker added the amount and importer information and filed the bond with CBP, often leaving the sureties without the chance to decline to issue a bond.⁴² As a result, sureties lacked a full understanding of their total liability. With eBond, only a surety can transmit a bond to CBP, giving the surety greater awareness of its liability levels without sacrificing speed or efficiency. The surety then provides the information from the already

executed bond for the broker or importer to use when filing entry. The eBond system is meant to assist sureties in managing their risk by centralizing STBs and requiring bonds to be submitted by sureties or their agents instead of by brokers or importers.

Technical Changes

The proposed rule also includes many technical changes and clarifications such as the addition of a secondary notify party for bonds, or clarification on notification requirements for bond termination. These updates would generally increase efficiency, provide clarity for sureties and importers, and modernize the regulations and are unlikely to increase the costs of the proposed regulation.

Net Impact

The eBond system was initially developed for the eBond test in 2015 and because those costs and time savings generated during the test period (2015–2024) have already been incurred, they are not included in the effects of the regulatory period in this proposed rule. CBP estimates that over the 5-year regulatory period, the implementation of the eBond system and the transition away from paper bonds would likely lead to an annualized net cost savings to CBP of \$4.083 million (discounted 2024 U.S. dollars) using three percent and seven percent discount rate. Table 7 displays CBP's estimates for the net present value and annualized cost savings from this proposed rule using a three percent and seven percent discount rate. Additionally, CBP notes that there are a number of other cost savings and benefits to sureties that CBP was unable to quantify or monetize and are discussed above.

TABLE 7—TOTAL DISCOUNTED NET COST SAVINGS IN REGULATORY PERIOD
[2024 U.S.dollars]

	3% Discount rate	7% Discount rate
Present Value Cost Savings	\$18,701,667	\$16,742,723
Annualized Cost Savings	4,083,594	4,083,394

Total Net Impact

To show the total effect of this proposed rule CBP provides estimates for the net cost savings during the entire

eBond program (2015–2029). CBP expects the total monetized effects of this proposed rule include the implementation costs of the eBond system in 2015 (\$4,257,058 in 2024 U.S.

dollars) and the estimated cost savings to CBP staff from 2015 to 2029. Table 8 displays CBP's estimates for total monetized costs and cost savings as a result of this proposed rule.

⁴¹ 19 CFR 113.13.

⁴² Industrial Economics, Inc. Report for CBP, "Customs Bonds; eBond Baseline Analysis," dated August 9, 2019. The document is available in the docket.

TABLE 8—TOTAL NET COST SAVINGS OF EBOND FROM 2015–2029
[2024 U.S. dollars]

Year	Costs	Cost savings	Net cost savings
2015	0	\$1,324,015	\$1,324,015
2016	0	3,081,588	3,081,588
2017	0	4,179,380	4,179,380
2018	0	3,954,880	3,954,880
2019	0	4,062,715	4,062,715
2020	0	3,832,138	3,832,138
2021	0	4,202,638	4,202,638
2022	0	4,310,531	4,310,531
2023	0	4,270,548	4,270,548
2024	* 4,257,058	4,075,848	– 181,209
2025	0	4,078,480	4,078,480
2026	0	4,081,113	4,081,113
2027	0	4,083,749	4,083,749
2028	0	4,086,385	4,086,385
2029	0	4,089,024	4,089,024
Total	4,257,058	57,713,033	53,455,975

* See footnote 43.

Using a three percent and seven percent discount rate, CBP estimates that from 2015–2029 the total discounted present value net costs savings from this proposed rule would range from \$42.1 million (discounted 2024 U.S. dollars) using a three percent

interest rate to \$31.7 million (discounted 2024 U.S. dollars) using a seven percent discount rate. CBP estimates that the annualized net cost savings from this proposed rule would range from \$3.53 million to \$3.48 million in discounted 2024 U.S. dollars,

using a three and seven percent discount rate respectively. Table 9 below displays CBP's estimates for the net present value and annualized cost savings from this proposed rule using a three percent and seven percent discount rate.

TABLE 9—TOTAL DISCOUNTED NET COST SAVINGS 2015–2029
[2024 U.S. dollars]

	3% Discount rate	7% Discount rate
Present Value Cost Savings	\$42,116,499	\$31,675,818
Annualized Cost Savings	3,527,955	3,477,835

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business concern per the Small Business Act); a small organization (defined as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field); or a small governmental jurisdiction (defined as a locality with fewer than 50,000 people).

The proposed rule results in annualized net cost savings of approximately \$4.1 million and no new

costs for the public. Therefore, CBP does not believe the proposed rule would result in a significant new cost burden for small businesses. Additionally, because sureties quickly adopted an email option when it was introduced in 2015 and have, for the most part, already adopted eBond, CBP expects that sureties would willingly adopt these changes. CBP certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number

assigned by OMB. The collections of information contained in these regulations are provided for by OMB control number 1651–0050 (Importation Bond Structure). CBP anticipates that this proposed rule would not change the time burden to respondents when submitting a CBP Form 301 Customs Bond; however, based on the estimates in the analysis for this proposed rule CBP is revising the total number of CBP Form 301 Customs Bond responses submitted by respondents every year. CBP expects that this proposed rule would result in the following change in the estimated time burdens to the public for the information collection number 1651–0050:

⁴³ CBP notes that although CBP incurred the implementation and development costs of the eBond system in 2015, the original cost estimates for that development was based in 2020 U.S.

dollars. Additionally, CBP adjusted those 2020 U.S. dollar values for the development costs to 2024 U.S. dollars in this analysis. Therefore, CBP displays the implementation and development costs as

occurring in 2024 in Table 8 for discounting purposes even though the costs were incurred in 2015.

Total Time Burden To Submit CBP Form 301 Customs Bond

Estimated number of respondents annually: 572,390.

Average responses per respondent: 1.

Total responses: 572,390.

Estimated time burden per respondent: 15 minutes (0.25 hours).

Total time burden: 143,098 hours.

CBP anticipates that based on the estimates from the analysis for this proposed rule the number of CBP Form 301 Customs Bond submissions would decrease by around 177,910 and this updated number of responses reflects a decline of 44,379 hours in total burden to the respondents for this information collection, down from 187,625 hours to 143,098 hours. CBP estimates that the cost to the public from this information collection would now be \$5,101,588.

CBP also expects that this proposed rule would result in a decrease in the time burden and the annual cost to the Federal Government for this information collection. Beyond the estimated reduction in total responses submitted by the public, this proposed rule would also decrease time burdens to the Federal Government by eliminating the need for CBP personnel to manually transcribe and process CBP Form 301 Customs Bond submissions that are transmitted electronically via eBond. CBP estimates that personnel would experience a 5-minute reduction in time burden from no longer having to transcribe and process approximately 572,351 eBond submissions every year.⁴⁴ These revisions resulted in a reduced time burden of around 77,738 hours and a cost reduction of around \$4,285,714 annually. The total estimated cost to the Federal Government from this collection is now estimated to be \$2,623,922.

D. Unfunded Mandates Reform Act of 1995

This rule will not 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 (adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

⁴⁴ CBP expects the majority of CBP Form 301 Customs Bond submissions to go through eBond, but a very small number of submissions would remain in paper form (this explains the difference between the total number of CBP Form 301 Customs Bond submissions of 572,390 and the number of eBond submissions of 572,351). These paper form submissions would still need to be transcribed and processed by CBP.

VI. Signing Authority

This rulemaking is being issued in accordance with 19 CFR 0.1(a)(1), pertaining to the authority of the Secretary of the Treasury (or that of the Secretary's delegate) to approve regulations concerning the customs revenue functions of CBP. In accordance with Treasury Order 100–20, the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority related to the customs revenue functions vested in the Secretary of the Treasury as set forth in 6 U.S.C. 212 and 215, subject to certain exceptions. This document is being issued in accordance with DHS Delegation 07010.3, Revision 03.2, which delegates to the Commissioner of CBP the authority to prescribe and approve regulations related to customs revenue functions.

Rodney S. Scott, the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign the document to the Director of the Regulations and Disclosure Law Division of CBP, for purposes of publication in the **Federal Register**.

List of Subjects

19 CFR Part 4

Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 10

Bonds, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 11

Labeling, Packaging and containers.

19 CFR Part 12

Cultural exchange programs, Exports, Foreign relations, Freight, Imports, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 18

Common carriers, Exports, Freight, Penalties, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 19

Exports, Freight, Reporting and recordkeeping requirements, Surety bonds, Warehouses, Wheat.

19 CFR Part 24

Accounting, Claims, Exports, Freight, Harbors, Reporting and recordkeeping requirements, Taxes.

19 CFR Part 54

Metals, Reporting and recordkeeping requirements.

19 CFR Part 112

Administrative practice and procedure, Canada, Common carriers, Freight, Harbors, Mexico, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 113

Common carriers, Exports, Freight, Laboratories, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 118

Administrative practice and procedure, Reporting and recordkeeping requirements.

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Alcohol and alcoholic beverages, Cigars and cigarettes, Cuba, Customs duties and inspection, Drug traffic control, Freight, Penalties, Reporting and recordkeeping requirements, Security measures.

19 CFR Part 123

Canada, Freight, International boundaries, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 125

Freight, Government contracts, Harbors, Reporting and recordkeeping requirements.

19 CFR Part 127

Exports, Freight.

19 CFR Part 128

Administrative practice and procedure, Freight, Reporting and recordkeeping requirements.

19 CFR Part 132

Imports, Postal Service.

19 CFR Part 133

Copyright, Reporting and recordkeeping requirements, Trade names, Trademarks.

19 CFR Part 134

Labeling, Packaging and containers.

19 CFR Part 141

Reporting and recordkeeping requirements.

19 CFR Part 142

Canada, Mexico, Reporting and recordkeeping requirements.

19 CFR Part 144

Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 146

Administrative practice and procedure, Exports, Foreign trade zones, Penalties, Petroleum, Reporting and recordkeeping requirements.

19 CFR Part 147

Fairs and expositions, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 148

Airmen, Foreign officials, Government contracts, International organizations, Reporting and recordkeeping requirements, Seamen, Taxes.

19 CFR Part 149

Foreign trade, Foreign trade zones, Freight, Imports, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 151

Cigars and cigarettes, Cotton, Fruit juices, Laboratories, Metals, Oil imports, Reporting and recordkeeping requirements, Sugar, Wool.

19 CFR Part 162

Administrative practice and procedure, Drug traffic control, Exports, Law enforcement, Marihuana, Penalties, Reporting and recordkeeping requirements, Search warrants, Seizures and forfeitures.

19 CFR Part 163

Administrative practice and procedure, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 190

Alcohol and alcoholic beverages, Claims, Cuba, Exports, Foreign trade zones, Guantanamo Bay Naval Station, Cuba, Packaging and containers, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 191

Alcohol and alcoholic beverages, Claims, Exports, Foreign trade zones, Guantanamo Bay Naval Station, Cuba, Packaging and containers, Reporting and recordkeeping requirements, Trade agreements.

VI. Proposed Amendments to the CBP Regulations

For the reasons stated above in the preamble, U.S. Customs and Border Protection proposes to amend 19 CFR parts 4, 10, 11, 12, 18, 19, 24, 54, 112, 113, 118, 122, 123, 125, 127, 128, 132, 133, 134, 141, 142, 144, 146, 147, 148, 149, 151, 162, 163, 190, and 191 as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general and specific authority citations for part 4 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1415, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

Section 4.3 also issued under 19 U.S.C. 288, 1441;

* * * * *

Section 4.10 also issued under 19 U.S.C. 1448, 1451;

* * * * *

Section 4.14 also issued under 19 U.S.C. 1466, 1498; 31 U.S.C. 9701.

* * * * *

Section 4.30 also issued under 19 U.S.C. 288, 1446, 1448, 1450–1454, 1490;

* * * * *

Section 4.32 also issued under 19 U.S.C. 1449;

* * * * *

Section 4.75 also issued under 46 U.S.C. 60105;

* * * * *

Section 4.85 also issued under 19 U.S.C. 1442, 1623;

* * * * *

Section 4.88 also issued under 19 U.S.C. 1442, 1622, 1623;

* * * * *

Section 4.94a also issued under 19 U.S.C. 1484b;

* * * * *

■ 2. In § 4.3, revise the sixth sentence in paragraph (b)(2) to read as follows:

§ 4.3 Vessels required to enter; place of entry.

* * * * *

(b) * * *

(2) * * * A master, owner, or agent of a vessel who desires that entry be made at an optional location will file with the appropriate port director an application on CBP Form 3171 and must have a single transaction or continuous bond, transmitted to CBP pursuant to part 113 of this chapter and containing the bond conditions set forth in § 113.64 of this chapter, in such amount as CBP deems appropriate but not less than \$1,000.

* * *

§ 4.10 [Amended]

■ 3. Amend § 4.10 by:

■ a. Removing the word “Customs” wherever it appears, and adding in its place the word “CBP”; and

■ b. Removing the phrase “on Customs Form 301” in the second-to-last sentence, and adding in its place the phrase “transmitted to CBP pursuant to part 113 of this chapter”.

■ 4. In § 4.14, revise paragraph (c) to read as follows:

§ 4.14 Equipment purchases for, and repairs to, American vessels.

* * * * *

(c) *Estimated duty deposit and bond requirements.* Generally, the person authorized to submit a vessel repair declaration and entry must either deposit or transmit estimated duties or produce evidence of a bond transmitted to CBP pursuant to part 113 of this chapter at the first United States port of arrival before the vessel will be permitted to depart from that port. A continuous or single transaction bond of sufficient value to cover all potential duty on the foreign repairs and purchases must be identified by surety, bond number and amount on the vessel repair declaration which is submitted at the port of first arrival. At the time the vessel repair entry is submitted by the vessel operator to the Vessel Repair Unit (VRU) as defined in paragraph (g) of this section, that same identifying information must be included on the entry form. Sufficiency of the amount of the bond is within the discretion of CBP at the arrival port with claims for reduction in duty liability necessarily being subject to full consideration of evidence by CBP. CBP officials at the port of arrival may consult the VRU as identified in paragraph (g) of this section or the staff of the Cargo Security, Carriers & Restricted Merchandise Branch, Office of Trade in CBP Headquarters in setting sufficient bond amounts. These duty, deposit, and bond requirements do not apply to vessels which are owned or chartered by the United States Government and are actually being operated by employees of an agency of the Government. If operated by a private party for a Federal agency under terms whereby that private party is liable under the contract for payment of the duty, there must be a deposit or a bond transmitted to CBP pursuant to part 113 of this chapter in an amount adequate to cover the estimated duty.

* * * * *

■ 5. In § 4.30, revise paragraphs (c) and (i)(2) to read as follows:

§ 4.30 Permits and special licenses for unloading and loading.

* * * * *

(c) The request for a permit or a special license shall not be approved (previously issued term permits or special licenses shall be revoked) unless the carrier complies with the provisions of paragraphs (l) and (m) of this section regarding terminal facilities and employee lists, and the required cash deposit or bond has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions

set forth in § 113.64 of this chapter relating to international carriers.⁶² When a carrier has a bond that has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.63 of this chapter relating to basic custodial bond conditions, no further bond shall be required solely by reason of the unloading or lading at night or on a Sunday or holiday of merchandise or baggage covered by bonded transportation entries. Separate bonds shall be required if overtime services are requested by different principals.

* * * * *

^[62] “Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle, or the person in charge of such vehicle, shall be required to deposit sufficient money to pay, or to have a bond in an amount to be fixed by the Secretary conditioned to pay, the compensation and expenses of the CBP officers and employees assigned to duty in connection with such unloading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the act of February 13, 1911, as amended (U.S.C. 1952 edition, title 19 sec. 267). In lieu of such deposit or bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may obtain a bond in an amount to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unloading of such vessels or vehicles for a period not to exceed one year. * * *” (Tariff Act of 1930, section 451, as amended, 19 U.S.C. 1451)

* * * * *

(i) * * *

(2) A bond transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers, or cash deposit shall have been given; or

* * * * *

■ 6. In § 4.32, revise paragraph (b) to read as follows:

§ 4.32 Vessels in distress; landing of cargo.

* * * * *

(b) A bond transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers, shall be given in an amount to be determined by CBP to insure the proper disposition of the cargo, whether such cargo be dutiable or free.

■ 7. In § 4.33:

■ a. Amend the introductory text of paragraph (c) and paragraph (c)(2) by removing the word “Customs” and adding in its place “CBP”; and

■ b. Revise paragraph (d).

The revision reads as follows:

§ 4.33 Diversion of cargo.

* * * * *

(d) *Retention of cargo on board for later return to the United States.* If, as the result of a strike or other emergency at a United States port for which inward foreign cargo is manifested, it is desired to retain the cargo on board the vessel for discharge at a foreign port but with the purpose of having the cargo returned to the United States, an application may be made by the master, owner, or agent of the vessel to amend the vessel’s Cargo Declaration, CBP Form 1302, under a procedure similar to that described in paragraph (c) of this section, except that a foreign port must be substituted for the domestic port of discharge. If the application is approved, it will be handled in the same manner as an application filed under paragraph (c) of this section. However, before approving the application, CBP may require such bond as deemed necessary to ensure that export control laws and regulations are not circumvented.

§ 4.34 [Amended]

■ 8. In § 4.34, amend paragraph (g) by:

■ a. Removing the word “Customs” in the second sentence, and adding in its place the text “CBP”; and

■ b. Removing the words “on Customs Form 301” in the third sentence, and adding in their place the words “that has been transmitted to CBP pursuant to part 113 of this chapter”.

■ 9. In § 4.75, revise paragraph (a) to read as follows:

§ 4.75 Incomplete manifest; incomplete or missing Electronic Export Information (EEI); bond.

(a) *Pro forma manifest.* Except as provided for in § 4.75(c), if a master desiring to clear the master’s vessel for a foreign port does not have available for filing with the CBP port director a complete Cargo Declaration Outward with Commercial Forms, CBP Form 1302A (see § 4.63), in accordance with 46 U.S.C. 60105, or all required EEI filing citations, exclusions, and/or exemption legends (see 15 CFR 30.47), the CBP port director may accept in lieu thereof an incomplete manifest (referred to as a pro forma manifest) on the Vessel Entrance or Clearance Statement, CBP Form 1300, if a bond has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers, executed by the vessel owner or other person as attorney in fact of the vessel owner. The “Incomplete Manifest for Export” box in item 17 of the Vessel

Entrance or Clearance Statement form must be checked.

* * * * *

■ 10. In § 4.85, revise paragraph (a) to read as follows:

§ 4.85 Vessels with residue cargo for domestic ports.

(a) Any foreign vessel or documented vessel with a registry endorsement, arriving from a foreign port with cargo or passengers manifested for ports in the United States other than the port of first arrival, may proceed with such cargo or passengers from port to port, provided a bond has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers, in a suitable amount.^[115] Before the vessel departs from the port of first arrival, the master shall obtain from the port director a certified copy of the complete inward foreign manifest (hereinafter referred to as the traveling manifest). The certified copy shall have a legend similar to the following endorsed on the Vessel Entrance or Clearance Statement, CBP Form 1300:

Port

Date

Certified to be a true copy of the original inward foreign manifest.

Signature and title

* * * * *

^[115] “* * * Any vessel arriving from a foreign port or place having on board merchandise shown by the manifest to be destined to a port or ports in the United States other than the port of entry at which such vessel first arrived and made entry may proceed with such merchandise from port to lading thereof.” (Tariff Act of 1930, sec. 442; 19 U.S.C. 1442)

* * * * *

■ 11. In § 4.88, revise paragraph (a) to read as follows:

§ 4.88 Vessels with residue cargo for foreign ports.

(a) Any foreign vessel or documented vessel with a registry endorsement which arrives at a port in the United States from a foreign port shall not be required to unlade any merchandise manifested for a foreign destination provided a bond has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers, in a suitable amount.^[119]

* * * * *

^[119] “Any vessel having on board merchandise shown by the manifest to be destined to a foreign port or place may, after

the report and entry of such vessel under the provisions of this Act, proceed to such foreign port of destination with the cargo so destined therefor, without unloading the same and without the payment of duty thereon.

* * * (Tariff Act of 1930, sec. 442; 19 U.S.C. 1442)

* * * * *

■ 12. Revise and republish § 4.94a to read as follows:

§ 4.94a Large yachts imported for sale.

(a) *General.* An otherwise dutiable vessel used primarily for recreation or pleasure and exceeding 79 feet in length that has been previously sold by a manufacturer or dealer to a retail consumer and that is imported with the intention to offer for sale at a boat show in the United States may qualify at the time of importation for a deferral of entry completion and deposit of duty. The following requirements and conditions will apply in connection with a deferral of entry completion and duty deposit under this section:

(1) The importer of record must certify to CBP in writing that the vessel is being imported pursuant to 19 U.S.C. 1484b for sale at a boat show in the United States;

(2) The certification referred to in paragraph (a)(1) of this section must be accompanied by the posting of a single transaction bond, transmitted to CBP pursuant to part 113 of this chapter, containing the terms and conditions set forth in § 113.75 of this chapter. The bond will have a duration of 6 months after the date of importation of the vessel, and no extensions of the bond period will be allowed;

(3) The filing of the certification and the transmission of the bond in accordance with this section will permit CBP to determine whether the vessel may be released;

(4) All subsequent transactions with CBP involving the vessel in question, including any transaction referred to in paragraphs (b) through (d) of this section, must be carried out in the same port of entry in which the certification was filed and the bond was posted under this section; and

(5) The vessel in question will not be eligible for issuance of a cruising license under § 4.94 and must comply with the laws respecting vessel entry and clearance when moving between ports of entry during the 6-month bond period prescribed under this section.

(b) *Exportation within 6-month period.* If a vessel for which entry completion and duty payment are deferred under paragraph (a) of this section is not sold but is exported within the 6-month bond period specified in paragraph (a)(2) of this

section, the importer of record must inform CBP in writing of that fact within 30 calendar days after the date of exportation. The bond transmitted to CBP, containing the terms and conditions set forth in § 113.75 of this chapter, will be cancelled and no entry completion and duty payment will be required. The exported vessel will be precluded from reentry under the terms of paragraph (a) of this section for a period of 3 months after the date of exportation.

(c) *Sale within 6-month period.* If the sale of a vessel for which entry completion and duty payment are deferred under paragraph (a) of this section is completed within the 6-month bond period specified in paragraph (a)(2) of this section, the importer of record within 15 calendar days after completion of the sale must complete the entry by filing an Entry Summary (CBP Form 7501, or its electronic equivalent) and must deposit the appropriate duty (calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States, or any applicable successor subheading, and based upon the value of the vessel at the time of importation). Upon entry completion and deposit of duty under this paragraph, the bond transmitted to CBP, containing the terms and conditions set forth in § 113.75 of this chapter, will be cancelled, and the Center director may require a new bond, containing the bond conditions set forth in § 113.62 of this chapter to be transmitted to CBP pursuant to part 113 of this chapter.

(d) *Expiration of bond period.* If the 6-month bond period specified in paragraph (a)(2) of this section expires without either the completed sale or the exportation of a vessel for which entry completion and duty payment are deferred under paragraph (a) of this section, the importer of record within 15 calendar days after expiration of that 6-month period must complete the entry by filing an Entry Summary (CBP Form 7501, or its electronic equivalent) and must deposit the appropriate duty (calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States, or any applicable successor subheading, and based upon the value of the vessel at the time of importation). Upon entry completion and deposit of duty under this paragraph, the bond transmitted to CBP, containing the terms and conditions set forth in § 113.75 of this chapter, will be cancelled, and the Center director may require a new bond, containing the bond

conditions set forth in § 113.62 of this chapter to be transmitted to CBP pursuant to part 113 of this chapter.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 13. The general and specific authority citations for part 10 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 4513.

* * * * *

Sections 10.41, 10.41a, 10.107 also issued under 19 U.S.C. 1322;

Section 10.41b also issued under 19 U.S.C. 1202 (Chapter 98, Subchapter III, U.S. Note 3, HTSUS);

* * * * *

Section 10.59 also issued under 19 U.S.C. 1309, 1371;

Sections 10.61, 10.62, 10.63, 10.64, 10.64a also issued under 19 U.S.C. 1309;

Sections 10.62a, 10.65 also issued under 19 U.S.C. 1309, 1317, 1555, 1556, 1557, 1646a;

* * * * *

Sections 10.70, 10.71, also issued under 19 U.S.C. 1486;

Sections 10.80, 10.81, 10.82, 10.83 also issued under 19 U.S.C. 1313(e) and (i);

* * * * *

■ 14. In § 10.24, revise paragraph (f) to read as follows:

§ 10.24 Documentation.

* * * * *

(f) *Unavailability of documents at time of entry.* If either or both of the documents specified in paragraph (a) of this section are not available at the time of entry, a bond containing the bond conditions set forth in § 113.62 of this chapter for the production of the document(s) may be transmitted to CBP pursuant to part 113 and § 141.66 of this chapter.

* * * * *

■ 15. In § 10.31:

■ a. Remove the word “Customs” in paragraphs (a) and (e) and add in its place “CBP” wherever it may appear; and

■ b. Revise paragraph (f).

The revision reads as follows:

§ 10.31 Entry; bond.

* * * * *

(f) With the exceptions stated herein, a bond must be transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to double the duties, including fees, which it is estimated would accrue (or such larger amount as CBP states in writing or by the electronic equivalent to the entrant is necessary to protect the

revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders entered under subheading 9813.00.20, HTSUS, motion-picture advertising films entered under subheading 9813.00.25, HTSUS, and professional equipment, tools of trade and repair components for such equipment or tools entered under subheading 9813.00.50, HTSUS, the bond required must be in an amount equal to 110 percent of the estimated duties, including fees, determined at the time of entry. If appropriate, a carnet, under the provisions of part 114 of this chapter, may be filed in lieu of a bond transmitted pursuant to part 113 of this chapter (containing the bond conditions set forth in § 113.62 of this chapter). Cash deposits in the amount of the bond may be accepted in lieu of sureties. When the articles are entered under subheading 9813.00.05, 9813.00.20, or 9813.00.50, HTSUS, without formal entry, as provided for in §§ 10.36 and 10.36a, or the amount of the bond for articles entered under any subheading of Chapter 98, Subchapter XIII, HTSUS, is less than \$25, the bond shall be without surety or cash deposit, and the bond must be modified to so indicate. In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada, Mexico, Singapore, Chile, Morocco, Australia, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, Bahrain, Oman, Peru, the Republic of Korea, Colombia, or Panama and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating, within the meaning of General Notes 12, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, HTSUS, in the country of which the importer is a resident.

* * * * *

■ 16. In § 10.41a, revise paragraph (c) to read as follows:

§ 10.41a Lift vans, cargo vans, shipping tanks, skids, pallets, and similar instruments of international traffic; repair components.

* * * * *

(c) The instruments of international traffic designated in paragraph (a) of this

section may be released in accordance with the provisions of that paragraph only when secured by a bond containing the bond conditions set forth in § 113.66 of this chapter and transmitted to CBP pursuant to part 113 of this chapter. The required application for release may be filed at the port of arrival or at a subsequent port to which an instrument shall have been transported in bond or to which a container shall have been moved under cover of a TIR carnet (see part 114 of this chapter) showing the characteristics and value of the container on the Goods Manifest of the carnet. If the container is listed on the Goods Manifest of the carnet, the application may be filed at the port of arrival or at the subsequent port. If the container is not listed on the Goods Manifest, the application shall be filed at the port of arrival. When the application is filed at a port other than the port at which the bond is on file, the following procedure applies:

(1) When the application is filed before the applicant has identified the bond covering release, the applicant must submit the CBP-issued bond number with the application.

(2) If the application is filed after the applicant has identified the bond covering release, the CBP-issued bond number need not be filed at the port of release. Upon determination by the appropriate CBP officer that the applicant's bond has been transmitted, and the bond has not been subsequently terminated, the instruments of international traffic will be released as provided for in paragraph (a) of this section.

(3) Upon the request of the applicant, the appropriate CBP officer at the port at which the instruments of international traffic are to be released will determine whether or not the applicant's bond has been transmitted.

* * * * *

■ 17. In § 10.41b, revise the first sentence of paragraph (b)(3) and the first sentence of paragraph (i) to read as follows:

§ 10.41b Clearance of serially numbered substantial holders or outer containers.

* * * * *

(b) * * *

(3) In addition to the application, a continuous bond containing the conditions set forth in § 113.66(c) of this chapter must be transmitted to CBP pursuant to part 113 of this chapter.

* * * * *

(i) A continuous bond containing the conditions set forth in § 113.66 of this chapter must be transmitted to CBP

pursuant to part 113 of this chapter.

* * *

■ 18. In § 10.49, revise paragraphs (a) and (c) to read as follows:

§ 10.49 Articles for exhibition; requirements on entry.

(a) A declaration, or its electronic equivalent, must be filed in connection with the entry of works of art and other articles claimed to be free of duty under Chapter 98, Subchapter XII, Harmonized Tariff Schedule of the United States (HTSUS), by a qualified officer of the institution in sufficient detail to demonstrate entitlement to entry as claimed. In addition, a bond must be transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter. Claim for free entry under Chapter 98, Subchapter XII, may be made for articles of the character described therein which have been previously entered under any other provision of law and the entry amended accordingly upon compliance with the requirements of this section, provided the articles have not been released from CBP custody.

* * * * *

(c) Articles entered under subheading 9812.00.20, HTSUS, may be transferred from one institution to another upon an application in writing in the case of each transfer describing the articles and stating the name of the institution to which transfer is to be made, provided the sureties on both institutions' bonds assent in writing or a new bond is transmitted to CBP pursuant to part 113 of this chapter. No entry or withdrawal shall be required for such a transfer.

* * * * *

■ 19. In § 10.59, amend paragraph (e) to read as follows:

§ 10.59 Exemption from customs duties and internal-revenue tax.

* * * * *

(e) A documented vessel with a fisheries license endorsement and foreign fishing vessels of 5 net tons or over may be allowed to withdraw distilled spirits (including alcohol), wines, and beer conditionally free under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), if the port director is satisfied from the quantity requested, in the light of whether the vessel is employed in substantially continuous fishing activities, and the vessel's complement, that none of the withdrawn articles is intended to be removed from the vessel in, or otherwise returned to, the United States without the payment of duty or tax. Such withdrawal shall be permitted only after the approval by the port

director of a special written application, in triplicate, on CBP Form 5125, of the withdrawer, supported by a bond transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter. Such application shall be filed with CBP Form 7501, or its electronic equivalent, or 7512, as the case may be. The original and the triplicate copy of the application, after approval, shall be stamped with the withdrawal number and date thereof and shall be returned to the withdrawer for use as prescribed below. Approval of each such application shall be subject to the condition that the original and the triplicate copy shall be presented thereafter by the withdrawer or the vessel's master to the port director within 24 hours (excluding Saturday, Sunday, and holidays) after each subsequent arrival of the vessel at a CBP port or station and that an accounting shall be made at the time of such presentation of the disposition of the articles until the port director is satisfied that all of them have been consumed on board, or landed under CBP's supervision, and takes up the original application. (The withdrawer shall retain the triplicate copy as evidence of consumption on board or landing under CBP supervision.) The approval shall be subject to the further conditions that any such withdrawn article remaining on board while the vessel is in port shall be safeguarded in the manner and to such extent as the district director for the port or place of arrival shall deem necessary and that failure to comply with the conditions upon which a conditionally free withdrawal is approved shall subject the total quantity of withdrawn articles to the assessment and collection of an amount equal to the duties and taxes that would have been assessed on the entire quantity of supplies withdrawn had such supplies been regularly entered, or withdrawn, for consumption. Exemption from internal-revenue tax on distilled spirits, alcohol, wines, and beer removed from any internal-revenue bonded warehouse, industrial alcohol premises, bonded wine cellar, or brewery; and drawback on taxpaid distilled spirits or wines removed from an export storage room, or on taxpaid beer removed from a brewery (or place of storage elsewhere), for use as supplies on vessels under section 309, Tariff Act of 1930, as amended, are governed by regulations of the Internal Revenue Service.

* * * * *

■ 20. In § 10.60, revise paragraphs (c) and (g) to read as follows:

§ 10.60 Forms of withdrawals; bond.

* * * * *

(c) A bond transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter, shall be taken when the withdrawal from warehouse is made by a person other than the principal on the warehouse or rewarehouse entry, as provided for in paragraph (b) of this section.

* * * * *

(g) A withdrawal under § 10.59(e) shall be supported by a bond transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter.

* * * * *

§ 10.61 [Amended]

■ 21. In § 10.61, remove the word “execution” and add in its place the word “transmission”.

■ 22. In § 10.64, revise the first sentence of paragraph (a) to read as follows:

§ 10.64 Crediting or cancellation of bonds.

(a) Except as stated below, a bond transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter, may be credited or canceled in respect of such articles upon the vessel's departure from the port of lading in a class of trade or business entitling the articles to exemption from duty and tax under the statute. * * *

* * * * *

■ 23. In § 10.65, revise paragraph (c)(3) to read as follows:

§ 10.65 Cigars and cigarettes.

* * * * *

(c) * * *

(3) When all the units in such shipping case are not to be withdrawn at the same time or for use on the same vessel, a blanket withdrawal may be filed for the entire case in lieu of a separate withdrawal for each unit. In such event, the withdrawal shall be retained by the warehouse proprietor until delivery receipts are obtained for the entire quantity covered by the withdrawal, provided the total period of time prior to delivery to the using vessel or aircraft does not exceed five years. A bond containing the bond conditions set forth in § 113.62 of this chapter, when required, must be transmitted to CBP pursuant to part 113 of this chapter at the time of or prior to the removal of any of the merchandise from the warehouse for delivery to the vessel on which it is to be used.

* * * * *

■ 24. In § 10.66:

■ a. Revise paragraph (b); and

■ b. Remove the words “Customs Form” and replace with the words “CBP Form” wherever they may appear.

The revision reads as follows:

§ 10.66 Articles exported for temporary exhibition and returned; horses exported for horse racing and returned; procedure on entry.

* * * * *

(b) If it is shown to be impracticable to produce the certificate of exportation required under paragraph (a)(1) of this section, the port director may accept other satisfactory evidence of exportation, or a bond may be transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter, to secure the production of such certificate or other evidence.

* * * * *

■ 25. In § 10.67:

■ a. Revise paragraph (b); and

■ b. Remove the words “Customs Form” and replace with the words “CBP Form” wherever they may appear.

The revision reads as follows:

§ 10.67 Articles exported for scientific or educational purposes and returned; procedure on entry.

* * * * *

(b) If it is shown to be impracticable to produce the certificate of exportation required by paragraph (a)(1) of this section, the port director may accept other satisfactory evidence of exportation or a bond may be transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter, to secure the subsequent production of any of the evidence or documents required by paragraph (a) of this section which are not available at the time of entry.

* * * * *

■ 26. In § 10.71, revise paragraphs (a) and (e) to read as follows:

§ 10.71 Purebred animals; bond for production of evidence; deposit of estimated duties; stipulation.

(a) The animal may be released from CBP custody upon the transmission of a bond to CBP pursuant to part 113 of this chapter, identifying the importer as principal and containing the bond conditions set forth in § 113.62 of this chapter, for the production within 6 months of (1) a certificate of pure breeding, or its electronic equivalent, issued by the Department of Agriculture, and (2) the declaration required by § 10.70(a) submitted in letter form if such declaration was not filed at the time of entry. The release of the animal from CBP custody requires

the presentation of the pedigree certificate and evidence of transfer of ownership in accordance with the regulations of the Department of Agriculture mentioned in § 10.70(b).

* * * * *

(e) When a passenger arriving in the United States with one or more dogs or cats and with the required certificates of pedigree and transfers of ownership in the passenger's possession furnishes a properly executed declaration as required by § 10.70(a) along with an application to the Department of Agriculture on ANH Form 17–338 for a certificate of pure breeding, the entry of the animal(s) as duty-free under subheading 0106.00.50, Harmonized Tariff Schedule of the United States (HTSUS), may be made on the passenger's baggage declaration if the value of the animals does not exceed \$500. In such case the entry shall be supported by a bond transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter for the production within six months of a certificate of pure breeding. The bond shall be without surety or cash deposit unless the port director on the basis of information before the port director finds that a bond with surety or a cash deposit is necessary to protect the revenue.

■ 27. Revise § 10.80 to read as follows:

§ 10.80 Remission of duty; withdrawal; bond.

Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish in the shores of the navigable waters of the U.S., whether such fish are taken by licensed or unlicensed vessels, and upon proof that the sale has been used for either of such purposes, the duties on the same shall be remitted. (Section 313(e), Tariff Act of 1930, 19 U.S.C. 1313(e)). Imported salt entered for warehouse may be withdrawn under bond for use in curing fish. Upon proof that the salt has been so used, the duties thereon shall be remitted. In no case shall the quantity of salt withdrawn exceed the reasonable requirements of the case. Withdrawal shall be made on CBP Form 7501, or its electronic equivalent. Each withdrawal shall contain the statement prescribed for withdrawals in § 144.32 of this chapter. When the withdrawal is made by a person other than the importer of record, a bond containing the bond conditions set forth in § 113.62 of this chapter, for the production of proof of proper use, must be transmitted to CBP pursuant to part 113 of this chapter. Upon transmission of the bond, a

withdrawal permit must be issued on CBP Form 7501, or its electronic equivalent.

■ 28. In § 10.81, revise paragraph (b) to read as follows:

§ 10.81 Use in any port.

* * * * *

(b) If desired, salt to be used in curing fish on shore at another port than that in which it is warehoused in bond may be withdrawn under a transportation entry and shipped in bond to the other port at which it is to be used, where it may be entered on CBP Form 7501, or its electronic equivalent, which shall show withdrawal of the salt for use in curing fish. Thereupon, and upon the transmission to CBP of a bond pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter, such salt may be used without being sent to a bonded warehouse or public store. In such a case the proof of use shall be filed at the latter port.

■ 29. Revise and republish § 10.83 to read as follows:

§ 10.83 Bond; cancellation; extension.

(a) If it shall appear to the satisfaction of the Center director that the entire quantity of salt covered by the bond referred to in § 10.80 of this part has been duly accounted for, either by having been used in curing fish or by the payment of duty, CBP may cancel the charges against the bond. CBP may require additional evidence in corroboration of the proof of use produced.

(b) On application of the person making the withdrawal, the period of the bond may be extended 1 year so as to allow the salt to be used during the time of extension in curing fish with the same privileges as if used during the original period.

■ 30. In § 10.90, revise paragraph (c) to read as follows:

§ 10.90 Master records and metal matrices.

* * * * *

(c) A bond containing the bond conditions set forth in § 113.62 of this chapter must be transmitted to CBP pursuant to part 113 of this chapter for importations under this section.

* * * * *

PART 11—PACKING AND STAMPING; MARKING

■ 31. The general authority citation for part 11 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i) and (j), Harmonized Tariff Schedule of the United States), 1623, 1624.

■ 32. In § 11.12, revise paragraph (c) to read as follows:

§ 11.12 Labeling of wool products to indicate fiber content.

* * * * *

(c) Packages of wool products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if a bond has been transmitted to CBP pursuant to part 113 of this chapter containing the bond conditions set forth in § 113.62 and/or a bond has been transmitted to CBP pursuant to part 113 of this chapter containing the bond conditions set forth in § 113.68 of this chapter, as appropriate, in such amount as CBP may require.

* * * * *

■ 33. In § 11.12a, revise paragraph (c) to read as follows:

§ 11.12a Labeling of fur products to indicate composition.

* * * * *

(c) Packages of fur products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if a bond has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 and/or a bond has been transmitted to CBP pursuant to part 113 of this chapter containing the bond conditions set forth in § 113.68 of this chapter, as appropriate, in such amount as CBP may require.

* * * * *

■ 34. In § 11.12b, revise paragraph (c) as follows:

§ 11.12b Labeling textile fiber products.

* * * * *

(c) Packages of fiber products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if a bond has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 and/or a bond has been transmitted to CBP pursuant to part 113 of this chapter containing the bond conditions set forth in § 113.68 of this chapter, as appropriate, in such amount as CBP may require.

* * * * *

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 35. The general and specific authority citations for part 12 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff

Schedule of the United States (HTSUS)),
1624.

* * * * *

Section 12.3 also issued under 7 U.S.C.
135h, 21 U.S.C. 381;

* * * * *

Section 12.16 also issued under 7 U.S.C.
1592(b);

* * * * *

Section 12.26 also issued under 18 U.S.C.
42;

* * * * *

Section 12.39 also issued under 19 U.S.C.
1337, 1623;

* * * * *

Sections 12.73 and 74 also issued under 19
U.S.C. 1484; 42 U.S.C. 7522, 7601;

* * * * *

Section 12.85 also issued under 19 U.S.C.
1623, 46 U.S.C. 4302, 4306, 4310;

* * * * *

Sections 12.104 through 12.104i also
issued under 19 U.S.C. 2612;

* * * * *

Sections 12.110 through 12.117 also issued
under 7 U.S.C. 136 *et seq.*;

Sections 12.118 through 12.127 also issued
under 15 U.S.C. 2601 *et seq.*;

* * * * *

■ 36. In § 12.3:

■ a. Amend paragraph (a) by revising
the second sentence; and

■ b. Amend the introductory text of
paragraph (b) by removing the words
“the port director” and adding in their
place “CBP”.

The revision reads as follows:

**§ 12.3 Release under bond; liquidated
damages.**

(a) * * * When any merchandise that
is the subject of § 12.1 is to be released
under bond pursuant to regulations
applicable to that merchandise, a bond
is required to be transmitted to CBP
pursuant to part 113 of this chapter,
containing the bond conditions set forth
in § 113.62 of this chapter.

* * * * *

■ 37. In § 12.8(a), revise the fourth
sentence to read as follows:

§ 12.8 Inspection; bond; release.

(a) * * * In such case a bond for the
return to CBP custody of the
merchandise must be obtained by the
consignee or agent and transmitted to
CBP pursuant to part 113 of this
chapter, containing the bond conditions
set forth in § 113.62 of this chapter, and
the conveyances or packages in which
such merchandise is removed to the
place of examination shall be sealed or
corded and sealed by a CBP officer or
an inspector of the Food Safety and
Inspection Service, Meat and Poultry
Inspection, with import-meat seals
furnished by the Department of
Agriculture unless bearing United States

CBP seals, or in the case of packages
otherwise identified as provided for in
this section. * * *

* * * * *

■ 38. Revise § 12.12 to read as follows:

§ 12.12 Release under bond.

Plants or plant products which
require fumigation, disinfection,
sterilization, or other treatment as a
condition of entry may be released to
the permittee for treatment at a plant
approved by the Department of
Agriculture upon transmission of a bond
to CBP pursuant to part 113 of this
chapter, containing the bond conditions
set forth in § 113.62 of this chapter, to
insure that the merchandise is treated
under the supervision and to the
satisfaction of an inspector of the
Department of Agriculture or returned
to CBP custody when demanded by the
port director.

■ 39. In § 12.16, revise paragraph (c) to
read as follows:

**§ 12.16 Joint regulations of the Secretary
of the Treasury and the Secretary of
Agriculture.**

* * * * *

(c) It is further provided in said joint
rules and regulations that after samples
have been drawn such seeds and
screenings shall be admitted into the
commerce of the United States only if
they have been found to meet the
requirements of the Federal Seed Act of
August 9, 1939, and the said
regulations, but if the containers bear
sufficient marks of identification the
port director may release the shipment,
pending examination and decision in
the matter, upon the transmission of a
bond. The bond must be transmitted to
CBP pursuant to part 113 of this chapter
and contain the bond conditions set
forth in § 113.62 of this chapter. In case
of default the port director shall issue a
claim for liquidated damages under the
bond.

■ 40. In § 12.26, revise paragraph (e) to
read as follows:

**§ 12.26 Importations of wild animals, fish,
amphibians, reptiles, mollusks, and
crustaceans; prohibited and endangered
and threatened species; designated ports of
entry; permits required.**

* * * * *

(e) If a shipment contains migratory
birds for which a permit is required by
the Fish and Wildlife Service of the
Department of the Interior, and such
permit is not at hand when the birds
arrive, an examination thereof shall be
made at once by the port director and
any duties estimated to be due shall be
collected. A stipulation shall be filed
with the port director within 24 hours
of the entry to produce the necessary

permit within 30 days from the date of
entry, whereupon final liquidation shall
be suspended until the permit is
produced or the 30-day period expires.
The shipment may be immediately
released if a bond is transmitted to CBP
pursuant to part 113 of this chapter,
containing the bond conditions set forth
in § 113.62 of this chapter, in an amount
equal to the entered value plus
estimated duties. If the bond conditions
are violated the port director shall issue
a claim for liquidated damages under
the bond. In lieu of transmitting a bond,
the merchandise may be left in CBP
custody at the risk and expense of the
importer pending issuance of the
permit.

* * * * *

■ 41. In § 12.39:

■ a. Amend the first sentence of the
introductory text to paragraph (b)(2) by
removing “single entry bond” and
adding in its place “single transaction
bond”;

■ b. Revise paragraph (b)(2)(i); and

■ c. Amend the last sentence of
paragraph (e)(1) by removing the name
“Office of International Trade” and
adding in its place “Office of Trade”.

The revision reads as follows:

**§ 12.39 Imported articles involving unfair
methods of competition or practices.**

* * * * *

(b) * * *

(2) * * *

(i) Have a bond that was transmitted
to CBP pursuant to part 113 of this
chapter, in the amount determined by
the Commission, that contains the
conditions identified in the special
importation and entry bond set forth in
Appendix B to part 113 of this chapter;
and

* * * * *

■ 42. In § 12.73, amend paragraph (j) by:

■ a. Revising the first sentence; and

■ b. Removing from the last sentence the
words “single entry bond” wherever
they appear, and adding in their place
the words “single transaction bond”.

The revision reads as follows:

**§ 12.73 Importation of motor vehicle and
motor vehicle engines.**

* * * * *

(j) *Release under bond.* If an EPA
declaration form filed in accordance
with paragraph (i)(3) of this section
states that the entry is being filed under
one or more of the exemptions and
exclusions identified in paragraph
(h)(1), (2), (3), or (4) of this section, the
entry will be accepted only if the
importer has a basic importation and
entry bond containing the bond
conditions set forth in § 113.62 of this
chapter that has been transmitted to

CBP, pursuant to part 113 of this chapter. * * *

* * * * *

■ 43. In § 12.74:

- a. Revise paragraph (c)(1); and
- b. Amend paragraph (c)(2) by removing “single entry bond” and adding in its place “single transaction bond” wherever it may appear;

The revision reads as follows:

§ 12.74 Importation of nonroad and stationary engines, vehicles, and equipment.

* * * * *

(c) *Release under bond*—

(1) *Conditional admission.* If the EPA declaration form states that the entry for a nonconforming nonroad engine is being filed under one of the exemptions described in paragraph (c)(3) of this section, under which the engine may be conditionally admitted under bond, the entry will be accepted only if the importer has a basic importation and entry bond containing the bond conditions set forth in § 113.62 of this chapter that has been transmitted to CBP, pursuant to part 113 of this chapter.

* * * * *

■ 44. In § 12.80:

- a. Revise the first sentence of paragraph (e)(1); and
- b. Amend paragraph (e)(2) by removing “single entry bond” and adding in its place “single transaction bond” wherever it may appear.

The revision reads as follows:

§ 12.80 Federal motor vehicle safety standards.

* * * * *

(e) *Release under bond.*

(1) If a declaration is filed under paragraph (b)(1)(iii) of this section, the entry shall be accepted only if the importer or consignee has a bond that was transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter. * * *

* * * * *

■ 45. In § 12.85:

- a. Revise the first sentence of paragraph (e)(1); and
- b. Amend paragraph (e)(3) by removing “single entry bond” and adding in its place “single transaction bond” wherever it may appear.

The revision reads as follows:

§ 12.85 Coast Guard boat and associated equipment safety standards.

* * * * *

(e) *Release under bond*—

(1) *When bond required.* The importer or consignee must have a bond that was transmitted to CBP pursuant to part 113

of this chapter, containing the bond conditions set forth in § 113.62 of this chapter, in such amount as CBP deems appropriate, when a declaration is made that a product is to be brought into conformity. * * *

* * * * *

■ 46. Revise § 12.91(d) to read as follows:

§ 12.91 Electronic products offered for importation under the Act.

* * * * *

(d) *Release under bond.* If a declaration filed in accordance with paragraph (b) of this section states that the entry is being made under circumstances described in paragraph (b)(4) of this section, the entry will be accepted only if the owner or importer of record has a bond that was transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter, for the production of a notification from the Secretary of Health and Human Services or the Secretary’s designee, in accordance with 21 CFR 1005.23, that the electronic product described in the declaration filed by the importer of record is in compliance with the applicable standards. The bond must be in an amount deemed appropriate by CBP. Within 180 days after the entry or such additional period as the port director may allow for good cause shown, the importer of record must take any action necessary to insure delivery to the port director of the notification described in this paragraph. If the notification is not delivered to the director of the port of entry of the electronic products within 180 days of the date of entry or such additional period as may be allowed by the port director, for good cause shown, the importer of record must deliver or cause to be delivered to the port director those electronic products which were released. In the event that any electronic products are not redelivered to CBP custody or exported under CBP supervision within the period allowed by the port director in the Notice of Redelivery (CBP Form 4647, or its electronic equivalent), liquidated damages will be assessed in the full amount of a bond if it is a single transaction bond, or if a continuous bond is used, the amount that would have been taken under a single transaction bond.

* * * * *

■ 47. Revise § 12.104f to read as follows:

§ 12.104f Temporary disposition of materials and articles.

Pending a final determination as to whether any archaeological or

ethnological material, or any article of cultural property, has been imported into the U.S. in violation of 19 U.S.C. 2606 or 19 U.S.C. 2607, the Secretary may permit such material or article to be retained at a museum or other cultural or scientific institution in the U.S. if the Secretary finds that sufficient safeguards will be taken by the museum or institution for the protection of such material or article; and the museum or institution has a sufficient bond, transmitted to CBP pursuant to part 113 of this chapter to ensure its return to the Secretary.

■ 48. In § 12.115, revise the second sentence to read as follows:

§ 12.115 Release under bond of shipment detained for examination.

* * * However, a shipment detained for examination may be released to the consignee prior to a determination by the Administrator provided a bond is transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter, for the return of the merchandise to CBP custody, and upon entry of the merchandise and the satisfaction of all other applicable laws. * * *

■ 49. In § 12.123, revise the second sentence in paragraph (b) to read as follows:

§ 12.123 Procedure under detention.

* * * * *

(b) * * * Any such release will be conditioned upon transmission of a bond to CBP pursuant to part 113 of this chapter, containing the conditions set forth in § 113.62 of this chapter for the return of the shipment to CBP custody. * * *

* * * * *

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

■ 50. The general and specific authority citations for part 18 are revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624. Section 18.1 also issued under 19 U.S.C. 1484, 1557, 1490; Section 18.2 also issued under 19 U.S.C. 1551a; Section 18.3 also issued under 19 U.S.C. 1565; Section 18.4 also issued under 19 U.S.C. 1322, 1323; Section 18.7 also issued under 19 U.S.C. 1490, 1557; 1646a; Section 18.11 also issued under 19 U.S.C. 1484; Section 18.12 also issued under 19 U.S.C. 1448, 1484, 1490; Section 18.13 also issued under 19 U.S.C. 1498(a); Section 18.14 also issued under 19 U.S.C. 1498; Section 18.25 also issued under 19 U.S.C. 1490; Section 18.26 also issued under 19 U.S.C. 1490;

Section 18.31 also issued under 19 U.S.C. 1553a.

■ 51. Revise § 18.1(e) to read as follows:

§ 18.1 In-bond application and entry; general rules.

* * * * *

(e) *Bond required.* A custodial bond transmitted to CBP pursuant to part 113 of this chapter and containing the bond conditions set forth in § 113.63 of this chapter, is required in order to transport merchandise in-bond under the provisions of this part.

* * * * *

■ 52. Revise § 18.3(d) to read as follows:

§ 18.3 Transfers.

* * * * *

(d) *Transfer by bonded cartmen.* All transfers to or from the conveyance or warehouse of merchandise being transported in-bond must be made under the provisions of part 125 of this chapter and at the expense of the parties in interest, unless the bond of the carrier transmitted to CBP pursuant to part 113 of this chapter and containing the bond conditions set forth in § 113.63 of this chapter, or a TIR carnet, is liable for the safekeeping and delivery of the merchandise while it is being transferred.

■ 53. In § 18.20, revise paragraph (d) to read as follows:

§ 18.20 General rules.

* * * * *

(d) *No bonded common carrier facilities available.* Except for merchandise covered by a carnet (see § 18.2(a)(2) and (3)), in places where no bonded common carrier facilities are reasonably available and merchandise is permitted to be transported otherwise than by a bonded common carrier, the port director may permit entry in accordance with the procedures outlined in this section if the port director is satisfied that the revenue will not be endangered. A bond transmitted to CBP pursuant to part 113 of this chapter and containing the bond conditions set forth in § 113.62 of this chapter in an amount equal to double the estimated duties that would be owed will be required when the port director deems such action necessary. The principal on any bond transmitted to CBP pursuant to part 113 of this chapter to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter within 30 days of exportation.

* * * * *

■ 54. In § 18.25, revise paragraph (e) to read as follows:

§ 18.25 Direct exportation.

* * * * *

(e) *Exportation without landing, vessels.* If the merchandise is exported on the arriving vessel without landing, a representative of the vessel who has knowledge of the facts must certify that the merchandise entered for exportation was not discharged during the vessel's stay in port. A charge will be made against the continuous bond transmitted to CBP pursuant to part 113 of this chapter and containing the bond conditions set forth in § 113.64 of this chapter, if one has been transmitted. If a continuous bond has not been transmitted, a single transaction bond containing the bond conditions set forth in § 113.64 will be required. If the merchandise is covered by a TIR carnet, the carnet must not be taken on charge (see § 114.22(c)(2) of this chapter).

* * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

■ 55. The general authority citation for part 19 continues to read and the specific authority citation is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624;

Section 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562; Section 19.6 also issued under 19 U.S.C. 1555, 1557;

Section 19.7 also issued under 19 U.S.C. 1555, 1556;

Section 19.11 also issued under 19 U.S.C. 1556, 1562;

Section 19.15 also issued under 19 U.S.C. 1311;

Sections 19.17–19.25 also issued under 19 U.S.C. 1312;

Sections 19.35–19.39 also issued under 19 U.S.C. 1555;

Section 19.40(a) also issued under 19 U.S.C. 1450, 1499, 1623;

Sections 19.41–19.43 also issued under 19 U.S.C. 1499;

Section 19.44 also issued under 19 U.S.C. 1448;

Section 19.45 also issued under 19 U.S.C. 1551, 1565;

Section 19.48 also issued under 19 U.S.C. 1499, 1623;

Section 19.49 also issued under 19 U.S.C. 1484.

* * * * *

■ 56. In § 19.2, revise paragraphs (c) and (e) to read as follows:

§ 19.2 Applications to bond.

* * * * *

(c) On approval of the application to bond a warehouse of any class, except Class 1, a bond must be transmitted to

CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.63 of this chapter.

* * * * *

(e) Any proprietor of a bonded warehouse may be required on 10 days' notice from the port director to obtain a new bond containing the bond conditions set forth in § 113.63 of this chapter, to be transmitted to CBP pursuant to part 113 of this chapter; and if the proprietor fails to do so, no more goods shall be sent to the warehouse and those therein shall be removed at the expense of such proprietor. A new bond is required if the bonded warehouse is substantially altered or rebuilt.

* * * * *

§ 19.13 [Amended]

■ 57. In § 19.13, amend paragraph (c) by removing the word “execution” and adding in its place the word “transmission”.

■ 58. In § 19.14, revise paragraphs (b) and (d) to read as follows:

§ 19.14 Materials for use in manufacturing warehouse.

* * * * *

(b) *Bond required.* Before the transfer of the merchandise to the manufacturing warehouse is permitted, a bond must be transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter.

* * * * *

(d) *Domestic spirits and wines.* For the transfer of domestic spirits from the bonded premises of a distilled spirits plant to a bonded manufacturing warehouse, or for the transfer of domestic wines from a bonded wine cellar to a bonded manufacturing warehouse, a bond must be transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter.

* * * * *

■ 59. In § 19.15, revise the last sentence of paragraph (g)(1) to read as follows:

§ 19.15 Withdrawal for exportation of articles manufactured in bond; waste or byproducts for consumption.

* * * * *

(g)(1) * * * A rewarehouse entry shall be made in accordance with § 144.34(b) of this chapter, supported by a bond transmitted to CBP pursuant to part 113 of this chapter and containing the bond conditions set forth in § 113.63 of this chapter.

* * * * *

■ 60. In § 19.17, revise the second sentence of paragraph (e) to read as follows:

§ 19.17 Application to establish warehouse; bond.

* * * *

(e) * * * A bond containing the bond conditions set forth in § 113.62 of this chapter must be transmitted to CBP pursuant to part 113 of this chapter.

* * *

■ 61. In § 19.40, revise paragraph (a) to read as follows:

§ 19.40 Establishment, relocation or alteration of container stations.

(a) A container station, independent of the importing carrier, may be established at any port or portion of a port, or any other area under the jurisdiction of a port director upon the filing of an application therefore and its approval by the port director and the transmission of a bond pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.63 of this chapter in such amount as CBP shall require.

* * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 62. The general authority for part 24 continues to read and specific authority citation for section 24.11 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * *

Section 24.11 also issued under 19 U.S.C. 1485(d), 1623;

* * * *

■ 63. Section 24.11 is revised to read as follows:

§ 24.11 Notice to importer or owner of increased or additional duties, taxes, fees and interest.

Any increased or additional duties, taxes, fees or interest found due upon liquidation or reliquidation will be billed to the importer of record, or to the actual owner if:

(a) A declaration of the actual owner in accordance with section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)), and § 141.20 of this chapter has been filed with CBP; and

(b) A bond has been transmitted to CBP pursuant to part 113 of this chapter in accordance with § 141.20 of this chapter.

■ 64. In § 24.16:

■ a. Remove the words “Customs Form” and add in their place “CBP Form” wherever they may appear; and

■ b. Revise the section heading and paragraph (c)(1).

The revisions read as follows:

§ 24.16 Overtime services; overtime compensation and premium pay for CBP Officers; rate of compensation.

* * * *

(c) *Application and bond.*

(1) Except as provided for in paragraphs (c)(2) and (4) of this section, an application for inspectional services of Customs Officers at night or on a Sunday or holiday, CBP Form 3171, supported by the required cash deposit or bond, must be filed in the office of the port director before the assignment of such officers for reimbursable overtime services. The cash deposit to secure reimbursement will be fixed by CBP in an amount sufficient to pay the maximum probable compensation and expenses of the Customs Officers, or the maximum amount which may be charged by law, whichever is less, in connection with the particular services requested. The bond to secure reimbursement must be transmitted to CBP pursuant to part 113 of this chapter, containing the appropriate bond conditions set forth in subpart G, part 113 of this chapter (see §§ 113.62, 113.63, 113.64 and 113.73), and in an amount to be fixed by CBP unless another bond containing a provision to secure reimbursement has been transmitted. A bond transmitted to CBP pursuant to part 113 of this chapter, containing the appropriate bond conditions set forth in subpart G, part 113 of this chapter (see §§ 113.62, 113.63, 113.64 and 113.73), to secure the payment of overtime services rendered private aircraft and private vessels will be taken without surety or cash deposit in lieu of surety, and the bond must be modified to so indicate.

* * * *

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

■ 65. The general authority citation for part 54 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i); Section XV, Note 5, Harmonized Tariff Schedule of the United States), 1623, 1624.

■ 66. In § 54.6, revise paragraph (b) to read as follows:

§ 54.6 Proof of intent; bond; proof of use; liquidation.

* * * *

(b) If the articles are entered for consumption or warehouse, a bond must be transmitted to CBP pursuant to part 113 of this chapter containing the bond conditions set forth in § 113.62 of

this chapter. Withdrawals from warehouse shall be made on CBP Form 7501, or its electronic equivalent. The liquidation of the consumption or warehouse entry shall be suspended pending proof of use or other disposition of the articles within the time prescribed in paragraph (c) of this section.

* * * *

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

■ 67. The general authority citation for part 112 continues to read as follows:

Authority: 19 U.S.C. 66, 1551, 1565, 1623, 1624.

■ 68. Revise § 112.11(a)(4)(ii) to read as follows:

§ 112.11 Carriers which may be authorized.

(a) * * *

(4) * * *

(ii) The private carrier has a bond that has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.63 of this chapter.

* * * *

■ 69. In § 112.12, revise paragraphs (a) and (b)(3) to read as follows:

§ 112.12 Application for authorization.

(a) *General requirements.* All carriers and freight forwarders desiring to be authorized to receive merchandise for transportation in bond must have a bond, containing the bond conditions set forth in § 113.63 of this chapter, in a sum specified by CBP, and accompanied by a fee of \$50. A check or money order must be made payable to United States Customs and Border Protection.

(b) * * *

(3) *Private Carriers.* The private carrier will ensure that the bond has been transmitted to CBP pursuant to part 113 of this chapter. If the private carrier intends to operate in two or more customs ports, the private carrier must identify the bond number in a list of all ports in which the private carrier intends to operate and provide this list to each port. If the private carrier is the proprietor of one or more customs bonded warehouses or bonded container stations, or the operator of a foreign trade zone, to which imported merchandise will be transported, the private carrier must identify the bond number in a statement showing the location of each warehouse, container station, or zone and provide the list to the port.

* * * *

■ 70. Revise § 112.14 to read as follows:

§ 112.14 Termination of carrier bonds.

The carrier or its surety may terminate a carrier bond pursuant to § 113.27 of this chapter. CBP may cancel a carrier bond or charges against the bond pursuant to § 113.51 of this chapter.

■ 71. In § 112.22, revise paragraph (a), to read as follows:

§ 112.22 Application for license.

(a) *General requirements.* An applicant for a customhouse cartage or lighterage license must have a bond containing the conditions set forth in § 113.63 of this chapter, in an amount specified by CBP, that has been transmitted to CBP pursuant to part 113 of this chapter, and must file with the director of the port where the applicant proposes to conduct business the following:

(1) Payment of a fee of \$100. A check or money order must be made payable to United States Customs and Border Protection.

(2) If required by the port director, a list showing the names and addresses of the managing officers and members of the organization or of the persons who will receive or transport imported merchandise which has not been released from CBP custody, or a list of all such persons and their addresses.

* * * * *

■ 72. Revise § 112.25 to read as follows:

§ 112.25 Bonded carriers.

A carrier or freight forwarder who has a bond containing the bond conditions set forth in § 113.63 of this chapter, that has been transmitted to CBP pursuant to part 113 of this chapter, may transport merchandise within a port for which the bond provides coverage.

■ 73. In § 112.49, revise paragraph (d) to read as follows:

§ 112.49 Temporary identification cards.

* * * * *

(d) *Bond.* The licensed cartman or lighterman shall as a condition precedent to the issuance of a temporary identification card to an employee be required to post a bond, the amount to be determined by CBP, to guarantee return of the temporary identification card by the holder upon its withdrawal or upon issuance of a permanent identification card and to cover any loss or damage caused to the United States by the holder of the temporary identification card. The bond shall be transmitted to CBP pursuant to part 113 of this chapter and contain the bond conditions set forth in § 113.63 of this chapter and be in such amount as determined by CBP.

PART 113—CBP BONDS

■ 74. The authority citation for part 113 is revised to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.
Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.
Section 113.74 also issued under 19 U.S.C. 1337.
Section 113.75 also issued under 19 U.S.C. 1484b.

§ 113.0 [Amended]

■ 75. In § 113.0, remove the words “approval and execution” in the second sentence, and add in their place the words “transmission and sufficiency”.

■ 76. Revise subpart A to read as follows:

Subpart A—General Provisions

§ 113.1 Definitions.

§ 113.2 Authority of Commissioner of CBP to require security or execution of bond and powers relating to bonds.

§ 113.3 Liability of principal and surety on a terminated bond.

§ 113.4 Carnets.

§ 113.5 Specific instruction bond.

§ 113.6 Treatment of bonds filed with or transmitted to CBP under prior regulations.

§ 113.1 Definitions.

For purposes of this part, the following terms shall have the meanings indicated, unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular subpart or portion thereof:

Activity code. Activity code means a CBP-assigned number identifying a set of terms and conditions for a bond securing a particular activity or transaction.

Authorized user. Authorized user means an unincorporated unit, trade name, or business name of the identified principal on the bond who is authorized to obligate a bond in the principal's name. An authorized user must also have a CBP filing identification number identical to that of the principal on the bond, except that the optional two-digit suffix code may differ as allowed in § 24.5 of this chapter. To make the regulations easier to read and understand, the singular term “authorized user” is used generally and, unless the context indicates otherwise, includes and applies to several “authorized users” (and the plural usage includes the singular), consistent with the Dictionary Act (1 U.S.C. 1).

Bond. Bond means a contract between principal and surety or an agreement by a principal secured by cash in lieu of surety (even when the cash is not required to be deposited with CBP),

securing the principal's performance of one or more obligations imposed by the U.S. Government with CBP or another party as beneficiary. A bond is comprised of the elements required under this part, and includes any amendments made to the bond in accordance with this part.

Bond amount adjustment. Bond amount adjustment means a retroactive amendment of a single transaction bond's amount or limit of liability, made in accordance with § 113.23 of this part.

Bond rider. Bond rider means a prospective amendment of a bond, made in accordance with this part.

Consolidated bond. Consolidated bond means a bond (single transaction or term) assuring compliance with two or more provisions of law, regulations, or instructions that CBP is authorized to enforce.

Continuous bond. Continuous bond means a term bond with a bond period of one year, that renews automatically for a new one-year period beginning on the anniversary of the effective date of the bond and continuing for each succeeding one-year period, unless terminated sooner by the principal or surety, or cancelled by CBP, in accordance with the regulations in this part. Each one-year period of a continuous bond, or partial-year period if the bond is terminated sooner, constitutes a separate period of liability in the amount of the bond for the transactions or activities that occur within the period.

Electronic Data Interchange (EDI). Electronic Data Interchange (EDI) means any CBP-authorized functionality, including eBond, that allows filers to transmit data electronically to, and receive electronic messaging from, CBP and the CBP-authorized EDI system.

Electronic Data Interchange (EDI) system. Electronic Data Interchange (EDI) system means the Automated Commercial Environment (ACE) or any other established mechanism approved by the Commissioner of CBP through which information can be transferred electronically.

Principal. Principal means a person, business firm, Government agency, or other organization, as identified by a CBP filing identification number, as detailed in § 24.5 of this title, engaged in a transaction or activity for which CBP requires a bond, including the officers, employees, contractors, and/or agents of such person, business firm, Government agency, or other organization. To make the regulations easier to read and understand, the singular term “principal” is used generally and, unless the context indicates otherwise, includes and

applies to several “principals” (and the plural usage includes the singular), consistent with the Dictionary Act (1 U.S.C. 1).

Revenue Division. Revenue Division means the division of the Office of Finance responsible for bond processing and retention for all continuous and single transaction bonds.

Single Transaction Bond (STB). Single Transaction Bond (STB) means a bond securing one transaction or activity covered by a single activity code.

Surety. Surety means a company listed in Treasury Circular 570 as an acceptable surety on Federal bonds or as an acceptable reinsurance company for such bonds, and the officers, employees, and/or agents (including surety agents) of such company. To make the regulations easier to read and understand, the singular term “surety” is used generally and, unless the context indicates otherwise, includes and applies to several “sureties” (and the plural usage includes the singular), consistent with the Dictionary Act (1 U.S.C. 1).

Surety agent. Surety agent means a person, business firm, or other organization granted power of attorney by a surety pursuant to § 113.37 of this part to transact business on behalf of the surety. To make the regulations easier to read and understand, the singular term “surety agent” is used generally and, unless the context indicates otherwise, includes and applies to several “surety agents” (and the plural usage includes the singular), consistent with the Dictionary Act (1 U.S.C. 1).

Term bond. Term bond means a bond securing one or more transactions or activities with the same activity code over a defined period of time.

Void. Void means an action invalidating an STB transmitted to CBP via EDI, before that STB has been used to secure an activity or transaction. Once voided, that STB will no longer be available to secure any activity or transaction. Only the surety may void an STB.

§ 113.2 Authority of Commissioner of CBP to require security or execution of a bond and powers relating to bonds.

Where a bond or other security is not specifically required by law or regulation, the Commissioner of CBP may by specific instruction require, or authorize the Director, Revenue Division, Center director, or the port director to require, such bonds or other security considered necessary for the protection of the revenue or to assure compliance with any pertinent law, regulation, or instruction. Whenever a bond is required or authorized by law,

regulation, or instruction, the Commissioner of CBP may:

(a) Prescribe the conditions and form of the bond and fix the amount of the bond, whether for the payment of liquidated damages, or of a penal sum, except as otherwise specifically provided by law.

(b) Provide for the approval of the sureties on the bond, without regard to any general provision of law.

(c) Authorize the execution of a term bond, the conditions of which will extend to and cover similar activities or transactions over a period of time, not to exceed one year or such longer period as the Commissioner may fix, when in the Commissioner’s opinion special circumstances warrant a longer period.

(d) Authorize the taking of a consolidated bond (single transaction or term) in lieu of separate bonds to assure compliance with two or more provisions of law, regulation, or instruction. Such a consolidated bond will have the same force and effect as the separate bonds in lieu of which it was taken. The Commissioner of CBP may fix the amount of a consolidated bond without regard to any other provision of law, regulation, or instruction.

§ 113.3 Liability of principal and surety on a terminated bond.

The principal and surety remain liable on a terminated bond for transactions or activities that occurred and obligations incurred prior to termination, unless otherwise authorized by the Commissioner or the Commissioner’s delegate.

§ 113.4 Carnets.

A carnet is an international customs document which serves simultaneously as a customs entry document and as a customs bond. Therefore, carnets, provided for in part 114 of this chapter, are ordinarily acceptable without posting further security under the customs laws or CBP regulations requiring bonds.

§ 113.5 Specific instruction bond.

Notwithstanding the provisions of this part, the Commissioner of CBP, or the Commissioner’s delegate, may prescribe any conditions, form, or amount for a bond required by specific instruction that he or she deems appropriate. Where the conditions, form, or amount of a specific instruction bond conflicts with the provisions of this part, the conditions, form, or amount of the specific instruction bond governs.

§ 113.6 Treatment of bonds filed with or transmitted to CBP under prior regulations.

Single transaction bonds and term bonds filed with or transmitted to CBP prior to [insert effective date of Final Rule here] will remain subject to the terms and conditions that were in place on the date that the bonds were executed. Principals may continue to secure transactions or activities with a term bond, including a continuous bond, filed with or transmitted to CBP prior to [insert effective date of Final Rule here] until the end of that bond’s latest period. Principals wishing to secure further transactions or activities with a term bond must transmit a new term bond to CBP on or after [insert effective date of Final Rule here] and prior to the end of the latest period of the existing term bond. Any bond filed with or transmitted to CBP prior to [insert effective date of Final Rule here] that has not been terminated prior to the end of its latest period is deemed insufficient to secure any transaction or activity occurring thereafter.

■ 77. Revise subpart B to read as follows:

Subpart B—Transmission, Sufficiency, and Retention of Bonds

§ 113.11 General requirements for bond transmission.

§ 113.12 Agreement of surety and principal to be bound.

§ 113.13 Sufficiency of bond.

§ 113.14 Restriction on use of continuous bond.

§ 113.15 Retention of bonds, bond riders, and bond amount adjustments.

§ 113.11 General requirements for bond transmission.

(a) *Transmission by surety.* The surety guaranteeing the bond or a properly empowered surety agent must transmit all bonds secured by a surety to CBP. The bond must contain the elements required in subpart C of this part, unless otherwise permitted by CBP. CBP will reject a transmission missing any required element.

(b) *Transmission via EDI.* The surety or surety agent must transmit bonds secured by a surety via EDI using an authorized EDI system filer code assigned to the surety, except for those bonds enumerated in paragraph (c) of this section or when otherwise permitted by CBP. A bond transmitted via EDI is active and available to secure a transaction or activity once the EDI system has accepted the bond transmission.

(c) *Transmission via email.* Email transmission is available only for the bonds enumerated below or when otherwise permitted by CBP. When

secured by a surety, the surety or surety agent must transmit the bond via email to the Revenue Division. For a bond secured by cash in lieu of surety or a bond without surety or cash deposit, the principal on the bond must transmit the bond via email to the Revenue Division, unless otherwise permitted by CBP, and if the bond involves cash in lieu of surety, the principal must transmit the cash deposit to CBP. Unless the bond is a specific instruction bond, bonds transmitted via email must include, as an attachment, a CBP Form 301 containing the elements required in subpart C of this part. Specific instruction bonds transmitted via email pursuant to § 113.5 of this part must include the conditions or form required by specific instruction. Bonds transmitted via email are subject to policies and procedures issued by CBP for the email transmission of bonds. A bond transmitted via email to the Revenue Division is active and available to secure a transaction once the Revenue Division has added the bond to the EDI system.

(1) Email transmission is required for the following bonds:

(i) *Neutrality Bond* (Activity Code 9; see § 113.71 of this part).

(ii) *Intellectual Property Rights (IPR) Bond* (Activity Code 15; see § 113.70 of this part).

(2) Email transmission is required for all bonds in the following circumstances:

(i) Any bond executed by two or more co-sureties pursuant to § 113.37(d), unless all co-sureties share the same EDI system filer code.

(ii) Any bond executed by two or more sureties pursuant to a reinsurance agreement, as outlined in § 113.37(d).

(iii) Any bond secured by a cash deposit in lieu of surety, pursuant to § 113.40 of this part.

(iv) Any bond without surety or cash deposit.

(v) Any other bond that cannot be transmitted via EDI.

§ 113.12 Agreement of surety and principal to be bound.

(a) *Transmission of bond, bond rider, or bond amount adjustment secured by a surety as binding agreement of surety and principal.* A surety or surety agent who transmits a bond, bond rider, or bond amount adjustment secured by a surety to CBP certifies the following:

(1) The transmitting surety or surety agent has the authority to bind both the surety and the principal identified in the bond, bond rider, or bond amount adjustment;

(2) The transmitting surety and the principal identified in the bond, bond

rider, or bond amount adjustment have the legal capacity to enter into a contract; and

(3) Pursuant to the transmitting surety or surety agent's authority, the surety and the principal agree to be bound by the transmitted bond, bond rider, or bond amount adjustment, including the terms and conditions identified therein.

(4) If the transmission is a bond rider or bond amount adjustment, pursuant to the transmitting surety or surety agent's authority, the surety and the principal agree to be bound by the terms and conditions of the identified bond, as amended by the transmitted bond rider or bond amount adjustment. Except for the amendments made pursuant to the bond rider or bond amount adjustment, the surety and principal agree that all other terms and conditions of the identified bond remain unchanged.

(b) *Transmission of bond or bond rider without a surety as binding agreement of principal.* A principal who transmits a bond or bond rider without a surety, pursuant to § 113.40 or § 142.4(c) of this part, to CBP certifies the following:

(1) The transmitting principal has the authority to bind itself and all other principals identified in the bond or bond rider;

(2) The transmitting principal and all other principals identified in the bond or bond rider have the legal capacity to enter into a contract; and

(3) Pursuant to the transmitting principal's authority, all principals agree to be bound by the transmitted bond or bond rider, including the terms and conditions identified therein.

(4) If the transmission is a bond rider, pursuant to the transmitting principal's authority, all principals agree to be bound by the terms and conditions of the identified bond, as amended by the transmitted bond rider. Except for the amendments made pursuant to the bond rider, all principals agree that all other terms and conditions of the identified bond remain unchanged.

(c) *Principal's use of bond as reaffirmation of agreement to be bound.* Identification of a bond to secure an activity or transaction constitutes the reaffirmation of the principal on the identified bond that it has the legal capacity to enter into a contract and agrees to be bound by the terms and conditions of the identified bond and any associated amendments.

§ 113.13 Sufficiency of bond.

(a) *Minimum amount of bond.* The amount of any bond must not be less than \$100, except when the law or regulation expressly provides that a lesser amount may be taken. Fractional

parts of a dollar will be rounded up to the next whole dollar in computing the amount of a bond.

(b) *Guidelines for determining bond sufficiency.* In determining whether the bond is sufficient, CBP may consider:

(1) The prior record of the principal, and any authorized user, in timely payment of duties, taxes, and charges with respect to the transaction(s) or activity(ies) involving such payments;

(2) The prior record of the principal, and any authorized user, in complying with CBP demands for redelivery, the obligation to hold unexamined merchandise intact, CBP demands for information or documents, and other requirements relating to enforcement and administration of customs and other laws and CBP regulations;

(3) The value and nature of the merchandise involved in the transaction(s) to be secured;

(4) The degree and type of supervision that CBP will exercise over the transaction(s);

(5) The prior record of the principal, and any authorized user, in honoring bond obligations, including the payment of liquidated damages; and

(6) Any additional information considered relevant by CBP.

(c) *Review of bond.* CBP will regularly review the bond for the principal's transaction(s) or activity(ies), and any authorized user's transaction(s) or activity(ies), to determine whether it is sufficient to protect the revenue and ensure compliance with applicable law and regulations. If CBP determines that the bond is insufficient, the principal and surety will be notified in writing or electronically via email. The principal must then obtain additional security deemed sufficient by CBP as described in paragraph (d) of this section, and have such additional security transmitted to CBP pursuant to this part. In general, the principal and surety will have 15 calendar days from the date of CBP's notification to transmit additional security to CBP. However, CBP may notify the principal and surety that additional security is required in a shorter time (including immediately) to protect the revenue or ensure compliance with applicable law and regulations, due to the risks posed by the bond or the transaction(s) or activity(ies) secured by the bond. After receiving notice of an insufficient bond(s) from CBP, the principal may make a written submission to CBP to demonstrate that the bond is sufficient. CBP will consider the principal's written submission and notify the principal and surety of any change to the sufficiency determination in writing or electronically via email.

Notwithstanding the foregoing, if a principal fails to ensure that additional security deemed sufficient by CBP is transmitted to CBP pursuant to this part, in accordance with a CBP notice of an insufficient bond(s), the principal's transaction(s) or activity(ies) and authorized user's transaction(s) or activity(ies) may be rejected, suspended, or otherwise prevented from continuing in accordance with applicable law or regulations.

(d) *Additional security.* Additional security required by CBP for the principal's transaction(s) or activity(ies) and authorized user's transaction(s) or activity(ies) may take the form of:

(1) An increase in the amount of an existing single transaction bond transmitted via EDI for Activity Code 1 (see § 113.62 of this part), via a proper bond amount adjustment pursuant to § 113.23(b) of this part;

(2) The termination of an existing continuous bond and replacement with one or more bonds;

(3) One or more additional bonds; or

(4) Other security permitted by CBP.

(e) *Joint and several liability of principal and sureties for obligations arising under all bonds that secure the same transaction or activity.* Where a principal obtains multiple bonds to secure a transaction or activity (*i.e.*, the bonds have the same activity code and, by their terms and conditions, apply to the same transaction or activity), regardless of whether the bonds have the same surety, the principal and sureties on all such bonds are jointly and severally liable for obligations thereunder (*e.g.*, penalties, duties, taxes, liquidated damages, or other charges), even if one or more of the bonds is not expressly identified in connection with the activity or transaction.

§ 113.14 Restriction on use of continuous bond.

(a) *Principal's nonperformance or default.* If a principal has demonstrated an unwillingness or inability to perform its obligations under part 113 on one or more bonds, CBP may restrict the principal's ability to use a continuous bond to secure new transactions or activities, instead requiring a single transaction bond for each transaction. This restriction may be imposed for a temporary period, or as a permanent termination of the principal's ability to engage in transactions or activities using a continuous bond.

(b) *Notice to principal and surety.* Before any restriction under paragraph (a) of this section will take effect, CBP will provide notice to the principal and surety with sufficient information about the restriction CBP intends to impose,

the date the restriction will take effect, and the basis for the restriction, to allow the principal to respond. The principal will have 30 calendar days from the date of the notice to respond. If the principal does not respond within 30 calendar days, CBP's restriction will take effect on the date indicated in the notice.

(c) *Review and final decision.* If the principal responds to the notice provided pursuant to paragraph (b) of this section, then, within 30 calendar days of CBP's receipt of the principal's response, CBP will review the response and make a final decision as to whether the proposed restriction will go into effect. CBP may extend the period for a final decision after providing notice of the extension to the principal. CBP will provide notice of the final decision to the principal and the surety on any existing continuous bond, and any restriction imposed will take effect at least five business days after the date of the notice of final decision.

(d) *Continuous bond limits.* Only one continuous bond for a particular activity will be authorized for each principal.

§ 113.15 Retention of bonds, bond riders and bond amount adjustments.

CBP will retain a record of all bonds, bond riders, and bond amount adjustments that parties properly transmit to CBP in accordance with the provisions of this part. Notwithstanding the preceding sentence, the absence of a bond, bond rider, or bond amount adjustment from CBP records, regardless of the reason for its absence, does not release any party from liability under the bond, bond rider, or bond amount adjustment if the bond, bond rider, or bond amount adjustment otherwise exists. Bonds containing the agreement to pay court costs (condemned goods), whose terms and conditions are in § 113.72 of this part, will be transmitted to the United States attorney, as required by section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608) and CBP will retain a record of the bonds.

■ 79. Revise subpart C to read as follows:

Subpart C—Bond Requirements

§ 113.21 Information required in the bond transmission.

§ 113.22 [Reserved]

§ 113.23 Amendments made to the bond.

§ 113.24 Bond riders.

§ 113.25 [Reserved]

§ 113.26 Effective dates of bonds and bond riders.

§ 113.27 Voiding or terminating a bond.

§ 113.21 Information required in the bond transmission.

(a) *Identification of principal and surety.*

(1) *Principals and other authorized users.* Each bond transmitted to CBP must include:

(i) A CBP filing identification number, as detailed in § 24.5 of this title, for each principal on the bond; and

(ii) A CBP filing identification number related to the filing identification number of the principal, as detailed in § 24.5 of this title, for any authorized users of the bond.

(2) *Sureties and surety agents.* Each bond transmitted to CBP must include:

(i) A surety code issued by CBP, as detailed in § 113.37 of this part, for the surety on the bond and any co-sureties. Where there are two or more sureties on the bond, (*i.e.*, co-sureties or re-insurance) the transmission must include the additional requirements detailed in § 113.37(d) of this part.

(ii) The unique surety agent identification number assigned by the surety, and transmitted to CBP as detailed in § 113.37(c)(1) of this part, for each surety agent.

(b) *Bond Information.* The bond transmission must include the following information regarding the bond:

(1) Bond type. The bond transmission must indicate the type of bond being transmitted (*e.g.*, single transaction bond, continuous bond).

(2) Bond designation type. The bond transmission must indicate the bond designation type (*e.g.*, new bond, substitution bond, superseding bond, additional bond).

(3) Activity Code. The bond transmission must indicate the activity code associated with the terms and conditions of the bond. Subpart G of this part lists the bond terms and conditions, and corresponding activity code for all bonds except specific instruction bonds issued pursuant to § 113.5 of this part.

(4) Amount. The bond transmission must indicate the limit of liability on the bond, in whole U.S. dollars.

(5) Date of execution. The date the bond is transmitted to CBP pursuant to § 113.11 of this part is the date of the bond's execution.

(6) Effective date. If the bond being transmitted is a term bond, the transmission must indicate the first date on which the bond can be obligated, subject to the provisions of § 113.26 of this part.

(7) Transaction identification information. If the bond being transmitted is a single transaction bond, the transmission must indicate:

(i) The transaction identification number for the transaction to be secured (*e.g.*, entry number, Importer Security Filing Transaction number, seizure case

number, bill of lading number, or carrier & voyage identification), and

(ii) The entry type code if the single transaction bond has one of the following activity codes: 1, 1A, 6, 7, 8, 12, or 16.

§ 113.22 [Reserved]

§ 113.23 Amendments made to the bond.

CBP will permit the following amendments to a bond:

(a) Bond riders listed in § 113.24 of this part; and

(b) A bond amount adjustment of a single transaction bond with Activity Code 1, transmitted to CBP by a surety or surety agent via EDI, if the bond amount adjustment is transmitted to CBP via EDI on or before the tenth business day after the date of entry. The transmission of a bond amount adjustment is subject to the following conditions:

(1) To ensure the protection of the revenue and legal compliance, transmission of a bond amount adjustment to CBP constitutes the surety's and the principal's agreement that the amended bond amount will only limit their liability if it was calculated and transmitted using reasonable care, as that term is used in 19 U.S.C. 1484, and absent reasonable care, the bond amount in effect prior to transmission of the bond amount adjustment remains in effect.

(2) Failure to use reasonable care may also result in penalties or other legal consequences permitted by law. Notwithstanding the foregoing, transmission of a bond amount adjustment to CBP also constitutes the surety's and the principal's agreement that CBP may immediately prohibit either the surety or the principal, or both, from being party to future bond amount adjustments to any bond, if necessary to protect the revenue or to ensure legal compliance.

§ 113.24 Bond riders.

(a) *Types of bond riders.* The permissible bond riders are listed below, with their terms and conditions.

(1) Authorized user addition bond rider. Transmission of an authorized user addition bond rider constitutes agreement by the principal and surety that:

(i) The CBP filing identification numbers transmitted with the bond rider identify unincorporated units of the identified principal or trade or business names used by the identified principal in its business;

(ii) The identified bond covers the activities or transactions of the added authorized user to the same extent as

though done by the identified principal; and

(iii) Any such activities or transactions will be considered to be the activities or transactions of the identified principal.

(2) Authorized user deletion bond rider. Transmission of an authorized user deletion bond rider constitutes agreement by the principal and surety that the CBP identification numbers transmitted with the bond rider are no longer authorized users of the identified bond.

(3) Reconciliation bond rider. Transmission of a reconciliation bond rider on a continuous bond constitutes agreement by the principal and surety that the identified bond covers all reconciliations elected pursuant to 19 U.S.C. 1484(b) on entries secured by the identified bond, and that all conditions set out in § 113.62 of this part are applicable to the identified bond.

(4) Removal of a reconciliation bond rider. Transmission of a removal of a reconciliation bond rider constitutes agreement by the principal and surety that the continuous bond identified in the transmission is amended to no longer cover future reconciliations elected pursuant to 19 U.S.C. 1484(b).

(5) U.S. Virgin Islands bond rider. Transmission of a U.S. Virgin Islands bond rider constitutes agreement by the principal and surety that the words "United States," whenever used in the terms and conditions of the identified bond, include the U.S. Virgin Islands, and that activities or transactions of the principal in the U.S. Virgin Islands are covered by the identified bond as if they occurred in the United States. A U.S. Virgin Islands bond rider may not be removed. Instead, the principal must terminate the existing bond with the rider and obtain a new bond pursuant to § 113.27 of this part.

(b) *Transmission of bond riders.* A bond rider must be transmitted to CBP using the same method as the underlying bond, pursuant to § 113.11 of this part.

(c) *Information required in the bond rider transmission.* A bond rider transmission must include the following information:

(1) Date of execution: The date the bond rider is transmitted to CBP is the date of the bond rider's execution;

(2) Bond number: The CBP-assigned bond number of the bond being amended by the bond rider;

(3) Information specific to the bond rider:

(i) Addition of authorized users: A bond rider transmission adding an authorized user must include the CBP identification number for the added

authorized user and the date the added authorized user may begin using the bond, pursuant to § 113.26 of this part.

(ii) Deletion of authorized users: A bond rider transmission deleting an authorized user must include the CBP identification number for the deleted authorized user and the date the user is no longer permitted to use the bond. The effective date of an authorized user deletion bond rider must comply with the requirements of § 113.26 of this part.

§ 113.25 [Reserved]

§ 113.26 Effective dates of bonds and bond riders.

(a) *Bonds.*

(1) Term bond. A term bond is effective on the effective date indicated in the bond transmission, so long as that effective date is no more than 60 calendar days after the date of the bond transmission. For bonds transmitted by email pursuant to § 113.11 of this part, the effective date must be at least ten business days after the date the bond is received by CBP.

(2) Single transaction bond. A single transaction bond is effective for the transaction indicated in the bond transmission, regardless of the date of the transaction.

(b) *Bond riders.*

(1) For riders transmitted via EDI, the bond rider is effective once the EDI system has accepted the bond rider transmission, except as follows:

(i) Authorized user addition bond riders. An authorized user addition bond rider is effective on or after the date the added authorized user may begin using the bond, as indicated in the bond rider transmission, so long as that date is on or after the effective date of the bond and is no more than 60 calendar days after the date of the bond rider transmission.

(ii) Authorized user deletion bond riders. An authorized user deletion bond rider is effective on or after the date the user is no longer permitted to use the bond, as indicated in the bond rider transmission, so long as that date is on or after the effective date of the bond, after the date the authorized user may begin using the bond, and is no more than 60 calendar days after the date of the bond rider transmission.

(2) For riders transmitted by email, the bond rider is effective on the date indicated in the bond rider email, except as follows:

(i) Authorized user addition, U.S. Virgin Islands, and Reconciliation bond riders. An authorized user addition, U.S. Virgin Islands, or Reconciliation bond rider is effective on the date indicated in the bond rider email, so

long as that date is on or after the effective date of the bond and is at least 10 business days, but no more than 60 calendar days, after the date of the bond rider email. If the bond rider is not transmitted by email to CBP at least 10 business days before the requested date, or if no date is indicated in the bond rider email, the bond rider is effective on the close of business of the tenth business day after the bond rider is transmitted by email to CBP.

(ii) Authorized user deletion bond riders. An authorized user deletion bond rider is effective on or after the date indicated in the bond rider email, so long as that date is at least on or after the effective date of the bond, after the date the authorized user may begin using the bond, and at least 10 business days, but no more than 60 calendar days, after the date of the bond rider email. If the bond rider is not transmitted by email to CBP at least 10 business days before the requested date, or if no date is indicated in the bond rider email, the bond rider is effective on the close of business of the tenth business day after the bond rider is transmitted by email to CBP.

§ 113.27 Voiding or terminating a bond.

(a) *Voiding a Single Transaction Bond.* The surety may void a single transaction bond transmitted to CBP via EDI, prior to obligation of that bond. To ensure the protection of the revenue and legal compliance, voiding a single transaction bond constitutes the surety's and the principal's agreement that the voided bond has not been used to secure any activity or transaction, and that the void was transmitted using reasonable care, as that term is used in 19 U.S.C. 1484. Otherwise, the single transaction bond in effect prior to voiding remains in effect. Failure to use reasonable care may also result in penalties or other legal consequences permitted by law. Notwithstanding the foregoing, voiding a single transaction bond constitutes the surety's and the principal's agreement that CBP may immediately prohibit either the surety or the principal, or both, from voiding any future bonds, if necessary to protect the revenue or to ensure legal compliance.

(b) *Terminating a bond.* No new transactions or activities may be charged against a terminated bond. A new bond in an appropriate amount, containing the appropriate bond conditions set forth in subpart G of this part, must be transmitted to CBP pursuant to this part to secure new transactions or activities. A bond may be terminated by either the principal or the surety on the bond, as follows:

(1) *Termination by principal.* A written request by a principal to terminate a bond must be transmitted by email to the Revenue Division. The termination will take effect on the date requested if that date is at least 15 calendar days after the date the request is transmitted by email to CBP. If no termination date is requested or if the request is not received at least 15 calendar days prior to the requested termination date, the termination will take effect on the fifteenth calendar day after the date the request is transmitted by email to CBP.

(2) *Termination by surety.* A surety wishing to terminate a bond must notify CBP and the principal of the termination. Notice of termination may be transmitted by a surety to CBP via EDI or via email to the Revenue Division. The surety must provide notice of termination to the principal at the same time that the notice of termination is transmitted to CBP. The notice must indicate the date on which the termination will be effective. The effective date of the termination must be at least 15 calendar days after the date that the notice of termination is transmitted to CBP, unless the surety can establish, to the satisfaction of the Director of the Revenue Division, good cause for earlier termination of the bond.

■ 79. Revise subpart D to read as follows:

Subpart D—Principals and Sureties

§ 113.30 Information pertaining to principals and sureties on the bond.

§ 113.31 Same party as principal and surety; attorney in fact.

§ 113.32 Partnerships as principals.

§ 113.33 Corporations as principals.

§ 113.34 Multiple principals and authorized users.

§ 113.35 [Reserved]

§ 113.36 [Reserved]

§ 113.37 Surety requirements.

§ 113.38 Consequences of surety nonperformance or default.

§ 113.39 Procedure to remove a surety from Treasury Department Circular 570.

§ 113.40 Acceptance of cash deposits in lieu of sureties on bonds.

§ 113.30 Information pertaining to principals and sureties on the bond.

The general information identifying the principal and surety that must be provided as part of the bond transmission is set forth in § 113.21.

§ 113.31 Same party as principal and surety; attorney in fact.

(a) *Same party as principal and surety.* The principal cannot act as surety on its own bond, except as provided in § 113.40 of this part.

(b) *Attorney in fact for principal or surety.* In executing a bond or bond amendment under § 113.23 of this part, a person may act as:

(1) Attorney in fact for both principal and surety; or

(2) Principal and attorney in fact for the surety.

§ 113.32 Partnerships as principals.

A partnership, including a limited partnership, means any business association recognized as such under the laws of the State where the association is organized.

(a) *Transmission.* Partnership bonds must be transmitted using the CBP identification number of the partnership.

(b) *Action of one principal binding on all principals of the partnership.* Pursuant to section 495, Tariff Act of 1930, as amended (19 U.S.C. 1495), when a bond is executed by any member of the partnership, the bond will be binding on the other partners in like manner and to the same extent as if such other partners had personally joined in the execution.

§ 113.33 Corporations as principals.

(a) *Identification of corporation on the bond.* The CBP identification number of a corporation using a bond as a principal must be included as part of the bond transmission.

(b) *Subsidiaries as principals.* The provisions of this part are applicable to each corporate subsidiary that joins its parent corporation as a principal on the bond. Pursuant to § 113.12 of this part, identification of a bond to secure an activity or transaction constitutes reaffirmation by the principal that it agrees to be bound by the terms and conditions of the identified bond and any associated bond amendments.

§ 113.34 Multiple principals and authorized users.

(a) *Multiple principals.* A bond may be transmitted to CBP with one or more principals, however, principals cannot be added or deleted by bond rider. All principals on the bond are jointly and severally liable for transactions or activities of any principals and any authorized users that use the bond.

(b) *Authorized Users.* A bond may be transmitted to CBP with one or more authorized users. An authorized user can be added to or deleted from a bond by transmitting a bond rider pursuant to § 113.24 of this part. An authorized user is not liable under the bond for transactions or activities of other principals or authorized users.

§ 113.35 [Reserved]**§ 113.36 [Reserved]****§ 113.37 Surety requirements.**

(a) *List of corporations and limits of their bonds.* Treasury Department Circular 570 contains a list of corporations authorized to act as sureties on bonds, with the amount in which each may be accepted. Unless otherwise directed by the Commissioner of CBP, no surety will be accepted on a bond if not named in the current Circular, as amended by **Federal Register** notice, and no bond may exceed the respective limit stated in the Circular, unless the excess is protected as prescribed in § 223.11, Bureau of the Fiscal Service Regulations (31 CFR 223.11).

(b) *Identification of surety on the bond.* Each surety executing or transmitting a bond to CBP must first obtain a surety code from the Revenue Division. The surety code must be transmitted to CBP with each bond, as detailed in § 113.21 of this part. In addition, each surety must establish and maintain an ACE Portal Account, obtained by submitting a completed ACE Secure Data Portal Account Application via email to CBP.

(c) *Power of attorney for the surety agent.* A surety may grant power of attorney to a surety agent to act on its behalf in the following manner:

(1) *Transmission and contents.* Surety powers of attorney must be transmitted to CBP through the ACE Portal. The data elements below must be part of that transmission:

- (i) Surety code;
- (ii) Name and physical address of surety agent;
- (iii) Surety-generated 9-digit alphanumeric identification number for the surety agent; and
- (iv) Dollar amount of surety agent's authority to obligate the surety for a single bond.

(2) *Term and revocation.* A power of attorney will continue in force and effect until revoked. Any surety desiring that a designated surety agent be divested of a power of attorney must transmit a revocation in the ACE Portal. The revocation will take effect immediately upon transmission.

(3) *Change on the power of attorney.*

(i) No change may be made to a power of attorney after it has been transmitted to CBP except changes to:

- (A) surety agent name or
- (B) surety agent address.

(ii) To make any other change to the power of attorney, the surety must first revoke the existing power of attorney in the ACE Portal, and then transmit a new

power of attorney containing the desired change.

(d) *Two or more sureties on the same bond.*

(1) *Coininsurance.* Two or more sureties may be accepted as sureties on the same bond, the amount of which cannot exceed their aggregate underwriting limitation, as stated in Treasury Department Circular 570, or an equivalent publication of the underwriting limitation by the Secretary of the Treasury. The amount for which each surety may act as surety in all cases must be within the underwriting limitation stated in the Circular. Each surety on the same bond must transmit its limit of liability, as follows, to CBP pursuant to §§ 113.11 and 113.12 of this part.

Corporate Sureties Agreement for Limitation of Liability

____ (name of surety), ____ (surety code), a surety company incorporated under laws of the State of ____, authorized to conduct a surety business in the State of ____, and having its principal place of business at ____ (address), and ____ (name of surety), ____ (surety code), a surety company incorporated under the laws of the State of ____ and having its principal place of business at ____ (address), as sureties, and ____ (name of principal), as principal, are jointly and severally obligated to the United States in the amount of ____ (\$) on a bond transmitted to CBP on ____ (date of execution) with each surety jointly and severally obligated with the principal in the amounts listed below and no more:

____ (name of surety) ____

(\$)

____ (name of surety) ____

(\$)

By this agreement the principal and sureties bind themselves and agree that for the purpose of allowing a joint action against any or all of them, and for that purpose only, this agreement and the bond under which they are obligated and which is incorporated by reference into this agreement, shall be treated as the joint and several obligation of each of the parties.

Signed this ____ day of ____ 20 ____

____ Principal

____ Surety

____ Surety

(2) *Reinsurance.* For reinsurance agreements pursuant to § 223.11 of title 31, Bureau of the Fiscal Service Regulations (31 CFR 223.11), each surety must limit its liability to a definite specified amount, in terms, transmitted with the bond. Reinsurance

agreements must be executed on Standard Form 275 pursuant to 31 CFR 223.11 and transmitted to CBP pursuant to § 113.11 of this part.

§ 113.38 Consequences of surety nonperformance or default.

(a) *Delinquency interest as a consequence of the surety's default.* Delinquency interest will accrue where a surety fails to pay in full any amount due to CBP under the surety's bond, excluding liquidated damages and penalties. Thirty days after the date such an amount is due, the unpaid balance will be considered delinquent and will bear interest by 30-day periods until the full balance is paid. The interest charged on the unpaid balance of the surety's debt will be in accordance with the rates and procedures described in § 24.3a(c) of this chapter.

(b) *Surety's nonperformance as principal.* No company will be able to act as surety on any bond while it has failed to perform its obligation(s) as principal on any other bond.

(c) *Surety's nonperformance as surety.* If a surety has demonstrated an unwillingness or inability to perform its obligations under this part on one or more bonds, CBP may limit the surety to transmitting bonds only via email or limit the surety's ability to act as surety for new transactions or activities, including, but not limited to, dollar amount limitations, time limitations, volume limitations, bond type limitations, transaction or activity limitations, geographic limitations, commodity limitations, suspension of the surety's ability to act as surety on any bond for a temporary period, or a permanent termination of the surety's ability to act as surety on any bond.

(1) *Notice to surety.* Before any limitation under paragraph (c) of this section will take effect, CBP will provide notice to the surety with sufficient information about the limitations to be imposed, the basis for the limitations, and the date the limitations will take effect, which will be at least 30 calendar days after the date notice is provided to the surety. The surety will have 30 calendar days from the date of the notice to respond. If the surety does not respond within 30 calendar days, CBP's limitations will take effect on the date indicated in the notice, and notice of the limitations will be given to the public by publication in the *Customs Bulletin*.

(2) *Review and final decision.* If the surety responds to the notice provided pursuant to paragraph (c)(1) of this section, then, within 30 calendar days of CBP's receipt of the response, the

appropriate deciding CBP official will review the response and make a final decision as to whether the proposed limitations, or less restrictive limitations, will go into effect. CBP may extend the period for a final decision after providing notice of the extension to the surety. Notice of the final decision will be provided to the surety, and any limitations imposed will take effect at least five business days after the date of the notice of final decision. Notice of the final decision will be given to the public by publishing the decision in the *Customs Bulletin*.

(3) *Final decision by the Commissioner.* The Commissioner of CBP or the Commissioner's delegate will be the deciding official for a final decision to suspend a surety's ability to act as surety on any bond for a temporary period, or a final decision to permanently terminate a surety's ability to act as a surety on any bond.

§ 113.39 Procedure to remove a surety from Treasury Department Circular 570.

If a port director, Center director, Fines, Penalties, and Forfeitures Officer, or the Director, Revenue Division, determines that a surety has failed to pay a valid demand made on the surety's bond or has failed to satisfy an obligation on that bond, the port director, Center director, Fines, Penalties, and Forfeitures Officer, or the Director, Revenue Division, may take the following steps to recommend that the surety company be removed from Treasury Department Circular 570.

(a) *Report to Headquarters.* A port director, Center director, Fines, Penalties, and Forfeitures Officer, or the Director, Revenue Division, will send the following evidence to the Executive Director, Financial Operations, Office of Finance:

(1) A copy of the bond in issue;
(2) A copy of the entry or other evidence which shows that there was a default on the bond;

(3) A copy of all relevant notices, demands or correspondence sent to the surety company requesting the honoring of the bond obligation;

(4) A copy of all relevant correspondence from the surety; and

(5) A written report of the relevant facts known to the port director, Center director, Fines, Penalties, and Forfeitures Officer, or the Director, Revenue Division, showing the unsatisfactory performance by the surety of the bond obligation(s).

(b) *Review by Headquarters.* The Executive Director, Financial Operations, will review the submitted evidence and determine whether further action against the surety is warranted. If

it is determined that further action is warranted, a report recommending appropriate action will be submitted to the Department of the Treasury, in accordance with 31 CFR part 223. The Executive Director, Financial Operations, will notify the port director, Center director, Fines, Penalties, and Forfeitures Officer, or the Director, Revenue Division, of the Executive Director's decision regarding their request for removal of the surety.

§ 113.40 Acceptance of cash deposits in lieu of surety on bonds.

(a) *General provisions.* In lieu of surety on any bond required or authorized by any law, regulation, or instruction which the Secretary of the Treasury, the Secretary of Homeland Security, or the Commissioner of CBP is authorized to enforce, the Director, Revenue Division, may accept United States money in an amount equal to the amount of the bond that would be required. The option to deposit cash in lieu of surety is at the option of the principal, and a CBP Form 301 or other CBP-approved bond designating the appropriate transaction or activity and terms and conditions for the cash deposit in lieu of surety must be transmitted via email pursuant to § 113.11 of this part, unless otherwise provided for by CBP. When cash is provided in lieu of surety, the bond must be for a period of no more than one year. Additional cash deposits in lieu of surety, or other bonds, may be required.

(b) *Application of United States money on principal's default.* If United States cash is deposited in lieu of surety on any bond, the appropriate CBP official is authorized to apply the cash to satisfy any liquidated damages, demand, or deficiency arising from the principal's default under the bond.

(c) *Release of bond and refund of cash.* The appropriate CBP official is authorized to release a bond with cash in lieu of surety upon expiration of all applicable statute(s) of limitations for claims against the cash bond. Release of a bond with cash in lieu of surety will result in a refund to the bond principal, subject to CBP's set off rights as provided in § 24.72 of this chapter.

■ 80. Revise § 113.51 to read as follows:

§ 113.51 Cancellation of bond or charge against the bond.

(a) *Cancellation of any bond or charge against any bond.* Cancellation of a bond is the process by which CBP relinquishes the right to enforce the terms and conditions of a bond, either because the principal has satisfied the terms and conditions secured by the

bond, or because the principal has satisfied alternative terms and conditions as agreed to by CBP. The Commissioner of CBP may authorize the cancellation of any bond provided for in this chapter or any charge that may have been made against the bond, in the event of a breach of any condition of the bond, upon payment of a lesser amount or penalty or upon such other terms and conditions as may be deemed sufficient. Notwithstanding the foregoing, the Commissioner of CBP may not authorize the cancellation of any bond or any charge that may have been made against a bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended, as provided for by § 113.74 and Appendix B of this part.

(b) *Cancellation of bond for deferral of duty on large yachts imported for sale at United States boat shows.*

(1) If a large yacht entered with deferral of duties pursuant to 19 U.S.C. 1484b is neither sold nor exported within the six-month period after importation, and entry is completed and duty deposited with CBP pursuant to § 4.94a of this chapter, the bond containing the terms and conditions found in § 113.75 of this part is cancelled.

(2) If a large yacht entered with deferral of duties pursuant to 19 U.S.C. 1484b is sold within the six-month period after importation, and entry is completed and duty deposited with CBP pursuant to § 4.94a of this chapter, the bond containing the terms and conditions found in § 113.75 of this part is cancelled.

(3) If a large yacht entered with deferral of duties pursuant to 19 U.S.C. 1484b is exported within the six-month period after importation and notice is provided to CBP pursuant to § 4.94a of this chapter, the bond containing the terms and conditions found in § 113.75 of this part is cancelled.

■ 81. Redesignate § 113.61 as § 113.60, and revise to read as follows:

§ 113.60 General.

In addition to the general terms and conditions applicable to all bonds, found in § 113.61 of this part, each section in this subpart identifies specific bond terms and conditions for each particular customs activity or transaction. When a bond is transmitted to CBP, the activity or transaction in which the principal plans on engaging will be identified in the bond transmission using the corresponding activity code, as identified in each section in this subpart. The bond conditions listed in this subpart which correspond to that activity or

transaction will be incorporated by reference into the bond.

■ 82. Add a new § 113.61 to read as follows:

§ 113.61 Terms and conditions applicable to all bonds.

(a) The principal and surety agree to the following terms and conditions in all bonds, unless CBP requires additional terms and conditions pursuant to paragraph (c) of this section:

(1) In order to secure payment of any duty, tax or charge, and compliance with laws and regulations as a result of activity(ies) or transaction(s) covered by any condition identified in a bond, the principal and surety identified on the bond bind themselves (jointly and severally) to the United States in the amount or amounts set forth in the bond.

(2) The principal and surety agree that any charge against the bond by any authorized user on the bond is as though it were made by the principal.

(3) The principal and surety agree that they are bound to the same extent as if they executed a separate bond covering each set of conditions incorporated by reference to the CBP regulations into the bond.

(4) If the surety fails to appoint an agent under 31 U.S.C. 9306, the surety consents to service on the Clerk of the U.S. Court of International Trade or any United States District Court in which suit is brought on this bond.

(5) To ensure that the United States receives the full value of the bond on its due date, the principal and surety agree to pay delinquency interest as a consequence of their own default, without regard to the limit of liability of the bond, on any debt arising under the bond, except for liquidated damages and penalties, with the interest accruing from the date CBP provides notice of the debt until the full balance of the debt is paid, as provided in § 113.38(a) of this part.

(6) For a term bond that renews automatically, the principal and surety agree that the terms and conditions applicable to each new bond period are those terms and conditions required by CBP and in effect on the bond renewal date (for example, the first day of the new bond period), unless the bond is terminated or cancelled at an earlier date in accordance with the regulations in this part.

(b) Additional terms and conditions for each bond are identified by the activity code transmitted with the bond. Selection of an activity code constitutes the agreement of the surety and principal to be bound by the terms and conditions in the corresponding

regulation in this subpart (for example, selection of Activity Code 1 constitutes agreement to be bound by the terms and conditions found in § 113.62 of this subpart).

(c) To the extent that the additional terms, conditions, form, or amount of a bond requirement conflict with the provisions of § 113.61(a), the additional terms, conditions, form, or amount of the specific bond requirement govern.

■ 83. In § 113.62, revise the introductory text to read as follows:

§ 113.62 Basic importation and entry bond conditions.

A bond for basic importation and entry is a consolidated bond that must contain the conditions listed in this section and may be either a single transaction or a continuous bond. An active continuous bond effective at the time entry is filed is obligated on that entry. These conditions are identified as Activity Code 1.

* * * * *

■ 84. In § 113.63, revise the introductory text to read as follows:

§ 113.63 Basic custodial bond conditions.

A basic custodial bond is a consolidated bond that must contain the conditions listed in this section and must be a continuous bond. These conditions are identified as Activity Code 2.

* * * * *

■ 85. In § 113.64, revise the introductory text to read as follows:

§ 113.64 International carrier bond conditions.

A bond for international carriers is a consolidated bond that must contain the conditions listed in this section and may be either a single transaction or continuous bond. These conditions are identified as Activity Code 3.

* * * * *

■ 86. In § 113.65, revise the introductory text to read as follows:

§ 113.65 Repayment of erroneous drawback payment bond conditions.

A bond for repayment of erroneous drawback must contain the conditions listed in this section and may be either a single transaction or continuous bond. These conditions are identified as Activity Code 1a.

* * * * *

■ 87. In § 113.66, revise the introductory text to read as follows:

§ 113.66 Control of containers and instruments of international traffic bond conditions.

A bond for control of containers and instruments of international traffic is a

consolidated bond that must contain the conditions listed in this section and must be a continuous bond. These conditions are identified as Activity Code 3a.

* * * * *

■ 88. In § 113.67:

■ a. Add a new sentence at the end of the introductory text in paragraph (a); and

■ b. Add a new sentence at the end of the introductory text in paragraph (b). The additions read as follows:

§ 113.67 Commercial gauger and commercial laboratory bond conditions.

Commercial Gauger Bond Conditions

(a) * * * These conditions are identified as Activity Code 5.

* * * * *

Commercial Laboratory Bond Conditions

(b) * * * These conditions are identified as Activity Code 5.

* * * * *

■ 89. In § 113.68, revise the introductory text to read as follows:

§ 113.68 Wool and fur products labeling acts and fiber products identification act bond conditions.

A bond to comply with wool and fur products labeling acts and fiber products identification act must contain the conditions listed in this section and must be a single transaction bond. These conditions are identified as Activity Code 6.

* * * * *

■ 90. In § 113.69, revise the introductory text to read as follows:

§ 113.69 Production of bills of lading bond conditions.

A bond to produce a bill of lading must contain the conditions listed in this section and must be a single transaction bond. These conditions are identified as Activity Code 7.

* * * * *

■ 91. In § 113.70:

■ a. Add a new sentence at the end of the introductory text of paragraph (a); and

■ b. Add a new sentence at the end of the introductory text of paragraph (b). The additions read as follows:

§ 113.70 Bond conditions for owners of recorded marks or recorded copyrights to obtain samples from CBP relating to importation of merchandise suspected of, or seized for, infringing recorded marks or recorded copyrights, or circumventing copyright protection measures.

(a) * * * These conditions are identified as Activity Code 15.

* * * * *

(b) * * * These conditions are identified as Activity Code 15.

* * * * *

■ 93. In § 113.71, revise the introductory text to read as follows:

§ 113.71 Bond condition to observe neutrality.

A bond to observe neutrality must contain the conditions listed in this section and must be a single transaction bond. These conditions are identified as Activity Code 9.

* * * * *

■ 93. In § 113.72, revise the introductory text to read as follows:

§ 113.72 Bond condition to pay court costs (condemned goods).

A bond to pay court costs (condemned goods) must contain the condition listed in this section and must be a single transaction bond. These conditions are identified as Activity Code 10.

* * * * *

■ 94. In § 113.73, revise the introductory text to read as follows:

§ 113.73 Foreign trade zone operator bond conditions.

A bond of a foreign trade zone operator is a consolidated bond that must contain the conditions listed in this section and must be a continuous bond. These conditions are identified as Activity Code 4.

* * * * *

■ 95. Revise § 113.74 to read as follows:

§ 113.74 Bond conditions to indemnify a complainant under section 337 of Tariff Act of 1930, as amended.

(a) *Conditions of the bond.* A bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended, must contain the conditions listed in Appendix B to this part. The bond must be a single transaction bond and must be executed and transmitted in accordance with the provisions set forth in 19 CFR 12.39(b)(2) and the provisions of this section. For the forfeiture or return of this bond, the provisions of 19 CFR 210.50(d) will apply.

(b) *Transmission of the bond.* A copy of the bond, executed as required by paragraph (c) of this section, must be transmitted to the Center or the port of entry, by the principal, with the entry, by email or EDI. In addition to transmitting the bond, when a principal elects to deposit cash in lieu of surety under § 113.40 of this part, the principal must transmit the cash deposit to the port of entry in accordance with the requirements of § 113.11 of this part.

(c) *Execution of the bond.*

(1) *Partnership as principal.* Bonds executed by a partnership, as defined in § 113.32 of this part, must be executed in the firm name, with the name of the member or attorney of the firm executing it appearing immediately below the firm signature.

(2) *Corporation as principal.* The bond of a corporate principal must be signed by an authorized officer or attorney of the corporation and the corporate seal must be affixed immediately adjoining the signature of the person executing the bond, as provided for in paragraph (d) of this section.

(i) *Corporate bond executed by an officer of the corporation.* When a bond is executed by an officer of a corporation, a power of attorney will not be required if the person signing the bond on behalf of the corporation is known to the Revenue Division, port director, or Center Director to be the president, vice president, treasurer, or secretary of the corporation. The officer's signature is prima facie evidence of that officer's authority to bind the corporation. When a power of attorney is required, it must conform to the requirements of subpart C, part 141, of this chapter.

(ii) *Corporate bond executed by an attorney in fact.* When an attorney in fact executes a bond on behalf of a corporate principal and a power of attorney has not been filed with the Revenue Division (unless exempted from filing by § 141.46 of this chapter), there must be attached a power of attorney executed by an officer of the corporation whose authority to execute the power must be shown as prescribed in paragraph (c)(2)(i) of this section.

(d) *Other requirements.*

(1) *Witnesses required.* The signature of each party to a bond executed by a noncorporate principal must be witnessed by two persons, who must sign their names as witnesses, and include their addresses.

(2) *Seals.* When a seal is required, the seal must be affixed adjoining the signature of the principal, if an individual, and the corporate seal must be affixed close to the signatures of persons signing on behalf of a corporation. Bonds must be under seal in accordance with the law of the state in which executed. However, when the charter or governing statute of a corporation requires its acts to be evidenced by its corporate seal, such seal is required.

■ 96. Revise § 113.75 to read as follows:

§ 113.75 Bond conditions for deferral of duty on large yachts imported for sale at United States boat shows.

A bond for the deferral of entry completion and duty deposit pursuant to 19 U.S.C. 1484b and § 4.94a of this chapter for a dutiable large yacht imported for sale at a United States boat show must be a single transaction bond and contain the terms below. These conditions are identified as Activity Code 22. The principal and surety on a bond for deferral of duty on large yachts imported for sale at United States boat shows agree to the following bond conditions:

(a) The principal agrees to provide CBP with all information necessary to complete the transaction provided for in § 4.94a; and

(b) If the principal fails to comply with any requirement or condition set forth in 19 U.S.C. 1484b or 19 CFR 4.94a, the principal and surety jointly and severally agree to pay to CBP an amount of liquidated damages equal to twice the amount of duty on the large yacht that would otherwise be imposed under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States, or any applicable successor subheading. For purposes of this paragraph, the term duty includes any duties, taxes, fees and charges imposed by law.

(c) The principal will exonerate and hold harmless the United States and its officers from or on account of any risk, loss, or expense of any kind or description connected with or arising from the failure to store and deliver the large yacht as required, as well as from any loss or damage resulting from fraud or negligence on the part of any officer, agent, or other person employed by the principal.

■ 98. Add new §§ 113.76–113.77 to subpart G to read as follows:

§ 113.76 Bond conditions for the Airport Customs Security Area Bond.

An Airport Customs Security Area bond must be a continuous bond containing the condition below. This condition is identified as Activity Code 11. The principal agrees to comply with the CBP regulations applicable to customs security areas at airports. If the principal defaults on the condition of this obligation, the principal and surety, jointly and severally, agree to pay liquidated damages of \$1,000 for each default; or such other amount as may be authorized by law or regulation.

§ 113.77 Importer Security Filing Bond conditions.

An Importer Security Filing Bond must contain the following terms and

conditions. These conditions are identified as Activity Code 16.

(a) The named principal (including the named principal's employees, agents and contractors) agrees to comply with all Importer Security Filing requirements set forth in 19 CFR part 149, including but not limited to providing security filing information to CBP in the manner and in the time period prescribed by regulation.

(b) If the principal defaults on the conditions of this obligation, the principal and surety jointly and severally, agree to pay liquidated damages of \$5,000 for each violation, or such other amount as may be authorized by law or regulation, upon demand by CBP.

■ 98. Remove and reserve appendices A, C, and D to part 113.

PART 118—CENTRALIZED EXAMINATION STATIONS

■ 99. The general authority citation for part 118 continues to read as follows:

Authority: 19 U.S.C. 66, 1499, 1623, 1624; 22 U.S.C. 401; 31 U.S.C. 5317.

■ 100. In § 118.11, revise paragraph (e) to read as follows:

§ 118.11 Contents of application.

(e) A bond containing the conditions set forth in § 113.63 of this chapter, transmitted to CBP pursuant to part 113 of this chapter;

PART 122—AIR COMMERCE REGULATIONS

■ 101. The general authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1415, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

■ 102. In § 122.38, revise paragraphs (d), (e) and (f) to read as follows:

§ 122.38 Permit and special license to unlade and lade.

(d) *Procedures.* The application for a permit and special license to unlade or lade shall be made by the owner, operator, or agent for an aircraft on CBP Form 3171, and shall be submitted to the port director for the airport where the unloading and lading will take place. The application shall be accompanied by a bond transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in subpart G of part 113 of this chapter, or a cash deposit, unless this requirement is waived under paragraph (e) of this section.

(e) *Waiver of bond.* To insure prompt and orderly clearance of the aircraft, passengers, baggage, or merchandise, the port director may waive the requirement under paragraph (d) of this section that either a bond be transmitted or a cash deposit be made, if the port director is convinced the revenue is protected and that all CBP requirements are satisfied.

(f) *Automatic renewal of term permit or special license.* Automatic renewal of a term permit or special license may be requested by the owner, operator, or agent for an aircraft when a continuous bond containing the appropriate bond conditions set forth in subpart G of part 113 of this chapter has been transmitted to CBP pursuant to part 113 of this chapter. The request shall be for successive annual periods which conform to the automatic renewal periods of the bond. An application will be approved by the port director unless specific reasons exist for denial. If a request for automatic renewal is not approved, the port director shall notify the requestor, and shall state the reasons for the denial. To apply for automatic renewal, item 10 on CBP Form 3171 shall be changed by adding the following words after the period of time indicated: "And automatic annual renewal thereof for so long as the bond is renewed and remains in effect."

■ 103. In § 122.74:

■ a. Revise paragraph (a)(1); and

■ b. Revise the last sentence in paragraph (a)(2).

The revisions read as follows:

§ 122.74 Incomplete (pro forma) manifest.

(a) *Application—*

(1) *Shipments to foreign countries.*

Except for aircraft bound for foreign locations referred to in paragraph (b) of this section, clearance, or permission to depart may be given to an aircraft bound for a foreign location by CBP at the departure airport before a complete manifest or all required Electronic Export Information (EEI) has been filed, if a proper bond has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in subpart G of part 113 of this chapter.

(2) * * * If any required manifest or EEI filing citations, exclusions, and/or exemption legends are not filed with the appropriate CBP officer within one business day after arrival in Puerto Rico, a proper bond must be transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in subpart G of part 113 of this chapter.

■ 104. In § 122.81, revise paragraph (b) as follows:

§ 122.81 Application.

(b) *Aircraft arriving with no cargo.* Aircraft arriving in the U.S. from a foreign area with no cargo on board, and requesting immediate examination and release, may proceed if a bond, containing the bond conditions set forth in subpart G of part 113 of this chapter, has been transmitted to CBP pursuant to part 113 of this chapter and covers the aircraft.

■ 105. Revise § 122.82 to read as follows:

§ 122.82 Bond requirements.

A bond containing the bond provisions set forth in subpart G of part 113 of this chapter must be transmitted to CBP pursuant to part 113 of this chapter before an aircraft is given a permit to proceed with residue cargo under this subpart. The bond must be transmitted in the amount required by CBP.

■ 106. In § 122.117, revise paragraphs (a)(1)(ii), (a)(2) and (c)(4)(ii) to read as follows:

§ 122.117 Requirements for transit air cargo transport.

(a) * * *

(1) * * *

(ii) Has a bond that has been transmitted to CBP pursuant to part 113 of this chapter.

(2) *Exportation from port of arrival.* Transit air cargo may be exported from the port of arrival only if covered by a bond, containing the bond conditions set forth in subpart G of part 113 of this chapter, that has been transmitted to CBP pursuant to part 113 of this chapter, as provided in § 18.25 of this chapter.

* * * * *

(c) * * *

(4) * * *

(ii) Obtain an appropriate bond, to be transmitted pursuant to part 113 of this chapter; and

* * * * *

■ 107. In § 122.182, revise the introductory text to paragraph (c)(1) to read as follows:

§ 122.182 Security provisions.

* * * * *

(c) *Application requirements—*

(1) *Initial application.* An application for an approved Customs access seal, as required by this section, must be filed by the applicant with the port director on CBP Form 3078 and must be supported by a written request and justification for issuance prepared by

the applicant's employer that describes the duties that the applicant will perform while in the Customs security area. The application requirement applies to all employees required to display an approved Customs access seal by this section, regardless of the length of their employment. The application must be supported by the bond of the applicant's employer or principal containing the bond conditions set forth in § 113.62, § 113.63, or § 113.64 of this chapter, relating to importers or brokers, custodians of bonded merchandise, or international carriers. If the applicant's employer is not the principal on a bond for one or more of the activities to which the bond conditions set forth in § 113.62, § 113.63, or § 113.64 relate, the application must be supported by an Airport Customs Security Area Bond, as set forth in § 113.76 of this chapter. The latter bond may be waived, however, for State or local government-related agencies in the discretion of the port director. Waiver of this bond does not relieve the agency in question or its employees from compliance with all other provisions of this subpart. In addition, in connection with an application for an approved Customs access seal under this section:

* * * * *

PART 123—CBP RELATIONS WITH CANADA AND MEXICO

- 108. The general authority citation for part 123 continues to read and the specific authority citation for Section 123.8 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1415, 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

Section 123.8 also issued under 19 U.S.C. 1450–1454, 1459, 1623;

* * * * *

- 109. In § 123.8, revise paragraph (c) to read as follows:

§ 123.8 permit or special license to unlade or lade a vessel or vehicle.

* * * * *

(c) *Cash deposit or bond for overtime services.* A request for reimbursable overtime services shall not be approved unless the required cash deposit or bond, containing the bond conditions set forth in § 113.64 of this chapter, has been transmitted to CBP pursuant to part 113 of this chapter.

* * * * *

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

- 110. The general authority citation for part 125 continues to read as follows:

Authority: 19 U.S.C. 66, 1565, and 1624.

* * * * *

- 111. In § 125.42, remove the words “on CBP Form 301.”

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

- 112. The general authority citation for part 127 continues to read and the specific authority citation for Sections 127.31, 127.36, and 127.37 is revised to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1493, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5753.

* * * * *

Sections 127.31, 127.36, 127.37 also issued under 19 U.S.C. 1753, 1623.

* * * * *

§ 127.37 [Amended]

- 113. In § 127.37, amend paragraph (a) by removing the words “on Customs Form 301”.

PART 128—EXPRESS CONSIGNMENTS

- 114. The general authority citation for part 128 continues to read as follows:

Authority: 19 U.S.C. 58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

- 115. Revise § 128.22 to read as follows:

§ 128.22 Bonds.

Each express consignment operator or carrier must be recognized by CBP as an international carrier and approved as a carrier of bonded merchandise, and shall have bonds containing the bond conditions set forth in §§ 113.62, 113.63, 113.64 and 113.66 of this chapter, that have been transmitted to CBP pursuant to part 113 of this chapter, to insure compliance with CBP requirements relating to the importation and entry of merchandise as well as the carriage and custody of merchandise under CBP control.

PART 132—QUOTAS

- 116. The general authority citation for part 132 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

* * * * *

- 117. In § 132.14:

- a. Revise paragraph (a)(4)(i)(C); and

- b. Amend paragraph (a)(4)(ii)(B) by removing the words “on Customs Form 301” and adding in their place the words “that has been transmitted to CBP pursuant to part 113 of this chapter”.

The revision reads as follows:

§ 132.14 Special permits for immediate delivery; entry of merchandise before presenting entry summary for consumption; permits of delivery.

(a) * * *

(4) * * *

(i) * * *

(C) The port director may assess liquidated damages under the bond that has been transmitted to CBP pursuant to part 113 of this chapter, containing the basic importation and entry bond conditions set forth in § 113.62 of this chapter, in an amount equal to the value of the merchandise, plus estimated duties (computed at the over-quota rate for tariff-rate quota merchandise), if the merchandise is (1) released before presentation of an entry summary for consumption or a withdrawal for consumption, with estimated duties attached; (2) the merchandise is not returned to CBP custody within 30 days from the date of demand for redelivery; or (3) the entry summary for consumption, or the withdrawal for consumption, with estimated duties attached, is not presented timely; and

* * * * *

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

- 119. The general authority citation for part 133 and the specific authority for section 133.47 continues to read as follows:

Authority: 15 U.S.C. 1124, 1125, 1127; 17 U.S.C. 101, 104, 106, 601, 602, 603; 19 U.S.C. 66, 1202, 1499, 1526, 1595a, 1623, 1624, 1628a; 31 U.S.C. 9701.

* * * * *

Section 133.47 also issued under 17 U.S.C. 1201.

* * * * *

- 119. In § 133.21:

- a. Revise the third sentence in paragraph (b)(5);

- b. Revise the first sentence in paragraph (c)(2); and

- c. Revise the second sentence in paragraph (f).

The revisions read as follows.

§ 133.21 Articles suspected of bearing counterfeit marks.

* * * * *

(b) * * *

(5) * * * CBP may release a sample under this paragraph when the owner of the recorded mark has a bond that has been transmitted to CBP pursuant to part 113 of this chapter, in an amount

specified by CBP and containing the conditions set forth in § 113.70(a) of this chapter. * * *

(c) * * *

(2) *Bond.* CBP may release a sample under paragraph (b)(3) of this section when the owner of the recorded mark has a bond that has been transmitted to CBP pursuant to part 113 of this chapter, in an amount specified by CBP and containing the conditions set forth in § 113.70(a) of this chapter. * * *

* * * * *

(f) * * * CBP may release a sample under this paragraph when the owner of the recorded mark has a bond that has been transmitted to CBP pursuant to part 113 of this chapter, in an amount specified by CBP and containing the conditions set forth in § 113.70(b) of this chapter. * * *

* * * * *

■ 120. In § 133.25, revise the second sentence in paragraph (c) to read as follows:

§ 133.25 Procedure on detention of articles subject to restriction.

* * * * *

(c) * * * CBP may release a sample under this paragraph when the owner of the recorded mark or trade name has a bond that has been transmitted to CBP pursuant to part 113 of this chapter, in an amount specified by CBP and containing the conditions set forth in § 113.70(a) of this chapter. * * *

* * * * *

§ 133.26 [Amended]

■ 121. Amend § 133.26 by removing the words “on CBP Form 301,”.

■ 122. In § 133.42:

■ a. Revise the third sentence in paragraph (b)(5);

■ b. Revise the first sentence in paragraph (c)(2); and

■ c. Revise the second sentence in paragraph (f).

The revisions read as follows:

§ 133.42 Piratical articles; Unlawful copies or phonorecords of recorded copyrighted works.

* * * * *

(b) * * *

(5) * * * CBP may release a sample under this paragraph when the owner of the recorded copyright has a bond that has been transmitted to CBP pursuant to part 113 of this chapter, in an amount specified by CBP and containing the conditions set forth in § 113.70(a) of this chapter. * * *

(c) * * *

(2) *Bond.* CBP may release a sample under paragraph (b)(3) of this section when the owner of the recorded copyright has a bond that has been

transmitted to CBP pursuant to part 113 of this chapter, in an amount specified by CBP and containing the conditions set forth in § 113.70(a) of this chapter. * * *

* * * * *

(f) * * * CBP may release a sample under this paragraph when the owner of the recorded copyright has a bond that has been transmitted to CBP pursuant to part 113 of this chapter, in the amount specified by CBP and containing the conditions set forth in § 113.70(b) of this chapter. * * *

* * * * *

■ 123. Revise § 133.46 to read as follows:

§ 133.46 Demand for redelivery of released articles.

If it is determined that articles which have been released from CBP custody are subject to the prohibitions or restrictions of this subpart, an authorized CBP official shall promptly make demand for redelivery of the articles under the terms of the bond, containing the bond conditions set forth in § 113.62 of this chapter, in accordance with § 141.113 of this chapter. If the articles are not redelivered to CBP custody, a claim for liquidated damages shall be made in accordance with § 141.113(h) of this chapter.

■ 124. In § 133.47:

■ a. Revise the third sentence in paragraph (b)(5);

■ b. Revise the first sentence in paragraph (c)(2); and

■ c. Revise the second sentence in paragraph (f).

The revisions read as follows:

§ 133.47 Articles suspected of violating the Digital Millennium Copyright Act.

* * * * *

(b) * * *

(5) * * * CBP may release a sample under this paragraph when the eligible person has a bond that has been transmitted to CBP pursuant to part 113 of this chapter, in an amount specified by CBP and containing the conditions set forth in § 113.70(a) of this chapter. * * *

(c) * * *

(2) *Bond.* CBP may release a sample under paragraph (b)(3) of this section when the eligible person has a bond that has been transmitted to CBP pursuant to part 113 of this chapter, in an amount specified by CBP and containing the conditions set forth in § 113.70(a) of this chapter. * * *

* * * * *

(f) * * * CBP may release a sample under this paragraph when the injured party has a bond that has been

transmitted to CBP pursuant to part 113 of this chapter, in an amount specified by CBP and containing the conditions set forth in § 113.70(b) of this chapter. * * *

* * * * *

§ 133.48 [Amended]

■ 125. In § 133.48, remove the words “on Customs Form 301,”.

PART 134—COUNTRY OF ORIGIN MARKING

■ 126. The general authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1304, 1623, 1624.

■ 127. In § 134.53:

■ a. Amend the heading of paragraph (a)(1) by removing the word “Customs” and adding in its place “CBP”; and

■ b. Amend paragraph (a)(2) by removing the word “Customs” at the end of the first sentence and adding in its place “CBP”; and by revising the second sentence.

The revisions read as follows:

§ 134.53 Examination packages.

(a) * * *

(2) * * * CBP may accept a bond transmitted to CBP pursuant to part 113 of this chapter and containing the basic importation and entry bond conditions set forth in § 113.62 of this chapter, as security for the requirements of 19 U.S.C. 1304 (f) and (g).

* * * * *

PART 141—ENTRY OF MERCHANDISE

■ 128. The general and specific authority citations for part 141 are revised to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1498, 1623, 1624.

Subpart F also issued under 19 U.S.C. 1481;

* * * * *

Section 141.4 also issued under 19 U.S.C. 1202 (General Note 3(e); Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1; Chapter 98, Subchapter III, U.S. Notes 3 and 4; Harmonized Tariff Schedule of the United States), 1498;

Section 141.19 also issued under 19 U.S.C. 1485, 1486;

Section 141.20 also issued under 19 U.S.C. 1485;

Section 141.66 also issued under 19 U.S.C. 1490;

* * * * *

■ 129. In § 141.4, revise paragraph (d) to read as follows:

§ 141.4 Entry required.

* * * * *

(d) *Railway locomotives and freight cars.* For railway locomotives and freight cars described in Additional U.S. Note 1 of Chapter 86, HTSUS, to be excepted and released in accordance with paragraph (b)(4) of this section, the importer must first have a bond that was transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in either § 113.62 or 113.64 of this chapter.

* * * * *

■ 130. In § 141.15 revise paragraphs (a) and (b) to read as follows:

§ 141.15 Bond for production of bill of lading or air waybill.

(a) *When appropriate.* If the person desiring to make entry is unable to present a bill of lading, air waybill, or other evidence of right to make entry in accordance with § 141.11, CBP may accept a bond for the production of a bill of lading or air waybill under the provisions of section 484(c), Tariff Act of 1930, as amended (19 U.S.C. 1484(c)). The bond shall be for the production of a bill of lading or air waybill, unless the person making entry intends to produce a carrier's certificate or certified duplicate bill of lading or air waybill. In that case, no bond is required because section 484(c) does not apply to entries made on a carrier's certificate or certified duplicate bill of lading or air waybill. If the port director is in doubt as to the propriety of permitting entry on a bond for the production of a bill of lading or air waybill, the port director shall request authority to do so from the Commissioner of CBP.

(b) *Form.* The bond shall be transmitted to CBP pursuant to part 113 of this chapter and contain the bond conditions set forth in § 113.69 of this chapter.

* * * * *

■ 131. In § 141.18, revise paragraph (b) to read as follows:

§ 141.18 Entry by nonresident corporation.

* * * * *

(b) Has a bond that has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter and having a resident corporate surety to secure the payment of any increased and additional duties which may be found due.

§ 141.19 [Amended]

■ 132. In § 141.19, amend paragraph (b)(2)(ii) by removing the words “on Customs Form 301” wherever they appear.

■ 133. In § 141.20:

■ a. Amend paragraph (a)(1) by removing the word “Customs” in the

final sentence, and adding in its place the text “CBP”; and

■ b. Revise paragraphs (a)(2), (b) and (c).

The revisions read as follows:

§ 141.20 Actual owner's declaration and superseding bond of actual owner.

(a) * * *

(2) *Bond of actual owner.* If the consignee desires to be relieved from contractual liability for the payment of increased and additional duties voluntarily assumed by the consignee under the single transaction bond transmitted to CBP in connection with the entry documentation and/or entry summary, or under the continuous bond against which the entry and/or entry summary is charged, the bond of the actual owner, containing the bond conditions set forth in § 113.62 of this chapter, must be transmitted to CBP pursuant to part 113 of this chapter within 90 days from the time of entry.

(b) *Appropriate party to execute and file.* The declaration of the actual owner will not be accepted unless executed by the actual owner or the owner's duly authorized agent, and filed by the nominal consignee or the consignee's duly authorized agent. The bond of the actual owner must identify the actual owner as principal on the bond, and the bond must be transmitted to CBP pursuant to part 113 of this chapter.

(c) *Nonresident actual owner.* If the actual owner is a nonresident, the actual owner's declaration shall not be accepted as compliance with section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)), unless a bond identifying the actual owner as principal and containing the bond conditions set forth in § 113.62 of this chapter, with a resident corporate surety, has been transmitted to CBP pursuant to part 113 of this chapter.

* * * * *

■ 134. Revise § 141.41 to read as follows:

§ 141.41 Surety on CBP bonds.

Powers of attorney to act as an agent for a surety on CBP bonds are subject to the requirements set forth in part 113 of this chapter.

■ 135. In § 141.61, revise the last sentence in the introductory text to paragraph (e)(2) to read as follows:

§ 141.61 Completion of entry and entry summary documentation.

* * * * *

(e) * * *

(2) * * * The importer must have an appropriate bond that has been transmitted to CBP pursuant to part 113 of this chapter, for the production of the required documentation, as follows:

* * * * *

■ 136. Revise § 141.66 to read as follows:

§ 141.66 Bond for missing documentation.

Unless otherwise prescribed in these regulations, a bond containing the bond conditions set forth in § 113.62 or § 113.69 of this chapter, as appropriate, may be transmitted to CBP pursuant to part 113 of this chapter for the production of any required documentation which is not available at the time of entry. (See § 141.91 for the procedure applicable to incomplete or missing invoices.)

■ 137. In § 141.91, revise the first sentence in paragraph (d) to read as follows:

§ 141.91 Entry without required invoice.

* * * * *

(d) The importer has a bond that has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to one and one-half the invoice value of the merchandise, for the production of the required invoice, which must be produced within 120 days after the date of the filing of the entry summary (or the entry, if there is no entry summary) documentation, unless the invoice is needed for statistical purposes. * * *

§ 141.92 [Amended]

■ 138. In § 141.92, amend paragraph (c) by removing the words “on Customs Form 301,”.

■ 139. In § 141.112:

■ a. In paragraphs (b), (c), (e)(1) and (h), remove the word “Customs” and add in its place “CBP”; and

■ b. Revise paragraph (g).

The revisions read as follows:

§ 141.112 Liens for freight, charges, or contribution in general average.

* * * * *

(g) *Bond may be required.* When any doubt exists as to the validity of a lien filed with the port director, the port director may require a bond to be transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter, to hold the port director harmless from any liability which may result from withholding the release of the merchandise.

* * * * *

PART 142—ENTRY PROCESS

■ 140. The general authority citation for part 142 is revised to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1623, 1624.

■ 141. In § 142.4:

- a. Revise paragraph (a);
- b. Revise paragraph (b)(1);
- c. Revise paragraph (b)(2); and
- d. Remove the word “Customs” from paragraph (c)(1)(iii) and add in its place “CBP”.

The revisions read as follows:

§ 142.4 Bond requirements.

(a) *At the time of entry.* Except as provided in § 10.101(d) of this chapter, or paragraph (c) of this section, merchandise will not be released from CBP custody at the time CBP receives the entry documentation or the entry summary documentation which serves as both the entry and the entry summary, as required by § 142.3, unless a single transaction or continuous bond containing the bond conditions set forth in § 113.62 of this chapter has been transmitted to CBP pursuant to part 113 of this chapter and has been secured by an approved corporate surety or secured by cash deposits as provided for in § 113.40 of this chapter. When any of the imported merchandise is subject to a tariff-rate quota and is to be released at a time when the applicable quota is filled, the full rates shall be used in computing the estimated duties to determine the amount of the bond.

(b) *If entry summary is filed after entry.*

(1) Except as provided in § 141.102(d) of this chapter, if the entry summary is filed after the entry, the bond transmitted to CBP at the time of entry, as required by paragraph (a) of this section or by § 142.19, shall continue to be obligated unless a superseding bond is transmitted to CBP, as provided in § 141.20 of this chapter, or unless a bond of the type described in paragraph (a) of this section is transmitted to CBP under the circumstances described in paragraph (b)(2) of this section. If a superseding bond is transmitted to CBP, or if a bond is transmitted to CBP under the circumstances described in paragraph (b)(2) of this section, the obligations of the initial bond shall be terminated as to any liability which may accrue after the superseding or other bond becomes effective.

(2) If entry is made in the name of an agent, supported by the agent's bond, or in the name of a principal, supported by the principal's bond, and the entry summary thereafter is filed in the name of the other party, the party named in the entry summary must have a bond that has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter. In this circumstance, the bond obligation of the party in whose name entry was made will be terminated, as to liability which

may accrue after the bond of the party named in the entry summary becomes effective, and the party filing the entry summary need not file the separate declaration of the actual owner or have the superseding bond otherwise required under § 141.20 of this chapter.

* * * * *

■ 142. In § 142.19:

- a. Revise the introductory text;
- b. Revise the first sentence in paragraph (a); and
- c. Amend the introductory text to paragraph (b) by removing the word “filed” and adding in its place the words “transmitted to CBP”.

The revisions read as follows:

§ 142.19 Release of merchandise under the entry summary.

Merchandise, for which an entry summary serves as both an entry and an entry summary, shall not be released from CBP custody until a bond has been transmitted to CBP, or the entry has been liquidated, as follows:

(a) *Bond.* Merchandise not designated for examination may be released to, or upon the order of, the carrier if a bond has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter. * * *

* * * * *

■ 143. In § 142.21:

- a. Revise the first sentence in paragraph (a);
- b. Revise paragraph (b)(2);
- c. Revise the first sentence in paragraph (e)(1);
- d. Revise paragraph (f)(2); and
- e. Revise paragraph (i).

The revisions read as follows:

§ 142.21 Merchandise eligible for special permit for immediate delivery.

* * * * *

(a) *Contiguous countries.* At the discretion of the port director, merchandise arriving by land from Canada or Mexico may be released under a special permit for immediate delivery provided the importer has a bond that has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter. * * *

(b) * * *

(2) The importer must have a continuous bond that has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter.

* * * * *

(e) * * *

(1) *Tariff rate quotas.* At the discretion of the port director, merchandise subject to a tariff-rate

quota may be released under a special permit for immediate delivery provided the importer has a bond that has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter. * * *

(f) * * *

(2) The importer must have a bond that has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter; and

* * * * *

(i) *When authorized by Headquarters.* Headquarters may authorize the release of merchandise under the immediate delivery procedure in circumstances other than those described in § 142.21(a) through (h) provided a bond containing the bond conditions set forth in § 113.62 of this chapter has been transmitted to CBP pursuant to part 113 of this chapter.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

■ 144. The general authority citation for part 144 is revised to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1623, 1624.

* * * * *

■ 145. Revise § 144.2 to read as follows:

§ 144.2 Liability of importers and sureties.

The importer of merchandise entered for warehouse is liable for the payment of all unpaid duties not only as principal on the bond transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.62 of this chapter, but also by reason of the importer's personal liability as consignee. Under the conditions of the bond, the sureties on the bond shall be held liable for the payment of duties and customs charges not paid by the principal on the bond, whether such duties and charges are finally ascertained before the merchandise is withdrawn from CBP custody or thereafter. Liability may be transferred in part along with the right to withdraw the merchandise, in accordance with Subpart C of this part.

■ 146. Revise § 144.13 to read as follows:

§ 144.13 Bond requirements.

A bond containing the bond conditions set forth in § 113.62 of this chapter must be transmitted to CBP pursuant to part 113 of this chapter in the amount required by CBP to support the entry documentation.

■ 147. Revise the introductory text of § 144.14 to read as follows:

§ 144.14 Removal to warehouse.

When the entry summary, CBP Form 7501, or its electronic equivalent has been filed, and the bond containing the bond conditions set forth in § 113.62 of this chapter has been transmitted to CBP pursuant to part 113 of this chapter, the merchandise shall be sent to the bonded warehouse, except for:

- * * * * *
- 148. Revise § 144.21 to read as follows:

§ 144.21 Conditions for transfer.

Under the provisions of section 557(b), Tariff Act of 1930, as amended (19 U.S.C. 1557(b)), the right to withdraw all or part of merchandise entered for warehouse may be transferred by appropriate endorsement on the withdrawal form, provided that the transferee has a bond containing the bond conditions set forth in § 113.62 of this chapter, that has been transmitted to CBP pursuant to part 113 of this chapter. Upon the deposit of the endorsed form, properly executed, with the CBP officer designated to receive such form, and transmission to CBP of the transferee's bond pursuant to part 113 of this chapter, the transferor and transferor's sureties will be relieved from all undischarged liability.

- 149. Revise § 144.23 to read as follows:

§ 144.23 Endorsement in blank.

If the transferor wishes to do so, the transferor may endorse the withdrawal form to authorize the right to withdraw the merchandise specified thereon but leave the space for the name of the transferee blank. A holder of a withdrawal form so endorsed and otherwise fully executed may insert the holder's own name in the blank space, deposit such form with the CBP officer designated to receive such form, prove that the holder has a bond that has been transmitted to CBP pursuant to part 113 of this chapter, and thereby establish the holder's right to withdraw the merchandise.

- 150. Revise § 144.24 to read as follows:

§ 144.24 Transferee's bond.

The transferee's bond must be transmitted to CBP pursuant to part 113 of this chapter and contain the bond conditions set forth in § 113.62 of this chapter.

- 151. Revise § 144.25 to read as follows:

§ 144.25 Deposit of forms.

Either the transferor or the transferee may deposit the endorsed withdrawal form with the CBP officer designated to

receive such form. The transferee's bond must be transmitted to CBP pursuant to part 113 of this chapter.

- 152. In § 144.41, revise paragraph (d) to read as follows:

§ 144.41 Entry for rewarehouse.

* * * * *

(d) *Bond.* A bond containing the bond conditions set forth in § 113.62 of this chapter must be transmitted to CBP pursuant to part 113 of this chapter before a permit is issued on CBP Form 7501, or its electronic equivalent, for sending the merchandise to the bonded warehouse. However, no bond will be required if the merchandise is entered by the consignee named in the original bond, or if it is entered by a transferee who has established the right to withdraw the merchandise and has a bond in accordance with subpart C of this part that has been transmitted to CBP pursuant to part 113 of this chapter.

* * * * *

PART 146—FOREIGN TRADE ZONES

- 153. The general authority citation for part 146 continues to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

- 154. In § 146.6, revise paragraphs (d) and (e).

The revisions read as follows:

§ 146.6 Procedure for activation.

* * * * *

(d) *Decision of the port director.* The port director shall promptly notify the applicant in writing of the port director's decision to approve or deny the application to activate the zone. If the application is denied, the notification will state the grounds for denial which need not be limited to those listed in § 146.82. The decision of the port director will be the final CBP administrative determination in the matter. On approval of the application, a Foreign Trade Zone Operator's Bond must be transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions of § 113.73 of this chapter.

(e) *Activation.* Upon the port director's approval of the application and transmission of the bond to CBP pursuant to part 113 of this chapter, the zone or zone site will be considered activated; and merchandise may be admitted to the zone. Transmission of the operator's bond to CBP does not lessen the liability of the grantee to comply with the Act and implementing regulations.

- 155. In § 146.7, revise paragraphs (d) and (f).

The revisions read as follows:

§ 146.7 Zone Changes

* * * * *

(d) *New bond.* The port director may require the transmission of a new Foreign Trade Zone Operator's Bond to CBP pursuant to part 113 of this chapter on 10 days' notice. If the new bond is not transmitted to CBP, no more merchandise will be received in the zone in zone status. Merchandise in zone status (other than domestic status) will be removed at the risk and expense of the operator. A new bond may be required if:

(1) the activated zone area is substantially altered;

(2) the character of merchandise admitted to the zone or operations performed in the zone are substantially changed;

(3) the existing bond lacks good and sufficient surety; or

(4) for any other reason that substantially affects the liability of the operator under the bond. Although a new bond may not be required, the operator must obtain the consent of the surety to any material alteration in the boundaries of the zone.

* * * * *

(f) The bond in § 146.6 must be transmitted to CBP pursuant to part 113 of this chapter before the operating agreement may become effective in respect to merchandise in zone status. The port director shall promptly notify the grantee, in writing, of the approval or disapproval of the application.

* * * * *

- 156. In § 146.67, revise paragraph (b) to read as follows:

§ 146.67 Transfer of merchandise for exportation.

* * * * *

(b) *Immediate exportation.* Each transfer of merchandise to the customs territory for exportation at the port where the zone is located will be made under an entry for immediate exportation filed in an in-bond application pursuant to part 18 of this chapter. The person making entry must transmit a bond to CBP pursuant to part 113 of this chapter, containing the bond conditions provided for in § 113.63 of this chapter.

* * * * *

- 157. In § 146.69, revise paragraph (a).

The revision reads as follows:

§ 146.69 Supplies, equipment, and repair material for vessels or aircraft.

(a) *General.* Any merchandise which may be withdrawn duty and tax free in

Customs territory under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), and under §§ 10.59 through 10.65 of this chapter, may similarly be transferred from a zone, regardless of its zone status, under those statutes and regulations. Each transfer from a zone for delivery to a qualified vessel or aircraft, will be made on CBP Form 5512 (see § 10.60 of this chapter). The person making entry must have a bond containing the bond conditions provided for in § 113.62 of this chapter, that has been transmitted to CBP pursuant to part 113 of this chapter.

* * * * *

PART 147—TRADE FAIRS

■ 158. The general authority citation for part 147 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624, 1751–1756, unless otherwise noted.

■ 159. Revise § 147.3 to read as follows:

§ 147.3 Bond required.

The fair operator must have a bond containing the bond conditions set forth in § 113.62 of this chapter and in such amount as CBP requires, that has been transmitted to CBP pursuant to part 113 of this chapter. Liquidated damages shall be assessed by the port director under the bond if payments required by §§ 147.33, 147.41 or 147.43 are not paid upon demand.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

■ 160. The general authority citation for part 148 continues to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States).

* * * * *

■ 161. In § 148.52, revise paragraph (c) to read as follows:

§ 148.52 Exemption for household effects used abroad.

* * * * *

(c) *Declaration.* When household effects are claimed to be free of duty a declaration of the owner on CBP Form 3299, or its electronic equivalent, shall be required to support the claim for free entry. If it is impracticable to produce the declaration at the time of entry, the importer may instead have a bond containing the bond conditions set forth in § 113.62 of this chapter, for the production of the owner's declaration within 6 months, that has been transmitted to CBP pursuant to part 113 of this chapter.

* * * * *

PART 149—IMPORTER SECURITY FILING

■ 162. The general authority citation for part 149 is revised to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 943; 19 U.S.C. 66, 1415, 1623, 1624, 2071 note.

■ 163. In § 149.5, revise paragraph (b) to read as follows:

§ 149.5 Eligibility to file an Importer Security Filing, authorized agents.

* * * * *

(b) *Bond required.* The ISF Importer must have a basic importation and entry bond containing all the necessary provisions of § 113.62 of this chapter, a basic custodial bond containing all the necessary provisions of § 113.63 of this chapter, an international carrier bond containing all the necessary provisions of § 113.64 of this chapter, a foreign trade zone operator bond containing all the necessary provisions of § 113.73 of this chapter, or an importer security filing bond containing all the necessary provisions of § 113.77 of this chapter. The bond must have been transmitted to CBP pursuant to part 113 of this chapter. If an ISF Importer does not have a required bond, the agent submitting the Importer Security Filing on behalf of the ISF Importer may use the agent's bond.

* * * * *

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

■ 164. The general authority provision for part 151 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i) and (j), Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624;

* * * * *

■ 165. In § 151.7:

■ a. Amend paragraphs (a)-(c) by removing the word “Customs” wherever it appears, and adding in its place “CBP”; and

■ b. Revise paragraph (d).

The revision reads as follows:

§ 151.7 Examination elsewhere than at place of arrival or public stores.

* * * * *

(d) *Bond for removal from CBP custody.* Before permitting the removal of merchandise for examination elsewhere than at the public stores, wharf, or other place under the control of CBP, the port director will require the importer to have a bond containing the bond conditions set forth in § 113.62 of this chapter, that has been transmitted to CBP pursuant to part 113 of this chapter.

■ 166. In § 151.12, revise paragraphs (f)(1)(vii) and (g)(2)(vi) to read as follows:

§ 151.12 Accreditation of commercial laboratories.

* * * * *

(f) * * *

(1) * * *

(vii) An express agreement that if notified by CBP of pending accreditation, that the applicant will obtain a bond and ensure that it is transmitted to CBP pursuant to part 113 of this chapter. (The limits of liability on the bond will be established by the port in consultation with the Executive Director, Laboratories & Scientific Services, and the Director, Revenue Division. In order to retain customs accreditation, the laboratory must maintain an adequate bond, as determined by the port director, Executive Director, Laboratories & Scientific Services, and Director, Revenue Division.);

* * * * *

(g) * * *

(2) * * *

(vi) Failure to have a bond that has been transmitted to CBP pursuant to part 113 of this chapter.

* * * * *

■ 167. In § 151.13, revise paragraphs (d)(1)(vii) and (e)(2)(vi) to read as follows:

§ 151.13 Approval of commercial gaugers.

* * * * *

(d) * * *

(1) * * *

(vii) An express agreement that, if notified by CBP of pending approval, the applicant will obtain a bond and ensure that it is transmitted to CBP pursuant to part 113 of this chapter. (The limit of liability on the bond will be established by the port in consultation with the Executive Director, Laboratories & Scientific Services, and the Director, Revenue Division. In order to retain CBP approval, the gauger must maintain an adequate bond, as determined by the port director, Executive Director, Laboratories & Scientific Services, and Director, Revenue Division.);

* * * * *

(e) * * *

(2) * * *

(vi) Failure to have a bond that has been transmitted to CBP pursuant to part 113 of this chapter.

* * * * *

PART 162—INSPECTION, SEARCH, AND SEIZURE

■ 168. The general and specific authority citations for part 162 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624, 6 U.S.C. 101, 8 U.S.C. 1324(b).

* * * * *

Section 162.47 also issued under 19 U.S.C. 1608;

* * * * *

■ 169. In § 162.47, revise paragraph (b) to read as follows:

§ 162.47 Claim for property subject to summary forfeiture.

* * * * *

(b) *Bond for costs.* Except as provided in paragraph (e) of this section, the bond in the amount of \$5,000 or 10% of the value of the claimed property, whichever is lower, but not less than \$250, required by section 608, Tariff Act of 1930, as amended, for a claim for seized property must contain the bond conditions set forth in § 113.72 of this chapter and must be transmitted to CBP pursuant to part 113 of this chapter.

* * * * *

PART 190—MODERNIZED DRAWBACK

■ 172. The general authority citation for part 190 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1623, 1624;

* * * * *

■ 173. In § 190.92, revise paragraphs (d) and (e)(3) to read as follows:

§ 190.92 Accelerated payment.

* * * * *

(d) *Bond required.* If approved for accelerated payment, the claimant must have a bond in an amount sufficient to cover the estimated amount of drawback to be claimed during the term of the bond, that has been transmitted to CBP pursuant to part 113 of this chapter. If outstanding accelerated drawback claims exceed the amount of the bond, the drawback office will require additional bond coverage as necessary before additional accelerated payments are made.

(e) * * *

(3) *Approval.* The approval of an application for accelerated payment, under this section, will be effective as of the date of CBP's written notification of approval under paragraph (e)(2) of this section. Accelerated payment of drawback will be available under this section to unliquidated drawback claims filed before and after such date. For claims filed before such date, accelerated payment of drawback will be paid only if the claimant has a bond covering the claim, in an amount sufficient to cover the amount of accelerated drawback to be paid on the claim, that has been transmitted to CBP pursuant to part 113 of this chapter.

* * * * *

PART 191—DRAWBACK

■ 174. The general authority citation for part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1623, 1624;

* * * * *

■ 175. In § 191.92, revise paragraphs (d) and (e)(3) to read as follows:

§ 191.92 Accelerated payment.

* * * * *

(d) *Bond required.* If approved for accelerated payment, the claimant must have a bond in an amount sufficient to cover the estimated amount of drawback to be claimed during the term of the bond, that has been transmitted to CBP pursuant to part 113 of this chapter. If outstanding accelerated drawback claims exceed the amount of the bond, the drawback office will require additional bond coverage as necessary before additional accelerated payments are made.

(e) * * *

(3) *Approval.* The approval of an application for accelerated payment, under this section, will be effective as of the date of CBP's written notification of approval under paragraph (e)(2) of this section. Accelerated payment of drawback will be available under this section to unliquidated drawback claims filed before and after such date. For claims filed before such date, accelerated payment of drawback will be paid only if the claimant has a bond covering the claim, in an amount sufficient to cover the amount of accelerated drawback to be paid on the claim, that has been transmitted to CBP pursuant to part 113 of this chapter.

* * * * *

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

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Part III

Department of Transportation

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49 CFR Parts 383 and 384

Restoring Integrity to the Issuance of Non-Domiciled Commercial Drivers
Licenses (CDL); Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 384

[Docket No. FMCSA–2025–0622]

RIN 2126–AC98

Restoring Integrity to the Issuance of Non-Domiciled Commercial Drivers Licenses (CDL)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FMCSA amends the Federal regulations for State Driver's Licensing Agencies (SDLAs) issuing commercial driving credentials to non-domiciled individuals. This final rule reaffirms, with minor changes, the provisions of the interim final rule (IFR) published on September 29, 2025. Specifically, this final rule limits eligibility for non-domiciled Commercial Learner's Permits (CLPs) and Commercial Driver's Licenses (CDLs) for foreign-domiciled individuals to those who hold specific, verifiable employment-based nonimmigrant status. This rule reaffirms the IFR requirements, aligning the issuance of non-domiciled CDLs with FMCSA's statutory mandate to ensure the fitness of all drivers who operate a CMV. By limiting eligibility to statuses subject to enhanced consular vetting of driver history and interagency screening, FMCSA restores the integrity of the CDL system, closes a significant safety gap, and enhances the safety of the traveling public.

DATES: This final rule is effective March 16, 2026.

Comments on the information collection in this final rule must be submitted to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) by March 16, 2026.

FOR FURTHER INFORMATION CONTACT:

Philip Thomas, Deputy Associate Administrator, Office of Safety, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–2551; CDLRulemaking@dot.gov. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION: FMCSA organizes this final rule as follows:

- I. Availability of Rulemaking Documents
- II. Comments on the Information Collection
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IX. Regulatory Analyses

- A. E.O. 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures
- B. E.O. 14192 (Unleashing Prosperity Through Deregulation)
- C. Congressional Review Act
- D. Regulatory Flexibility Act (Small Entities)
- E. Assistance for Small Entities
- F. Unfunded Mandates Reform Act of 1995
- G. Paperwork Reduction Act
- H. E.O. 13132 (Federalism)
- I. Privacy
- J. E.O. 13175 (Indian Tribal Governments)
- K. National Environmental Policy Act of 1969

I. Availability of Rulemaking Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2025-0622/document> and choose the document to review. To view comments, click the IFR, then click “Document Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in room W58–213 of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Comments on the Information Collection

Written comments and recommendations for the information collection discussed in this final rule should be sent within 30 days of publication to www.reginfo.gov/public/do/PRAMain. Find this information collection by clicking the link that reads “Currently under Review—Open for Public Comments” or by entering OMB control number 2126–0087 in the search bar and clicking on the last entry to reach the “comment” button.

III. Executive Summary

This final rule revises the regulations that allow SDLAs to issue and renew non-domiciled CLPs and CDLs to individuals not domiciled in a U.S. State. This final rule builds on and makes minor revisions to the regulatory changes in the IFR published on September 29, 2025 titled, “Restoring Integrity to the Issuance of Non-

Domiciled Commercial Drivers Licenses (CDL)” (90 FR 46509). In reaffirming the changes made in the IFR and making some revisions for clarity, this final rule closes a critical safety gap in the Nation's commercial drivers licensing system that has manifested in two ways: (1) the issuance of licenses to individuals whose safety fitness cannot be adequately verified by SDLAs; and (2) the reliance on Employment Authorization Documents (EAD)¹ to demonstrate eligibility for a non-domiciled CDL, which has proven administratively unworkable and resulted in widespread regulatory non-compliance.

First, the agency identified an unacceptable bifurcated standard in driver vetting. While domestic CDL applicants face rigorous driver history checks through the Commercial Driver's License Information System (CDLIS) and the Problem Driver Pointer System (PDPS), non-domiciled applicants were previously processed without equivalent checks on their foreign driving history. This effectively shielded unsafe driving behaviors—including serious violations or fatal crashes—simply because they occurred outside the reach of U.S. databases. It is important to recognize that a non-domiciled driver's foreign driving record is not only historical, but also concurrent, as the driver is not required to surrender their foreign license to obtain a non-domiciled CDL and may be driving in another country during the same time period in which they hold a non-domiciled CDL. In this case, the SDLA does not have access to either the historical or the concurrent information. To close this loophole and fulfill FMCSA's statutory mandate to ensure the safety fitness of CMV drivers, this rule establishes eligibility criteria for foreign-domiciled drivers seeking non-domiciled CDLs. Following consultation with the U.S. Department of State and the U.S. Department of Homeland Security, eligibility is limited to nonimmigrant status holders who undergo enhanced consular vetting and interagency screening which serves as a functional proxy for driver history vetting by the SDLAs. By limiting eligibility to the nonimmigrant status holders identified through consultation with the U.S. Department of State, H–2A (Temporary Agricultural Workers), H–2B (Temporary Non-Agricultural

¹ An Employment Authorization Document (Form I–766/EAD), issued by USCIS, indicates that the holder is authorized to work in the United States for a specific time period. See <https://www.uscis.gov/green-card/green-card-processes-and-procedures/employment-authorization-document>.

Workers), and E-2 (Treaty Investors) nonimmigrant status holders,² FMCSA ensures that non-domiciled drivers undergo rigorous driver history checks that SDLAs, who lack access to this critical information, are incapable of performing independently. This ensures all drivers on U.S. roadways satisfy a comparable standard of background and driver history vetting, consistent with FMCSA's statutory mandate to ensure the fitness of CMV operators.

FMCSA identified 17 fatal crashes in 2025 that were caused by actions of non-domiciled CDL holders whose fitness could not be ensured and thus would be ineligible under this new rule. FMCSA did not identify, out of all the crashes the Agency reviewed, any that were caused by non-domiciled CDL holders who would remain eligible under the revised regulations. These crashes resulted in 30 fatalities and numerous severe injuries, underscoring the lethal consequences of allowing unvetted operators behind the wheel of CMVs. FMCSA believes that that the previous SDLA-administered process for foreign-domiciled drivers was insufficient to screen for high-risk drivers.

Furthermore, Annual Program Reviews (APRs) revealed systemic non-compliance with FMCSA regulations governing the issuance of non-domiciled CDLs. Under 49 CFR 383.71 and 383.73, SDLAs must issue regular CLPs and CDLs to drivers who are U.S. citizens or lawful permanent residents. With respect to foreign-domiciled drivers, regulations in effect prior to September 29, 2025 IFR, and currently in effect, provide that States that issue non-domiciled CLPs and CDLs to foreign-domiciled drivers may only accept as valid proof of lawful presence (i) an unexpired EAD issued by the United States Citizenship and Immigration Services (USCIS) or (ii) an unexpired foreign passport accompanied by an approved I-94 form documenting the driver's most recent admittance into the United States. Further, the regulations require that States accept as valid only unexpired lawful presence documents, which also means that the State must make the period of validity of the non-domiciled CLP or CDL less than or equal to the period of validity of the driver's lawful presence document(s). In other words, because FMCSA's regulations considered only unexpired lawful presence documents to be valid, States were required to ensure that the non-

domiciled CLP or CDL period of validity do not exceed the expiration of the driver's lawful presence documents. Therefore, State driver's licensing agencies are required to ensure that the validity of non-domiciled CLPs or CDLs did not exceed the expiration date of drivers' lawful presence documents. In addition, States may not issue a non-domiciled CLP or CDL to citizens of Mexico or Canada, with the exception of those present in the United States under the Deferred Action for Childhood Arrivals (DACA) program. Under FMCSA's 2023 guidance, which is being rescinded under this final rule, States were permitted to issue a non-domiciled CLP or CDL to citizens of Mexico or Canada only if they are present in the United States under the DACA program.

More than 30 States have issued tens of thousands non-domiciled CDLs contrary to Federal regulations. In this regard, SDLAs have issued noncompliant non-domiciled CDLs that extend beyond the expiration of drivers' lawful presence in the United States, issued non-domiciled CDLs to citizens of Mexico and Canada not present in the United States under the DACA program, issued non-domiciled CDLs to lawful permanent residents who should have been issued regular CDLs, and issued non-domiciled CDLs without providing evidence that it verified the driver's lawful presence in the United States under the standards set forth in 49 CFR part 383. For example, in California, FMCSA found a non-compliance rate of approximately 25 percent among reviewed non-domiciled files, while New York and Texas demonstrated staggering error rates of 53 and 49 percent respectively.

This rule also replaces a complex framework for the issuance of non-domiciled CDLs to DACA recipients and other EAD holders with a "bright-line" eligibility standard. For example, as explained above, under the prior regulations, States are prohibited from issuing a non-domiciled CLP or CDL to a driver domiciled in Canada or Mexico, with the exception of Canadian and Mexican drivers present in the United States under DACA. An individual's DACA status is indicated on the EAD under the category code "C33." However, SDLAs have demonstrated challenges reliably distinguishing between EAD codes and language that were considered under prior guidance to indicate a permissible basis for issuance of a non-domiciled CDL to a driver domiciled in Canada or Mexico (e.g., C33—"Deferred Action for Childhood Arrivals") and those considered to indicate an impermissible basis (e.g., C14—"Deferred Action" or

"Alien Granted Deferred Action").³ This confusion, along with uneven application of the regulations and guidance, led to the improper issuance of many non-domiciled CDLs to drivers domiciled in Canada or Mexico. To restore system integrity, FMCSA now requires an unexpired foreign passport and an I-94 corresponding to a specific valid employment-based nonimmigrant status. This objective standard eliminates the burden on SDLAs to interpret complex immigration codes.

Ultimately, this rule aligns the issuance of non-domiciled CDLs with FMCSA's statutory mandate to "ensure the fitness" of CMV operators. By limiting eligibility to statuses subject to consular vetting and interagency screening, FMCSA closes a significant safety gap, solves the bifurcated standard, and prioritizes the safety of the traveling public.

IV. Abbreviations

AAMVA American Association of Motor Vehicle Administrators
AFL-CIO American Federation of Labor & Congress of Industrial Organizations
AFSCME American Federation of State, County and Municipal Employees
AFT American Federation of Teachers
APA Administrative Procedure Act
APR Annual Program Review
APTA American Public Transportation Association
ATA American Trucking Associations
ATRI American Transportation Research Institute
BLS Bureau of Labor Statistics
CDL Commercial driver's license
CDLIS Commercial Driver's License Information System
CRA Civil Rights Act of 1964
CFR Code of Federal Regulations
CLP Commercial learner's permit
CMV Commercial motor vehicle
CMVSA Commercial Motor Vehicle Safety Act of 1986
COFA Compact of Free Association
COVID-19 Coronavirus Disease 2019
Pandemic
DACA Deferred Action for Childhood Arrivals
DHS Department of Homeland Security
DMV Department of motor vehicles
DOL Department of Labor
DOT Department of Transportation
EAD Employment Authorization Document
ELD Electronic logging device
ELP English language proficiency
E.O. Executive Order
FARS Fatality Analysis Reporting System
FAS Freely Associated States
FMCSRs Federal Motor Carrier Safety Regulations
FR Federal Register
FSM Federated States of Micronesia
ICR Information collection request
IFR Interim final rule

² For more information on the requirements and processes required for the listed statuses see <https://www.uscis.gov/working-in-the-united-states>.

³ EAD codes correspond to eligibility categories listed in 8 CFR 274a.12. See <https://www.uscis.gov/employment-authorization>.

INA Immigration and Nationality Act of 1952
 IT Information technology
 MALDEF Mexican American Legal Defense and Educational Fund
 MCMIS Motor Carrier Management Information System
 NAICS North American Industry Classification System
 NJSBCA New Jersey School Bus Contractors Association
 NPRM Notice of proposed rulemaking
 OES Occupational Employment Statistics
 OFLC Office of Foreign Labor Certification
 OIRA Office of Information and Regulatory Affairs
 OMB Office of Management and Budget
 OOIDA Owner-Operator Independent Drivers Association
 PRA Paperwork Reduction Act
 PII Personally identifiable information
 RCUSA Refugee Counsel USA
 RFA Regulatory Flexibility Act
 RIA Regulatory impact analysis
 SALDEF Sikh American Legal Defense and Education Fund
 SAS Service Annual Survey
 SAVE Systematic Alien Verification for Entitlements
 SBTC Small Business in Transportation Coalition
 Secretary The Secretary of Transportation
 SDLA State Driver's Licensing Agency
 SSN Social Security number
 TPR Training Provider Registry
 TPS Temporary Protected Status
 USW United Steelworkers
 U.S.C. United States Code
 USCIS U.S. Citizenship and Immigration Services
 VLS Verification of Lawful Status

V. Legal Basis

This final rule is based on the broad authority granted to the Secretary of Transportation (Secretary) by the Commercial Motor Vehicle Safety Act of 1986 (CMVSA, 49 U.S.C. 31301, *et seq.*), as amended, which forms the basis for the CDL program and the performance standards with which State CDL programs must comply. Among other things, the statute requires the Secretary to prescribe regulations on minimum standards “for testing and ensuring the fitness of an individual operating a commercial motor vehicle” (49 U.S.C. 31305(a)). It also requires the Secretary, after consultation with the States, to prescribe regulations on minimum uniform standards for the issuance of CDLs and CLPs by the States and for information to be contained on each license and permit (49 U.S.C. 31308). Further, it prohibits States from issuing CDLs to drivers who have been disqualified as a result of committing serious traffic violations or certain offenses, such as driving a CMV under the influence of alcohol or controlled substance, leaving the scene of an accident, or using a CMV in committing a felony, or drivers whose licenses have

been suspended, revoked, or cancelled (49 U.S.C. 31310, 31311(a)(10)). In addition, section 32204 of the Moving Ahead for Progress in the 21st Century Act (MAP-21, 49 U.S.C. 31310(k)) explicitly provides that drivers licensed by an authority outside of the United States or foreign citizens operating CMVs in the United States are subject to the same disqualification requirements as domestic CMV drivers. This final rule fulfills FMCSA’s statutory duty to prescribe minimum standards to ensure the safety fitness of drivers (49 U.S.C. 31305) and to prescribe issuance standards that are uniform (49 U.S.C. 31308). As discussed in greater detail in Section VI.B, the current regulatory framework has resulted in a bifurcated safety standard in which U.S.-domiciled drivers are subject to strict safety vetting, while permitting foreign-domiciled drivers to operate under a demonstrably lower threshold for scrutiny, thereby compromising public safety. This final rule aligns the issuance of non-domiciled CDLs with the statutory mandates to “ensure the fitness” of CMV operators (49 U.S.C. 31305(a)) and it also ensures consistent application of the laws consistent with the statutory mandate in 49 U.S.C. 31308.

The CMVSA provides that States may issue CDLs to individuals who are “not domiciled in a State that issues [CDLs],” but if they choose to issue non-domiciled CDLs, they must do so in accordance with regulations prescribed by FMCSA (49 U.S.C. 31311(a)(12)(B)). This statutory language grants the agency explicit discretion to define the parameters of eligibility. The regulations setting forth the standards States must apply when issuing non-domiciled CLPs and CDLs are found at 49 CFR 383.23, 383.71(f), 383.73(f), 384.201, and 384.212(a). By authorizing, but not requiring, the issuance of non-domiciled CDLs, Congress did not create an unqualified right for every foreign-domiciled driver who wishes to operate CMVs in the United States to obtain a CDL; rather, Congress created a pathway to permit States to issue CDLs and CLPs to foreign-domiciled drivers whom the Secretary determines are eligible. This final rule exercises that delegated authority to narrow eligibility for foreign-domiciled drivers who wish to obtain a non-domiciled CDL to those classes of individuals who are in an employment-based nonimmigrant category (H-2A, H-2B, E-2) and whose fitness, driver history, and qualifications can be reliably verified and vetted.

This final rule is also consistent with the concurrent authorities of the Motor Carrier Safety Act of 1984 (49 U.S.C.

31131, *et seq.*), as amended, and the Motor Carrier Act of 1935 (49 U.S.C. 31502), as amended. The 1984 Act granted the Secretary broad authority to issue regulations on “commercial motor vehicle safety,” including regulations to ensure that “commercial motor vehicles are . . . operated safely” (as amended and codified at 49 U.S.C. 31136(a)(1)). This final rule is consistent with the safe operation of CMVs, as it rectifies critical safety gaps in the CLP and CDL vetting and issuance process as driving history has been cited consistently as a strong predictor of future driving safety outcomes. In accordance with 49 U.S.C. 31136(a)(2), the amendments contained in this rule will not impose any “responsibilities . . . on operators of commercial motor vehicles [that would] impair their ability to operate the vehicles safely” because it relates only to obtaining, renewing, and upgrading the credential that authorizes operation of CMVs, but does not have an impact on the way in which a driver operates such vehicles after having obtained the credential. This final rule does not implicate 49 U.S.C. 31136(a)(3) or (4) as it does not directly address medical standards for drivers (49 U.S.C. 31136(a)(3)) or possible physical effects caused by driving CMVs (49 U.S.C. 31136(a)(4)). FMCSA does not anticipate that this rule will result in the coercion of CMV drivers by motor carriers, shippers, receivers, or transportation intermediaries to operate a CMV in violation of the Federal Motor Carrier Safety Regulations (FMCSRs, 49 U.S.C. 31136(a)(5)). Limiting eligibility to those in certain employment-based nonimmigrant statuses who undergo additional vetting for dangerous driving history ensures that available drivers are less likely to be coerced to violate the FMCSRs. By excluding unvetted drivers who may be more prone to unsafe behaviors and thus more susceptible to pressure to violate safety rules, this requirement ensures the eligible driver population is less likely to be coerced.

Pursuant to 49 U.S.C. 31502(b), “[t]he Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.” This final rule, which addresses the ability of individuals who are domiciled in foreign jurisdictions to operate CMVs in the United States, is related to the safe operation of motor carrier equipment

because the CDL program is designed to ensure that only individuals who have been determined by relevant State licensing agencies—in accordance with Federal standards—to be qualified to operate large commercial vehicles are allowed to drive such vehicles on the Nation's roadways. Both identity verification and skills testing are integral to the determination of a driver's qualifications and are implicated in this rule.

The Administrator of FMCSA is delegated authority under 49 U.S.C. 113(f) and 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. chapters 311, 313, and 315 as they relate to CMV operators, programs, and safety.

VI. Discussion of the IFR and Comments

A. Overview of the IFR

On September 29, 2025, FMCSA published in the **Federal Register** (Docket No. FMCSA–2025–0622, 90 FR 46509) an IFR titled “Restoring Integrity to the Issuance of Non-Domiciled Commercial Drivers Licenses (CDL).” The agency also published a notice correcting an error in the amendatory instructions of the IFR on October 2, 2025 (90 FR 47627). The IFR revised the regulations that allow SDLAs to issue and renew non-domiciled CLPs and CDLs to individuals domiciled in a foreign jurisdiction. The changes were intended to strengthen the security of the CDL issuance process and enhance the safety of CMV operations. FMCSA undertook the IFR based on both a spate of recent, fatal crashes involving non-domiciled CDL holders and recently uncovered evidence of systemic, nationwide regulatory non-compliance by SDLAs in their issuance of non-domiciled CLPs and CDLs.

In the IFR, FMCSA amended its regulations to restrict issuance of non-domiciled CLPs and CDLs to individuals maintaining lawful immigration status in the United States in certain employment-based nonimmigrant statuses, to certain individuals domiciled in a U.S. territory, and to individuals domiciled in a State that is prohibited from the issuance of CLPs or CDLs as a result of the decertification of the State's CDL program. The agency stated that the revisions were intended to help ensure that individuals who do not have lawful immigration status in the United States, and those who do have lawful immigration status but whose status is not directly connected to a legitimate, employment-based reason to hold a

CDL, will no longer be eligible to obtain non-domiciled CLPs or CDLs.

Specifically, the IFR made the following changes to the existing regulations: (1) limiting individuals eligible for non-domiciled CLPs and CDLs to those maintaining certain employment-based nonimmigrant statuses, certain individuals domiciled in a U.S. territory, and individuals domiciled in a State that is prohibited from issuing CLPs or CDLs because the State's CDL program is decertified; (2) requiring non-citizen applicants (except for lawful permanent residents) to provide an unexpired foreign passport and an unexpired Form I–94/I–94A (Arrival/Departure Record) indicating a specified type of employment-based nonimmigrant status at every issuance, transfer, renewal, and upgrade action defined in the regulation; (3) requiring SDLAs to query Systematic Alien Verification for Entitlements (SAVE), administered by USCIS, to confirm the applicant's claim to be in lawful immigration status in a specified category; (4) requiring that SDLAs retain copies of the application documents for no less than two years; (5) requiring the expiration date for any non-domiciled CLP or CDL to match the expiration date of the Form I–94/I–94A or one year whichever is sooner; (6) requiring the applicant to be present in-person at each renewal; and (7) requiring an SDLA to downgrade the non-domiciled CLP or CDL if the State becomes aware that the holder is no longer eligible to hold a non-domiciled CLP or CDL.

The IFR took effect immediately upon publication. However, on November 10, 2025, the U.S. Court of Appeals for the District of Columbia Circuit issued an Order in *Lujan, et al. v. Fed. Motor Carrier Safety Admin., et al.*, No. 25–1215, administratively staying the effective date of the IFR in response to two Petitions for Review challenging the rule.⁴ The court subsequently stayed the IFR pending resolution of those cases on November 13, 2025. Therefore, since November 10, 2025, the previous regulations have been in effect. Accordingly, FMCSA advised SDLAs to follow the procedures set forth in the agency's regulations and guidance on non-domiciled CLPs and CDLs in effect

⁴ The first Petition for Review was filed on October 20, 2025 by the American Federation of State, County and Municipal Employees; the American Federation of Teachers; and two individual immigrant truck drivers. The second Petition for Review was filed on October 22, 2025 by Martin Luther King, Jr. County in Washington. The court consolidated the cases. *Lujan, et al. v. Fed. Motor Carrier Safety Admin., et al.*, No. 25–1215 (D.C. Cir.).

immediately prior to issuance of the IFR.⁵

B. Comments and Responses

FMCSA solicited comments concerning the IFR for 60 days ending November 28, 2025. By that date, 8,010 comments were received. A summary of the comments and FMCSA's responses follows.

1. Eligibility for Non-Domiciled CLPs or CDLs

a. Eligible Nonimmigrant Statuses (H–2A, H–2B, and E–2) and Vetting

Many commenters questioned FMCSA's rationale for limiting eligibility for non-domiciled CLPs and CDLs to individuals in H–2A, H–2B, or E–2 nonimmigrant statuses. The Sikh Coalition wrote that FMCSA failed to provide evidence that H–2A, H–2B, or E–2 visa holders are safer drivers than those that are excluded by the rule. The Sikh Coalition also wrote that the IFR claims H–2A, H–2B, or E–2 visa holders go through additional employer screening but does not provide any evidence to support this. The AFL–CIO and the Sikh Coalition argued that FMCSA asserts that State regulations do not allow for vetting of workers who have driving records in foreign jurisdictions, but the rule exempts workers from short-term immigration programs who are even less likely to have U.S. driving records than those groups that are not eligible under the IFR. The Asian Law Caucus wrote that the population of drivers being hired under the H–2A and H–2B programs are no more likely to be drivers with safe driving records because the qualifications of these drivers are required by Federal regulations to be consistent with those of U.S. drivers, and because the employer screening process highlighted in the IFR is primarily a means to screen U.S. drivers, including those the IFR excludes.

US Custom Harvesters, Inc. expressed appreciation for FMCSA's recognition of the critical needs that H–2A workers provide through being issued CDLs and requested that FMCSA ensure that the exemption for H–2A visa holders is retained. Two individuals asked how H–2A, H–2B, and E–2 visa holders are eligible to drive semi-trucks safely. Similarly, an individual asked how FMCSA can verify 10 years of driving experience for H–2A, H–2B, and E–2

⁵ See e.g., <https://www.fmcsa.dot.gov/newsroom/interim-final-ruling-restoring-integrity-issuance-non-domiciled-drivers-licenses-cdl>; <https://www.fmcsa.dot.gov/newsroom/order-granting-administrative-stay-interim-final-rule-titled-restoring-integrity-issuance>.

visa holders in their country of origin, and what makes these visa categories safer than other categories. US Custom Harvesters, Inc. stated that States are concerned regarding the issuance of CDLs for H-2A holders and may have inadvertently begun pausing issuance to H-2A holders; they requested confirmation from FMCSA that the H-2A program is exempt. An individual stated that the driving records and criminal records of H-2A visa holders are loosely monitored and recorded.

The Asian Law Caucus wrote that H-2A and H-2B visas are intended to be temporary and seasonal in nature while limited to certain geographical areas, but the IFR did not discuss how these limitations will be applicable to commercial driving. United, LLC and an individual said that visas should not be a registration requirement. Six individuals wrote that non-domiciled CDL holders undergo the same testing, training, and background verification processes as U.S. citizen drivers, and the focus should be on ensuring all drivers meet these standards rather than creating different rules based on immigration status. CPAC Foundation's Center for Regulatory Freedom wrote that FMCSA should collaborate with the Department of Homeland Security (DHS) and U.S. Department of State to initiate a systematic review of the framework overseeing and classifying employment-based nonimmigrant statuses as they pertain to CDL eligibility to ensure these designations cannot be abused as an indirect means to securing commercial driving privileges.

An individual questioned the IFR's eligibility criteria, which limit non-domiciled CDLs to holders of H-2A, H-2B, and E-2 visas. They argued that this restriction was arbitrary and failed to account for other categories of lawfully present individuals with work authorization. An individual stated that the IFR does not provide a clear rationale for excluding specific immigrant groups from operating commercial vehicles, while allowing other individuals from treaty countries who are associated with enterprises investing significant capital in the United States to obtain CDLs. Another individual stated that the rule ties eligibility to specific visa categories and document types, which has an obvious disparate-impact potential and may be challenged as discriminatory in practice if States apply it unevenly.

FMCSA Response

After considering the comments and information provided, FMCSA declines to revise the scope of individuals

eligible for a non-domiciled CLP or CDL from what was established in the IFR. The purpose of this final rule is to enhance safety by rectifying a critical gap in the Nation's non-domiciled licensing system that has manifested in two ways. First, non-domiciled CLPs and CDLs have been issued to individuals whose safety fitness cannot be adequately verified by SDLAs. Second, FMCSA has uncovered evidence of systemic, nationwide regulatory non-compliance by SDLAs in the issuance of non-domiciled CLPs and CDLs, which shows the need for a revised issuance process inclusive of a bright line standard that focuses on adequate vetting of non-domiciled drivers. As explained in greater detail below, under this final rule, all non-domiciled CLP and CDL drivers will be subject to sufficient vetting to ensure that they are as safe as practicable before allowing them to operate CMVs on our roadways, consistent with FMCSA's statutory mandate to ensure the fitness of CMV operators.

In the IFR, FMCSA amended its regulations to restrict issuance of non-domiciled CLPs and CDLs to individuals maintaining lawful immigration status in the United States in certain employment-based nonimmigrant categories, to certain individuals domiciled in a U.S. territory, and to individuals domiciled in a State that is prohibited from the issuance of CLPs or CDLs as a result of the decertification of the State's CDL program. FMCSA made these revisions to ensure that all drivers of CMVs on our Nation's roadways are properly vetted to maintain the highest level of safety practicable. Ultimately, the changes made in the IFR, and affirmed in this final rule, rectify a bifurcated safety standard in which U.S.-domiciled drivers are subject to strict safety vetting, while permitting foreign-domiciled drivers to operate under a demonstrably lower threshold for scrutiny, thereby compromising public safety. More importantly, the final rule aligns the issuance of non-domiciled CDLs with the statutory mandates to "ensure the fitness" of CMV operators (49 U.S.C. 31305(a)). It also ensures consistent application of the laws disqualifying drivers—regardless of whether they are domiciled or non-domiciled—from holding a CDL for a specified period of time after committing certain offenses or serious traffic violations, or having their driver's license revoked, suspended, or canceled (49 U.S.C. 31310–31311). By restricting eligibility to statuses subject to consular vetting and interagency screening,

FMCSA closes a significant safety gap and prioritizes the safety of the traveling public.

The general concerns raised by commenters fail to recognize that non-domiciled applicants have been subject to a lower level of scrutiny in the CLP and CDL application process than U.S.-domiciled individuals due to the severe limits on vetting their driving history. As noted above, non-domiciled drivers are not required to surrender their foreign license to obtain a non-domiciled CDL and may also operate in a foreign country while their non-domiciled CDL is valid, and under the previous regulations the SDLA would not have access to either the driver's historical record or their concurrent driving record outside the United States. The SDLA would not receive notifications of serious traffic violations that occur in a foreign country during the validity of the non-domiciled CDL, as they would if the violation occurs in a State. Studies have shown that drivers who have a history of driving offenses are more likely to be involved in future crashes. As explained in greater detail in Section X.A below, driving history has been cited consistently as a strong predictor of future driving safety outcomes. In the *Safety Performance of Passenger Carrier Drivers* report, prior crash involvement and past out-of-service violations were both found to increase significantly the likelihood of a driver being involved in future crashes.⁶ ATRI has published similar findings for the truck transportation industry in their report, *Predicting Truck Crash Involvement*. Repeated multiple times since 2005, the top five stable predictors of crash risk include reckless driving violations and past crashes.⁷ Similarly, the *Commercial Driver Safety Risk Factors* study found that prior moving violations in the last three years were associated with increased crash and moving violation risk.⁸ Finally, an FMCSA commissioned literature review, *Driver Issues: Commercial Motor Vehicle Safety Literature Review*, concluded that drivers with prior crash involvement were 87 percent more likely to be involved in a future crash.⁹ Together, these findings underscore a consistent conclusion across studies: a driver's historical performance, whether measured through crashes, violations, or

⁶ <https://rosap.ntl.bts.gov/view/dot/7>.

⁷ <https://truckingresearch.org/2022/10/predicting-truck-crash-involvement-2022-update/>.

⁸ *Commercial Driver Safety Risk Factors (CDSRF)*, available at <https://rosap.ntl.bts.gov/view/dot/49620>.

⁹ *Driver Issues: Commercial Motor Vehicle Safety Literature Review*, available at <https://rosap.ntl.bts.gov/view/dot/11259>.

observable risky behaviors, provides a robust basis for predicting future safety outcomes on the road.

Given the link between a driver's safety history and overall roadway safety, Congress mandated that SDLAs request information from the National Driver Register and give "full weight and consideration" to that information in deciding whether to issue the individual a CDL (49 U.S.C. 31311(a)(16)(B)). Further, FMCSA requires SDLAs to perform additional screening of CDL applicants to ensure appropriate vetting. In this regard, when a U.S.-domiciled driver applies for a CLP or CDL, States are required to initiate and complete a check of the applicant's driving record to ensure that the person is not subject to any disqualification under 49 CFR 383.51, or any license disqualification under State law, and does not have a driver's license from more than one State or jurisdiction. (49 CFR 383.73(b)(3)). When a foreign-domiciled applicant applies for a CLP or CDL, States are also required to complete the same checks; however, information about a foreign-domiciled applicant's driver history in the foreign country of domicile are not accessible, because States do not have access to foreign nations' systems.

SDLAs are required to initiate and complete four distinct checks of the applicant's records. In this regard, States must check CDLIS to determine whether the driver applicant already has been issued a CDL, whether the applicant's license has been disqualified, and whether the applicant has been disqualified from operating a CMV (49 CFR 383.73(b)(3)(ii)). Based on the information in CDLIS, the SDLA may issue the license, promptly implement any disqualifications, licensing limitations, denials, or other penalties required (49 CFR 384.205). While CDLIS is the authoritative source of CDL records for each State, it does not contain information on whether the foreign-domiciled applicant is subject to any section 383.51- or 391.15-equivalent disqualifications in the foreign country of domicile, or whether the foreign-domiciled applicant has any license disqualifications under the foreign country's laws. For example, CDLIS would contain information about a CDL driver's conviction and disqualification for driving a motor vehicle (commercial and non-commercial) while under the influence of alcohol or a controlled substance, leaving the scene of an accident, or reckless driving (49 CFR 383.51 (requiring a period of disqualification upon conviction), 384.225 (requiring SDLAs to maintain information on convictions and

disqualifications on the CDLIS driver record)). However, CDLIS would not contain any information about a driver's conviction that occurred in a foreign country, or any subsequent foreign driver's license suspension or disqualification.

Through the PDPS, which allows States to search the National Driver Register, SDLAs must determine whether a driver has been disqualified from operating a motor vehicle (other than a CMV) for any reason, or had a license (other than a CDL) disqualified for cause in the three-year period ending on the date of application, or has been convicted of any offenses contained in 49 U.S.C. 30304(a)(3) (49 CFR 384.220; see *e.g.*, 49 CFR 383.73(b)(3)(iii)) to ensure that the applicant is not subject to any of the sanctions under 49 CFR 383.51 based on previous motor vehicle convictions. As noted above, Congress mandated that States accord "full weight and consideration" to the information from the National Driver Register in deciding whether to issue the individual a CDL (49 U.S.C. 31311(a)(16)(B)). PDPS does not contain the foreign-domiciled applicant's driver history from the foreign country of domicile.

States must also request the applicant's complete driving record from all States where the applicant was previously licensed over the last 10 years to drive any type of motor vehicle (49 CFR 384.206, see *e.g.*, 49 CFR 383.73(b)(3)(iv)). If, after reviewing this information, the State discovers adverse information about the applicant, the State may, among other actions, implement a disqualification, deny the CDL transaction, or implement a licensing limitation (49 CFR 384.206(b)(3)). In the case of foreign-domiciled applicants for which any portion of their driver history over the past 10 years was in a foreign country or whose previous licenses were issued in foreign countries, States are unable to check the driver's history because the previous jurisdictions of licensure are not States but foreign countries.

Finally, as of January 6, 2020, States must request information from the Drug and Alcohol Clearinghouse (DACH) (81 FR 87686). The DACH is the central repository of FMCSA's DOT drug and alcohol use and testing program violations, including but not limited to, a verified positive DOT drug test result, a blood alcohol content of .04 or higher on a DOT alcohol test, or a refusal to test violation (see generally, 49 CFR part 382, subpart B). Drivers who violate FMCSA's drug and alcohol regulations are prohibited from operating a CMV until they complete the return-to-duty

process (see 49 CFR 382.503 and the cross reference to 49 CFR part 40, subpart O), which includes evaluation by a substance abuse professional, completion of prescribed education or treatment, and a negative return-to-duty drug or alcohol test result. If, in response to a DACH query, the SDLA receives notification that the applicant is prohibited from operating a CMV due to a drug or alcohol violation in the driver's DACH record, the State must not issue the CDL (49 CFR 384.235, see *e.g.*, 49 CFR 383.73(b)(10)). However, to the extent an applicant's foreign country of domicile has a similar or otherwise equivalent drug and alcohol testing program for commercial drivers, the DACH would not contain any information about a foreign-domiciled applicant's violations incurred under such a program. Therefore, SDLAs would not have the benefit of this information in assessing a driver's qualifications for a CDL.

The lack of available driving history information for non-domiciled applicants severely limits the effectiveness of these vetting processes. This inability to obtain driver history for non-domiciled applicants creates an unacceptable bifurcated standard in driver vetting and ensuring the fitness of an individual operating a commercial motor vehicle. While domestic CDL applicants face rigorous history checks through CDLIS, PDPS, DACH, and other State driving records, non-domiciled drivers were previously processed without equivalent checks on their foreign driving history. This effectively shielded unsafe driving behaviors, which may have included serious violations, equivalent to one or more of the disqualifying offenses listed in 49 CFR 383.51 (such as, driving a motor vehicle (commercial and non-commercial) while under the influence of alcohol or a controlled substance, leaving the scene of an accident, or reckless driving, causing a fatality through negligent operation of a CMV), that would have disqualified these drivers from obtaining a CLP or CDL, simply because they occurred outside the review of FMCSA or the SDLAs. To close this loophole, the IFR, as affirmed by this final rule, restricts eligibility for foreign-domiciled CLP or CDL holders exclusively to H-2A, H-2B, and E-2 nonimmigrant status holders, as these individuals are subjected to increased vetting, which provides a more equivalent history check to those encountered by domestic CDL applicants. FMCSA has determined that the totality of federal vetting processes applicable to these visa categories—

including consular screening, labor certification requirements, and employer verification—provides sufficient assurance of driver fitness to mitigate the safety gap created by the SDLA's inability to access and verify the foreign driving records. Certain eligible domiciliaries in a U.S. territory and individuals domiciled in a State that is prohibited from the issuance of CLPs or CDLs as a result of the decertification of the State's CDL program, remain eligible for a non-domiciled CLP or CDL.

The relevant vetting that occurred through the visa application and labor certification processes for the eligible nonimmigrant status holders were thoroughly detailed in the IFR.¹⁰ In this regard, the H-2A (Temporary Agricultural Workers), H-2B (Temporary Non-Agricultural Workers), and E-2 (Treaty Investors) nonimmigrant categories require either a labor certification through DOL, current employment, or other specified proof of work established through the Federal visa process (90 FR 46515). These requirements ensure that individuals in the United States under these nonimmigrant categories are already approved to work specific jobs that may require acquisition of a non-domiciled CDL. Further, FMCSA understands that employer applications for labor certifications related to commercial trucking typically include some combination of the following job requirements: possess U.S. CDL or foreign CDL equivalent, related work experience (12 months to 2 years), clean driving record, pass drug or medical testing, and knowledge of or proficiency in English. This employer screening, in addition to the incentive to avoid unnecessarily repeating the lengthy job order process, helps ensure that the population of drivers being hired under one of the specified employment-based nonimmigrant categories are more likely to be drivers with safe driving records (90 FR 46516).

In addition, FMCSA has coordinated with the U.S. Department of State regarding visa adjudication processes for H-2A, H-2B, and E-2 applicants seeking employment that requires CMV operation. The Department of State has confirmed that consular officers adjudicating such visa applications assess certain factors relevant to both visa eligibility and CMV driver fitness, including but not limited to driving history, occupational qualifications, and English language proficiency. FMCSA's determination that these visa categories provide sufficient vetting is based on the totality of the federal screening

process, including consular review, labor certification, and employer attestations, rather than on any specific procedural requirements.

The U.S. Department of State procedures mitigate the safety gap created by the unavailability of foreign driving records in two essential ways. First, the enhanced vetting procedures facilitates the consular officer's review of visa applicants' demonstration of their ability to operate a CMV safely. These procedures serve as a functional proxy for the vetting requirements in the FMCSRs for U.S.-domiciled drivers. In determining whether an applicant has established the requisite experience to operate a CMV safely, such that they are eligible for the requested visa classification, the consular officer reviews and requests evidence establishing whether the H-2A, H-2B, and E-2 visa applicant has a history of unsafe driving, and other relevant factors to the visa adjudication (*e.g.*, whether they possess the requisite years of experience listed for that particular job or hold a valid CDL or can obtain one). The procedures, which are conducted as part of the consular officer's determination under section 214(b) of the Immigration and Nationality Act of 1952 (INA) regarding whether the applicant qualifies for the visa classification sought, further enable the review of evidence that would demonstrate that the driver qualifies for a CDL, which generally includes requests for 10 years of driving history, past traffic violations, license suspensions and revocations, and other similar records. The review assists in uncovering incidents of dangerous driver behaviors similar to what would be revealed by the SDLA's review of CDLIS, PDPS, DACH, and other State driving histories outlined above.

Second, the enhanced screening and vetting procedures for H-2A, H-2B, and E-2 visa applicants require an assessment of the applicant's ability to meet the driver qualification requirements of 49 CFR 391.11(b)(2) to read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records. The consular officer's assessment of English proficiency during the interview, while conducted for purposes of determining visa eligibility, provides FMCSA with reasonable assurance that non-domiciled drivers in these visa categories possess the basic English proficiency necessary to operate a CMV safely.

FMCSA's determination that H-2A, H-2B, and E-2 visa holders are eligible for non-domiciled CDLs is based on several factors that, in combination, provide reasonable assurance of driver fitness:

1. *Labor Certification and Employer Screening:* The DOL labor certification process for the H-2A and H-2B categories requires employers to list the qualifications necessary for the position, which for CMV-related positions typically includes driving experience, clean driving records, and English proficiency. Employers then screen workers for these qualifications.

2. *Consular Adjudication:* During the visa application process, consular officers have the authority to assess whether applicants meet the qualifications for their intended employment, including the ability to request and review documentation related to driving history and occupational qualifications.

3. *Ongoing Employment Relationship:* In addition to the protocols implemented by the Department of State to vet driving records for these categories, H-2A, H-2B, and E-2 visa holders often maintain an ongoing relationship with a U.S. employer who has a direct economic interest in ensuring the driver's qualifications and safety record.

4. *Federal Oversight:* These visa categories are subject to ongoing federal oversight through multiple agencies (DOL, DHS, State Department) via the nonimmigrant status and visa renewal processes, creating multiple points of verification and accountability. In addition, as part of continuous visa vetting procedures, State constantly reviews available information on current U.S. visa holders, and revokes visas when there is an indication of a potential ineligibility or in other situations where warranted. That could include visa overstay, possible criminal activity, support for terrorism, or any other indication of a potential ineligibility under the INA.

While no single element of this process perfectly replicates the CDLIS/PDPS/DACH checks available for domestic drivers, FMCSA has determined that the totality of Federal vetting for these specific visa categories provides a reasonable functional equivalent that adequately addresses the safety gap.

Therefore, given the administrative inability for SDLAs to vet foreign driving histories, it is the combination of Federal processes applicable to H-2A, H-2B, and E-2 visa holders—including labor certification (for H-2A and H-2B visa applicants), consular

¹⁰ See 90 FR 46515–16.

review, employer verification, and continuous vetting—that collectively mitigate this safety gap. For these specific categories, Federal interagency screening performs a background assessment that serves as a functional equivalent for the driver history checks required for domestic drivers, thereby allowing the agency to ensure the fitness of the drivers. Because no other category of foreign-domiciled driver is subject to this combination of labor certification, employer sponsorship, and multi-agency Federal oversight, the rule draws a necessary distinction based on the presence of multiple mechanisms that can collectively compensate for the SDLA's inability to verify foreign records. By relying on these combined Federal processes, the agency strikes the most reasonable balance: allowing non-domiciled drivers who have been federally vetted through multiple federal screening processes to obtain licensure while ensuring the exclusion of individuals with unknown driver histories who could have unsafe driving histories that would otherwise disqualify them from obtaining a CDL or would pose a significant safety risk on America's roadways.

The second safety gap addressed by this final rule is the systemic, nationwide regulatory non-compliance by SDLAs in their issuance of non-domiciled CLPs and CDLs. The majority of the SDLA errors as identified by FMCSA as part of the APR process stem from the EAD-based eligibility standard. The amended non-domiciled CLP and CDL issuance processes prescribed in this final rule will mitigate SDLA confusion and errors in issuing non-domiciled CLPs and CDLs. As discussed in greater detail in Section VI.B.3 (Annual Program Reviews), FMCSA has identified more than 30 States that failed to comply with the non-domiciled CLP and CDL regulations. These States violated FMCSA's regulations by issuing tens of thousands of non-domiciled CLPs and CDLs that exceed the expiration date of the driver's lawful presence documents; issuing non-domiciled CDLs to individuals ineligible for that credential due to their status as a citizen of Canada or Mexico not present in the United States under the DACA program; issuing non-domiciled CLPs or CDLs to lawful permanent residents of the United States, who are eligible for regular CDLs; and issuing non-domiciled CLPs or CDLs without verifying the drivers' lawful presence with the document required under 49 CFR 383.71(f)(2)(i) and 383.73(f)(3). As FMCSA noted in the IFR, when the integrity of the non-

domiciled CDL process is in question, the credential itself is compromised and can no longer be trusted to verify an individual's eligibility and qualifications.

b. EADs

CPAC Foundation's Center for Regulatory Freedom and many individual commenters expressed support for the removal of existing accepted documentation, like an EAD. An individual suggested that these changes will protect the public, improve highway safety, and maintain fairness for professional drivers. The Owner-Operator Independent Drivers Association (OOIDA) wrote that they supported changes to documentation requirements, stating that improper and inconsistent protocols have led to unqualified drivers on the road.

The AFL-CIO, International Brotherhood of Electrical Workers, the Potential Development Association, and many individuals opposed the removal of existing accepted documentation and requested that FMCSA amend the rule to allow explicitly people with valid EADs to continue holding non-domiciled CDLs. An individual said that aligning CDL eligibility to EAD status preserves safety while ensuring consistency with INA 274A, and that asylum EADs are identical in format and legal force to H-2A/H-2B EADs.

An individual stated that people with EADs are by definition documented and are following an established legal process to eventual naturalization. An individual stated that the EAD, by definition, grants work authorization without restricting the type of job an individual can pursue, and that the change creates an arbitrary and unjust barrier, undermining the clear intent of the Federal Government's work authorization process. Many individuals stated that people with lawful residency have the right to work and deserve a fair opportunity. DDL stated that it is unfair to deprive people of their right to work when they have lived in this country for years, have complied with all State and Federal requirements, and have demonstrated the skills and knowledge necessary to operate safely. DDL said that these individuals have proven themselves and should not be excluded from the workforce simply because of their immigration category.

Some commenters said that commercial drivers with a valid EAD who meet State and Federal requirements should be allowed to continue driving. Washington Trucking Association wrote that many non-domiciled drivers impacted by the IFR have valid EADs, extensive U.S. driving

histories, as well as safety and transportation credentials. Seven individuals expressed that having an EAD should be sufficient to qualify for a CDL, provided the applicant meets all safety and testing requirements. One individual recommended allowing drivers with EADs to continue renewing their license while their immigration status is being processed.

An individual asked FMCSA to further explain why an EAD would no longer be sufficient evidence for CDL eligibility.

FMCSA Response

FMCSA disagrees with comments arguing that the regulations should continue to permit drivers who hold an EAD to obtain a non-domiciled CLP or CDL. As stated in the IFR, EADs are not sufficient documentation to obtain a non-domiciled CLP or CDL. An EAD only serves as proof that an individual is authorized to work in the United States for a specific time period, not that the individual's safety fitness has been thoroughly vetted and are drivers with safe driving records. The individual receiving an EAD would not have been subject to the same vetting to ensure safety fitness as those in the eligible employment-based nonimmigrant statuses. Simply being authorized to work does not adequately ensure that an individual has a safe driving history and should be eligible to drive CMVs on roadways without additional vetting. Allowing for an individual with an EAD to obtain a non-domiciled CLP or CDL would continue the pre-IFR regulatory framework that allowed unvetted drivers to operate CMVs on our Nation's roadways which, as discussed throughout this final rule, is contrary to FMCSA's mission and statutory duty to promote safety and ensure safety fitness of individuals operating a CMV. Further, holding an EAD does not entitle an individual to perform any type of work they choose irrespective of safety implications or qualifications.

Critically, the agency cannot view the EAD as a valid proxy for safety fitness because its issuance involves no assessment of transportation safety. In contrast, the U.S. Department of State's adjudication of H-2A, H-2B, and E-2 visas includes specific protocols to assess driver history and qualifications. This Federal assessment serves as the functional regulatory substitute for the State-level driver history checks required for U.S.-based drivers. As SDLAs are structurally incapable of performing these checks for foreign-domiciled drivers, the agency must rely on the only available Federal substitute: the U.S. Department of State vetting

process. Since EAD issuance lacks this specific transportation safety component, accepting an EAD would require the agency to license drivers without any verifiable safety history, significantly hampering its ability to ensure fitness.

In addition to the EAD being insufficient to show that an individual has been adequately vetted, FMCSA has seen that States have had extreme difficulty appropriately issuing non-domiciled CLPs and CDLs based on EADs. As stated in response to comments earlier in this final rule, the 2025 APRs revealed a systemic collapse in State compliance regarding EAD-based eligibility. With respect to foreign-domiciled drivers, regulations in effect prior to September 29, 2025 IFR, and currently in effect, provide that States that issue non-domiciled CLPs and CDLs to foreign-domiciled drivers may only accept as valid proof of lawful presence (i) an unexpired employment authorization document (EAD) issued by the USCIS or (ii) an unexpired foreign passport accompanied by an approved I-94 form documenting the driver's most recent admittance into the United States. Further, the regulations require that States accept as valid only unexpired lawful presence documents, which also means that the State must make the period of validity of the non-domiciled CLP or CDL less than or equal to the period of validity of the driver's lawful presence document(s). In other words, because FMCSA's regulations considered only unexpired lawful presence documents to be valid, States were required to ensure that the non-domiciled CLP or CDL period of validity do not exceed the expiration of the driver's lawful presence documents. Therefore, State driver's licensing agencies are required to ensure that the validity of non-domiciled CLPs or CDLs did not exceed the expiration date of drivers' lawful presence documents. In addition, States may not issue a non-domiciled CLP or CDL to citizens of Mexico or Canada, with the exception of those present in the United States under the Deferred Action for Childhood Arrivals (DACA) program. The IFR identified six States that were not compliant with non-domiciled requirements and that number has now grown to more than 30 as of this final rule. Crucially, the ability to verify an individual's status via SAVE did not prevent this collapse. For example, States issued licenses with expiration dates extending years beyond the dates verified in SAVE (e.g., California issued licenses four years past the EAD date). From FMCSA's reviews, it has observed

that front-line clerks at SDLAs cannot reliably distinguish between EAD codes and language that indicate a permissible basis for issuance of a non-domiciled CDL (C33—"Deferred Action for Childhood Arrivals") and those codes that indicate an impermissible basis (C14—"Deferred Action" or "Alien Granted Deferred Action"), as applied to drivers domiciled in Canada or Mexico.

Further, FMCSA observed that SDLAs had significant challenges interpreting various USCIS form letters, such as USCIS Form I-797C,¹¹ Notices of Action, when presented by holders of EADs as supporting documentation for EADs that were due to expire or had expired. EADs are not valid indefinitely; they are valid for specified periods, and may be renewed, or terminated based on various conditions being met.¹² FMCSA frequently observed that when an applicant's EAD was due to expire or had expired, the applicant would, upon applying or reapplying for a non-domiciled credential, present an accompanying Form I-797C with their application as nominal proof that the applicant's eligibility for an EAD had been extended. FMCSA found that some SDLAs, upon receiving the Form I-797C presented with the applicant's expiring or expired EAD, accepted the Form I-797C as proof that the applicant's eligibility for an EAD had been extended in fact, when in some circumstances it had not, and subsequently issued non-domiciled credentials based on a Form I-797C, instead of relying on the documentation in 49 CFR 383.71(f)(2)(i) then in effect.

FMCSA never sanctioned the Form I-797C as a substitute for an expired or expiring EAD for the purpose of non-domiciled CDL driver licensing, nor did USCIS intend for the Form I-797C to supply the basis for an SDLA to grant a non-domiciled CLP or CDL. Instead, USCIS uses the Form I-797C, to notify applicants about the receipt or rejection of an application or a petition, or to relay other important notices to an applicant.¹³ The Form includes a header which states, "THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT."¹⁴ In fact, on its website, USCIS reminds state, local,

public, and private benefit granting agencies that the Form I-797C is solely a receipt to prove an applicant has submitted a request for a benefit and not a determination that USCIS has deemed the applicant eligible for an immigration benefit.¹⁵ In other words, a CLP or CDL applicant's mere presentation of a Form I-797C, with an accompanying EAD was not proof that the applicant had been granted an extension of immigration status. Yet, during the 2025 APRs, FMCSA identified that some SDLAs, when presented with an expiring or expired EAD along with an I-797C indicating the applicant had applied for an immigration benefit (such as an extension of the applicant's immigration status), would treat the I-797C as if the applicant's application for extension in immigration status had been granted and subsequently issue the non-domiciled CDL.

This consistent failure across more than 30 States demonstrates that the issue is not merely a training deficiency, but a structural incompatibility with the administrative capabilities of an SDLA. Further, the systemic breakdown in compliant non-domiciled CLP and CDL issuance based on EADs defeats FMCSA's statutory mandate to prescribe uniform standards for the issuance of CLPs and CDLs (49 U.S.C. 31308(a)). In fact, States' varying levels of compliance with the non-domiciled CLP and CDL eligibility standards based on EADs has led to national dis-uniformity in administering the non-domiciled CDL program. Limiting eligibility strictly to the individuals in the employment-based nonimmigrant categories from the IFR is the only way to restore integrity and uniformity to the non-domiciled licensing process and create a foolproof standard because those individuals can present I-94/94As and foreign passports rather than EADs. The Form I-94 will clearly display whether an individual's nonimmigrant status is in one of the three categories allowed under this final rule (H-2A, H-2B, or E-2) without having to decipher a separate code. The simplicity of the information presented on the I-94 eliminates the need for front-line SDLA personnel to decipher codes on an EAD, which are not clearly identifiable to those without sufficient specified knowledge on what each code means. Because States have demonstrated an inability to correctly interpret those codes and process non-domiciled CLPs and CDLS based on EADs correctly, FMCSA has determined that EADs should not be treated as acceptable proof of identity and eligibility. The simplicity of the

¹¹ The Form I-797, Notice of Action exists in numerous iterations (e.g., Form I-797C is one of seven other Forms I-797) and USCIS uses it to "communicate with applicants/petitioners or convey an immigration benefit." <https://www.uscis.gov/forms/filing-guidance/form-i-797-types-and-functions> (last visited Jan. 29, 2026).

¹² 8 CFR 274a.13(b); 8 CFR 274a.14.

¹³ <https://www.uscis.gov/forms/filing-guidance/form-i-797-types-and-functions> (last visited Feb. 9, 2026).

¹⁴ <https://www.uscis.gov/forms/all-forms/form-i-797c-notice-of-action> (last visited Feb. 9, 2026).

¹⁵ *Id.*

nonimmigrant status coding on the I-94 allows for front-line workers in SDLAs to correctly determine an individual's nonimmigrant status without having to undergo the same process of interpreting complex codes.

c. Excluded Statuses

A joint submission of the U.S. Committee for Refugees and Immigrants, Church World Service, IRC, Orel Alliance, RCUSA, and World Relief (Joint Organization comment) stated that excluding refugees, asylees, and humanitarian paroles from eligibility for non-domiciled CDLs puts these groups at risk of "financial devastation" and would severely harm the economy.

Delaware Division of Motor Vehicles wrote that FMCSA did not provide sufficient evidence as to why only H-2A, H-2B, and E-2 visa holders should be eligible for a non-domiciled CLP or CDL and the rationale for the exclusion of other categories. An individual said that other visa holders who have undergone rigorous U.S. visa vetting and whose work authorization routinely depends on demonstrated professional or managerial qualifications—such as L-1 intracompany transferees, TN professionals, H-1B specialty workers, and O-1 individuals of extraordinary ability—find themselves categorically excluded. The individual said that this exclusion lacks any safety-based explanation in the preamble or regulatory text.

Two individuals said that the IFR should include derivative spouse status which also authorizes employment such as E-2S. One individual stated that because the rule does not explicitly mention E-2S status, some SDLAs including Georgia Department of Driver Services are interpreting this as ineligibility, and rejecting CDL and CLP applications from E-2S spouses.

Numerous individuals expressed opposition to FMCSA restricting immigrants with Temporary Protected Status (TPS) from eligible categories for CDL issuance and requested that FMCSA amend the regulations to allow individuals with TPS to hold a CDL. An individual stated that there is no evidence that drivers with TPS are less safe than U.S. citizens. An individual suggested that FMCSA provide a transitional or grandfather period for current CDL holders with valid TPS. An individual stated that TPS holders undergo repeated DHS vetting, and TPS is granted only when DHS determines that returning to a person's home country would be unsafe due to war, disasters, or humanitarian crises. The individual also said that many TPS designations have existed for decades,

meaning holders have lived and worked legally in the United States long-term. Relatedly, Safety Management Inc. stated that denying TPS recipients, authorized under Federal law to pursue employment, the access to CDLs is discriminatory and not justified by safety evidence.

An individual expressed support for the restriction against asylees and asylum seekers receiving CDLs. Many individuals opposed the IFR and requested that FMCSA allow asylees and asylum seekers to qualify for non-domiciled CDLs. Two individuals provided multiple reasons to preserve the eligibility of asylum seekers including the lawful presence of asylum seekers, the need for drivers in the trucking industry, the contributions of asylum seekers who become self-sufficient due to work, and consistency with FMCSA goals. Two other individuals stated that drivers with pending asylum cases have already been vetted and cleared by U.S. authorities, and that there is no evidence that these drivers are less safe than U.S. citizens. Relatedly, Safety Management Inc. stated that denying asylum applicants authorized under Federal law to pursue employment the access to CDLs is discriminatory and not justified by safety evidence.

Another individual questioned how a person with only a temporary work visa, such as H-2A, H-2B, and E-2, is allowed to drive a commercial vehicle but an asylee who has a more permanent legal status is excluded. Many individuals explicitly opposed the policy that the C8 status is not eligible for CDLs. Six other individuals discussed the A05 category of EADs and said that it should be eligible to receive a CDL. An individual said that A05 status is lawful, stable, and federally protected. The commenter also said the rule violates proportionality and administrative fairness because equating A05 holders with undocumented or pending asylum applicants, such as the C08 category, ignores the significant legal distinctions between the two. The individual said that A05 holders should not be penalized for the misconduct of others. The individual suggested that FMCSA distinguish between approved asylees (A05) and pending asylum applicants (C08) when determining CDL eligibility. An individual suggested that FMCSA allow asylum seekers to receive a CDL on a one-year renewable basis, with annual confirmation of immigration status, CDL class, and driving record. The Joint Organization comment provided examples of how the IFR is impacting asylees that these organizations work with.

Many individuals requested that FMCSA revise the IFR so that SDLAs may continue issuing limited-duration non-domiciled CLPs/CDLs to refugees.

Many individuals requested that FMCSA allow individuals with U4U humanitarian parole status be eligible to receive a non-domiciled CDL. An individual said that those with U4U status are legally allowed to work, pay income taxes, contribute to social security and Medicare, and participate in communities. The Joint Organization comment provided examples of how the IFR is impacting humanitarian paroles under the U4U programs that these organizations work with. An individual stated that the IFR conflicts with DHS regulations because, according to DHS, the commenter is lawfully present in the United States and is authorized to work through at least April 19, 2026.

Asian Law Caucus, US Custom Harvesters, Inc., and many individuals requested that the following categories be added to the IFR: humanitarian parolees; lawful nonimmigrant statuses; E-3 visa holders; J-1 visa holders; J-2 visa holders; U-visa holders; A10; Deferred Enforced Departure; A19; I-797; Department of Labor Permanent Labor Certification; crime victim visa applicants; trafficking survivors; conditional permanent resident status; individuals with approved petitions who are waiting on visa availability; legal immigrants with significant professional experience operating heavy equipment; individuals that are legally present; and permanent residents. Two individuals suggested that FMCSA generally expand the list of immigration and residency categories eligible to obtain a CDL.

Accion Opportunity Fund suggested that FMCSA consider a tiered eligibility framework with enhanced verification for drivers outside of the H-2A/H-2B/E-2 statuses, which would uphold FMCSA's safety and integrity goals while preserving access for drivers. An individual encouraged FMCSA to define clearly which nonimmigrant categories will be eligible to ensure that applicants have sufficient notice and due process to comply. Similarly, an individual said that the rule fails to address other millions of lawful workers who hold alternative statuses and contribute to the economy and supply chain.

In addition, the individual said that in the absence of comparative crash-rate data, stakeholders cannot assess whether preventing L-1, TN, H-1B, or O-1 holders from obtaining non-domiciled credentials meaningfully advances highway safety. If FMCSA intends to maintain this narrow eligibility window, the individual said

that it should ground its distinctions in measurable safety performance metrics rather than in visa turnover characteristics or administrative convenience.

Asian Law Caucus said the IFR does not explain why other employment-based visa categories cannot now receive a non-domiciled CDL or CLP, such as visa holders under the Program Electronic Review Management process. Asian Law Caucus said these other visa categories also have requirements the IFR mentions, such as labor certification through DOL, current employment, or other specified proof of work established through the Federal visa process. Asian Law Caucus also said FMCSA did not adequately explain why employers generally are not incentivized to screen for drivers with clean driving records and the other positive characteristics given existing Federal requirements and potential repercussions for the company, including enforcement actions that FMCSA is authorized to bring.

TOSAM LLC stated that the inclusion of drivers with temporary immigration statuses, such as temporary protected status (TPS) and humanitarian parole, was “overly broad.” Similarly, another individual said that a categorical visa ban is arbitrary, overbroad, and punishes people who are legally present and authorized to work.

FMCSA Response

FMCSA disagrees with commenters stating that eligibility for a non-domiciled CLP or CDL should extend beyond H-2A, H-2B, and E-2 visa holders. FMCSA recognizes that there is a population of current non-domiciled CDL holders who will no longer meet the eligibility standards set forth in this final rule, as well as new drivers with a different immigration status who will not be eligible. However, given the need for non-domiciled CLP and CDL holders to be vetted properly, this final rule limits individuals eligible for non-domiciled CLPs and CDLs to those maintaining lawful immigration status in one of the following employment-based nonimmigrant categories: H-2A, H-2B, or E-2, as well as certain individuals domiciled in a U.S. territory, and individuals domiciled in a State that is prohibited from issuing CLPs or CDLs because the State’s CDL program is decertified.

As explained in greater detail in section, VI.B.1.a. (Eligible Nonimmigrant Statuses and Vetting), FMCSA closes a significant safety gap and prioritizes the safety of the traveling public by restricting eligibility to statuses subject to consular vetting and

interagency screening. This will correct the bifurcated safety standard in which U.S.-based drivers are subject to strict safety vetting, while non-domiciled drivers with an unknown foreign driving history are allowed to obtain a non-domiciled CLP or CDL. By limiting eligibility for non-domiciled CLP or CDL holders exclusively to H-2A, H-2B, and E-2 nonimmigrant status holders, FMCSA ensures that as these individuals are subjected to increased vetting, which provides a more equivalent history check to those encountered by domestic CDL applicants. No other category of visa applicants is subject to enhanced vetting assessing driver history in foreign jurisdictions. As explained previously, the vetting that occurs through the visa application and labor certification processes for the H-2A, H-2B, and E-2 nonimmigrant categories ensure that these individuals are already approved to work specific jobs that may require acquisition of a non-domiciled CDL. Further, the required employer screening, in addition to the incentive to avoid unnecessarily repeating the lengthy job order process, helps ensure that the population of drivers being hired under one of the specified employment-based nonimmigrant categories are more likely to be drivers with safe driving records (90 FR 46516).

In addition, the U.S. Department of State’s procedures for increased driver history screening and vetting of H-2A, H-2B, and E-2 visa applicants seeking to operate CMVs in the United States provide additional safety checks. In this regard, the enhanced vetting procedures ensures that applicants are capable of safe operation of a CMV, requires applicants to provide evidence to show the applicant has the ability and experience required to operate a CMV, and requires that applicants possess the basic English skills necessary to operate a CMV safely.

The U.S. Department of State’s enhanced screening and vetting procedures bridges the safety gap between the differences in vetting for U.S.-domiciled and foreign-domiciled drivers for H-2A, H-2B, and E-2 visa applicants. These enhanced driver history vetting procedures are required for H-2A, H-2B, and E-2 visa applicants only, and no other category of foreign-domiciled driver is subject to them. Notably, the mere status of holding other employment-based visas, such as an H-1B or L-1, does not supply the agency with the necessary data to ensure safety fitness of those drivers. Unlike the H-2A, H-2B, and E-2 categories, other visa adjudications focus strictly on professional

qualifications, not enhanced vetting of driver history and safety. Consequently, possessing a valid visa in another category offers the agency no visibility into the applicant’s foreign driving record. With the specific U.S. Department of State safety vetting acting as a functional proxy for driver history vetting, the agency is able to fulfill its statutory fitness mandate to a level that is more equivalent to the level established for U.S.-domiciled drivers. Therefore, because H-2A, H-2B, and E-2 visa applicants are the only categories of foreign-domiciled drivers currently subject to the U.S. Department of State’s enhanced driver history screening and vetting procedures, FMCSA declines to extend non-domiciled CLP and CDL eligibility to other immigration categories.

d. DACA

Numerous individuals expressed opposition to FMCSA restricting DACA recipients from eligible categories and stated that DACA recipients should be able to obtain non-domiciled CDLs. Two individuals also suggested that DACA recipients with CDLs should be grandfathered into the regulations. Two individuals also requested that FMCSA grant an exemption permitting DACA recipients with EADs to obtain and hold Class B passenger-vehicle CDLs under the same conditions as other lawfully authorized individuals under 49 CFR 389.31. Two individuals stated that FMCSA failed to present data demonstrating that DACA-based CDL holders posed a distinct safety threat in comparison to other classes of drivers. An individual stated that excluding DACA recipients from the IFR without rigorous crash or performance analysis is arbitrary. The individual also recommended that FMCSA allow DACA-based CDL holders to continue renewals until a safe replacement path is created. An individual stated that in 2023 FMCSA issued guidance stating that SDLAs may issue non-domiciled CDLs to DACA recipients under certain conditions. The individual said that nothing about their lawful presence or work authorization has changed since then, and changing course now is “inconsistent, unfair, and will unnecessarily push responsible drivers out the workforce.”

An individual said that DACA recipients should be allowed to obtain CDLs for three basic reasons: (1) they are legally authorized to work and are already vetted by Federal immigration authorities; (2) CDLs are governed by strict Federal tests and medical standards that apply equally to all applicants; and (3) excluding a class of

authorized workers will harm safety oversight and worsen driver shortages. Another individual said that DACA recipients are fundamentally different from many other non-domiciled applicants in that they graduated from a U.S. high school, maintain a clear record as a prerequisite for DACA renewal, and have long-term ties to U.S. communities. Because of these requirements, the individual said that DACA holders already meet or exceed the safety and integrity standards FMCSA seeks to ensure.

FMCSA Response

After considering the comments and information submitted, FMCSA determines that the final rule will remain as set forth in the IFR with respect to DACA recipients. DACA recipients are reliant on EADs and are therefore limited by the significant problems associated with that document in the non-domiciled licensing process. DACA recipients may have the ability to obtain other Federal identification documents, such as a social security card, or other photo identifications, such as a State license. However, there is no form of federally issued photo identification that can verify both their status and authorization to work outside of the EAD. Ultimately, the problems associated with SDLA's use of the EAD in the non-domiciled application process, as documented throughout this final rule, make it impracticable for FMCSA to allow for DACA recipients to be eligible for a non-domiciled CLP or CDL. As stated above, SDLAs have been unable to reliably distinguish between those codes and language on an EAD which indicated a permissible basis for issuance of a non-domiciled CDL and those that indicated an impermissible basis, which has led to improper issuance of non-domiciled CLPs and CDLs. Even if the agency limited the use of EADs to DACA recipients, the systemic inability of SDLAs to issue non-domiciled CLPs or CDLs with an EAD properly would result in the improper issuance of non-domiciled CLPs and CDLs to individuals who are not DACA recipients, but may appear to be one to a front-line SDLA clerk who cannot accurately distinguish whether an EAD code is a permissible basis for issuance of a non-domiciled CDL to a DACA recipient. This would continue the confusion surrounding EADs from the pre-IFR regulations and create the same problems with the improper issuance of non-domiciled CLPs and CDLs that the IFR and this final rule have sought to address.

In addition, DACA recipients' unique status presents a fundamental conflict

with the non-domiciled CLP and CDL issuance process. As FMCSA has made clear, CDLs are high-value, long-term credentials. DACA reflects an exercise of Executive Branch discretion that temporary and revocable in a way that the employment-based nonimmigrant statuses specifically provided by statute are not. Excluding DACA mitigates the safety risk of invalid CDLs remaining in circulation should the status of non-domiciled CDL holders change.

The arguments regarding DACA recipients are further undercut by the fact that citizens of Mexico and Canada who are present in the United States under the DACA program have never been eligible for a non-domiciled CLP or CDL under FMCSA's regulations. This distinction is critical because, according to USCIS, approximately 80 percent of DACA recipients are citizens of Mexico.¹⁶ In this regard, 49 CFR 383.23(b)(1) states that the only drivers permitted to obtain non-domiciled CDLs are those not from "a jurisdiction that the Administrator has determined tests drivers and issues CDLs in accordance with, or under standards similar to, the standards [adopted by FMCSA] . . . so long as that person meets the requirements of § 383.71(f)." The regulation categorically excludes all other individuals. This necessarily includes individuals domiciled in Canada and Mexico, footnote one to section 383.23(b)(1) explains, because Mexico and Canada are jurisdictions for which the Administrator has issued an equivalency determination and entered into a reciprocity agreement. Nonetheless, FMCSA exercised its enforcement discretion in 2023 to publish guidance advising States that they may issue a non-domiciled CLP or CDL, using the procedures under 49 CFR 383.73(f)(2), to individuals who are citizens of Mexico and present in the United States under the DACA, provided that the applicants meet the requirements of 49 CFR 383.71(f)(2) and do not hold, and have never held, a *Licencia Federal de Conductor* issued by Mexico.¹⁷ Since issuing that guidance, FMCSA has further exercised its enforcement discretion to recognize an exception from the regulatory prohibition for citizens of Canada. It was solely by virtue of FMCSA's non-enforcement posture, issued less than three years ago, that States were allowed

to issue non-domiciled CLPs and CDLs to Mexican and Canadian DACA recipients without receiving a finding of noncompliance. FMCSA acts well-within its authority to alter the agency's recent non-regulatory enforcement posture with respect to these drivers, particularly in light of the systemic noncompliance uncovered by the APRs. This final rule rescinds the 2023 guidance on the eligibility of Mexican DACA recipients for a non-domiciled CDL.

e. Freely Associated States

Several individual commenters requested that citizens of Freely Associated States (FAS) be admitted to the eligible categories allowed to receive a non-domiciled CDL. The Embassy of the Federated States of Micronesia (FSM) said that as drafted, the IFR does not mention the FSM, fails to reflect the agreements between the governments, and incorrectly limits opportunities for FSM citizens who are legally authorized to work in the United States. The Embassy of the Federated States of Micronesia said that an FSM citizen's stay in the United States is not limited to any period of authorized stay or duration of stay, does not require reapplication for retention, and is perpetual, therefore, the commenter said that the status of FSM citizens living in the United States is closer to lawful permanent residents than to individuals with a temporary immigration status. In addition, the Embassy of the Federated States of Micronesia and the Embassy of the Republic of the Marshall Islands to the United States of America said that FAS citizens are not required to obtain a visa to work in the United States, and therefore do not have the documentation required by the IFR to access a non-domiciled CDL. Similarly, an individual requested that States receive training on handling legal documents presented by individuals to renew or obtain a CDL because Compact of Free Association (COFA) and FAS citizens do not require a visa and do not have expiration dates on their I-94s.

The Embassy of the Republic of Palau and the Embassy of the Republic of the Marshall Islands to the United States of America said that under the IFR, 49 CFR 383.5(2) requires CDL applicants domiciled in Guam, the Commonwealth of the Northern Mariana Islands, or any of the three other U.S. territories to supply as evidence of lawful immigration status "any of the documents specified in Table 1 of section 383.71," which limits proof of status for non-citizen lawful permanent residents to a "valid, unexpired Permanent Resident Card, issued by the

¹⁶ According to USCIS data, more than 80 percent of individuals present in the United States under DACA are from Mexico, as of June 20, 2025. See https://www.uscis.gov/sites/default/files/document/data/active_daca_recipients_fy2025_q3.xlsx.

¹⁷ See <https://www.fmcsa.dot.gov/registration/commercial-drivers-license/may-state-drivers-licensing-agency-sdla-issue-non-domiciled>.

USCIS or INS.” The Embassy of the Republic of Palau said that Palauan citizens do not need and are not issued a Permanent Resident Card to reside in U.S. territories lawfully. In recognition of the unique status of Palauan and other COFA citizens, they suggested that FMCSA include a new row in Table 1 of § 383.71 to address the COFA citizen population and indicate that their proof of status requirement could be satisfied by an unexpired passport along with a Form I-94/94A.

The Embassy of the Republic of Palau stated that Palauan citizens may enter and live in the United States on a habitual basis with only an unexpired passport, and that upon admission to the U.S., Palauan citizens are issued a Form I-94, but this documentation does not name a specified employment-based status. The Embassy of the Republic of Palau said that requiring such a notation would be inconsistent with the bilateral agreement that the United States has entered into with Palau, as integrated into U.S. domestic law, which does not premise entry into the United States on any employment justification. The Embassy of the Republic of Palau suggested that the evidence of lawful presence contained in 49 CFR 383.5 could be expanded to include:

“an unexpired Form I-94/94A issued by the U.S. Department of Homeland Security indicating one of the following classifications: H-2A-Temporary Agricultural Workers, H-2B-Temporary Non-Agricultural Workers, or E-2-Treaty Investors; or an acceptable Form I-94/94A under the Compact of Free Association between the United States and the nation that issued the passport. The appropriate 1-94 Classifications for Freely Associated States are in the case of the Palau: CFAIPALJ.”

The Embassy of the Federated States of Micronesia suggested that the definition of “evidence of lawful immigration status” at section 383.5 could read:

“An unexpired Form I-94/94A issued by the U.S. Department of Homeland Security indicating one of the following classifications: H-2A-Temporary Agricultural Workers, H-2B-Temporary Non-Agricultural Workers, or E-2-Treaty Investors; or an acceptable Form I-94/94A, documenting the applicant’s most recent admission to the United States under the Compact of Free Association between the United States and the nation that issued the passport. The appropriate 1-94 Classifications for Freely Associated States are as follows: CFA/FSM, CFA/RMI, and CFA/PAL.”

The Embassy of the Republic of the Marshall Islands to the United States of America suggested the following definition:

“An unexpired Form I-94/94A issued by the U.S. Department of Homeland Security

indicating one of the following classifications: H-2A-Temporary Agricultural Workers, H-2B-Temporary Non-Agricultural Workers, or E-2-Treaty Investors; or an acceptable Form I-94/94A under the Compact of Free Association between the United States and the nation that issued the passport. The appropriate 1-94 Classifications for Freely Associated States are in the case of the RMI: CFAIMJSJ.”

FMCSA Response

FMCSA understands the lawful presence status of Citizens of the FAS. This final rule does not include a specific carve-out for Citizens of the FAS. Those individuals are currently subject to an existing exemption¹⁸ and a pending exemption application.¹⁹ Due to their relationship with the United States through the COFAs, FMCSA will continue to address this population through those processes.

2. Legal Basis and Agency Authority

a. Congressional Authority

The Oregon Department of Transportation challenged FMCSA’s statutory authority to issue the IFR given that “CDL issuance is a transportation safety function, not an immigration enforcement mechanism.” An individual echoed these sentiments, stating the IFR exceeds statutory authority under the Motor Carrier Safety Act by transforming CDL regulation into immigration enforcement. Another individual reasoned that because FMCSA’s authority is limited to promoting uniform safety standards and does not include enforcing immigration policy, which is the exclusive jurisdiction of DHS, the IFR exceeds FMCSA’s authority.

Similarly, the Asian Law Caucus, writing that “the statutory authorities cited by FMCSA do not list or allude to ‘immigration status’ or ‘visa category’ as a basis for restricting” the issuance of CDLs, concluded that FMCSA “regulate[d] in areas beyond its purview” in issuing the IFR. A joint submission from the Attorneys General of Massachusetts, California, and 17 Other Jurisdictions²⁰ (joint AG comment) also questioned FMCSA’s reliance on statutes related to driver testing and fitness, safety standards for operation of vehicles, and governance of the CDL program to program to exclude entire classes of drivers categorically

based on immigration status. Citing *INS v. Chadha*, 462 U.S. 919 (1983), three individuals asserted it held that immigration classifications must originate from Congress. Citing *FDA v. Brown & Williamson Tobacco Corp.*, four individuals said the Court upheld that an agency (FDA) lacked authority to regulate in an area (tobacco products) where Congress had never clearly delegated such power. Referencing the book *Over Ruled*, in which Supreme Court Justice Neil Gorsuch “warned that unchecked agency power leads to overreach and undermines democracy,” another individual stated that the IFR is an example of such overreach.

Citing *West Virginia v. EPA*, 597 U.S. 697 (2022), multiple individuals asserted that agencies cannot develop rules of major economic and political significance without clear Congressional authorization. Citing *Massachusetts v. U.S. Environmental Protection Agency (EPA)*, 549 U.S. 497, 532 (2007), another individual said that FMCSA does not have the statutory authority to invoke terrorism or national security concerns.

Cautioning that in the wake of the U.S. Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), agencies must adhere to Congress’ language exactly to avoid the risk of legal challenges (e.g., litigation brought under the Equal Access to Justice Act), an individual asserted that the statutes FMCSA cites as authority for the IFR are not applicable. Specifically, the individual stated that the statutes in question relate to the safe operation of CMVs, but FMCSA has not established a clear correlation between immigration status and safety. Accion Opportunity Fund and three individuals asserted that the agency exceeded its statutory authority by restricting, without Congressional approval, the rights of lawfully present asylees to obtain, renew, and use CDLs. Two individuals suggested the agency should rescind the IFR because it exceeds statutory authority.

Citing *Mathews v. Diaz*, 426 U.S. 67 (1976), two individuals asserted that only Congress possesses the plenary power to set distinctions for immigrants and agencies cannot unilaterally impose new restrictions. Citing the Supremacy Clause alongside *Arizona v. United States* 567 U.S. 387 (2012), *Hines v. Davidowitz*, 312 U.S. 52 (1941), *Gade v. National Solid Wastes Mgmt. Ass’n*, 505 U.S. 88 (1992), and *De Canas v. Bica*, 424 U.S. 351 (1976), several individuals wrote that Federal laws enacted by Congress take precedence over agency rules, meaning FMCSA cannot impose new conditions that negate those rights. Accion Opportunity Fund and two

¹⁸ 89 FR 78428 (Sep. 25, 2024).

¹⁹ 89 FR 73744 (Sep. 11, 2024).

²⁰ The full list of jurisdictions from the joint Attorneys General comment are as follows: Massachusetts, California, Arizona, Colorado, Delaware, the District of Columbia, Hawai’i, Illinois, Maine, Maryland, Minnesota, Nevada, New Mexico, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington.

individuals stated that the IFR's categorical limitation of CDLs to only those immigrants with H-2A, H-2B, and E-2 visas rewrites the statute's eligibility terms without Congressional direction. Moreover, two individuals said that excluding EAD holders, asylees, and refugees from CDL eligibility unlawfully deprives those groups of employment rights guaranteed by Congress. In addition, an individual asserted that employment status is permanent and the IFR transforms permanent status into temporary status. Citing *Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014), Accion Opportunity Fund and an individual said the agency may not tailor unambiguous statutes to suit policy preferences. Citing *Loper Bright v. Raimondo*, two individuals stated that agency reinterpretations of law receive no judicial deference.

While agreeing that FMCSA's authorizing statute "only allows separation by classes of vehicles driven and not by point of origin or any status of immigration or entry," an individual supportive of the IFR suggested that to avoid a court challenge on this basis, "the underlying statute should be amended to explicitly allow for this." In contrast, another individual wrote that FMCSA possesses clear statutory authority to issue the IFR, reasoning that Congressional authorization to regulate non-domiciled CDLs, including to ensure the fitness of drivers, permits the IFR as a direct exercise of congressionally delegated authority. Citing the 9/11 Commission Report and a 2004 DOT management advisory, the individual asserted that identity verification and immigration status confirmation are both warranted and a reasonable interpretation of FMCSA's statutory mandate. The individual concluded that the IFR complies with *Loper Bright v. Raimondo* because it is "a straightforward application of unambiguous statutory authority rather than an aggressive interpretation requiring deference."

FMCSA Response

FMCSA disagrees with comments claiming that the agency acted beyond its authority in issuing the IFR. Through the CMVSA, Congress provided the agency with the authority to prescribe regulations for ensuring the fitness of a CMV operator (49 U.S.C. 31305(a)) as well as regulations on minimum uniform standards for the issuance of non-domiciled CDLs (49 U.S.C. 31308)). Under this authority, FMCSA has the discretion to define the parameters of eligibility. The agency also has broad authority to issue regulations to ensure

that CMVS are operated safely (49 U.S.C. 31136(a)(1)). Further, under 49 U.S.C. 31311(a)(12)(B)(ii), States are authorized to issue non-domiciled CDLs, but they must do so in accordance with regulations prescribed by FMCSA. The rule is both an authorized and reasonable exercise of the agency's statutory authority to regulate non-domiciled CDL issuance in the interest of highway safety. It is also consistent with the intent of 49 U.S.C. 31310(k), which explicitly provides that drivers licensed by an authority outside of the United States or foreign citizens operating CMVs in the United States are subject to the same disqualification requirements as domestic CMV drivers. Ensuring the safety of our Nation's roadways is FMCSA's mission and top priority. By aligning the final rule's eligibility requirements with the nonimmigrant statuses that undergo enhanced consular vetting and interagency screening which serves as a functional proxy for driver history vetting by the SDLAs, the agency is fulfilling its statutory obligation to ensure the fitness of all drivers who operate a CMV.

Passing the knowledge and skills tests are just two components of showing that a person is a safe and fully qualified driver. Under section 12009(a)(6) and (20) of the CMVSA (codified at 49 U.S.C. 31311(a)(6) and (16)), Congress made clear that an integral part of determining an individual's qualifications was for the State to review the individual's driver history record. Specifically, States are to request the driving record from any other State that has issued a driver's license to the individual, consult the national driver registry maintained under 49 U.S.C. Chapter 303, and give full weight and consideration to the information in deciding whether to issue the individual a CDL. The States' inability to access a single, reliable driving record for CDL applicants was, in fact, described by the agency as a "major area of concern" to be addressed in early versions of minimum standards promulgated under the Act (52 FR 20574, 20576 (June 1, 1987)). The records check has been and remains an important part of the process for determining whether an individual is qualified to operate a CMV safely. Moreover, the rule promotes uniform safety standards because it helps the agency ensure that the driver history vetting of foreign-domiciled drivers is comparable, and therefore more uniform to, the driver history vetting of U.S.-domiciled drivers.

b. Federal Law

The Mexican American Legal Defense and Educational Fund (MALDEF) and numerous individuals wrote that the IFR conflicts with EAD holders' right to work as authorized by DHS under the INA. An individual stated that excluding EAD holders from eligibility for CDLs goes against the Federal definition of "lawful presence." Similarly, an individual described the legal framework for work authorization and critiqued the IFR for nullifying the authorization that DHS has granted individuals who are in the United States lawfully. Three individuals asserted that a ban on entire groups of immigrants who already possess lawful work authorization under INA exceeds the bounds of permissible regulation. An individual asserted that under INA, refugees and asylees are eligible to adjust to lawful permanent resident status after one year of residence, effectively aligning their labor rights with those of lawful permanent residents, even before the adjustment, since Congress guaranteed them employment authorization.

Many individuals said the IFR conflicts with Federal immigration authority under DHS. Specifically, three individuals asserted that the IFR creates a conflict between Federal transportation law and existing immigration law by treating EAD holders as non-domiciled despite Federal law recognizing them as lawfully present and employable. Expressing concerns about Federal supremacy and preemption, an individual asserted that FMCSA's attempt to reclassify individuals with EADs as ineligible to work is legally impermissible. Two individuals stated that USCIS guidance says EAD holders have indefinite work authorization because their immigration status does not expire. Another individual expressed concerns that the rule undermines the Federal verification process established under SAVE, which the REAL ID Act of 2025 designates as the sole mechanism for confirming lawful presence.

An individual cited U.S. Supreme Court cases holding that it is impermissible for agencies to issue regulations that are in direct conflict with Federal law (*Arizona v. United States*, 567 U.S. 387 (2012); *Chamber of Commerce v. Whiting*, 563 U.S. 582 (2011); *U.S. Food and Drug Administration (FDA) v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000)). The commenter questioned whether every Federal agency could adopt its own "immigration filters" if

FMCSA can override DHS determinations as to work authorization.

Numerous individuals stated that they are immigrants with legal status in the United States, such as pending immigration cases with valid work authorizations, and therefore are lawful CDL holders. Multiple individuals questioned why immigrants with the legal right to live and work in the United States will no longer be able to obtain a CDL. Two individuals said that barring individuals with lawful presence and work authorization from accessing CDLs contradicts the CMVSA's purpose of promoting uniform driver qualification standards.

An individual requested rescission of the IFR because it creates inter-agency conflict undermining constitutional separation of powers. Similarly, an individual suggested the agency withdraw the IFR, harmonize its regulatory definitions with DHS policy, and reaffirm CDL eligibility for all lawfully authorized drivers under TPS and EAD holder categories to preserve the integrity of the Federal licensing framework, and protect lawful workers. One individual requested that DOT align the IFR with Federal immigration law. Another individual requested a coordinated interagency approach with DHS, consistent with Executive Order (E.O.) 12866 section 6(b)(2), to restore legal coherence, to uphold humanitarian protections, and to ensure that Federal transportation policy remains aligned with the rule of law.

In contrast, America First Legal Foundation commented that the IFR promotes road safety by ensuring compliance with existing Federal regulations, such as the requirement that commercial drivers have proficiency in English, which the commenter said have been significantly underenforced for some time. The America First Legal Foundation concluded that the IFR is needed to ensure the public that commercial drivers "will be able to interact well with law enforcement, fully and quickly understand signs indicating rules of the road, and accordingly safely drive their large commercial vehicles on American roads."

Citing the Lobbying Disclosure Act of 1995, an individual stated that it requires transparency in all forms of influence and that if undisclosed contacts or quid pro quo arrangements are present, this may implicate 18 U.S.C. 201 (bribery of public officials) and 18 U.S.C. 1343 and 1346 (fraud and honest services fraud). The individual noted that *Skilling v. United States*, 561 U.S. 358 (2010), clarified that "honest services fraud includes situations where

officials act against the public interest in favor of private gain" and remarked that, under *Illinois Central Railroad v. Illinois*, 146 U.S. 387 (1892), Federal agencies must act as trustees on behalf of the public and serve the public good. Further, citing *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936), the individual asserted that regulatory capture is present in this IFR and FMCSA is serving the interests of the motor carrier industry rather than the public, which is an abuse of delegated authority.

FMCSA Response

FMCSA continues to emphasize this regulatory action is consistent with authorizing statutes concerning the establishment of safety rules and that in exercising its authority to strengthen the integrity of the CDL program, the agency's actions are not in conflict with Federal immigration law. The agency's actions have been transparent, lawful, and in the public interest. As discussed above, the rule is both an authorized and reasonable exercise of the agency's statutory authority to ensure safety fitness and regulate non-domiciled CDL issuance in the public interest of highway safety. Though the rule references certain immigration statuses, it does so only insofar as they relate to helping the agency ensure safety fitness and that the driver history vetting of foreign-domiciled drivers is comparable, and therefore more uniform to, the driver history vetting of U.S.-domiciled drivers.

Regarding claims that FMCSA exceeded the bounds of permissible regulation by nullifying the lawful work authorization that DHS has granted individuals or that Congress has guaranteed to refugees and asylees after one year of residence, FMCSA believes that these claims overstate the authorization granted or guaranteed. A work authorization does not grant an individual a guaranteed right to work in any position of employment he or she chooses, regardless of whether he or she is qualified for that employment. It would be dangerous for a State to issue a CLP or CDL to an individual without ensuring that the individual had been fully vetted for a safe driving record. This danger is present, regardless of truck driving being a private economic activity, rather than a governmental function. Under the revised regulations, FMCSA ensures the fitness of non-domiciled drivers by limiting eligibility to those in specified nonimmigrant statuses who are subject to rigorous driver history checks that SDLAs are incapable of performing independently.

c. Equal Protection and Civil Rights

Multiple individuals critiqued the IFR for failing to provide equal protection as required under the Fourteenth Amendment to the U.S. Constitution. Many of the individuals concluded that the IFR violates equal protection requirements by discriminating against certain classes of immigrants. Likewise, three individuals asserted that the IFR is unconstitutional because it violates the Fourteenth Amendment in treating similarly situated drivers differently by allowing U.S. citizen CDL holders to continue driving while immigrant drivers with valid EADs cannot. Citing *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985), an individual asserted that the IFR violates the Fourteenth Amendment by requiring States to treat "similarly situated individuals differently without a legitimate governmental interest."

An individual asserted that by creating two groups (U.S. citizens, lawful permanent residents, and people in certain visa categories who are eligible for CDLs; and EAD holders who are excluded from CDLs), the IFR violates equal protection principles applied to Federal actions. The individual further asserted that FMCSA has not provided a rational connection between EAD status and highway safety, provides no empirical data, and is noncompliant with the Information Quality Act. The individual cited judicial precedent in several cases where courts invalidated rules based on unsupported assumptions (*Int'l Ladies' Garment Workers' Union v. Donovan*, 722 F.2d 795 (D.C. Cir. 1983); *Allentown Mack Sales v. NLRB*, 522 U.S. 359 (1998); *Michigan v. EPA*, 576 U.S. 743 (2015)).

In addition, two individuals raised concerns about the IFR violating the Equal Employment Opportunity Act through discrimination on the basis of immigration status. Three individuals stated that the rule raised equal protection concerns by discriminating against lawfully present non-citizens. Citing *Ariz. Dream Act Coalition v. Brewer*, 855 F.3d 957 (9th Cir. 2017) and *Rodriguez v. P&G*, 338 F. Supp. 3d 1283, one of the individuals stated that courts have held that policies refusing to issue driver's licenses to lawfully present aliens, including DACA recipients, violate the Equal Protection Clause. Five individuals said that the IFR is discriminatory and constitutionally invalid.

The American Federation of Labor & Congress of Industrial Organizations (AFL-CIO) and numerous individuals stated that the IFR is not safety policy,

but rather discrimination based on national origin. Numerous individuals discussed that the IFR impacts immigrant or non-English speaking drivers disproportionately. Two individuals asserted that the IFR undermines the rule of law, erodes public trust in government institutions, and violates both U.S. constitutional principles and international human rights obligations by instituting administrative discrimination disguised as safety regulation. Citing *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977), another individual said the IFR includes unconstitutional policies motivated by hidden discriminatory intent. Similarly, three individuals stated that using safety as a pretext for discrimination is impermissible, citing *Department of Commerce v. New York*, 139 S. Ct. 2551 (2019). Some individuals said that the IFR could be considered a discriminatory measure by limiting access to a means of livelihood for a specific population without offering alternatives.

Citing *Plyler v. Doe*, 457 U.S. 202 (1982), three individuals reasoned that immigration status alone is not a sufficient basis for denying access to fundamental rights without compelling justification. In terms of the IFR, the individuals asserted that justification is absent as immigration status has no connection to road safety, which is already covered by law through medical exams, skills testing, and professional qualification standards. Also citing *Plyler v. Doe*, three individuals said that the government cannot impose lifelong burdens on children due to their parents' immigration status.

Citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), three individuals wrote that applying a neutral law in a discriminatory manner violates equal protection. Also citing *Yick Wo v. Hopkins*, an individual stated that by stripping lawful immigrant drivers with spotless safety records of CDLs, FMCSA is punishing their status, not their conduct, and violating equal protection principles. Similarly, an individual stated that imposing categorical restrictions without evidence that citizenship correlates with safety raises concerns of unequal protection and selective enforcement. Some individuals added that the equal employment opportunity principle provides that no person who is lawfully authorized to perform a job should be discriminated against based on citizenship or immigration status.

Several individuals asserted that the IFR raises due process concerns under the Fifth Amendment to the U.S.

Constitution. Citing *Bolling v. Sharpe*, 347 U.S. 497 (1954), five individuals asserted that the Fifth Amendment extends the principle of equal protection to actions of the Federal Government, including the IFR. Similarly, Safety Management Inc. and many individuals asserted that the IFR violates the Fifth Amendment by denying due process and equal protection. An individual said the IFR “serves no compelling interest related to safety” and “broadly exclude[s] EAD holders regardless of record or experience.” Six individuals stated that the IFR is constitutionally indefensible because it discriminates against law-abiding immigrant drivers solely based on their immigration category. Another individual, citing *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976), said the Court held that a regulation barring residents from Federal employment violated the due process clause.

Numerous individuals stated that non-domiciled drivers deserve equal opportunity. Three individuals stated that laws should protect opportunity and fairness, not take them away. Six individuals specifically requested that FMCSA focus on fair treatment for all drivers.

An individual asserted that the Constitution does not limit the pursuit of happiness to U.S. citizens. Two individuals asserted that the IFR, contrary to the constitutional guarantee of due process, violates both the presumption of innocence and the presumption of good faith by replacing an evidence-based standard with a speculative assumption unsupported by verified data.

Citing *Romer v. Evans*, 517 U.S. 620 (1996), an individual said the IFR's provisions targeting unpopular groups fail rational basis review. Similarly, an individual asserted that when classifications are based on immigration status, the agency “must demonstrate a logical and reasonable connection between its stated goal and the means chosen” to satisfy the rational basis test. An individual stated that restrictions based on lawful presence or humanitarian status are subject to rational basis review, and in the absence of current statistical data or substantiated documentary evidence, such restrictions fail to satisfy this standard. The individual reasoned that because this is a Federal executive action rather than a Congressional classification, the deferential standard of *Mathews v. Diaz* does not apply, and FMCSA must still satisfy rational basis review consistent with *Plyler v. Doe*. In contrast, another individual, also citing *Mathews v. Diaz*, asserted that

“immigration status is a legal classification, not a suspect class, and government distinctions based on immigration status receive rational basis review,” which the individual said the IFR easily satisfies. The individual reasoned that because Congress explicitly authorized FMCSA to establish requirements for the issuance of non-domiciled CDLs, it is permissible to base distinctions in those requirements on immigration status.

Citing *Graham v. Richardson*, 403 U.S. 365, 371–72 (1971), three individuals asserted that alienage classifications require strict scrutiny. One individual stated that in *Graham v. Richardson*, the Court found that restrictions on alienage classifications are unconstitutional unless the government proves a compelling interest and narrow tailoring and further that fiscal savings alone cannot justify discrimination against a suspect class. Citing *Foley v. Connelie*, 435 U.S. 291 (1978), three individuals said that truck driving is a private economic activity, not a governmental function, and therefore the governmental function exception does not apply.

Three individuals asserted the IFR violates Title VI of the Civil Rights Act of 1964 (CRA), while another individual asserted that the IFR violates Title VII of the CRA. The joint AG comment (which refers generally to the CRA but cites case law related to Title VII) and two individuals wrote that the IFR runs afoul of the CRA's prohibition on employment discrimination against immigrants. An individual asserted that the IFR excludes refugees and asylees based on their immigration status and origin, creating a direct discriminatory effect prohibited under Title VI. In addition, the individual wrote, “even facially neutral rules that result in discriminatory exclusion fall under Title VI violations,” citing *Alexander v. Sandoval*, 532 U.S. 275 (2001). An individual commenter stated that the categorical exclusion disproportionately harms certain national-origin groups and raises concerns under Title VI's prohibition on discrimination in federally assisted programs (42 U.S.C. 2000d).

Two individuals asserted that the IFR violates the Immigration Reform and Control Act of 1986 and conflicts with Federal anti-discrimination provisions enacted by Congress because it discriminates in hiring or licensing based on citizenship or immigration status for individuals who are authorized to work. Four individuals stated that the International Covenant on Civil and Political Rights, Article 26, and the Universal Declaration of Human

Rights, Articles 2 and 23, guarantee non-discrimination in access to work and professions. Moreover, the joint AG comment stated that INA prohibits employment discrimination on the basis of citizenship against asylees and refugees.

FMCSA Response

FMCSA disagrees with comments claiming that the agency deprived the public of equal protection and due process under the Fourteenth and Fifth Amendments to the U.S. Constitution or was otherwise discriminatory in issuing the IFR, regardless of which law is applied.²¹ Nor has FMCSA violated a fundamental principle of public trust or the presumptions of innocence and good faith. As discussed above, the rule is both an authorized and reasonable exercise of the agency's statutory authority to regulate non-domiciled CDL issuance in the public interest of highway safety. Ensuring the safety of our Nation's roadways is FMCSA's mission and top priority. This final rule demonstrates that the agency has narrowly tailored the regulation to the least restrictive means possible to achieve this compelling government interest in good faith and without assuming the criminal standards of guilt or innocence of any party.

Contrary to comments asserting that immigration status bears no relation to traffic safety, FMCSA notes that immigration status does have a relation to traffic safety insofar as the status affects FMCSA's ability to ensure the safety fitness of the drivers classified in that status. As discussed in section VI.B.1 of this final rule, the inability of the States to obtain driver history for non-domiciled applicants creates an unacceptable bifurcated standard in driver vetting when compared to U.S.-domiciled drivers, with non-domiciled credentials being processed without equivalent checks on the respective driver's foreign driving history. This creates a critical safety gap in FMCSA's ability to ensure the safety fitness of such drivers, as SDLAs are unable to access foreign driving histories that would identify prior unsafe behaviors,

crashes, or disqualifying offenses that would otherwise prevent licensure.

Given the administrative inability for SDLAs to vet foreign driving histories, it is the U.S. Department of State's enhanced and thorough vetting procedures for H-2A, H-2B, and E-2 visa applicants that will mitigate this safety gap. As explained in the IFR, in consulting with DOL's Office of Foreign Labor Certification, FMCSA understands that employer applications related to commercial trucking typically include some combination of the following job requirements: possess U.S. CDL or foreign CDL equivalent, related work experience (12 months to two years), clean driving record, pass drug or medical testing, and knowledge of or proficiency in English (90 FR 46516). Applicants for these commercial trucking positions associated with an H-2A, H-2B, or E-2 visa classification are then subject to the Department of State's enhanced vetting procedures to determine whether an applicant has established the requisite experience to operate a CMV safely, such that they are eligible for the requested visa classification. As described in VI.B.1.a, these procedures direct the consular officer to request evidence that would demonstrate that the driver qualifies for a CDL, and generally include requests for 10 years of driving history, past traffic violations, license suspensions and revocations, and other similar records. No other category of foreign-domiciled driver is currently subject to the same level of enhanced vetting procedures for CMV driver qualifications and safety fitness by the U.S. Department of State.

The limitation of eligibility to H-2A, H-2B, and E-2 statuses is therefore not based on the status itself, but on the existence of a parallel Federal vetting regime that mitigates the safety gap and thereby resolves the bifurcated standard and fulfills FMCSA's statutory mandate. By aligning the rule's eligibility requirements to certain employment-based nonimmigrant statuses that receive enhanced and thorough interagency screening and vetting, the agency is narrowly tailoring the regulation to the least restrictive means possible to achieve a compelling government interest—ensuring the safe operation of CMVs and driver safety fitness through vetting non-domiciled drivers at a level comparable to U.S.-domiciled drivers.

The concerns raised by commenters regarding alternatives to the final rule are addressed below in section VI.B.8.

d. Administrative Procedure Act (APA)

The Asian American Legal Defense and Education Fund and many individuals asserted that the IFR violates the APA as it is arbitrary and capricious, contrary to constitutional rights, or exceeds jurisdiction. The Asian American Legal Defense and Education Fund and an individual stated that the IFR is arbitrary and capricious because the agency considered an impermissible factor such as race or nationality or relied on information Congress did not intend for it to consider.

Similarly, citing *Marin Audubon Soc'y v. U.S. Federal Aviation Association*, 121 F.4th 902, 912 (D.C. Cir. 2024), and *Am. Clinical Lab. Ass'n v. Becerra*, 40 F.4th 616, 624 (D.C. Cir. 2022), the joint AG comment stated that agencies can only act to the extent Congress authorizes them to and relying on factors Congress did not intend them to consider violates the APA. Thus, the commenter said, FMCSA violated the APA by stating that the IFR was "issued with respect to an immigration-related function of the United States" (90 FR 46521) when FMCSA has no authority to carry out immigration-related functions, adding that FMCSA "attempted to deny that the IFR is an immigration-related rule" when defending the IFR in litigation before the D.C. Circuit. Further, citing *Dep't of Commerce v. New York*, 588 U.S. 752, 785 (2019), the commenter reasoned that the IFR is arbitrary and capricious because it not only is "both irrationally overinclusive and irrationally underinclusive" but also fails to connect the decision made with the explanation given.

Citing *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29 (1983), the Asian American Legal Defense and Education Fund, MALDEF, and multiple individuals said that an agency must articulate a rational connection between the facts found and the choice made, whereas FMCSA made speculative assumptions in the IFR about public safety that lacked empirical support, thus rendering the IFR arbitrary and capricious under the APA. An individual reasoned that because FMCSA's authority is limited to promoting uniform safety standards and does not include enforcing immigration policy, which is the exclusive jurisdiction of DHS, the IFR exceeds FMCSA's authority and is thus arbitrary and capricious under the APA. Another individual also critiqued the IFR as being arbitrary and capricious in violation of the APA, specifically for reversing, without grandfather

²¹ Some commenters alleged that the IFR violated Title VI of the CRA (42 U.S.C. 2000d *et seq.*), which prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance, while others alleged violations of Title VII of the CRA (42 U.S.C. 2000e *et seq.*), which prohibits private and State and local government employers with 15 or more employees and employment agencies from discriminating on the basis of race, color, religion, national origin or sex in all aspects of an employment relationship, including hiring, discharge, compensation, assignments, and other terms, conditions and privileges of employment.

protection, EAD holders' eligibility to be issued CDLs. Five individuals said that the IFR is procedurally invalid. The Asylum Seeker Advocacy Project and an individual requested the IFR be withdrawn because it was arbitrary, with the individual noting the D.C. Circuit cited serious legal concerns when it issued an administrative stay. Another individual urged the agency to vacate and withdraw the IFR, disclose its decision-making process, and re-engage in lawful rulemaking consistent with the Constitution, the APA, and the principles of nondiscrimination.

Citing *U.S. Federal Communications Commission v. Fox Television Stations*, 556 U.S. 502 (2009), two individuals said the Court reiterated that agencies must provide reasoned explanations when making substantial policy changes. Similarly, citing *Judulang v. Holder*, 565 U.S. 42 (2011), an individual said the IFR cannot forbid certain individuals from holding CDLs based on an irrational reason such as immigration status. Citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985), an individual said that the agency may not arbitrarily presume misconduct or unfitness in individuals who hold lawful rights and status.

FMCSA Response

FMCSA disagrees with comments claiming that the agency was arbitrary and capricious in issuing the IFR. In both the IFR and throughout this rule, FMCSA articulated a rational basis for specifying employment-based nonimmigrant categories in the IFR and demonstrated that the rule is both an authorized and reasonable exercise of the agency's statutory authority to regulate non-domiciled CDL issuance in the interest of highway safety. By aligning the rule's eligibility requirements to certain employment-based nonimmigrant statuses that receive enhanced and thorough interagency screening, the agency is narrowly tailoring the regulation to the least restrictive means possible to achieve a compelling government interest—ensuring the safe operation of CMVs and driver safety fitness through vetting of non-domiciled drivers at a level comparable to those who are domiciled in the United States. The records check has been and remains an important part of the process for determining whether an individual is qualified to operate a CMV safely. Moreover, the rule promotes uniform safety standards because it helps the agency ensure that the driver history vetting of foreign-domiciled drivers is comparable, and therefore more uniform

to, the driver history vetting of U.S.-domiciled drivers.

Further, as discovered through the APRs, the reliance on EADs to demonstrate eligibility for a non-domiciled CDL has proven administratively unworkable and resulted in widespread regulatory non-compliance. This rule necessarily simplifies the documentation to ensure that SDLAs could accurately apply the eligibility criteria. As explained in Section VI.B.1.b, the simplicity of the nonimmigrant status coding on the I-94 allows for front-line workers in SDLAs to correctly determine an individual's nonimmigrant status without having to undergo the same process of interpreting complex codes.

e. Revocation or Denied Renewal of Credentials and Due Process

An individual asserted the IFR revokes CDLs that were legally issued under existing Federal laws. Citing *Bowen v. Georgetown Univ. Hospital*, 488 U.S. 204 (1988), an individual wrote that Federal agencies may not impose retroactive penalties without clear statutory authority and the agency revoking or refusing renewal of CDLs solely due to later rule changes constitutes impermissible retroactive punishment. Five individuals reasoned that the IFR violates due process requirements because it retroactively removes drivers' validly issued licenses without a fair hearing or individualized review.

An individual critiqued FMCSA's inaction in cases where States have rescinded CDLs and are not reinstating them despite the IFR having been stayed by the court. In contrast, an individual expressed outrage at the court for staying the IFR and urged the court to lift the stay so that the IFR can be enforced.

Three individuals said that under *Mathews v. Eldridge*, 424 U.S. 319 (1976), FMCSA's action fails the procedural due process balancing test, writing that the individual's interest in continued lawful employment is substantial, the risk of erroneous deprivation is high, and the agency's asserted interest in administrative convenience is minimal. Further, citing *Bell v. Burson*, 402 U.S. 535 (1971), four individuals said there is no basis to deprive a party of procedural safeguards nor to take away property rights and entitlements (*i.e.*, driver's licenses) that people had until the IFR was issued. Citing *Elrod v. Burns*, 427 U.S. 347 (1976), and *Winter v. NRDC*, 555 U.S. 7 (2008), an individual stated that the IFR causes irreparable harm to constitutional liberty and property

interests because it prevents CDL renewal and thus disrupts people's ability to work and earn money.

Citing *Cleveland Bd. of Educ. v. Loudermill*, another individual characterized the IFR as directing States to "tak[e] away a property interest from a non-domiciled CDL holder without giving them notice or opportunity to be heard." Similarly, an individual, citing *Alvarado v. Dep't of Licensing*, 371 P.3d 549 (2016), asserted that CDLs are property interests protected by procedural due process principles, requiring meaningful notice and an opportunity to be heard. Another individual asserted the IFR lacks fair administrative processes by denying individuals access to appeal or review procedures if their CDL renewal requests are automatically rejected.

FMCSA Response

With respect to the comment alleging that the rule has a retroactive application (*e.g.*, cancelling rights that were legally obtained under previous regulations), FMCSA notes that the rule itself was written to be prospective, applying to all CDL and CLP issuances on or after the effective date of the IFR. The commenters seem to be focusing on concerns with the corrective action required as part of the ongoing APRs of SDLAs that unveiled serious deficiencies in the CDL issuance processes of several States. Regarding drivers whose licenses were improperly issued, the requirement to reissue licenses pursuant to the new processes outlined in the IFR, and by extension the final rule, is not intended to penalize drivers. Rather, it is intended to ensure that all licenses determined to be improperly issued through the APR process were reissued following the standards in effect at the time of reissuance. Such standards had been strengthened to ensure the integrity of the credentials and address the very gaps that led to non-domiciled CDLs and CLPs being issued improperly on such a large scale. To permit improperly issued non-domiciled CDLs and CLPs to be reissued under the prior standards would have caused uneven application and confusion.

Further, with regard to drivers who currently hold an unexpired non-domiciled CLP or CDL that was properly issued under the pre-IFR rules, nothing in this final rule requires States to proactively revoke those licenses. However, at the next licensing transaction following the effective date of this final rule (*e.g.*, reissuance, including amending, correcting, reprinting, or otherwise duplicating a previously issued CLP or CDL; transfer;

renewal; or upgrade), States are required to apply the new eligibility standards.

Regarding comments asserting that CDLs are property interests protected by procedural due process principles, requiring meaningful notice and an opportunity to be heard, FMCSA notes that the agency provided meaningful notice and an opportunity to be heard through a 60-day comment period. Moreover, the authority to issue and downgrade CLPs and CDLs lies with the SDLAs.²² Although such issuances and downgrades need to be in substantial compliance with the minimum Federal standards set forth in 49 CFR parts 383 and 384 to avoid having amounts withheld from Highway Trust Fund apportionment under 49 U.S.C. 31314, individuals who believe their credentials have been improperly denied or downgraded due to a State's error in administering the previous standard (e.g., because the State had improperly issued the credential for a time period exceeding the EAD date) have the opportunity to be heard and otherwise afforded due process through established State procedures and State law.

f. Federalism

The Oregon Department of Transportation challenged the IFR's constitutionality on the basis of its mandatory downgrade provision, which the commenter said, "effectively deputizes states to carry out federal immigration enforcement, a role that has traditionally been reserved for federal agencies." In contrast, an individual writing in support of the IFR said it "approach[es] the limits of the anticommandeering doctrine," which the commenter described citing *Printz v. United States*, 521 U.S. 898, 935 (1997), and *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 474 (2018), but could be protected against a constitutional challenge on that grounds by "subsidizing the States to correct their deficiencies and administer the program, rather than penalize them from federal highway funds for noncompliance." Citing *S. Dakota v. Dole*, 483 U.S. 203, 211 (1987), and *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012), the individual also suggested that if FMCSA does withhold funds, to avoid crossing the line from inducement to coercion of States, "the

federal funds to be withheld should be more appropriately described as punitive or else be reduced from the standard penalty fines contained within 49 U.S.C. 31314."

Another individual expressed concerns that the rule encroached on State licensing authority, created regulatory inconsistency, and undermined federalism principles in 49 U.S.C. 31141. Further, an individual stated that the IFR is an overreach of the Federal Government and an unconstitutional use of Federal power, noting that States are capable of handling licensing.

FMCSA Response

FMCSA disagrees that the IFR required States to carry out Federal immigration enforcement. Though the rule references certain immigration statuses, it does so only insofar as they relate to helping the agency ensure that the driver history vetting of foreign-domiciled drivers is comparable, and therefore more uniform to, the driver history vetting of U.S.-domiciled drivers. Nor does the rule improperly commandeer States. Congress established the requirements for State participation in 49 U.S.C. 31311. That section clearly provides that to avoid having amounts withheld from apportionment under 49 U.S.C. 31314, the State must adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under 49 U.S.C. 31305(a). As described above and in section IV.B.3.a, below, this rule is both an authorized and reasonable exercise of the agency's statutory authority to regulate non-domiciled CDL issuance in the interest of highway safety.

3. Background of IFR

a. Annual Program Reviews (APRs) of SDLAs

Unitarian Universalists for Social Justice stated that the lack of transparency in the APRs used to justify the rule undermines public trust, and without transparency, stakeholders cannot determine whether the identified issues correlate with real safety risk. Unitarian Universalists for Social Justice added that without convincing data, the IFR's subtextual purpose appears to be to target immigrants by unjustly limiting their employment opportunities.

An individual said that the 2025 APRs point to systemic deficiencies at the SDLA level, including inadequate SDLA training, inconsistent application

of SAVE checks, and weak internal audits, and not problems related to the visa category of the applicant. Citing a recent report, the individual stated that weaknesses have been found in FMCSA's guidance regarding complaint handling and oversight, leading to inconsistent enforcement. Likewise, another individual stated that the issues raised by the 2025 APRs, namely the finding that some States issued non-domiciled CDLs without proper verification or timely cancellation, originate from administrative oversight, and not the drivers.

FMCSA Response

CMVSA,²³ as amended, established performance standards with which State²⁴ CDL programs must comply to avoid having amounts withheld from Highway Trust Fund apportionment under 49 U.S.C. 31314 and to avoid CDL program decertification under 49 U.S.C. 31312.²⁵ In this regard, States are required to be in substantial compliance with the requirements of 49 U.S.C. 31311(a) and its implementing regulations in 49 CFR part 383 and part 384, subpart B. Under 49 CFR 384.301(a), to be in substantial compliance with 49 U.S.C. 31311(a), a State must meet each and every standard of part 384, subpart B by means of "the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices."

As part of its oversight, FMCSA conducts comprehensive APRs of State CDL programs, in accordance with 49 CFR 384.307, to verify that States are in substantial compliance. During an APR, FMCSA evaluates all aspects of the State's CDL program, including knowledge and skills testing procedures, CDL issuance processes, procedures to report convictions and withdrawals, compliance with FMCSA's physical qualification and Drug and Alcohol Clearinghouse programs, issuance of non-domiciled CDLs, and other areas.

At the conclusion of the APR, if FMCSA makes a preliminary determination that a State does not meet one or more of the minimum standards for substantial compliance under Part 384, Subpart B, FMCSA notifies the

²² See, e.g., 49 CFR 383.73(f)(5), requiring States to initiate established State procedures for downgrading the non-domiciled CLP or CDL upon receiving information from FMCSA, the Department of Homeland Security, the U.S. Department of State, or other Federal agency with jurisdiction that the applicant no longer has lawful immigration status in the United States in a specified category.

²³ 49 U.S.C. 31301 *et seq.*

²⁴ Under 49 U.S.C. 31301 and 49 CFR 383.5, the definition of "State" includes the District of Columbia. Accordingly, the term "State" throughout this letter includes the District of Columbia.

²⁵ 49 U.S.C. 31311(a).

State accordingly.²⁶ A State has 30 calendar days to respond to the preliminary determination explaining the State's corrective action or, alternatively, why FMCSA's preliminary determination is incorrect.²⁷ If FMCSA makes a final determination of substantial noncompliance, FMCSA may initiate the withholding of certain Federal-aid highway funds and may decertify the State's CDL program.²⁸

As part of the 2025 comprehensive APRs, FMCSA conducted an in-depth review of State procedures and policies in issuing non-domiciled CLPs and CDLs. FMCSA's enhanced focus on State non-domiciled CDL issuance practices during the 2025 APR was consistent with E.O. 14286, "Enforcing Commonsense Rules of the Road for America's Truck Drivers."²⁹ The E.O. directed FMCSA to "review non-domiciled . . . CDLs issued by relevant State agencies to identify any unusual patterns or numbers or other irregularities" and "to take appropriate actions to improve the effectiveness of current protocols. . . ." ³⁰ Accordingly, FMCSA conducted a thorough audit of each SDLA's procedures and policies in issuing non-domiciled CLPs and CDLs as part of the 2025 APR.

The 2025 APRs uncovered systemic procedural and computer programming errors, significant problems with staff training and quality assurance, and policies that lack sufficient management controls in the issuance of non-domiciled CLPs and CDLs by multiple SDLAs. As a result, SDLAs were discovered to have issued non-domiciled CDLs to drivers who do not qualify,³¹ issued non-domiciled CDLs that extend beyond a driver's expiration of lawful presence known at the time of issuance, issued non-domiciled CDLs without first validating the drivers' eligibility under § 383.71(f)(2)(i), and engaged in other noncompliant practices. At the time the Agency published the IFR, FMCSA noted several other States apart from California issued non-domiciled CDLs in violation of the regulatory requirements. Those States were, Colorado, Pennsylvania, South Dakota,

Texas and Washington. In total, FMCSA has identified more than 30 States that have failed to comply with the non-domiciled CDL regulations.

Where FMCSA discovered deficiencies in an SDLA's non-domiciled CLP or CDL issuance process, FMCSA required the SDLA to complete several corrective actions as part of the APR process, in accordance with 49 CFR 384.307. The agency's stated corrective actions included, but were not limited to: immediately pausing the issuance of all new, renewed, transferred, or upgraded non-domiciled CLPs and CDLs until FMCSA provided written confirmation that an SDLA's corrective action plan was accepted and implemented; requiring the SDLA to, as soon as practicable, identify all unexpired non-domiciled CLPs and CDLs that were not issued in compliance with parts 383 and 384 and conduct an internal audit to identify all procedural and programming errors, training and quality assurance problems, insufficient policies and practices, and other issues that resulted in the issuance of any non-domiciled CLPs and CDLs that did not meet the standards of parts 383 and 384 (the scope of the audit was not limited to the issues identified in a State's APR); take immediate action to correct the deficiencies identified in SDLA's internal audit; as part of the State's audit, review all supporting documentation for all new, renewed, transferred, or upgraded non-domiciled CLP and CDL transactions to ensure compliance with parts 383 and 384 and provide FMCSA a copy of the audit findings and the number of unexpired noncompliant non-domiciled CLPs and CDLs; take immediate action to correct the deficiencies identified in the SDLA's internal audit; take immediate action to void or rescind all unexpired noncompliant non-domiciled CLPs and CDLs and reissue the licenses in accordance with parts 383 and 384, in effect at the time of reissuance; resume issuing non-domiciled CLPs and CDLs only after the State has voided or rescinded all unexpired noncompliant non-domiciled CLPs and CDLs and reissued the licenses in accordance with parts 383 and 384, in effect at the time of reissuance, and the State ensures that all statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resources assignments (facilities, equipment, and personnel), and enforcement practices meet each and every standard of subpart B of part 384 and 49 U.S.C. 31311, and FMCSA provides written confirmation that the

SDLA's corrective action plan has been accepted and implemented.

The agency required the corrective actions during the APR process as part of its oversight authority over States' CDL programs in 49 U.S.C. 313 and separate from the issuance of the non-domiciled CDL IFR. These corrective actions were designed to rectify the findings of widespread noncompliance, but further action is necessary to deter continued noncompliance, whether willful or unintentional. Insofar as commenters have complained that the pause in non-domiciled credential issuance was nontransparent or subtextual, FMCSA asserts that the agency was and is well within its statutory and regulatory authority to issue corrective actions to ensure States' compliance with each and every standard of 49 CFR part 384, subpart B and the integrity of the National CDL program. States are cognizant of their requirement to maintain compliance with 49 U.S.C. 31311, as well as FMCSA's obligation to review States' compliance with the National CDL program through the agency's APR process. That process is clearly outlined in subpart B of part 384, therefore any assertion that the APR process is nontransparent is ill-informed and should be rejected. In addition, as the letters of preliminary determination of substantial noncompliance state,³² FMCSA conducts program reviews yearly, thus, the APR process is no surprise to the States. Further, FMCSA conducts its APRs in close cooperation with the States, as the documentation necessary to substantiate the non-domiciled credentialing issuance process, which FMCSA reviews during the APR, is solely within the possession of the States. Annual program reviews often involve onsite visits to SDLA offices to review documentation and policies, and to observe facilities, internal control mechanisms, and procedures. None of these activities can occur without prior coordination with the States.

Insofar as any allegations of subtext exist, FMCSA likewise rejects those arguments. In addition to the fact that APRs are routine and conducted annually, the agency noted earlier in this section that our enhanced focus on State non-domiciled CDL issuance practices during the 2025 APR was consistent with E.O. 14286, "Enforcing Commonsense Rules of the Road for

²⁶ 49 CFR 384.307(b). A preliminary determination of noncompliance is also known as a "finding."

²⁷ *Id.* at section 384.307(c).

²⁸ 49 U.S.C. 31314(c), 31312; *see also infra* at section VI; 49 CFR 384.307(d), 49 CFR part 384, subpart D.

²⁹ 90 FR 18759 (Apr. 28, 2025).

³⁰ *Id.* at 18759–60.

³¹ For example, FMCSA is aware that numerous States have issued non-domiciled CDLs to drivers who are domiciled in Mexico, despite the fact that Mexican and Canadian drivers are not eligible for non-domiciled CDLs under 49 CFR 383.71(f).

³² The letters of preliminary determination of substantial noncompliance from the 2025 APRs, as well as the letters of conditional determination of substantial noncompliance and final determination of substantial noncompliance for California, are in the docket for this rulemaking.

America's Truck Drivers,"³³ which directed FMCSA to "review non-domiciled . . . CDLs issued by relevant State agencies to identify any unusual patterns or numbers or other irregularities" and "to take appropriate actions to improve the effectiveness of current protocols. . . ." ³⁴ The APR process is a routine and vital component of FMCSA's oversight of the National CDL Program, any suggestion of subtext in its administration should be dismissed.

b. Lack of Statistical Evidence

AFSCME, the American Federation of Teachers (AFT), the Asian Law Caucus, the Asylum Seeker Advocacy Project, Inspiritus, Justice at Work PA, King County Metro, the joint AG comment, The Sikh Coalition, Teamsters California, and numerous individuals expressed concern about the lack of statistical evidence supporting the rule's safety justification and stated that FMCSA had not provided nationwide crash data showing that non-domiciled CDL holders were disproportionately responsible for crashes compared to U.S. citizen drivers. United LLC and many individuals stated that there was no correlation between a driver's immigration status and their ability to drive safely. AFT, the Asian Law Caucus, the Public Rights Project on behalf of Local Governments, and several individuals stated that FMCSA itself stated in the rule text that there was "not sufficient evidence, derived from well-designed, rigorous, quantitative analyses, to reliably demonstrate a measurable empirical relationship between the nation of domicile for a CDL driver and safety outcomes in the United States." Two individuals stated that, without such evidence, the rule appeared arbitrary under the APA. An individual cited court decisions that condemn such "evidentiary gaps."

OPM Logistics, the joint AG comment, Unitarian Universalists for Social Justice, and numerous individual commenters stated that the rule is based on a small number of incidents that were not representative of the broader population of non-domiciled CDL holders. They said that FMCSA cited only five fatal crashes involving non-domiciled CDL holders in 2025, which they considered insufficient justification for such sweeping policy changes. The National Education Association and many individuals stated that the vast majority of fatal truck crashes in the United States were caused by U.S.

citizen drivers, not non-domiciled CDL holders. The Sikh Coalition and an individual stated that, based on FMCSA's own Federal statistics and crash reports, non-domiciled CDL holders accounted for fewer than 2 two percent of all large-truck crashes nationwide, while over 98 percent of such crashes involved U.S.-domiciled CDL drivers. Unitarian Universalists for Social Justice stated that the five fatal crashes represent 0.13 percent of the 2025 fatal truck crashes, yet non-domiciled drivers comprise 3.5 to four percent of all CDL holders, which suggests these drivers are not inherently more dangerous. An individual stated that the five incidents represented only 0.002 percent of fatalities involving CDL drivers. Three individuals provided specific statistics to illustrate their point, stating that in 2023, there were 164,347 crashes involving large trucks and buses, making the five incidents involving non-domiciled drivers account for less than 0.003 percent of these crashes. Another individual stated that in 2025, there had been 2,200 deaths in truck-related accidents, and the 12 people who died as a result of actions by non-domiciled CDL holders represented 0.55 percent of fatalities in truck accidents and 0.033 percent of the total number of fatalities on U.S. roads. Two individuals stated that Federal data shows that about 70 percent of fatal truck-passenger vehicles collisions are caused by the passenger vehicle. King County Metro stated that collisions involving large trucks are significantly decreasing year over year.

An individual said that CDL holders, regardless of domicile status, have lower crash rates than non-commercial drivers. Several other commenters stated that non-domiciled CDL holders do not have higher crash rates than domiciled CDL holders. Many individuals stated that accidents can happen to anyone, unrelated to immigration status. Teamsters California remarked that non-domiciled CDL holders are highly qualified and rigorously screened, and the loss of these drivers will make communities fundamentally less safe. An individual urged FMCSA to research which demographics are responsible for the majority of truck-related accidents before finalizing such an impactful rule. An individual questioned whether there has been an increase in accidents. Another individual said the data shows there is a trend of safer driving, even with more miles driven, which begs the question of what is the "true narrative" behind the regulation, since the data is not supportive of the safety aspect.

Another individual said data is also needed on how many commercial accidents are caused by the CDL holder versus by non-commercial vehicles.

Other commenters offered support for FMCSA's rationale. OOIDA discussed that the five recent fatal crashes are likely a small sample of crashes involving non-domiciled drivers. Similarly, an individual stated that the five crashes cited by FMCSA, while seemingly small in number, were significant enough to warrant action. This commenter stated that these documented crashes represented only the fatal crashes FMCSA had identified to date and did not include non-fatal crashes involving non-domiciled CDL holders. The individual also stated that the systemic compliance failures documented through APRs demonstrated that the problem extended far beyond these five crashes, with approximately 25 percent of non-domiciled CDLs in California improperly issued and similar problems confirmed in at least five other States.

An individual stated that statistics were "notoriously understated to look pretty" and that the full extent of conflicts and violations was far greater than published. An individual also stated that data from recent years indicated that non-domiciled CDL holders had been disproportionately represented in serious traffic incidents, often due to language barriers and limited familiarity with U.S. road standards. Another individual discussed "all the available data" showing recent audits of non-domiciled drivers being taken off the road due to fake/illegal CDLs, CDLs that had expired, or CDLs with no names, as well as the "uptick in fatal crashes" involving undocumented illegal immigrants and expired non-domiciled CDL holders who could not pass a simple English proficiency test. The individual also stated that it is not possible to know the skill level of a non-domiciled driver, noting that even legal citizens are receiving CDLs with no verification of their skill level. Commending the agency for addressing many safety issues, the American Trucking Associations (ATA) also described the illegal practice of "cabotage" and stated that there has been an increase in recent years in the incidence of U.S. motor carriers illegally hiring B-1 visa drivers.

FMCSA Response

In response to commenters who cited a lack of statistical evidence in the IFR, FMCSA discussed five recent, fatal crashes involving drivers with non-domiciled CDLs as examples of the tangible impact of States failing to

³³ 90 FR 18759 (Apr. 28, 2025).

³⁴ *Id.* at 18759–60.

follow the proper procedures when issuing non-domiciled CDLs, as well as the need for stronger regulations to ensure that non-domiciled drivers present in the United States without lawful immigration status are not able to obtain CLPs and CDLs. This sample of crashes was not intended to be exhaustive or to provide the basis for a statistical analysis; rather, it was merely a discussion of crashes that had come to the agency's attention and, when combined with the widespread systemic collapse of non-domiciled issuance by SDLAs, warranted immediate action. Moreover, by focusing on statistical significance, commenters overlook the core safety issue. The necessity of this Rule stems not from a specific crash count, but from a critical safety vulnerability: the inability of SDLAs to verify foreign driver histories. This failure compromises the agency's ability to ensure the safety fitness for drivers who operate CMVs. Consequently, the statistics cited in the comments, such as the calculations that the five fatal crashes represent 0.13 percent of the 2025 fatal truck crashes or that the 12 fatalities from those crashes represented 0.55 percent of fatalities in truck accidents and 0.033 percent of the total number of fatalities on U.S. roads, are not useful metrics to evaluate the complete safety impact of the rule.

Since the IFR was issued, additional fatal crashes have come to the attention of FMCSA involving holders of non-domiciled CDLs (or drivers who were improperly issued standard CDLs instead of non-domiciled CDLs), who were eligible to receive a non-domiciled CDL at the time the license was issued but would have had a substantial likelihood of being prevented from being licensed under the revised regulations.³⁵ However, FMCSA emphasizes that even this expanded list remains incomplete because the necessary level of detail regarding the type of CDL a driver involved in a crash held is simply not available under current crash reporting requirements. FMCSA is therefore unable to create a comprehensive list of all crashes that are within the scope described above.

A primary issue with the data is that neither the Motor Carrier Management Information System (MCMIS), nor the Fatality Analysis Reporting System (FARS), nor the Commercial Driver's

License Information System (CDLIS) allow FMCSA to ascertain whether the driver's CDL was, or should have been, designated as non-domiciled. The primary purpose of MCMIS is to capture and organize data for motor carriers. Crash and inspection reports in MCMIS only include driver's license number and no additional information related to the status of the driver. Similarly, FARS captures the driver's license number, endorsements, and status (e.g., valid, suspended, revoked, expired, or canceled). CDLIS, while a more comprehensive data set of driver information, does not contain a data field for entry of this status. Instead, FMCSA had to review reports of fatal crashes that occurred in 2025 individually, cross-reference driver information from these databases along with other available information, and reach out to the SDLAs for details about each driver to determine whether each crash was in scope.

Each crash listed in this final rule and the IFR has been manually verified through the SDLA and corresponding police crash reports. Notably, FMCSA has included only those fatal crashes where it could be reasonably determined that the non-domiciled driver—operating a CMV requiring a CDL—was at fault due to the driver's action or inaction. This distinction is critical because studies indicate between 26 and 38 percent of fatal crashes involving CMVs have a driver-related factor attributed to the CMV driver.³⁶ Therefore, it would be erroneous to compare the fatality figures in this section with total CMV fatalities, crashes involving a CMV that do not require a CDL, or fatal CMV crashes not caused by the actions of the CMV driver. Finally, given the extraordinary limitations in obtaining exhaustive crash data for non-domiciled CDL holders, this section serves as an illustrative sample of the risks this regulatory action aims to mitigate and the crashes that would be prevented by FMCSA fulfilling its statutory obligation to ensure the fitness of all drivers who operate a CMV.

Based on this analysis, FMCSA has identified for illustrative purposes at least twelve more fatal crashes fitting this description in calendar year 2025, in addition to the five crashes already discussed in the IFR. At least 30 people were killed in the 17 crashes discussed in the IFR and here, including two of the non-domiciled drivers, and more

than 40 other people suffered non-fatal injuries as part of these 17 crashes. FMCSA consulted with USCIS and confirmed that there is a substantial likelihood none of the drivers involved in these crashes would be eligible to hold a non-domiciled CDL under the regulations adopted in this rule.

Moreover, the available data highlights a significant lack of driving experience within this sample; the majority of these drivers obtained their initial CDL within the preceding two years. Despite this brief period of licensure, several of the drivers have already been convicted of traffic violations, underscoring the safety risks associated with the Agency's inability to verify foreign driving histories.

On February 3, 2025, a Cascadia Freightliner being driven by a non-domiciled CDL holder was struck by a passenger car on I-44 in Oklahoma City. Although the driver of the passenger car, who died in the crash, was found to be under the influence of alcohol, investigators also found that the CDL holder contributed to the crash by illegally parking and in a manner that blocked the lane of travel. The Freightliner driver was first issued a non-domiciled CDL in May 2024. He has convictions for improper/erratic (unsafe) lane changes and for failure to obey a traffic sign.

On February 14, 2025, a tractor-trailer driven by a driver who held a non-domiciled CDL from Colorado was involved in a multi-vehicle fatal crash in the tunnel on Interstate 80 in Green River, Wyoming. Several vehicles, including CMVs, were involved in a prior crash and traffic behind these disabled vehicles had stopped. Shortly thereafter, the tractor-trailer driven by the non-domiciled CDL driver swerved out of its lane without significantly slowing down and impacted the rear of a Dodge Ram traveling in the next lane. Additional vehicles were then impacted by those vehicles and became involved in the crash; a separate but related crash later occurred among the vehicles stopped behind the initial crash. The incident involved smoke that billowed out of both ends of the tunnel, which required temporary closure for inspection and repair.³⁷ In total, the incident led to three fatalities and 20 injuries.³⁸ The driver was first issued a

³⁵ FMCSA coordinated with federal partners in the Department of Homeland Security's U.S. Citizenship and Immigration Services and using available information, to confirm that it is likely the status of each of the drivers listed in the descriptions of the crashes in this final rule would have rendered them ineligible for a non-domiciled CLP or CDL under this final rule's requirements.

³⁶ See, e.g., <https://rosap.nhtl.bts.gov/view/dot/20428>; <https://rosap.nhtl.bts.gov/view/dot/14276>; <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2025-10/LTBCF%202022-%20508.pdf> [Table 29].

³⁷ <https://county10.com/officials-investigators-share-details-about-i-80-tunnel-crash-near-green-river-at-feb-15-press-conference-with-governor-gordon/> (accessed Dec. 16, 2025).

³⁸ <https://www.nts.gov/investigations/Pages/HWY25MH004.aspx> (accessed Dec. 12, 2025); <https://cowboystatedaily.com/2025/02/14/huge->

non-domiciled CDL by Colorado in April 2024, and it expired in July 2025.

Another incident occurred on February 19, 2025, on Highway 374 near Green River, Wyoming, not far from the incident described above. The driver of a tractor-trailer combination unit failed to negotiate a curve in the road and collided with a passenger vehicle, killing two people and injuring another.³⁹ Reports indicated the driver was watching videos at the time of the crash, and he was charged with Aggravated Vehicular Homicide. He received his non-domiciled CLP in New York State in August 2024 and his non-domiciled CDL the following month, September 2024.

On March 15, 2025, a truck driven by a non-domiciled CDL holder slid on black ice in Carbon County, Wyoming and crashed into another truck, injuring the second truck's driver and killing a passenger who was resting in its sleeper berth.⁴⁰ News media reported that the non-domiciled driver told law enforcement officers he closed his eyes and did not brake as his truck spun out of control. He pleaded no contest to vehicular homicide and was sentenced to 90 days in jail, one year probation, fined, and ordered to pay court costs and fees.⁴¹ He received a non-domiciled CLP in Washington State in January 2024 and a non-domiciled CDL in March 2024, which expired in October 2025 and was not renewed.

On July 1, 2025, the non-domiciled driver of a CMV pulling a trailer failed to stop at a stop sign in Ector County, Texas and struck the side of a passenger vehicle traveling through the intersection.⁴² The driver of the passenger vehicle was pronounced dead at the scene. The CMV driver had been granted a Class A non-domiciled permit in August 2024 and a Class A non-domiciled CDL in September 2024. At the time of the crash, he had one prior conviction for failure to use a seat belt properly, as required.

A fatal head-on collision between a semi-truck and a passenger vehicle occurred on October 15, 2025 in Porter County, Indiana. The truck driver swerved left of the center line to avoid a rear-end collision with a van who had been stopped waiting to make a left-hand turn and struck a passenger car in the opposite lane head-on, killing the car's driver.⁴³ The semi-truck's trailer then struck the van. The truck driver previously held a standard Class A CDL issued in 2010, even though he was only eligible for a non-domiciled CDL under the rules in effect at the time. This indicates a failure of the SDLA to process the CDL application properly under the existing regulations. This driver downgraded his CDL in May 2019 and held only a standard Class D driver's license at the time of the crash, even though a CDL was required for the type of vehicle he was driving. Even so, FMCSA finds it plausible that, had he never been issued a CDL, he would not have been operating this vehicle at the time of the crash. He had previous traffic convictions for improper or erratic lane changes, failure to use a seat belt properly, driving with a disqualified license, failure to obey restricted lane, operating without equipment required by law, and failure to comply (citations, fines, or penalties).

On October 21, 2025, a driver who held a California non-domiciled CDL issued in June 2025 was involved in a fatal crash on I-10 in Ontario, California. Media reports state that the driver failed to stop, rear-ending several vehicles and colliding with others.⁴⁴ In total, the incident involved eight vehicles, including four tractor-trailers. There were three fatalities and multiple other injuries. This driver was initially issued a Class A CDL with a "K" restriction, which means the driver was only allowed to drive intrastate, in June 2025. However, six days before the crash, the SDLA removed the "K" restriction when the driver turned 21, which upgraded⁴⁵ his driving

privileges. Had the SDLA complied with the IFR (which was still in effect at the time of the upgrade and crash) or the enforcement action which required California to pause issuance of non-domiciled CDLs, it would have prevented the upgrade of his driving privileges. The driver would have been required to return to the DMV (on or after turning 21) to have the "K" restriction removed and upgrade his CDL. Upon returning for the upgrade, he would have been found ineligible to retain the non-domiciled CDL because he was not in one of the specified employment-based nonimmigrant categories, and consequently would not have been permitted to operate the CMV involved in this crash.

A single-vehicle fatality involving a non-domiciled driver occurred on November 3, 2025, when a semi-truck went off Highway 160, near Pagosa Springs, Colorado.⁴⁶ The truck driver failed to navigate a left-hand curve, crossed the road, and struck a Jersey barrier on the roadside before overturning, sliding back across the roadway, and plunging approximately 160 to 200 feet down a steep embankment. He was not wearing a seat belt and was ejected from the vehicle. Media reports indicated the truck's brakes were visibly smoking before the crash, and excessive speed was identified as a contributing factor.⁴⁷ There were runaway truck ramps located both before and after the crash site. No other vehicles or individuals were involved or injured in the incident. The driver held a non-domiciled CDL issued by New York State in September 2024, following the initial issuance of a non-domiciled CLP in August 2024.

Another semi-truck driven by a non-domiciled CDL holder jackknifed on US 20 near Brothers, Oregon on November 24, 2025. The truck blocked both lanes of travel, but there were no warning signals or devices in place when it was struck at highway speed by a passenger

explosions-multiple-fatalities-from-fiery-crash-in-green-river-tunnel/ (accessed Dec. 12, 2025).

³⁹ <https://www.dot.state.wy.us/news/fatal-crash-occurs-outside-green-river-not-part-of-i-80-detour> (accessed Jan. 27, 2026).

⁴⁰ <https://cowboystatedaily.com/2025/03/18/brief-trucker-suspected-of-causing-i-80-crash-that-killed-another-trucker/> (accessed Dec. 18, 2025).

⁴¹ <https://cowboystatedaily.com/2025/07/08/ukrainian-trucker-who-killed-another-trucker-in-crash-gets-90-days/> (accessed Dec. 18, 2025); <https://cdllife.com/2025/driver-who-admitted-he-closed-his-eyes-and-did-nothing-during-fatal-black-ice-crash-given-90-day-sentence/> (accessed Dec. 18, 2025).

⁴² <https://www.msn.com/en-us/news/us/dps-odessa-man-killed-in-crash-on-302-after-driver-of-semi-fails-to-yield/ar-AA1HQZgW> (accessed Jan. 8, 2026).

⁴³ <https://www.dhs.gov/news/2025/10/21/criminal-illegal-alien-kills-indiana-man-after-driving-semi-truck-oncoming-traffic> (accessed Dec. 16, 2025).

⁴⁴ <https://abc7.com/post/pomona-high-school-coach-wife-among-3-killed-chain-reaction-crash-10-freeway-ontario-suspect-jashanpreet-singh-expected-court/18062397/> (accessed Dec. 15, 2025); <https://abc7.com/post/dui-charge-dropped-jashanpreet-singh-semi-truck-driver-deadly-10-freeway-crash-ontario/18114192/> (accessed Dec. 15, 2025); <https://apnews.com/article/crash-jashanpreet-singh-california-ad268515fbc4ff67d9376c141e8995c5> (accessed Dec. 15, 2025).

⁴⁵ FMCSA notes that removal of any restriction, including a "K" restriction (which denotes Intrastate Only), constitutes an upgrade of the credential. Merriam-Webster online defines the term *upgrade* in part as an "improvement." See

<https://www.merriam-webster.com/dictionary/upgrade>. As an intransitive verb it means "to replace something (such as software or an electronic device) with a more useful version or alternative." See id. Removing a "K" restriction from a CDL is therefore an *upgrade* of the credential within the plain meaning of the term because removing the restriction from the CDL makes it a more useful version that can be used interstate.

⁴⁶ <https://www.cbsnews.com/colorado/news/deadly-semi-truck-crash-colorado-mountain/>, accessed Dec. 15, 2025; <https://www.denvergazette.com/outtherecolorado/2025/11/03/semi-plunges-off-notorious-colorado-pass-killing-23-year-old-driver/>, accessed Dec. 15, 2025.

⁴⁷ <https://cdllife.com/2025/runaway-semi-truck-bypassed-ramp-on-wolf-creek-pass-before-fatal-plummet-down-embankment-colorado-troopers-say/>, accessed Dec. 15, 2025.

vehicle.⁴⁸ The passenger vehicle's driver and passenger were killed, while the truck driver was uninjured. He was arrested and charged with Criminally Negligent Homicide and Reckless Endangering. This driver completed Entry Level Driver Training in July 2024 and received a California non-domiciled CDL in August 2024.

A tractor-trailer driven by a non-domiciled CDL holder collided with a locomotive at a railroad crossing in Ontario, California on December 3, 2025.⁴⁹ FMCSA's investigation showed that, despite the crossing's active warning signals (bells and lights), the CMV entered the crossing and the train struck the rear portion of its trailer. One train crew member survived but another was fatally injured. The non-domiciled CDL was issued in February 2025 by the State of California.

On December 9, 2025, a motorcoach collided with two CMVs and a passenger vehicle on Interstate 40 Westbound, in Baxter, Putnam County, Tennessee.⁵⁰ The motorcoach driver was allegedly distracted by a video playing on a cell phone at the time of the crash and failed to communicate effectively in English, failing the ELP requirement.⁵¹ The crash resulted in one fatality and multiple additional injuries. The motorcoach driver received a Class A non-domiciled CDL permit in March 2024 and was issued a non-domiciled Class B CDL by New York State in April 2025.

A crash occurred on December 11, 2025 in Auburn, Washington, in which a Freightliner Cascadia semi-truck driven by a non-domiciled CDL holder struck a stopped passenger car from behind, crushing it against the vehicle ahead of it. The driver of the passenger vehicle was pronounced dead at the scene. According to initial court documents, troopers determined the

Cascadia driver did not make any attempt to brake or evade the stopped vehicles before crashing into the car.⁵² There are also allegations that the Cascadia's electronic logbook was tampered with or falsified. The Cascadia driver received Entry Level Driver Training in November 2024 and was issued a California non-domiciled CDL in December 2024. He had a conviction for speeding in the State of Oregon in May 2025.

Ultimately, the necessity for this rule rests not on a specific crash count but on FMCSA's fundamental statutory mandate to ensure the safety fitness of all operators of CMVs. Although system limitations preclude the aggregation of comprehensive data, the fatal crashes identified in this section serve to illustrate the tangible risks mitigated by this rule. By limiting licensure to only those individuals whose driver history can be vetted, FMCSA is not only responding to a clear safety flaw but is affirmatively fulfilling its statutory requirement to ensure the safety fitness of every driver licensed to operate a CMV.

c. Real Causes of Truck Crashes

Many individuals stated that the rule ignores the well-documented causes of truck crashes, such as fatigue, training lapse, insufficient oversight, distracted driving, impaired driving, speeding, and mechanical failures—not immigration status. An individual identified other specific factors that contributed to commercial vehicle crashes, including company pressure, inadequate supervision, and insufficient training. The individual stated that companies often prioritize productivity over safety, leading to fatigue, pressure, and increased risk of driver error, and that immigrant drivers were especially vulnerable to this dynamic because they might fear questioning a dispatcher or refusing a load. The individual stated that many Class A Entry-Level Driver Training programs focused on minimum proficiency and allowed trainees to complete programs in a matter of days, without real-world experience in high-risk environments such as mountain driving or night operations. An individual stated that the Florida Turnpike crash, which was cited in the rule, was likely a case of a driver being lazy and not wanting to travel to the next exit, rather than an issue related to language or nationality. Another individual stated that the Florida incident was “just an accident” that

could happen to anyone, noting that many accidents happen daily, including those involving white drivers.

FMCSA Response

FMCSA finds these comments to be out of scope for this rulemaking. The critical issue is that statutory authority requires the agency to implement a regulatory framework that ensures CDL driver safety and fitness. FMCSA has determined that it is not logistically possible for SDLAs to perform a thorough driver history investigation for foreign-domiciled individuals. Therefore, the underlying causes of any particular crash, or even large truck crashes in general, are not relevant to FMCSA's revisions to the non-domiciled CDL issuance process. Moreover, while the agency acknowledges that many factors contribute to crashes, the specific regulatory failure addressed by this rule is the licensure of individuals who may have a history of unsafe driving that would otherwise disqualify them. If a driver causes a crash due to unsafe behaviors that were present in their unverified foreign record, that crash was preventable through proper vetting. Licensing a driver without the ability to investigate their history—as is required for domestic drivers—removes a critical layer of defense in accident prevention.

However, FMCSA does note that the agency's primary mission is roadway safety and the reduction of crashes, injuries, and fatalities involving large trucks and buses. The agency does not accept that crashes are a daily fact of life; instead, the agency strives to eliminate as many crashes as possible by strengthening its safety regulations and requiring compliance with those regulations. To that end, FMCSA has considered underlying causes of truck crashes as part of various other agency actions. For instance, the agency is currently taking action regarding CDL driver training schools who cut corners and do not provide high quality, consistent, and sufficient driver education. FMCSA has also strengthened its enforcement of English language proficiency requirements,⁵³ which many commenters on the IFR identified as a barrier to highway safety because a lack of familiarity with U.S. roadways and traffic laws and the inability to read and interpret signage easily leads to unsafe driving practices.

⁴⁸ https://www.centraloregondaily.com/news/local/dhs-semi-driver-involved-in-fatal-highway-20-crash-in-us-illegally-arrest-detainer-requested/article_183caa8a-3453-430a-bedc-9201e291c37a.html (accessed Dec. 15, 2025); <https://www.dhs.gov/news/2025/12/01/ice-lodges-detainer-criminal-illegal-alien-semi-truck-driver-charged-negligent> (accessed Dec. 15, 2025); <https://ktvz.com/news/accidents-crashes/2025/11/26/osp-arrests-california-truck-driver-after-suv-struck-his-jackknifed-semi-on-highway-20-killing-two-people/> (accessed Dec. 15, 2025).

⁴⁹ <https://www.trains.com/pro/freight/class-i/ntsb-probing-death-of-union-pacific-conductor-in-grade-crossing-incident/> (accessed Jan. 27, 2026).

⁵⁰ <https://www.msn.com/en-us/autos/other/charges-pending-against-tour-bus-driver-after-deadly-crash-shuts-down-interstate-in-tn-thp-reports/ar-AA1S2nDD?ocid=BingNewsSerp> (accessed Dec. 15, 2025).

⁵¹ <https://nypost.com/2025/12/11/us-news/feds-probe-if-tour-bus-driver-in-fatal-crash-was-illegally-issued-nys-drivers-license-its-outrageous/> (accessed Dec. 15, 2025).

⁵² <https://auburnexaminer.com/judge-sets-100000-bail-in-deadly-sr-167-crash-as-prosecutors-cite-probable-cause/> (accessed Jan. 5, 2026).

⁵³ See e.g., FMCSA's May 20, 2025 English Language Proficiency Policy (MC-SEE-2025-0001), available at https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2025-05/FMCSA%20ELP%20Guidance%20with%20Attachments%20Final%20%285-20-2025%29_Redacted.pdf.

d. Individual Assessment vs. Collective Punishment

Many individuals stated that drivers should be evaluated based on their individual record and compliance history, rather than being subject to collective punishment based on the actions of a few or immigration status. Several individuals, stated that immigrant drivers who passed the same training, testing, and safety requirements as U.S. citizens should not be treated differently. An individual said it is wrong to punish those with officially issued permits and documents from the United States. Another individual said that CDL eligibility should be based on safety and competency criteria instead of factors unrelated to a person's ability to operate a commercial vehicle.

Multiple individuals objected to what they perceived as collective punishment of an entire group based on the actions of a few individuals, and stated that the vast majority of non-domiciled CDL holders were responsible, law-abiding drivers who should not be penalized. Unitarian Universalists for Social Justice said that the IFR is unjust and counterproductive. Multiple individuals wrote that drivers should not be penalized for administrative errors or oversight failures by SDLAs. Another individual stated that bureaucratic delays are not a driver's fault, and they should not be punished for inefficiencies in the immigration system.

FMCSA Response

Again, FMCSA highlights that this rule is not intended to be punitive, but rather to improve highway safety. There is a statutory duty to ensure a driver's fitness and investigate driver history before issuing a CDL because doing so uncovers prior unsafe behaviors that would prevent the driver from receiving a CDL. SDLAs are not able to perform a foreign driver history review for most non-domiciled drivers, thus these drivers may have a history of unsafe behavior that remains unknown due to the lack of vetting. This necessitates narrowing the pool of drivers who are eligible to receive non-domiciled drivers to those whose driver histories can be vetted as part of the consular vetting and interagency screening. Moreover, even if SDLAs were able to obtain foreign driver histories, States would face a substantial burden in evaluating those records, which would require knowledge of how traffic laws in the driver's country of domicile compare to domestic laws. Narrowing the pool of drivers eligible for non-domiciled CDLs

is the only reasonable way to ensure that SDLAs are only issuing non-domiciled CDLs to eligible applicants, because they will be able to rely on safety determinations already made by Federal agencies with the necessary experience.

FMCSA also reiterates that, based on the recent APRs and investigations into individual crashes, the SDLAs are unable to administer the existing regulations adequately. Therefore, narrowing the discretion given to the States regarding the issuance of non-domiciled CDLs is likely to lead to improved compliance and better safety outcomes.

e. Differentiation Between Class A and Class B Licenses

One individual suggested that the rule should differentiate between Class A and Class B licenses, noting that the recent FMCSA restriction arose from incidents involving Class A tractor-trailer drivers engaged in freight transport, while Class B licensing governed passenger vehicles such as school buses and coaches, which were subject to more stringent testing, supervision, and background-check requirements. An individual provided detailed analyses comparing the safety records of Class A (combination vehicles) and Class B (single-unit vehicles) operations, arguing that the rule failed to distinguish between these different risk profiles. The commenter stated that Class B operations, particularly school buses, had significantly better safety records than Class A operations. The individual cited data showing that school buses had a fatality rate of about 0.2 fatalities per 100 million vehicle-miles traveled, compared to about 1.5 fatalities per 100 million vehicle-miles traveled for cars and 1.3 to 1.7 fatal crashes per 100 million large-truck miles. The individual also stated that Class B vehicles were inherently safer because they lacked articulation points, operated at lower speeds within city limits, followed structured routes, and faced less severe weather exposure.

FMCSA Response

The statutory requirement to investigate driver history in order to ensure safety fitness prior to issuing a CDL does not differentiate between CDL classes. As previously stated, it is not possible to perform this investigation for most non-domiciled drivers. Moreover, for similar reasons to those cited above, FMCSA finds it would be impractical to maintain different standards for Class A and Class B CDL holders, as this would require SDLAs to administer two

different sets of rules. As stated above, many SDLAs have already demonstrated an inability to administer the existing regulations properly; creating a more complex regulatory system at this point in time is likely to diminish compliance even further. Therefore, FMCSA finds it appropriate to maintain one simplified, clearly defined set of rules for all non-domiciled individuals seeking CDLs, regardless of license class.

g. Comments on the Relationship Between Safety and Immigration Status

The Asian Law Caucus wrote that H-2A and H-2B visas are intended to be temporary and seasonal in nature while limited to certain geographical areas, but the IFR did not discuss how these limitations will be applicable to commercial driving. AFSCME stated that FMCSA's decision to allow workers in short-term, nonimmigrant guestworker visa programs, who have been in the United States for less time, to obtain CDLs, but not those who have been in the United States longer, like Deferred Action for Childhood Arrivals (DACA) recipients, undermines FMCSA's use of the lack of accessible driving records as a justification for the rule. AFSCME also said the statement that current State regulations do not allow for vetting of workers with driving records in foreign jurisdictions is "pretextual" because of the rule's exemption for workers in short-term, nonimmigrant guestworker visa programs, remarking that government employees are incentivized to hire safe drivers. In addition, AFSCME stated that FMCSA has not provided evidence that immigrants with lawful work authorization pose a larger threat to national security or safety, and cited studies indicating the opposite is true. AFSCME added that the IFR will not be effective in vetting CDL applicants and instead will exclude a category of people from obtaining CDLs without any evidence that they pose a threat to national security. Lastly AFSCME stated FMCSA failed to consider operations of State and local government services that could be impacted by the IFR. An individual said that there is a difference between legal and illegal migrants, with the latter posing a legitimate safety concern, while the former does not, which the individual stated the IFR did not recognize. The individual expressed support for preventing CDL issuance to illegal migrants, but not legal migrants.

FMCSA Response

FMCSA disagrees that its decision to allow workers in short-term, nonimmigrant guestworker visa programs to obtain CDLs, but not those

who have been in the United States longer undermines FMCSA's use of the lack of accessible driving records as a justification for the rule. As described above, workers in nonimmigrant employment-based statuses specifically for the purpose of driving vehicles requiring a CDL are subjected to increased scrutiny, both by employers and by relevant Federal agencies. This includes a review of prior driving history to ensure a clean driving record, experience driving commercial vehicles or the equivalent, and demonstration of English proficiency. Thus, in addition to all of FMCSA's safety regulations, foreign-domiciled individuals in an employment-based nonimmigrant status are subject to enhanced vetting at the near-equivalency as domestic-domiciled drivers. Other foreign-domiciled drivers do not receive this level of scrutiny with respect to their driving qualifications and are therefore more likely to impact highway safety negatively. This is true regardless of whether that person has legal status and work authorization.

The comment responses previously discussed the issue of DACA recipients holding non-domiciled CDLs. Most DACA recipients are citizens of Mexico and have therefore never been eligible for a non-domiciled CLP or CDL under FMCSA's regulations because Mexico is a jurisdiction for which the Administrator has issued an equivalency determination and entered into a reciprocity agreement. 49 CFR 383.23(b)(1). Only since 2023 have citizens of Mexico and Canada who are present in the United States under the DACA who satisfy specific requirements been allowed to hold non-domiciled CDLs, though that exception was only pursuant to the agency's enforcement discretion and guidance and has never been codified in regulation.⁵⁴ During this time, SDLAs have demonstrated a pattern of not being able to reliably distinguish between EAD codes and language that indicate a permissible basis for issuance of a non-domiciled CDL (C33—"Deferred Action for Childhood Arrivals") and those codes that indicate an impermissible basis (C14—"Deferred Action" or "Alien Granted Deferred Action"), leading to the improper issuance of non-domiciled CDLs to drivers domiciled in Canada or Mexico who were not DACA recipients. Ensuring that there is a "bright-line" standard and that all foreign-domiciled drivers are held to consistent

requirements is essential in promoting highway safety.

h. Other Comments

Two individuals said that safety on the road should be the primary focus of CDL requirements, not immigration enforcement. The National Education Association stated that the IFR will negatively impact school bus service despite the lack of evidence of safety concerns for students with non-domiciled drivers, as all of the crashes cited by FMCSA involved large trucks, not buses. An individual said that there have been recent reports of individuals arrested for driving semi-trucks with no CDL at all, which the IFR would not solve. The individual also recommended auditing CDLs to ensure they were all issued properly. An individual said the IFR may reduce highway safety by potentially forcing drivers into "underground work." In addition, an individual stated studies show that hit-and-run accident rates were lower in States where immigrants have broader access to licensing. An individual suggested that all traffic violations for all vehicles should be strictly regulated instead of discriminating on the basis of identity or immigration status.

The Sikh Coalition submitted a comment that provided a history of non-domiciled CDLs and argued that there is a critical need for them in the United States. An individual stated that the rescinded 2019 guidance requiring proper legal documentation was effective and recognized that people authorized to work in the United States should be allowed to work, adding that FMCSA has not provided evidence that the policy caused safety problems, which the individual stated it did not. However, OOIDA stated that the 2019 guidance should have never been issued and went beyond Congressional intent of the CMVSA. OOIDA said the combination of non-domiciled CDL regulation, guidance, and lack of oversight for SDLAs resulted in improperly licensed foreign drivers flooding U.S. highways. Citing studies indicating increasing issuance of non-domiciled CDLs, OOIDA stated that this pattern is indicative of systemic, nationwide non-compliance by SDLAs in administering non-domiciled CDL procedures which necessitated DOT action. An individual remarked that data supporting the categorical exclusion of non-domiciled groups would help determine whether any groups could qualify under a more targeted regulatory approach.

FMCSA Response

FMCSA reiterates that this rulemaking action concerns strengthening the integrity of the non-domicile CLP and CDL process. The Agency acknowledges that this rule will affect various sectors of the transportation industry, including passenger transportation such as school buses. However, the rule does not have retroactive effect, therefore school bus service providers will have time to plan for a potential reduction in available drivers as non-domiciled CDLs expire and are not renewed.

Regarding instances in which individuals who do not hold CDLs have been arrested for driving vehicle requiring a CDL, this is a problem FMCSA is unable to prevent entirely, whether the drivers are domiciled or not. Such individuals are potentially subject to State criminal penalties, in addition to any civil liability resulting from crashes or other damage while the unlicensed individual was driving. FMCSA is not a law enforcement agency; rather, it relies on State and local law enforcement to enforce these traffic laws and State courts to handle civil litigation. However, FMCSA may separately assess civil penalties against individuals who operate CMVs without a CDL, as set out in Appendix B to 49 CFR part 386, as well as against motor carriers who employ such individuals.

In response to the commenter who cited a reduction in hit-and-run incidents in jurisdictions where immigrants have broader access to licensing, FMCSA notes that this rule does not prohibit non-domiciled individuals from obtaining any license to operate motor vehicles. It merely prohibits certain of these individuals (*i.e.*, those who are not in a nonimmigrant category with an employment-based need for a CDL and who are not subject to enhanced vetting) from obtaining a specific type of license necessary to operate vehicles weighing over 26,000 pounds.

While some commenters stated that there is a critical need for non-domiciled CDLs and that the rescinded 2019 guidance requiring proper legal documentation was effective, FMCSA disagrees. That 2019 guidance, which this rule rescinds in section IX.B.2. below, explained in part that a foreign driver holding an EAD or an unexpired foreign passport accompanied by an approved Form I-94 may obtain a non-domiciled CDL. In authorizing non-domiciled CDLs, Congress did not intend for them to become a crutch for the industry; rather, they were to be the exception to the rule that CDL holders be domiciled in a State. FMCSA finds

⁵⁴ See <https://www.fmcsa.dot.gov/registration/commercial-drivers-license/may-state-drivers-licensing-agency-sdla-issue-non-domiciled>.

that the 2019 guidance was not effective, hence its rescission. FMCSA agrees with OOIDA that there has been a pattern indicative of systemic, nationwide non-compliance by SDLAs in administering non-domiciled CDL procedures, which was a major factor in the agency promulgating this rule. While one individual sought data supporting the categorical exclusion of non-domiciled groups, as FMCSA has explained, based on existing limitations it is a near impossibility to obtain the data, and FMCSA explains the rational for categorically excluding foreign-domiciled drivers without a verifiable driver history throughout this final rule.

4. Justification for the IFR

a. “Good Cause” Exception

Accion Opportunity Fund, AFL–CIO, Asian Law Caucus, Citizens Rulemaking Alliance, International Brotherhood of Electrical Workers, MALDEF, the joint AG comment, and numerous individuals stated that FMCSA improperly invoked the “good cause” exception under the APA to bypass the notice-and-comment requirements. They stated that the APA requires agencies to provide notice of proposed rulemaking (NPRM) and an opportunity for public comment before a rule becomes effective, unless the agency finds “good cause” that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.” The Citizens Rulemaking Alliance and multiple individuals stated that courts have consistently held that the “good cause” exception should be “narrowly construed and only reluctantly countenanced,” and is limited to emergency situations or when delay would cause “real harm.”

Citizens Rulemaking Alliance, Maryland Department of Transportation Motor Vehicle Administration, the joint AG comment, and multiple individual commenters stated that FMCSA’s justification for invoking the “good cause” exception was insufficient. They stated that FMCSA cited five fatal crashes involving non-domiciled CDL holders, systemic documentation issues identified through APRs, and a potential surge in applications during a comment period. The commenters stated that these justifications did not constitute an emergency or imminent hazard that would justify bypassing notice-and-comment procedures. Asian Law Caucus, Citizens Rulemaking Alliance, and Maine Secretary of State stated that FMCSA’s claim that providing notice would lead to a “surge” in applications was speculative and unsupported by evidence. They, along with an

individual, stated that FMCSA could have used less drastic measures to address its concerns while still following the APA’s notice-and-comment requirements. Suggestions included issuing an NPRM with a short comment period, implementing temporary enforcement priorities, or using existing compliance mechanisms to address state-level problems.

Conversely, SBTC and three individuals supported FMCSA’s use of the “good cause” exception. They stated that the exception was properly invoked due to the imminent safety risks demonstrated by recent crashes and the need to prevent further harm. SBTC agreed that FMCSA has provided sufficient evidence to support its good cause exception and asserted that it is unreasonable to assume that the large truck fatality incidents provided by FMCSA are the only incidents involving non-domiciled CDL holders. SBTC further stated that it would be unreasonable to expect FMCSA to have pre-IFR data readily available from the States because they would have to both supply the data and admit to issuing CDLs unlawfully. SBTC provided additional accident/fatality information from its own review of NHTSA accident data in support of the IFR. An individual stated that the justification for the “good cause” exception is reasonable, but sufficient data has not been provided by FMCSA to support it.

FMCSA Response

FMCSA found good cause to issue the IFR without prior notice and comment and to make it effective immediately based on a determination that notice and public comment were both contrary to the public interest and impracticable. As discussed in Section VI.A of the IFR, it was necessary to implement immediately strict standards concerning the issuance and renewal of non-domiciled CLPs and CDLs to address a recently discovered, two-front crisis that constituted an imminent hazard to public safety and a direct threat to national security. The dangerous consequences of having overly broad eligibility requirements combined with a systemic breakdown in State implementation were illustrated by the five fatal crashes highlighted in the IFR. These crashes, which were not meant to be an exhaustive list, involved drivers who either held non-domiciled CDLs issued in accordance with existing regulations or who were mistakenly issued a standard CDL instead of a non-domiciled CDL. Most of the crashes described there would have been prevented had the IFR been in place. Furthermore, providing advance notice

through an NPRM was impracticable and contrary to the public interest because it would have actively subverted the rule’s purpose by creating a foreseeable and concentrated surge in applications that would have exacerbated the current safety crisis. As explained in the IFR, this risk of a concentrated surge was not speculative; rather, it was borne out by data drawn from another recent change in CDL licensing standards, which showed a surge in applications for CDLs in the months immediately preceding the compliance date for those changes to levels that were approximately twice as high as the same time period in the previous year (90 FR 46514–46515).

By issuing an IFR that set forth the nature and substance of the rule with sufficient detail to put the public on notice, explained the legal authority and rationale for the regulation, and provided a 60-day comment period, FMCSA has satisfied the notice-and-comment procedures for this final rule.⁵⁵ The public availed itself of the opportunity to provide comments (with over 8,000 received) and FMCSA has carefully considered those comments in writing this final rule. Thus, while FMCSA maintains that its IFR was properly issued under the good cause exceptions in 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Agency finds it appropriate to utilize the standard 30-day delay in the effective date for the final rule. Stakeholders have been on notice since publication of the IFR that these rules are being amended, numerous States have paused issuance of non-domiciled CDLs while the IFR is stayed and the final rule is pending, and there is no longer the same risk of a surge in applicants trying to obtain or renew a non-domiciled CDL in advance of the rule change. Therefore, the process by which this final rule has been issued has cured any alleged failure under the APA’s notice-and-comment requirements.

b. Insufficient Data and Lack of Justification

AFT, the Asian American Legal Defense and Education Fund, the Asylum Seeker Advocacy Project, the Potential Development Association and many individuals, stated that FMCSA failed to provide sufficient evidence to support its claim that the rule enhances safety. AFT, The Asian American Legal Defense and Education Fund, The Asylum Seeker Advocacy Project, and the Maine Secretary of State stated that

⁵⁵ 5 U.S.C. 553(b) and (c); see also *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 591 U.S. 657, 683–84 (2020).

FMCSA ignored the rigorous safety requirements already embedded in CDLs, such as the mandatory skills and knowledge tests, medical certification, and disqualification of drivers with serious traffic violations. They stated that these existing requirements ensure all CDL holders are thoroughly vetted for safety, regardless of their immigration status. AFT stated that rather than considering the efficacy of these measures, FMCSA arbitrarily aims at certain statuses without provided any rational, nondiscriminatory connection between these targeted groups and road safety.

The Asian American Legal Defense and Education Fund, Asian Law Caucus, Delaware Division of Motor Vehicles, Oregon Department of Transportation, Maine Equal Justice, King County Metro, New York State Office of Temporary and Disability Assistance, and several individuals stated that FMCSA cited only five fatal crashes involving non-domiciled CDL holders in 2025, which represented a small fraction of the total fatal crashes involving commercial vehicles. They stated that this limited data did not demonstrate a systemic safety issue that would justify the rule's restrictions. The joint AG comment stated that this lack of evidence is sufficient alone to render the IFR arbitrary, capricious, and unlawful. The joint AG comment added that FMCSA's own data indicates that CDL holders that will be excluded under the IFR have lower rates of fatal crashes than drivers who will not be impacted by the new restrictions. Oregon Department of Transportation stated that anecdotal examples are insufficient to justify the conclusion that current eligibility standards are overly broad or that non-domiciled drivers inherently pose a greater risk. Delaware Division of Motor Vehicles suggested that, without statistically valid evidence, States cannot assess necessity or proportionality of the policy change. Delaware Division of Motor Vehicles suggested that FMCSA commission a study or ongoing data collection to better compare crash rates, violations, and driving behavior between non-domiciled and domiciled CDL holders.

The Asian American Legal Defense and Education Fund, the Asian Law Caucus, and multiple individuals stated that the rule is arbitrary and capricious because FMCSA failed to establish a rational connection between the facts found and the policy choices made. They stated that FMCSA did not provide evidence that restricting CDL eligibility based on immigration status would enhance safety. An individual

stated that under *Motor Vehicle Mfrs. Ass'n v. State Farm*, an agency must articulate a rational connection between the facts found and the choice made, and FMCSA failed to do so.

Maryland Department of Transportation Motor Vehicle Administration stated that they are interested in understanding what information FMCSA has received and analyzed to determine this population of drivers presents an increased safety risk. Maryland Department of Transportation Motor Vehicle Administration said that they are unaware of any data which indicates that non-domiciled drivers are less safe than other CDL drivers, given that the testing, and now, training processes are identical. If there is research indicating an increased risk on the roads with this population, Maryland Department of Transportation Motor Vehicle Administration said they are interested to work with FMCSA on potential solutions as they work to eliminate fatalities and serious injuries on roadways. Similarly, the Public Rights Project on behalf of Local Governments suggested that FMCSA consider collecting additional data to better understand the problem facing it, such as from States, employers, or other entities that could report data about crashes. The Potential Development Association and an individual requested that FMCSA conduct and publish comprehensive data comparing crash rates among all CDL holders, both domestic and non-domiciled, before implementing such restrictions.

FMCSA Response

In response to comments about insufficient data to justify the rule, FMCSA has discussed the data limitations above. As explained in section VI.B.3.b, the systems with crash data available to FMCSA do not contain information regarding whether a license was a non-domiciled CLP or CDL. Producing the data the commenters seek is not possible with currently available tools, and the commenters have not provided alternative comprehensive sources of data that FMCSA could consider or rely on for the type of analysis requested by commenters. However, as laid out throughout the final rule, it is FMCSA's conclusion based on subject matter expertise that there are clear safety benefits of restricting unvetted drivers from operating CMVs on the Nation's highways.

c. Contradictions in FMCSA's Justification

AFT, the Asian Law Caucus, the Asylum Seeker Advocacy Project, and the joint AG comment stated that FMCSA's justification for the rule contained contradictions. They said that FMCSA claimed the rule is necessary because States could not verify the driving histories of individuals from foreign jurisdictions, yet the rule allowed H-2A, H-2B, and E-2 visa holders to obtain CDLs despite potentially having driving histories that exist predominantly in foreign jurisdictions. MALDEF stated that the agency failed to consider that the driving histories of many excluded immigrants are as accessible as those of the immigrants who can still obtain non-domiciled CDLs and CLPs under the IFR. The Asian Law Caucus stated that the IFR's reliance on the inability of States to compel foreign jurisdictions to produce an applicant's driving history in some circumstances does not justify its exclusion of almost 200,000 drivers in all circumstances, especially when there are alternatives to vet applicants of these permits and licenses. Washington Trucking Associations stated that limiting eligibility to only three visa categories without clearly demonstrating a safety-related justification risks undermining the effectiveness and durability of the rule. AFT stated that FMCSA's rule excluded DACA recipients, who came to the United States as young children and learned to drive in the United States, while allowing temporary workers with H-2A and H-2B visas who would have driving histories that exist predominantly in foreign jurisdictions.

FMCSA Response

As discussed throughout this final rule, the limitation to certain categories of visa holders is designed to increase and ensure proper vetting of driver history. These categories of drivers are sponsored by employers who scrutinize the applicant's employment history and driving record, as well as by other Federal agencies during the employment authorization and application for entry process. Drivers who are not sponsored for entry and employment in the United States specifically for the purpose of driving CMVs do not receive this level of scrutiny, and there is no practical way for SDLAs to perform this rigorous level of review for foreign nationals who are not individually sponsored for employment requiring a CDL or who otherwise are not subject to the U.S. Department of State's enhanced vetting.

As previously discussed, most DACA recipients are citizens of Mexico who have therefore never been eligible for a non-domiciled CLP or CDL under FMCSA's regulations because Mexico is a jurisdiction for which the Administrator has issued an equivalency determination and entered into a reciprocity agreement. 49 CFR 383.23(b)(1). It has only been since 2023 that citizens of Mexico and Canada who are present in the United States under the DACA who satisfy specific requirements have been allowed to hold non-domiciled CDLs, though that exception was only pursuant to the agency's enforcement discretion and guidance and has never been codified in regulation.⁵⁶ Therefore, FMCSA acts well-within its authority to alter the agency's recent non-regulatory enforcement posture with respect to these drivers, particularly in light of the systemic noncompliance uncovered by the APRs.

d. Immediate Effective Date of IFR

Real Women in Trucking stated that the immediate effective date of the IFR was justified, as any delay would risk a spike in fraudulent applications. An individual also said the immediate effective date was justified because systemic breakdown in non-domiciled CDL issuance, combined with multiple preventable fatalities, constitutes an emergency. Another individual said that historical precedent, such as *United States v. Dean*, 604 F.3d 1275 (2010), allows the rule to proceed with good cause and become effective immediately. An individual recommended that the IFR be applied retroactively, since refugee work permits were issued for five years under the Biden administration. An individual said there should be a 30-day grace period, after which all non-domiciled CDL licenses should be revoked.

Many individuals recommended implementing a transition period, for example delaying the effective date of the IFR by one to five years, to prevent disruptions. Punjab Trans Inc., RKL Express Inc., and some individuals also stated there should be a transition plan and at minimum a grace period to protect existing legal operators. An individual stated that FMCSA is obligated to provide a transition period to mitigate harm and cited a court decision that held that sudden policy changes without sufficient justification are arbitrary. Another individual stated that the immediate effective date has

created widespread confusion and instability, as well as burden on SDLAs and businesses. An individual recommended providing support mechanisms for drivers who have invested time and resources into their profession. An individual recommended that during a transition period, new licenses should not be issued, but existing licenses should be renewed. An individual said that a more controlled implementation of regulations would give trucking companies enough time to replace drivers that no longer qualify for a CDL.

An individual recommended suspending the effective date of the IFR until a proper rulemaking process, as legally mandated, is completed. Another individual requested that FMCSA withdraw or stay the IFR and proceed via an evidence-based notice of proposed rulemaking focused on verification, training, and SDLA compliance. Two individuals also requested a judicial stay of enforcement pending full judicial review. An individual requested that non-domiciled CDLs remain active until a final decision on the IFR is made by the courts. An individual recommended allowing drivers to keep using their valid CDLs until their original expiration date in order to both protect the livelihood of drivers and the Nation's supply chain. An individual urged FMCSA to delay the effective date of the rule until guidance is issued and workers are guaranteed due process. Two individuals recommended establishing a transition period allowing existing CDL holders to continue working until their immigration status or work authorization is decided. Delaware Division of Motor Vehicles stated that immediate compliance expectations create major operational and legal challenges for SDLAs. In addition, Delaware Division of Motor Vehicles said that the IFR imposes significant administrative, programming, documentation-retention, SAVE-query, and in-person renewal requirements without an implementation window. The Delaware Division of Motor Vehicles requested clarification on the emergency justification and recommended a reasonable phase-in period. An individual recommended that enforcement be phased to give States time to update systems. Similarly, another individual stated that States under corrective action plans face administrative burden, and requested FMCSA consider a phased compliance timeline and clarification guidance to

avoid unfair cancellation of CDLs while the IFR is under review.

FMCSA Response

Under 5 U.S.C. 553(d)(3), an agency is permitted to make a rule effective immediately upon publication, for good cause. For the reasons explained above in section VI.B.4.a, FMCSA found good cause to make the IFR effective immediately based on a determination that notice and public procedure were both contrary to the public interest and impracticable.

FMCSA believes it was in the public's interest to take immediate action to address the inconsistencies and failures discovered through its recent APRs of various States that demonstrated acute systemic problems across the country in the non-domiciled CDL issuance processes. Notably, FMCSA discovered that approximately one in four non-domiciled CDLs issued in California were not compliant with the requirements in 49 CFR parts 383 and 384. It was therefore in the public's safety interest to ensure that drivers would not be permitted to take advantage of the deficiencies or the overly broad eligibility requirements that permit such a large number of drivers with unknown driver safety records to obtain CDLs and CLPs. FMCSA noted that California issued approximately 3,820 non-domiciled CDLs and CLPs in June 2025 alone and that, extrapolating from the 2025 APR finding in June, this could have led to the issuance of potentially over 1,000 improperly issued credentials for each month following a proposed rule up until the rule would have been finalized.

FMCSA also emphasizes that many of the commenters who noted their inability to renew their CDL after publication of the IFR would likely have experienced the same issue in the absence of the rule. During the APR process, if FMCSA determines that existing non-domiciled CLPs and CDLs, issued before the September 29, 2025 effective date of the IFR, failed to comply with the FMCSRs in effect at the time of issuance, FMCSA could require, as part of the State's corrective action plan, that the SDLA revoke those credentials and reissue them only if reissuance would be appropriate under the current standards (which means the pre-IFR standards, due to the stay order pending review of the IFR that was granted by the D.C. Circuit). However, many States have been required to pause issuance of all non-domiciled CDLs as part of the corrective action plan for the deficiencies discovered under the APR and others have

⁵⁶ See <https://www.fmcsa.dot.gov/registration/commercial-drivers-license/may-state-drivers-licensing-agency-sdla-issue-non-domiciled>.

voluntarily paused issuance of all non-domiciled CDLs to conduct internal audits of their issuance procedures and processes apart from FMCSA's APR process. The public should not blame the issuance of the IFR for States' required or proactive steps to restore integrity to their non-domiciled credentialing process. Nor should the time and effort the States need to invest to fix their broken processes be attributed to the IFR.

Finally, FMCSA notes that the IFR was ultimately stayed by the D.C. Circuit, and the revised regulations have not been in effect since November 10, 2025. For the reasons described above in Section VI.B.4.a., FMCSA has determined not to give this rule an immediate effective date. Therefore, the issue of an immediate effective date is moot and is no longer an issue at this stage in the rulemaking process. In response to commenters who sought rescission of the IFR and continued issuance of non-domiciled CDLs, FMCSA notes that the IFR is not currently in effect and the agency has carefully reviewed the comments received during the comment process. Under the IFR, and now under this final rule, the agency did not completely prohibit issuance of non-domiciled CDLs but has instead narrowed the categories of foreign-domiciled individuals who are eligible to receive these licenses. U.S. nationals who live in jurisdictions that do not issue CDLs remain eligible to receive non-domiciled CDLs in any State that issues such licenses.

FMCSA does not find phased enforcement to be a practicable approach. The CDL program is intended to be consistent across States, and the safety concerns raised throughout this rule are clear. States are not required to issue non-domiciled CDLs, so they are free to pause issuance for any length of time if they need additional time to update systems and implement procedures.

e. Public Participation and Requests To Extend the Comment Period

Three individuals requested extending the comment period. Citizens Rulemaking Alliance requested that FMCSA convert the IFR to an NPRM with at least a 60- or 90-day comment period and 30-day effective date. Citizens Rulemaking Alliance elaborated that the sweeping policy changes introduced by the IFR necessitate public comment opportunity. Similarly, six individuals requested the IFR either be withdrawn or reissued as an NPRM. Three individuals also recommended holding

listening sessions and public hearings. An individual requested a supplemental notice and comment period on non-urgent sections of the IFR. Three individuals requested that implementation of the IFR be suspended pending a full notice and comment process.

Teamsters California, the joint AG comment, and an individual asserted that FMCSA issued the IFR without giving the public notice and an opportunity to comment, as required by the APA. Teamsters California stated that through public consultation, FMCSA would have been better able to assess the alleged need for and potential harm caused by the IFR. Relatedly, an individual stated that the lack of notice-and-comment period denied the public any opportunity to contribute crucial data, experience, and legal analysis before the IFR became law. Two individuals stated the lack of a proper notice-and-comment period undermines public trust and violates the principles of fair administrative process. An individual said that conducting a notice-and-comment period would help ensure the IFR is grounded in reality. Another individual stated the lack of due process leaves drivers and States scrambling to comply while bearing administrative burden.

FMCSA Response

FMCSA provided ample opportunity for public comment by providing a 60-day comment period, which is a standard comment period for many rules and which was adequate for the public to express their views on a rule of this length and complexity. FMCSA does not believe it is necessary to increase public participation in other ways, such as by providing a public hearing. As noted above, the public availed itself of the opportunity to provide comments (with over 8,000 received) and FMCSA has carefully considered those comments in writing this final rule.

5. Implementation

a. Documentation Requirements

Another individual requested FMCSA reconsider requiring an unexpired passport. The South Carolina Department of Motor Vehicles recommended FMCSA clarify how I-797s for green card holders play into the commercial credential issuance process and if they should be considered when reviewing immigration documents or completing a SAVE inquiry.

CPAC Foundation's Center for Regulatory Freedom wrote that requiring an unexpired passport and

Form I-94/94A establishes a necessary chain of verification. America First Legal Foundation wrote that the revised registration requirements ensure lawful admission, verifiable status, and a documented, job-specific basis for holding a CDL. Washington Trucking Associations wrote that they supported efforts to strengthen SDLA vetting procedures, but citizenship and immigration status is a protected status in some States therefore establishing Federal requirements for SDLAs to review supporting documentation preempts these State prohibitions.

An anonymous commenter said that people who enter illegally do not have an I-94 form so illegal CDL holders should be easily identified. The individual said that work permit categories should be sufficient to identify a person's status. An individual said that form I-94 is clear evidence of lawful presence, consistent with the requirements of both DHS and FMCSA prior to this rule. Real Women in Trucking expressed support for the use of the I-94/94A form and said that it ensures lawful entry and employment purpose. Five individuals suggested that FMCSA add I-94s with "Admitted as Refugee with Asylum Granted" to the list of acceptable forms in lieu of an unexpired passport.

An individual stated that the IFR's definition of "foreign jurisdiction" excludes U.S. territories, such as Guam or Puerto Rico, but the documents in Table 1 include only State-issued documents, and recommended that FMCSA explicitly list acceptable documents for residents of U.S. territories, which issue their own credentials and ID cards, in order to prevent applicants from being wrongfully denied.

FMCSA Response

As mentioned in the IFR and the comment response above, EADs are not sufficient for the non-domiciled licensing process for a variety of issues. The only standard documents that can prove identification and lawful status in an approved employment-based nonimmigrant status are the Form I-94/94A and unexpired foreign passport. The other options presented by commenters are impracticable because they are either not federally issued documents, still rely on the EAD, or do not show the required proof that an applicant has been vetted under the process outlined above.

In addition, the concerns raised in the comment regarding citizens of U.S. territories being wrongfully denied non-domiciled CLPs and CDLs are incorrect. The citizens of U.S. territories have

access to acceptable documentation under Table 1 and have always been required to provide such documentation to obtain a non-domiciled CLP or CDL.

b. Expiration Date for Non-Domiciled CLPs and CDLs

Real Women in Trucking stated that the one-year expiration date prevents abuse. The Oklahoma Department of Public Safety expressed support for the expiration date requirement. CPAC Foundation's Center for Regulatory Freedom said that the expiration date requirement will curtail the ability of foreign nationals to establish indefinite, undocumented tenure. Four individuals expressed support for the expiration date requirement because it improves integrity.

The South Carolina Department of Motor Vehicles stated that the South Carolina Code of Laws prohibits the issuance of a driver's license for less than one year, which conflicts with the proposed requirement that a non-domiciled CDL must not exceed the applicant's "admit until" date or one year, whichever is sooner. The South Carolina Department of Motor Vehicles added that the South Carolina General Assembly is considering a bill that would amend this requirement. The American Association of Motor Vehicle Administrators (AAMVA) stated that the requirement for the expiration date to match the expiration date of Form 1-94/1-94A or one year, whichever is sooner, conflicts with REAL ID requirements, such as that requiring States to use SAVE verification to determine the appropriate expiration date for credentials issued to those with temporary lawful status. AAMVA requested clarification on how States should reconcile differences between the FMCSA requirement and REAL ID requirements and also requested the agency coordinate with DHS on the issue. AAMVA suggested using the SAVE response to meet both sets of requirements and suggested revisions to the rule text to accommodate this. AAMVA also recommended enhancing SAVE to provide clear responses on eligibility based on the three visa categories eligible for non-domiciled CDLs under the IFR.

The Potential Development Association recommended directly linking the duration of the non-domiciled CDL to the duration of the applicant's legal status documents, with a maximum duration of one year, in order to ensure the CDL holder continues to meet work status requirements and enable monitoring of driver qualifications through a regular review mechanism. Accion Opportunity

Fund recommended extending CDL duration to match the applicant's Federal work authorization, with online check-ins or safety audits to ensure continued compliance, noting that a one-year duration imposes unnecessary burden on drivers and states.

Washington Trucking Association wrote that CDL and CLP expiration should be directly tied to verified employment authorization, and there is not a strong safety justification for yearly renewal requirements.

An individual recommended requiring all States to tie expiration dates to the expiration date of the applicant's legal status and provide a process for extending licenses when legal status is renewed. An individual recommended tying the CDL expiration date to the earlier of the EAD/SAVE date or one year. Many individuals recommended tying the expiration date to the EAD and medical certification expiration date. Another individual recommended tying the expiration date to the earlier of the EAD or Form 1-94 date. An individual recommended tying the expiration date to the earlier of the applicant's legal status duration or one to two years. An individual recommended allowing renewal of CDLs up until the expiration of the holder's EAD or work permit. Several individual commenters recommended expiration dates to match visa or permit duration. Three individuals recommended setting the expiration date at one year to enhance oversight. Another individual recommended setting the expiration date to one or two years. An individual expressed opposition to the expiration date requirement and recommended reverting to prior requirements or renewing driver's licenses annually. An individual stated that a five-year CDL expiration date with SAVE verification would save drivers time and resources.

The Asian Law Caucus wrote that FMCSA did not explain the requirement for matching expiration date in the IFR, leaving the public to guess as to the rationale, which is arbitrary and capricious. The Asian Law Caucus also wrote that the IFR does not explain why the one-year period of validity allows consistency and reduces confusion but another time period such as two years would not offer the same benefit. An individual remarked that the IFR will take at least one year to be fully effective, as there could be drivers who under the new rule still have valid licenses for a year, since there is no provision to revoke those drivers' licenses. Some individuals stated that the expiration date tied to duration of the applicant's work authorization results in drivers temporarily losing

their ability to work due to administrative delays or renewal processes for their work permits, conflicting with human rights and the principle of equality. Many individuals stated that the difference between expiration dates on their CDL and EAD is an error on the SDLA's part, and they should not be punished for it.

FMCSA Response

The maximum one-year period of validity for a non-domiciled CLP or CDL ensures that individuals are subject to the review of their nonimmigrant status at least once per year, or sooner, based on their I-94/94A expiration date. The eligibility status of foreign-domiciled drivers may change suddenly based on a variety of factors. While this final rule requires SDLAs to revoke non-domiciled CLPs and CDLs if they become aware that an individual's status changes such that they no longer are in an allowable nonimmigrant category, this rule does not establish a formal process for notifying SDLAs of such a change and it is possible that an SDLA may not be aware of such a change in status for a variety of reasons. This would result in a driver that is no longer eligible for a non-domiciled CLP or CDL potentially driving with a license that looks to be valid on its face but is no longer a properly issued license. Given the possibility that a change in status may occur without the SDLA's knowledge in such a situation, it is necessary to verify an individual's lawful status on a regular basis of no longer than one-year to ensure that all non-domiciled CLP and CDL holders are actually eligible to be operating CMVs. This addresses the safety gap created when non-domiciled licenses are not reviewed for years at a time, resulting in ineligible drivers operating CMVs and putting the public at risk. The expiration date requirements mitigate the safety risk of invalid CDLs remaining in circulation should the status of thousands of non-domiciled CDL holders suddenly change based on potential administrative or judicial changes to an individual's status.

FMCSA is also aware of some confusion about the one-year maximum period of validity and adds language for the sake of clarity in the regulatory text of this final rule to state explicitly that no non-domiciled CLP or CDL may be issued for a period longer than one year, regardless of the expiration date on the documentation provided during the application process.

FMCSA does not believe the concern about the expiration date provision conflicting with REAL ID requirements is warranted. The regulations at 6 CFR

37.21 state that “States shall not issue a temporary or limited-term driver’s license or identification card . . . [f]or a time period longer than the expiration of the applicant’s authorized stay in the United States, or, if there is no expiration date, for a period longer than one year.” In addition, “States must verify the information presented to establish lawful status through SAVE, or another method approved by DHS.” These requirements are not conflict with the provisions in this final rule.

c. Verification of Status and Use of SAVE by SDLAs

An individual specifically stated that subjecting drivers to a full SAVE query and two-person review every time they need a replacement card imposes unnecessary burden and recommended instead a streamlined pathway of accepting proof of identify and a signed affidavit, with a full SAVE query only when fraud is suspected. The individual also said the “substantial compliance” benchmark in 49 CFR 384.301 (q) lacks any quantifiable metric, leading to uncertainty in how SDLAs will be assessed by FMCSA.

The Oklahoma Department of Public Safety and three individuals expressed support for the requirement to confirm lawful immigration status in the specified category. An individual urged FMCSA to remove improperly issued or unsafe licenses and strengthen the verification process for all CDL holders. The Potential Development Association recommended requiring a two-person verification process for reviewing an applicant’s background investigation. AAMVA requested that FMCSA clarify that all States will be required to modify their existing non-domiciled credential designs to include the word “non-domiciled” on the face of the credential before resuming issuance, noting such a change may take several months to implement. An individual stated that grouping all drivers into a generalized category, such as “non-domiciled” or “temporary” does not reflect legal distinctions under Federal law, and results in confusion and unnecessary barriers. Another individual stated that FMCSA should require the highest standard of identification and security screening for drivers involved in the transport of critical domestic supplies to reduce the risk of attacks.

CPAC Foundation’s Center for Regulatory Freedom, the Oklahoma Department of Public Safety, the Potential Development Association, Real Women in Trucking, United LLC, Solo Flight Transport, and many individuals expressed support for SAVE requirements. The National Association

for Pupil Transportation, the National School Transportation Association, and the New Jersey School Bus Contractors Association (NJSBCA) urged FMCSA to provide guidance on the proper use of SAVE. NJSBCA recommended FMCSA work with DHS and U.S. Department of Justice on uniformity in verification procedures and to streamline process and address implementation challenges.

The South Carolina Department of Motor Vehicles stated they have discontinued the issuance of non-domiciled CDLs in response to the IFR, but added that previously they consistently conducted SAVE queries as a verification measure, and if the individual did not have a positive SAVE result, they were never issued a credential. AAMVA requested clarification on how to treat SAVE query results of “Institute Additional Verification” or other results that require additional steps. AAMVA asked if it would be appropriate to issue a temporary credential pending additional verification, or if SDLAs are required to deny the application pending additional verification. AAMVA also asked if FMCSA is aware of the timeline for additional verification and the impacts it may have. Accion Opportunity Fund recommended that FMCSA reassess SAVE verification to permit State discretion, alternative verification methods, and a formal appeals mechanism, noting that there have been documented SAVE data errors and processing delays. Accion Opportunity Fund also recommended requiring SDLAs to log and publicly report SAVE “tentative non-confirmation” and delay rates and creating a Federal-State audit and training program to improve data accuracy and reduce wrongful denials.

An individual stated that the requirement for a separate SAVE query may silo information technology (IT) workflows and recommended a unified SAVE-query workflow to streamline operations and ensure consistency. The individual also stated FMCSA did not offer guidance on what to do when SAVE is temporarily unavailable or returns an “initial validation” response, and recommended allowing an unexpired Form I–94 and foreign passport in such a situation, provided the query is performed again after system restoration. The individual also recommended implementing an automated SAVE response workflow that auto-escalates ineligibility flags and logs responses in a tamper-evident audit trail. An individual recommended improving SAVE verification instead of excluding entire groups of people from receiving CDLs. Three individuals warned that the SAVE system is known

to produce errors and mismatches, creating administrative and operational problems and resulting in qualified applicants being wrongfully denied. An individual urged FMCSA to make it easier for SDLAs to understand how to handle SAVE mismatches, keep track of applicants who change their immigration status, and make sure all SDLAs follow the same steps.

Another individual stated that the SAVE process is often applied inconsistently and urged FMCSA to ensure stronger training, oversight, and accountability for SDLA staff. Another individual requested that FMCSA improve the accuracy and efficiency of the SAVE system to reduce delays and errors. The National School Transportation Association requested “a path forward in the utilization of [SAVE] as the national immigration status verification method.” The individual reasoned FMCSA could work with DHS to prioritize CDL-related SAVE checks.

FMCSA Response

Commenter concerns about the burdens on SDLAs created by the updated non-domiciled CLP and CDL issuance process fail to consider the safety impacts of the updates. Requiring a SAVE query to verify an applicant’s lawful status ensures that SDLAs are not relying solely on physical documentation in the non-domiciled licensing process. Given the frequency at which an individual’s regulatory basis to hold a non-domiciled CDL may change, it would be improper to rely solely on physical documents that were issued months or years prior to the application. SAVE is currently the best option available to verify an individual’s immigration status. FMCSA would allow the use of AAMVA’s Verification of Lawful Status (VLS) as a means to query SAVE if the State can ensure that VLS is the functional equivalent of, and is merely a pass-through for, SAVE (*i.e.*, because a query made through VLS automatically queries SAVE’s Application Programming Interface, which returns a response with the same data that would have been returned under an SDLA’s direct query to SAVE).

In order to fix the systemic problems in the non-domiciled CLP and CDL issuance process discovered by FMCSA through the APR process, there must be an established method to verify an applicant’s status and ensure that the documentation provided is accurate. Requiring anything less would promote the same issuance problems that have resulted in tens of thousands of

improperly issued non-domiciled CLPs and CDLs nationwide.

d. Renewals

Potential Development Association, Real Women in Trucking, United, LLC, and several individuals expressed support for in-person renewals. An individual stated that in-person renewal addresses integrity concerns, while Real Women in Trucking stated that it eliminates mail fraud. CPAC Foundation's Center for Regulatory Freedom wrote that the in-person renewal requirement will curtail the ability of foreign nationals to establish indefinite, undocumented tenure.

An individual stated that in-person renewals impose significant travel burdens on rural drivers and that without remote-renewal or limited-waiver allowance, compliance will be both impractical and inequitable. The individual, along with Accion Opportunity Fund, said that the final rule should permit secure remote renewals via videoconference or through designated third-party centers. Similarly, another individual said that in-person renewals will be difficult for drivers engaged in interstate transportation. The Delaware Division of Motor Vehicles and an individual said that in-person renewal places undue burden on the logistics industry, which is already suffering from a chronic driver shortage. An individual said that mail-in renewals with valid EAD, Social Security Number (SSN), and State-issued Real ID should be allowed.

An individual asked if all States will be required to run a report and verify that currently operating drivers have appeared in person and brought proper documentation to maintain their status. Another individual said that, instead of cancelling CDLs, FMCSA should eliminate CDLs at the time of renewal if proper documentation is not provided. Eight individuals suggested that renewals should be limited to one year at a time.

FMCSA Response

Providing the required documents annually for in-person renewals is also necessary to ensure that applicants can prove their identity, prove their lawful status, and be subjected to a thorough review of both. While this in-person process may represent a burden for applicants, the findings of the State APRs show that this is necessary. The automatic renewal process and mailing of licenses has resulted in a number of improperly issued licenses. In-person renewals ensure that documentation is reviewed and verified in SAVE prior to

the issuance of a new non-domiciled CLP or CDL. The burden of this process is outweighed by the safety benefit of significantly reducing the risk of issuing improper non-domiciled CLPs or CDLs under the current automatic mailing process.

e. Document Retention

The Potential Development Association, Real Women in Trucking, and an individual expressed support for the document retention requirement. An individual stated that despite the two-year personally identifiable information (PII)-retention requirement, data security and privacy safeguards appeared to be absent from the IFR and recommended incorporating baseline Federal standards and mandating annual third-party security audits of PII systems with breach reporting to FMCSA. Another individual recommended requiring SDLAs to document SAVE checks and record language-proficiency assessments.

AAMVA urged FMCSA to clarify the mechanisms and protocols for data collection, retention, and sharing, specifically: data elements that will be shared between Federal agencies and States; security and privacy protections that will govern the sharing of immigration status information; whether States are required to report information about non-domiciled CDL holders to Federal agencies and, if so, what information must be reported and how frequently; and the mechanism by which data will be reported from the agencies to the States and vice versa. AAMVA recommended that FMCSA develop a standardized data sharing agreement. AAMVA also requested clarification on the two-year retention requirement, specifically: when would the two-year period begin; which specific documents must be retained; and would documentation related to SAVE queries and responses have to be retained for audit purposes and, if so, how long and in what format. AAMVA recommended that FMCSA clearly state that CDL Program Implementation grant funding may be used for maintenance of records. The joint AG comment called the IFR's document retention requirement "legally unsupported and unwarranted."

FMCSA Response

The document retention requirement is necessary to address the problems in the APRs with determining whether non-domiciled CLPs and CDLs were issued properly. States are not required to issue non-domiciled CLPs or CDLs, but those that choose to do so must ensure that nonimmigrant individuals

seeking these credentials are in a proper lawful status that shows they have been adequately vetted. This will ensure a heightened level of safety for non-domiciled CMV drivers on our roadways. The increased burden on the States to query SAVE and to retain records is necessary to ensure that greater care is taken by States in properly issuing these credentials and that there is greater accountability and oversight through the recordkeeping requirements. Moreover, this increased burden may be offset by the fewer numbers of credentials that would be issued under the more restrictive eligibility requirements.

f. Mandatory Downgrade

The Potential Development Association expressed support for the mandatory downgrade provision. In contrast, an individual wrote that the downgrade provision, as is, violates due process under the Fifth and Fourteenth Amendments. The individual requested FMCSA incorporate revisions to require that non-domiciled CDL holders be personally notified of their change in status and an opportunity to be heard prior to being downgraded. Relatedly, an individual recommended that FMCSA clarify how notification that the holder no longer meets eligibility requirements will be transmitted. The individual also requested that the driver be given notice and the opportunity to appeal before the downgrade becomes final. The Oregon Department of Transportation expressed concern that by invoking an immigration exception via a mandatory downgrade requirement, FMCSA effectively deputizes States to carry out Federal immigration enforcement in circumvention of the agency's statutory mandate and constitutional authority. The Oregon Department of Transportation stated that this undermines rulemaking transparency and accountability as well as the economic stability of lawful non-domiciled CDL holders. An individual recommended that FMCSA authorize driver-initiated updates accompanied by a SAVE re-query and document review, enabling SDLAs to amend the license before its expiration rather than downgrading and forcing the individual to restart the application process.

AAMVA requested clarification on and asked specific questions on the mechanisms, format, and timeline for the notification that a credential holder no longer has lawful immigration status in a specified category. In addition, AAMVA requested FMCSA apply consistent terminology regarding expected actions and AAMVA requested

that FMCSA clarify that States are not required to conduct ongoing independent monitoring of immigration status for existing non-domiciled CDL holders. AAMVA also requested clarification on whether FMCSA expects to leverage the APR process to inform individual State corrective action plans associated with all already-issued licenses and whether State-initiated corrective action plans will be denied if they do not include correction of program errors based on the new criteria. AAMVA also requested clarification on whether States would be required to identify and take action proactively against a driver who holds a non-domiciled CDL that was properly issued under the previous regulations but would not qualify under the new standards, noting this would be a substantial undertaking. AAMVA also requested clarification on whether an administrative transaction would trigger the application of the new eligibility requirements even if no change in the driver's immigration status has occurred. AAMVA also requested clarification on the timeline for downgrade actions, and how to treat a credential holder that provides updated documentation showing continued eligibility before the downgrade is completed.

The South Carolina Department of Motor Vehicles requested FMCSA specify how SDLAs will be notified of changes in lawful immigration status to initiate the downgrade process and recommended implementing automation to achieve this. ATA stated that the IFR paired with audits of SDLA practices for non-domiciled and standard CDLs helps preserve the integrity of the CDL credential. However, ATA requested that FMCSA establish a mechanism to inform motor carriers promptly when a non-domiciled driver's legitimately issued CDL has been downgraded and to provide advance notice to drivers to allow time to prepare for staffing changes. ATA also suggested that FMCSA revisit the minimum information required on a driver's motor vehicle record to indicate whether the CDL is a non-domiciled credential.

FMCSA Response

FMCSA disagrees with comments arguing that the mandatory downgrade provision violates the due process principles in the Fifth and Fourteenth Amendments of the Constitution. Under the final rule, if a State receives information from FMCSA, DHS, the U.S. Department of State, or other Federal agency with jurisdiction that a non-domiciled CLP or CDL holder licensed

in that State no longer holds lawful nonimmigrant status in a category established in this rule, or if the non-domiciled CLP or CDL holder violates any terms of their immigration status, the SDLA will be required to initiate established State procedures for downgrading the non-domiciled CLP or CDL. The final rule gives SDLAs a 30-day timeline for completing the downgrade to allow States sufficient time to comply with State-based procedural due process requirements. States should already have such due process procedures in place since FMCSA similarly requires States to initiate CDL downgrade proceedings for drivers who are prohibited from operating a commercial motor vehicle due to drug and alcohol program violations or due to a lapse in medical certification (49 CFR 383.73(o) and (q)). Further, drivers are able to avail themselves of the due process proceedings associated with the underlying action taken by DHS, the U.S. Department of State, or other Federal agency with jurisdiction, that resulted in a change in immigration status.

FMCSA also disagrees with arguments stating that the final rule effectively deputizes States to carry out Federal immigration enforcement. This argument is without merit. The final rule requires States to comply with the issuance standards for non-domiciled CLPs and CLPs, not carry out immigration enforcement. While an individual's immigration status determines, among other things, their eligibility for a non-domiciled CLP or CDL, the reverse is not true. An individual's ineligibility for a non-domiciled CDL does not impact their immigration status or work authorization. Nothing in this final rule requires States to engage in border control activities, the removal of individuals unlawfully present in the United States, or the adjudication of an individual's immigration status.

Finally, FMCSA clarifies that the final rule does not require SDLAs to identify and take action proactively against a driver who holds a non-domiciled CDL that was properly issued under the previous regulations but would not qualify under the new standards. The final rule requires SDLAs to apply the new standards at the time the next licensing transaction occurs after the effective date of the final rule.

f. General Implementation Comments

Oklahoma Department of Public Safety and six individuals stated that there were issues with State compliance with existing regulations for issuing

non-domiciled CDLs. They stated that some States had issued CDLs with expiration dates that exceeded the expiration dates of EADs, failed to label non-domiciled CDLs properly, or issued CDLs to individuals who did not meet eligibility requirements. The Oklahoma Department of Public Safety stated that Oklahoma Highway Patrol had encountered many illegal aliens operating CMVs with facially valid CDL or CLPs issued under the authority of the current rules and provided examples of recent arrests. The Oklahoma Department of Public Safety also stated that some States were failing to adhere to the requirement that "Non-domiciled" must be conspicuously and unmistakably displayed" on the CDL/CLP and provided examples of CDLs issued by New York and California that lacked this label. The Asian Law Caucus stated that the IFR's discussion of State implementation issues is misleading. The Asian Law Caucus stated that the IFR states that FMCSA's APR has demonstrated that approximately one in four non-domiciled CDLs California issued were not compliant with the requirements in 49 CFR parts 383 and 384. Yet, FMCSA's September 26, 2025 letter to California relied heavily on 25 examples where the expiration dates of a CDL did not match the expiration date of the driver's lawful presence document, according to the commenter. At the time of the letter, the Asian Law Caucus said that there was no requirement in 49 CFR parts 383 and 384 that these dates match, and FMCSA's letter "tellingly" cites no authority for this position.

The Citizens Rulemaking Alliance suggested that FMCSA should address State compliance issues through existing enforcement mechanisms rather than by restricting CDL eligibility based on immigration status. The Citizens Rulemaking Alliance stated that FMCSA could deploy the CDL compliance regime—up to and including decertification findings and withholding of Federal-aid highway funds—coupled with immediate corrective action plans and targeted enforcement guidance, without immediately revising national eligibility criteria via an IFR. An individual stated that if FMCSA had concerns about eligibility, the agency should have coordinated with SDLAs before allowing them to issue CDLs, rather than punishing drivers who had invested thousands of dollars in training and testing.

An individual stated that the SDLAs are not thoroughly reviewing application materials from CDL applicants and recommended that all State agencies have access to every

applicant's immigration status in order to prevent fraud. An individual discussed that SDLAs and FMCSA have previously been unresponsive to requests for information from drivers and unhelpful in the CDL renewal process, yet when the IFR was published, they took action immediately to cancel CDLs.

AAMVA submitted detailed comments requesting clarification on numerous implementation issues, including: downgrade requirements and timing for non-domiciled CDLs; audit and compliance requirements for previously issued credentials; Federal agency coordination and notification procedures; SAVE system usage and I-94 documentation requirements; testing versus issuance pause procedures; implementation timeline and technical assistance needs; and data sharing and tracking mechanisms. Three individuals expressed concern about inconsistent implementation across States, with some States potentially interpreting "domicile" differently, leading to confusion and potential discrimination. An individual requested that FMCSA provide clear Federal guidance to States to prevent confusion or discrimination against compliant drivers. AAMVA and an individual stated that the rule created confusion regarding how States should handle out-of-State transfers, renewals, and other transactions for non-domiciled CDL holders. AAMVA also requested that FMCSA clarify the definition of "issuing" and related transactions to avoid overly broad interpretations that could create excessive burdens for simple administrative corrections.

FMCSA Response

FMCSA disagrees that under the pre-IFR regulations, SDLAs were not required to ensure the expiration date of the non-domiciled CLP or CDL did not exceed the driver's lawful presence. The regulatory universe of non-domiciled CLPs and CDLs is premised on the basic notion that a non-domiciled driver's commercial motor vehicle driving privileges cannot extend beyond that driver's lawful presence in the United States. Moreover, FMCSA's IFR and this final rule amend 49 CFR parts 383 and 384 to underscore existing substantive rules governing the period of validity for non-domiciled CLPs and CDLs, not to create new rules on non-domiciled CLP and CDL periods of validity that did not exist prior to FMCSA's publication of the IFR.

Section 31308 of title 49 of the U.S. Code is the statutory basis for the part 383 minimum standards for CDL expiration dates. It governs State

issuance of CLPs and CDLs and permits FMCSA to issue regulations that compel all CDLs and CLPs to contain "the dates between which the license or learner's permit is valid." Pursuant to this statutory authority, FMCSA issued regulations requiring that CLPs and CDLs issued by the States "must contain . . . the date of issuance and the date of expiration of the license." Under 49 CFR 383.73(a)(3) and 383.73(b)(9), FMCSA mandates that CLPs be valid for no more than one year from the date of issuance, while CDLs may not be valid for more than eight years from the date of issuance. However, these rules merely provide a regulatory ceiling for CLP and CDL expiration generally. States must follow additional procedures prior to issuing non-domiciled CLPs and CDLs. These additional rules further restrict the period of validity for such credentials.

The pre-IFR regulations obligated the States to require applicants to present an unexpired employment authorization document issued by USCIS or an unexpired foreign passport accompanied by an approved I-94 form documenting the applicant's most recent admittance into the United States prior to issuing a non-domiciled CLP or CDL. Regulations must be read in harmony to avoid redundancy and surplusage. The requirements regarding verification of lawful presence in sections 383.73(f)(3) and 383.71(f)(2)(i) would have been rendered meaningless if a SDLA may issue a non-domiciled CLP or CDL that expires after the expiration of the driver's lawful presence document. In other words, the mandate to present an unexpired EAD or foreign passport would be irrelevant and inconsequential. Similarly, there would be no reason to verify lawful presence as § 383.73(f)(3) required. Further, permitting States to issue non-domiciled CLPs and CDLs to individuals in a manner that permits them to continue operating CMVs without being lawfully present in the United States is illogical, unreasonable, and contrary to the fundamental purpose of FMCSA's regulations establishing legal presence requirements for all CLP and CDL applicants: to ensure CLP and CDL drivers, including non-domiciled drivers, operate commercial motor vehicles while lawfully present in the United States.

FMCSA agrees that there have been numerous instances of States issuing non-domiciled CDLs with expiration dates that exceeded the expiration dates of the holders' EADs, failing to label non-domiciled CDLs properly, and issuing CDLs to individuals who did not meet eligibility requirements. FMCSA

cited these concerns in the IFR and has, since publication of the IFR, identified even greater levels of systematic noncompliance. Given the statutory requirement to vet driver history, FMCSA does not believe alternative enforcement mechanisms would be appropriate for this program, as the necessary level of effort and oversight would be unduly burdensome for both FMCSA and the States.

In response to comments about States failing to follow the FMCSRs and not thoroughly reviewing application materials from CDL applicants, FMCSA agrees that this was a major impetus for issuing the IFR and this final rule. FMCSA has demonstrable evidence that States have been erroneously issuing non-domiciled CDLs to individuals who are not eligible to hold them, such as Canadian and Mexican drivers, as well as issuing standard CDLs to drivers who should have been issued non-domiciled CDLs under the prior regulations. This provides strong justification for FMCSA to implement a clearer, stricter system with increased documentation requirements, so SDLAs can improve compliance levels and FMCSA investigators can more easily verify such compliance.

FMCSA will continue to coordinate with AAMVA and the States following this final rule to address other concerns regarding implementation. The agency may also publish additional guidance as necessary.

6. Economic Analysis

a. Methodology and Adequacy of the Regulatory Impact Analysis

Accion Opportunity Fund suggested that an impact assessment should be disaggregated by visa category, fleet size, region, and industry sector and that FMCSA should publish semi-annual metrics on CDL issuance, renewals, and small-fleet business outcomes for at least five years post-implementation. An individual also requested guidance on implementation and support for affected drivers and carriers, along with continued monitoring following changes to assess their effectiveness.

Three individuals expressed concern that the regulatory impact analysis (RIA) failed to analyze rate increases, cost of replacement training, impacts to schools and municipal systems, tax revenue losses potentially totaling \$1 billion, and inflationary effects. An individual commented that the economic analysis relies on a per-hour personnel rate derived from an undisclosed composite of wages. Multiple individuals urged FMCSA to evaluate the rule's economic

and workforce impact, or more specifically to perform a full cost-benefit analysis in accordance with E.O. 12866, "Regulatory Planning and Review." An individual asserted that FMCSA did not comply with E.O. 12866, the Unfunded Mandates Reform Act of 1995 (UMRA), or OMB Circular A-4.

Maine Immigrants' Rights Coalition and a joint submission by Public Rights Project on behalf of Local Governments said that FMCSA failed to provide data demonstrating that the selected category of non-citizens is more likely to be involved in fatal crashes. An individual stated that without a baseline safety analysis comparing crash rates by domicile status, neither stakeholders nor FMCSA can gauge how many crashes the rulemaking might prevent. The individual requested that visa-based restrictions be tied to a data-driven study demonstrating safety improvements for visa holders relative to excluded categories. Three individuals expressed concern that replacing the qualified workforce with inexperienced drivers puts public safety at risk. Real Women in Trucking and an individual stated that FMCSA's break-even analysis demonstrates that preventing even 0.085 crashes annually generates net benefits that justify the costs of the IFR.

FMCSA Response

As stated in the RIA below, the agency has met its requirements under E.O. 12866, UMRA, RFA, and OMB Circular A-4. FMCSA developed an RIA in accordance with E.O. 12866, has provided additional detail on the impact to motor carriers and drivers that could result from this rule, provided more information regarding the CDL composite wage rate, and more detail surrounding underlying assumptions in the analysis. Lastly, FMCSA disagrees that this rule would result in less qualified or inexperienced drivers taking to the road. As discussed in the regulatory analysis section below, there are experienced drivers that have been sidelined or working at a reduced capacity during the ongoing freight recession who are ready and willing to come back into the market or increase their workload (e.g., decrease deadhead miles or increase hours within the HOS regulations).

b. Impacts to States and SDLAs

The Maine Immigrants' Rights Coalition, the joint AG comment, The National Education Association, and several individuals said that the IFR creates administrative burdens and delays for States or SDLAs. Two individuals remarked that States have

long accepted EADs as lawful proof of work authorization for issuing CDLs, and that new administrative processes and training will need to be implemented at new costs for compliance with the IFR. The individuals added that the changes in administration of non-domiciled CDLs require States to rewrite procedures on short notice, causing disruption and disorganization. Relatedly, AAMVA and AFSCME stated that the burden estimates for implementation cost failed to account for costs associated with updating legacy systems, procurement, training, legal review, opportunity costs, and additional verification through SAVE. An individual stated that the increased administrative burden may strain State resources and lead to delays in processing applications. Some individuals expressed concern that the IFR would cost SDLAs \$3.2 million in taxpayer funds to implement in first year costs alone. Some individuals said that this money could be spent on existing and new data-driven initiatives aimed at improving highway safety.

Two individuals described funding risks for States due to non-compliance at the State level, including a reduction in State revenue from licensing fees, fuel taxes, and registration income. One individual stated that a CDL driver contributes on average \$8,000 to \$12,000 per year in Federal and State taxes, and excluding even 20,000 drivers would result in a \$160 to million annual tax loss. Two other individuals raised the issue of increased cost of social services and assistance, which on average total \$1,500 to \$2,000 per month for a family that loses income and translates to hundreds of millions of dollars for the tens of thousands of families impacted by the IFR.

Public Rights Project on behalf of Local Governments stated that the IFR will impact core local government services supported by CDL holders, including: public transit and school bus services; highway and road maintenance and repair; response to inclement weather; utilities services; and disaster response, mitigation, and recovery. Public Rights Project on behalf of Local Governments cited a 2022 survey by the American Public Transportation Association that found that 96 percent of transit agencies faced workforce shortages, with 84 percent of agencies reporting impacts on service, adding that the IFR will exacerbate existing shortages and reliability issues. Public Rights Project on behalf of Local Governments remarked that local governments operate on fixed budgets and therefore are limited in their ability to address the effects of the IFR through

increased expenditures. Public Rights Project on behalf of Local Governments reasoned that compliance with the IFR may require governments to redirect funding from other critical services.

The Hawaii Department of Transportation expressed concern that the IFR negatively impacts sectors of Hawaii's CDL market that service students and disabled veterans. Relatedly, King County Metro stated the IFR will negatively impact transit options available to the public at a time when transit agencies nationwide have been struggling to rebuild their workforces. King County Metro discussed that impacts to public transit staffing presents complementary issues pertaining to safety, budget, and reliability and costs of service. The commenter wrote that up to 100 current King County Metro employees work in job classifications that sometimes require a CDL (50 percent of those being bus drivers) and will be ineligible to renew their licenses under the rule. King County Metro expressed concern that the \$60,000 investment made by the county to train four replacement bus operators at \$15,000 per driver will be permanently lost now that those individuals are ineligible to take the CDL exam. In addition, King County Metro discussed investments of \$75,000 for training for drivers with recently revoked licenses and \$675,000 for current CDL holders who will be unable to renew.

AFT, National Education Association, USW, and two individuals stated that the IFR will negatively impact public schools and students by exacerbating driver shortages. The National Education Association stated that approximately 50 percent of U.S. schoolchildren, or 23.5 million students, rely on school bus services, but remarked that school districts struggle to recruit drivers given annual average pay as low as \$39,000 in some regions. Central Puget Sound Regional Transit Authority commented that a loss of operators risks bus operators not being able to run all routes or provide the needed bus frequency, which results in both a decrease in service that customers rely on and an increase in uncertainty.

FMCSA Response

FMCSA agrees with commenters that the rulemaking will result in some program adjustment costs to States, which could include changing the credential that is issued to ensure that "non-domiciled" is conspicuously and unmistakably displayed on the face of the CLP or CDL, and ensuring that SDLA employees are properly issuing

non-domiciled CDLs and retaining appropriate records. To the extent that States are already in compliance with the SAVE query requirement (*i.e.*, running a SAVE query or a functional equivalent that is merely as pass-through to SAVE, to verify lawful permanent residence prior to issuing a non-domiciled CDL), they would not experience additional costs to comply with that component of the regulation. These costs, as well as the ongoing cost for retaining documentation have been accounted for in the RIA. Moreover, SDLAs are able to apply for and use CDLPI grants to come into or maintain compliance with the requirements of this rule. FMCSA also notes that while each transaction involving a non-domiciled CDL applicant could be longer, there will be fewer transactions, and FMCSA does not expect this rule to result in delays in service at the SDLAs in the aggregate. Further, due to the systemic noncompliance and enforcement action resulting from the nationwide APR, many States are working to update their license issuance policies and procedures. FMCSA has been working closely with SDLAs regarding issuances of non-domiciled CDL holders and will continue to do so as this final rule is implemented.

FMCSA disagrees with the estimates of tax revenue decrease and increase in social services costs stated by the commenters. These individuals will still be able to procure employment in non-CDL requiring roles, in which case, they will continue to pay State and Federal taxes and will not be dependent on social services. The analysis highlights a few different occupations that are likely alternatives for these individuals. With regards to fuel taxes, FMCSA does not anticipate a decrease in miles driven, and so does not agree that there would be a decrease in fuel taxes collected.

FMCSA understands that certain geographic areas or CDL sectors might employ non-domiciled CDL holders at a higher rate than other areas or sectors. This fact is not sufficient to negate the necessity of this rulemaking. A CDL, once obtained, can be used to transport vehicles of the specific group regardless of the purpose or sector. For instance, a Class B CDL with a Passenger and School bus endorsement can be used to drive school buses, passenger vehicles, and straight trucks requiring a Class B CDL. As previously stated, the lack of available driving history information for non-domiciled applicants severely limits the effectiveness of State vetting processes. This inability to obtain driver history for non-domiciled applicants creates an unacceptable bifurcated

standard in driver vetting. Further, he non-domiciled CDL credentials were never meant to be permanent documents, but to have an expiration date based on the individual's employment authorization. As such, school districts should have been aware that these drivers might be unable to continue holding a CDL based on their employment authorization restrictions.

c. Impacts to Drivers

Amalgamated Transit Union, Representative Josh Harder, Inspiritus, Maine Immigrants' Right Coalition, New York State Office of Temporary and Disability Assistance, a joint submission by Public Rights Project on behalf of Local Governments, Teamsters California, and some individuals stated that the IFR threatens the livelihoods of the approximately 200,000 workers who rely on their CDLs to provide for themselves and their families. Maine Immigrants' Right Coalition and three individuals stated that the IFR risks the loss of economic and financial livelihoods for lawful businesses and drivers. The New York State Office of Temporary and Disability Assistance remarked that foreign-born drivers account for nearly one in six U.S. truck drivers, many of whom own small businesses. An individual wrote that FMCSA should not prevent legal immigrants from filling CDL-dependent roles and should avoid creating additional burdens. Another individual said there will not be a negative impact on legitimate labor, and labor markets will adjust.

Potential Development Association and three individuals said that the IFR effectively nullified the investments made by thousands of non-domiciled drivers in training, licensing, and career development while leaving drivers unemployed and unable to repay debts. Three individuals described how the rule will create hardships in ability to make payments on CMVs, potentially leading to defaults totaling three to five billion dollars on vehicle loans. An individual stated drivers may pay \$3,500 to \$8,000 for training programs and invest \$80,000 to \$150,000 to purchase or lease a truck. Another individual remarked that each family-owned truck under financing at monthly payments of \$2,000 to \$3,000 risks losing both business and housing. Seven individuals also provided specific cost data related to their mortgages, truck payments, and other loans. An individual stated that FMCSA's reasoning that the impacts of the IFR to drivers who lose eligibility are de minimis is arbitrary and capricious and ignores real-world consequences.

Relatedly, the Asian Law Caucus wrote that the cost of the IFR to drivers is not de minimis but instead would result in decreased wage opportunities, foregone investments in CDL training, and foregone investments in equipment and contracts. The Asian Law Caucus stated that FMCSA's failure to discuss these reliance interests and to show adequately how it arrived at the IFR's de minimis impact on drivers is improper and illegal. Furthermore, the Asian Law Caucus expressed concern that the IFR also fails to provide guidance to small and large carriers as well as State agencies in implementing substantive changes.

FMCSA Response

FMCSA acknowledges that drivers have invested time and resources into obtaining a CDL credential as a CDL is indeed a valuable asset. However, the non-domiciled CDL credentials were never meant to be permanent documents for foreign-domiciled drivers, but to have an expiration date based on the individual's employment authorization. To the extent that individuals took on long-term loans for vehicles or other investments, they should have been aware that their CDL credential was not a permanent right, but a privilege with a limited term and subject to a sudden change in status. The individuals were responsible for weighing these risks when entering into loans or contracts. FMCSA steers policy based on safety, and not the sunk costs that have been incurred by individuals. Further, drivers that are no longer eligible to hold a CDL at the time of renewal will be able to operate until the expiration date on their license (up-to five years from the date of issuance) and will still be able to work in positions not requiring a CDL following expiration of their CDL. Therefore, FMCSA does not expect that these drivers would be unemployed with no ability to earn a living and sustain a family, but would seek alternative employment either within or outside the transportation sector. As discussed in analysis section below, within the transportation and materials moving industry, Bureau of Labor Statistics (BLS) data shows that alternative employment options range from \$27 to \$35 per hour for wages and benefits.

d. Impacts to Motor Carriers

Three individuals stated the IFR will harm small and mid-sized carriers, owner-operators, and logistics-dependent industries. An individual stated that American trucking professionals disagree with FMCSA's claim that there will be a limited

economic impact on the freight market and motor carriers. The individual discussed findings by industry analysts regarding increasing costs of turnover observed in 2024, with the estimated cost of losing just one driver reaching \$12,799. An individual stated that the IFR will disproportionately affect small businesses, including family-owned and minority-owned businesses, and stimulate a market monopolization by a few large trucking corporations. Relatedly, another individual remarked that reducing competition in the CDL labor market lowers wages and strengthens dominance of large companies. Representative Josh Harder said that the IFR will destroy American businesses that employ members of the Sikh and Punjabi communities, as 150,000 Sikh Americans work in the trucking industry nationwide.

FMCSA Response

FMCSA acknowledges, but disagrees with, the commenters concern regarding friction in the motor carrier industry and the magnitude of the impact of replacing drivers who are no longer eligible to hold a CDL. The non-domiciled CDL credentials were never meant to be permanent documents, but to have an expiration date based on the individual's employment authorization. As such, motor carriers should have been aware that these drivers might be unable to continue holding a CDL based on their employment authorization restrictions. Further, employment turnover and churn are well-documented features of the CMV industry. The 2025 update to the American Transportation Research Institute's (ATRI) Analysis of the Operational Costs of Trucking reports that the average driver turnover rate, weighted by sector representation was 48 percent in 2024.⁵⁷ Driver turnover in the truckload sector ranges from 44.3 percent to 72.1 percent depending on the size of the carrier. The OOIDA foundation finds that while driver churn affects large truckload carriers to a greater extent than small carriers, it is endemic to the entire industry, and something that carriers have been managing for many years.⁵⁸ The American Public Transportation Association reports that 59 percent of departures happen within the first two

years of employment.⁵⁹ Given the industry norm regarding movement of drivers and the constant need for hiring, FMCSA considers motor carriers to be well equipped to handle any driver replacement necessitated by this rule. Further, the five-year attribution will assist in mitigating any impacts to motor carriers. While this exit from the market might come earlier than anticipated in some instances, the non-domiciled CDL credentials were always meant to be temporary with expiration dates based on the individual's employment authorization. At most, this rule would result in a temporal shift in impact related to that subset of non-domiciled CDL holders that would not have looked for alternative employment in the baseline at an earlier date.

e. Impacts to Supply Chain

AFSCME, Asylum Seeker Advocacy Project, Colorado Fiscal Institute, Representative Josh Harder, Justice at Work PA, National Education Association, United Steelworkers, and numerous individuals described the harm of driver shortages to motor carriers, industry, supply chain, or schools. Accion Opportunity Fund, a joint submission by Public Rights Project on behalf of Local Governments, and numerous individuals suggested the IFR will impact supply chains and drive higher prices for food, medicine, and construction materials, accelerating inflation. An individual cited a BLS finding that over 72 percent of U.S. freight is moved by truck. Another individual described how past shocks show how slowly and unevenly markets adjust, refuting FMCSA's claim that "markets will adjust." An individual stated this will lead to spot rate increase and increase in consumer costs.

The Colorado Fiscal Institute estimated that Colorado's expanded access to driver's licenses regardless of immigration status saves \$127 million in insurance premiums every year because more people are insured, adding that licensing non-domiciled drivers could increase revenue for insurance companies by \$360 million annually. The Colorado Fiscal Institute also stated that transportation and warehousing is a \$25 billion industry across Colorado, with 6.7 percent of that industry's workforce being made up of immigrant workers who are responsible for more than \$1.6 billion in gross domestic product. An individual stated that the loss of drivers creates revenue losses and congestion at ports, impacting supply chains. The

individual estimated the monthly freight revenue losses totaling approximately \$1.18 billion per month if 10 percent of excluded drivers are removed, based on the following impacts to the supply chain: \$337.5 million for dry van operations; \$562.5 million for reefer operations; and \$281.25 million for reefer spoilage, assuming 50 percent delayed reefer loads.

Maine Equal Justice wrote that Maine residents rely on truck transport for more than 80 percent of their material goods, meaning CDL drivers are responsible for delivering essential goods like food and heating oil. Maine Equal Justice discussed that while one out of 16 workers are employed in trucking and logistics jobs and more than 5,300 companies employ drivers and other transportation workers across the State, as of May 2025 Maine faces an estimated driver shortage of 1,100 workers to meet existing demands. Maine Equal Justice estimated the IFR will remove up to 200 Maine drivers from the road. Maine Equal Justice added that Maine also faces a school bus driver shortage of 80 drivers, and that the State's trucking industry annually pays \$163 million in tolls and taxes. California Bus Association discussed that in 2024 the U.S. motorcoach industry generated: \$158 billion in total economic impact, supporting 885,000 jobs nationwide across transportation, tourism, and hospitality sectors; \$11.9 billion in impact in California alone; and \$39.8 billion in direct spending from group travel, supporting more than 500,000 jobs in food service, lodging, and retail. California Bus Association added that removing non-domiciled CDL holders could lead to a ripple effect on tourism, hospitality, and local economies. California Bus Association stated that the private motorcoach sector is facing a 21.4 percent shortfall in driver availability, with public transit agencies reporting 71 percent have cut or delayed service because of operator shortages.

Relatedly, Amalgamated Transit Union stated the IFR fails to account for impacts to workers other than drivers such as mechanics, dispatchers, and road supervisors. Amalgamated Transit Union also expressed concern that a shortage of CDL holders limits the growth of the intercity bus industry and could negatively impact student attendance and extracurricular participation. Teamsters California asserted that FMCSA failed to address other significant costs to consumers, businesses, and unions. Teamsters California discussed that labor unions will be required to represent these

⁵⁷ ATRI, Analysis of the Operational Cost of Trucking: 2025 Update, p. 48, available for download at <https://truckingresearch.org/about-atratri/attri-research/operational-costs-of-trucking/>.

⁵⁸ <https://www.ooida.com/wp-content/uploads/2025/04/The-Churn-A-Brief-Look-at-the-Roots-of-High-Driver-Turnover-in-U.S.-Trucking.pdf>.

⁵⁹ <https://www.apta.com/wp-content/uploads/APTA-Transit-Workforce-Shortage-Report.pdf>.

drivers when they lose their licenses and jobs, resulting in arbitrations or negotiations costing thousands of dollars, which is not addressed in the IFR RIA. International Brotherhood of Electrical Workers, AFL–CIO stated that the IFR will negatively impact the reliability of the electrical grid by reducing the number of CDL holders qualified to construct, maintain, and repair national infrastructure. International Brotherhood of Electrical Workers, AFL–CIO reasoned that this limits national emergency preparedness at and exacerbates the recent supply shortage of skilled electricians. Accion Opportunity Fund discussed that driver shortages will harm agriculture and harvest logistics due to short harvest windows for crops and ports and drayage. Accion Opportunity Fund stated this will lead to capacity loss, longer dwell times, higher demurrage, and increases in prices. Accion Opportunity Fund estimated \$250 million in small business working capital tied to current non-domiciled truckers will be in jeopardy.

An individual questioned why the IFR considered the \$15.7 million “cost of a fatal crash,” but not the cost of tripling the driver shortage. Another individual discussed that the driver shortage reached approximately 78,800 positions in 2022, with projections reaching up to 160,000 by 2028 even as 237,600 job openings for heavy and tractor-trailer truck drivers are estimated to be available annually between 2024 and 2034. Kilban Logistics LLC and many individuals stated that the notion that there was a shortage of truck drivers in the United States was a myth, perpetuated by large trucking companies and industry associations to justify hiring foreign drivers at lower wages. DD 214 Transport LLC and six individuals expressed that there are plenty of qualified American drivers available but that they are unwilling to accept poor working conditions and inadequate compensation. OOIDA stated that the trucking industry is at overcapacity and that the industry has been exploiting cheap labor on the basis of false “driver shortage” claims, instead highlighting the driver turnover that plagues the industry, which could be mitigated by the IFR by ensuring that only well-trained, qualified individuals can earn a commercial license.

FMCSA Response

FMCSA disagrees with the commenters’ assertions that the rule would exacerbate the purported driver shortage and subsequent disruptions to supply chains. Following the COVID–19 pandemic boom, the industry found

itself with “too many trucks chasing too few loads, forcing rates down and squeezing profit margins across the country.”⁶⁰ Carriers have been parking trucks to lower operating costs, operating at low profit margins, and exiting the industry.^{61 62} The commenters’ suggestion that this rule will result in negative impacts to the supply chain does not comport with the reality of the freight recession that motor carriers have been shouldering for the past three years. There are drivers who are underutilized and facing increasing dead-head miles at the expense of their bottom line.⁶³ Multiple outlets have reported how the current conditions in the freight market have resulted in layoffs, market exits, and bankruptcies.^{64 65} Many commenters referencing the driver shortage echoed previously published data from ATA. However, ATA has pivoted away from the “driver shortage” narrative, reflecting current freight market realities. This shift is underscored by the issue’s recent departure from the top ten list in the ATRI Critical Issues in the Trucking Industry report—for the first time in the 21-year history of the report.^{66 67} Capacity in the freight market has contracted over the past three years as the industry began a downturn in April 2022; however, those drivers that have reduced their mileage or exited the market remain eligible to hold a CDL creating a layer of latent capacity. FMCSA does not agree that this rule will result in a shortage of drivers. Instead, based on the numerous

⁶⁰ <https://otrsolutions.com/what-truckers-need-to-know-about-the-freight-recession/>.

⁶¹ ATRI Operational Cost of Trucking, p. 54, available for download at <https://truckingresearch.org/about-atri/atri-research/operational-costs-of-trucking/>.

⁶² FMCSA 2024 Pocket Guide to Large Truck and Bus Statistics, Table 1–8. Available at: <https://www.fmcsa.dot.gov/safety/data-and-statistics/commercial-motor-vehicle-facts>.

⁶³ ATRI, Analysis of the Operational Cost of Trucking: 2025 Update, available for download at <https://truckingresearch.org/about-atri/atri-research/operational-costs-of-trucking/>.

⁶⁴ ATRI, Critical Issues in Trucking–2025. Available at: <https://truckingresearch.org/wp-content/uploads/2025/10/ATRI-Top-Industry-Issues-2025.pdf>.

⁶⁵ Commercial Carrier Journal, Carrier failures have “declined mostly steadily, but they are still higher than seen before the pandemic” (Apr. 26, 2024). Available at: <https://www.cjdigital.com/business/article/15669400/carrier-failures-declining-still-high#:~:text=Looking%20at%20Federal%20Motor%20Carrier,did%20i immediately%20before%20the%20pandemic.%E2%80%9D>.

⁶⁶ <https://www.overdriveonline.com/channel-19/article/15771074/how-dots-duffy-destroyed-the-driver-shortage-narrative>.

⁶⁷ <https://truckingresearch.org/2025/10/critical-issues-in-the-trucking-industry-2025/>.

reports of underutilization and lay-offs cited previously, FMCSA anticipates that there are available, experienced drivers who will be willing to increase their workload or able to step back into the market after being sidelined throughout the freight recession. The large quantitative impacts stemming from supply chain disruptions discussed by commenters assume that the industry will be unable to meet existing demands in the freight market. FMCSA disagrees with these assertions based on the evidence cited above.

The Colorado Fiscal Institute’s comments related to insurance premiums are outside the scope of this rulemaking. This rule does not impact the ability of drivers to obtain insurance.

f. Failure To Consider Reliance Interests

Maine Equal Justice, the joint AG comment, and three individuals stated that FMCSA failed to consider the reliance interests of CDL holders, their employers, and training providers who had invested time and resources based on the previous policy. The joint AG comment stated that FMCSA’s failure to consider these serious reliance interests in promulgating an IFR that effectively strips these CDL holders of their licenses as soon as they come up for renewal, or when States are notified of a purported change in immigration status, renders the IFR arbitrary, capricious, and unlawful. In addition, the joint submission stated that the IFR cites no data that supports its assertions that individuals will be able to find similar employment or that their costs would be merely de minimis. Further, the joint submission said that FMCSA’s claim that transition costs resulting from the loss of a CDL will be merely “de minimis” is contradicted by FMCSA’s statement that “[a] non-domiciled CDL is a high-value economic credential.”

Other commenters focused on the magnitude of the previously invested time and resources. Potential Development Association and three individuals said that the IFR effectively nullified the investments made by thousands of non-domiciled drivers in training, licensing, and career development while leaving drivers unemployed and unable to repay debts. Three individuals described how the rule will create hardships in ability to make payments on CMVs, potentially leading to defaults totaling three to five billion dollars on vehicle loans. An individual stated drivers may pay \$3,500 to \$8,000 for training programs and invest \$80,000 to \$150,000 to purchase or lease a truck. Another individual remarked that each family-

owned truck under financing at monthly payments of \$2,000 to \$3,000 risks losing both business and housing. Justice at Work and some individuals discussed specific payments ranging from \$3,500 to nearly \$15,000 spent to obtain CDLs. Seven individuals also provided specific cost data related to their mortgages, truck payments, and other loans. An individual stated that FMCSA's reasoning that the impacts of the IFR to drivers who lose eligibility are de minimis is arbitrary and capricious and ignores real-world consequences. Relatedly, the Asian Law Caucus wrote that the cost of the IFR to drivers is not de minimis but instead would result in decreased wage opportunities, foregone investments in CDL training, and foregone investments in equipment and contracts. The Asian Law Caucus stated that FMCSA's failure to discuss these reliance interests and to show adequately how it arrived at the IFR's de minimis impact on drivers is improper and illegal.

Citing *DHS v. Regents of the University of California*, 140 S. Ct. 1891 (2020), MALDEF and six individuals said that agencies must consider the reliance interests of individuals who structured their lives and investments based on existing legal frameworks. Citing *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211 (2016), two individuals said the IFR ignores employers' reliance interests developed under prior rules. Two individuals added that the IFR is arbitrary and capricious because it disregards that commercial drivers and trainees have already invested substantial resources in CDL training, truck purchases, and financing. Commenting that courts have ruled that agencies must consider reliance interests and provide fair transition periods to satisfy the APA, an individual concluded that the IFR ignores reliance interests because it lacks grandfathering provisions. An individual stated that the IFR violates the APA because it "failed to provide a transition period." Similarly, the Potential Development Association asserted that the IFR does not provide adequate transitional relief or appeal channels for EAD holders who have already legitimately obtained their CDLs or have invested significant time and resources in training. Relatedly, MALDEF challenged the IFR's assertion that most drivers who lose their CDL as a result of the IFR will find work in other sectors like construction, saying the IFR "provides no explanation, let alone evidence, why these drivers will successfully transition to other sectors."

FMCSA Response

Several commenters have argued that FMCSA failed to consider the reliance interests of individuals who structured their lives and investments based on existing legal frameworks as well as the reliance interests of employers that invested time and resources based on the previous rule. FMCSA recognizes the serious economic reliance interests at stake. The agency understands that many foreign-domiciled drivers have invested time in training and capital in equipment based on the prior regulatory framework. We have not taken the decision to alter eligibility criteria lightly. However, the agency must weigh these private reliance interests against the public's reliance on a safe and securely vetted commercial driver workforce and its statutory obligation to ensure driver fitness. While the economic disruption to these drivers is regrettable, it is necessary to ensure that the CDL credential retains its integrity as a certification of safety fitness and an identified safety gap is remedied.

Moreover, the temporary nature of the legal presence documents that formed the basis of non-domiciled CLP and CDL eligibility under FMCSA's pre-IFR regulations belie the commenters' argument. As explained in the IFR, FMCSA interprets the agency's pre-IFR regulations to require SDLAs to ensure that the expiration date of non-domiciled CLPs and CDLs do not exceed the expiration date of the driver's lawful presence known at the time of issuance. FMCSA's regulations in this regard are consistent with DHS's REAL ID regulations, which also prohibit States from issuing limited term driver's licenses and identification cards that exceed the applicant's legal presence (6 CFR 37.21). Further, some States have codified a similar requirement in their laws (see e.g., Cal. Code Regs. tit. 13, § 26.02(c)). It is well established that the lawful presence documents required for an applicant to be eligible for a non-domiciled CLP or CDL under FMCSA's pre-IFR regulations (i.e., an unexpired EAD or unexpired foreign passport accompanied by an approved I-94 form documenting the applicant's most recent admittance into the United States) are not permanent credentials. Rather, these lawful presence documents are based on an applicant's temporary legal status, which is subject to adjudication by DHS. Further, under DHS regulations, EADs are subject to expiration, termination, or revocation for a number of reasons (see e.g., 8 CFR 274a.14 (Termination of employment authorization)). Consequently, non-domiciled CLP and CDL drivers, as well

as their employers, have long borne, and voluntarily accepted, the risk that a driver who previously held a non-domiciled CLP or CDL would become ineligible for the permit or license upon the expiration or termination of the lawful presence documents required under the pre-IFR regulations. To the extent that individuals took on long-term loans for vehicles or other investments, they should have been aware that their CDL credential was not a permanent right, but a privilege with a limited term and subject to a sudden change in status. The individuals were responsible for weighing these risks when entering into loans or contracts. FMCSA steers policy based on safety, and not the sunk costs that have been incurred by individuals. Further, drivers that are no longer eligible to hold a CDL at the time of renewal will be able to operate until the expiration date on their license (up-to five years from the date of issuance) and will still be able to work in positions not requiring a CDL after their credential expires. Therefore, FMCSA does not expect that these drivers would be unemployed with no ability to earn a living and sustain a family, but would seek alternative employment either within or outside the transportation sector. As discussed in analysis section below, within the transportation and materials moving industry, BLS data shows that alternative employment options range from \$27 to \$35 per hour for wages and benefits.

Further, as FMCSA's 2025 APRs demonstrated, many non-domiciled CDL holders have been improperly issued licenses under the existing regulations. These individuals have no reliance interests because they were not eligible from the outset. To the extent that an individual who was otherwise previously eligible is prevented from upgrading or renewing a CDL because of errors made by the SDLA, this is an issue between the individual and the licensing State. Moreover, for all individuals—whether domiciled or not—the ability to hold a CDL is a privilege and not a right. This is particularly true for non-domiciled CDL holders, who should be on notice that their licenses are subject to additional terms and conditions and will not necessarily be renewed upon expiration. Neither the IFR nor this final rule are stripping non-domiciled CDL holders' licenses retroactively; rather these individuals will be ineligible for renewal or upgrade, which was always a possibility even absent the rule.

Most individuals who are ineligible for renewal will, contrary to one commenter's assertion, have a transition

period from when this rule becomes effective until the date of the CDL's expiration. This transition period could be up to five years and will be well known to the motor carrier or individual in advance. The individuals whose CDLs must be cancelled prior to the expiration date shown on the credential are not ineligible due to this rule, but rather due to audits that showed that they never should have been issued a non-domiciled CDL in the first place.

As far as training providers are concerned, FMCSA stresses that the training standards set forth in the regulations (49 CFR 380 subpart F) are the exact same regardless of whether the trainee is US domiciled or not. Training providers that developed a business model focused on EAD holders can provide the same excellent training to CLP and CDL applicants that are eligible to obtain a CDL under this rule.

7. Other Comments on Procedural Matters

a. State Consultation

The Asian Law Caucus, The Maine Secretary of State, the joint AG comment, and Teamsters California expressed concern that FMCSA did not, as 49 U.S.C. 31308 requires, consult with the States before amending the regulations that govern eligibility for and issuance of CDLs. The joint AG comment wrote that bypassing consultation with the States disregards their "knowledge and experience in having administered CDL programs for decades." The Maine Secretary of State, the joint AG comment, and Teamsters California asserted that FMCSA's inability to justify its lack of consultation with the States is one reason the D.C. Circuit stayed the IFR. The Asian Law Caucus and the joint AG comment said FMCSA failed to consult with the States despite acknowledging in the IFR that it was required to do so under the CMVSA. Both commenters objected to FMCSA's assertion that consultation was "not practicable," citing the CMVSA's lack of an exception to the requirement, with the Asian Law Caucus adding that failure to consult with the States is at odds with FMCSA having consulted with other government agencies such as the U.S. Department of Labor (DOL) before issuing the IFR, and the joint AG comment referencing past rules in which FMCSA "affirmed that rulemaking pursuant to § 31305 requires consultation with the States."

FMCSA Response

In the IFR, FMCSA found good cause to forego consultation with the States. Such consultation is not required under

49 U.S.C. 31305(a), which the agency cited as statutory authority, and was not practicable under section 6(b) of E.O. 13132. However, in its order staying the IFR, the D.C. Circuit cited a separate State consultation requirement in 49 U.S.C. 31308 as, in part, reason for granting the stay. During the comment period for the IFR, FMCSA sent consultation letters to each of the States and received comments from eight State agencies and SDLAs, AAMVA, and 19 State attorneys general. Thus, to the extent that State consultation is required prior to issuance of this final rule, this requirement has now been satisfied.

In addition to this direct consultation, FMCSA held a call with SDLAs on October 2, 2025 to discuss the now stayed IFR and answer questions that were submitted in the days following its issuance. There was a CDL Roundtable Virtual Meeting on November 4, 2025, where FMCSA discussed the subject with SDLAs. FMCSA Field Offices participate in routine meetings with SDLAs to discuss various topics as well as conduct APRs where an in-depth review of CDL issuance is conducted by FMCSA and results discussed with the SDLA.

b. Other Consultation

An individual urged FMCSA to disclose stakeholder meetings and correspondence in compliance with E.O. 12866. Another individual asserted that FMCSA failed to comply with interagency coordination requirements in E.O. 12866; the individual noted that the IFR introduces a definition of lawful presence that directly affects the responsibilities of DHS and states that FMCSA has provided no evidence that it sought or obtained DHS concurrence prior to publication. An individual stated that a coordinated interagency approach with DHS is needed to ensure federal transportation policy remains aligned with the law.

Asian Law Caucus stated that the IFR states that FMCSA consulted with DOL's Office of Foreign Labor Certification (OFLC) in restricting those eligible for non-domiciled CLPs and CDLs to H-2A, H-2B, and E-2 visa holders, but FMCSA failed to include information from its consultation with OFLC in the rulemaking docket to allow meaningful input. Asian Law Caucus requested an additional opportunity to comment after the OFLC information is provided.

FMCSA Response

Through the IFR and this final rule, FMCSA has been fully transparent about the coordination that it engaged in during the rulemaking process. The

agency coordinated regularly with Federal partners and incorporated their expertise into the IFR. FMCSA continued to work with other agencies between the IFR and this final rule to provide as much updated information as possible, including the enhanced vetting procedures from the U.S. Department of State.

c. E.O. 14192

Oregon Department of Transportation stated that FMCSA claims the rulemaking is exempt from the regulatory cost and repeal requirements of E.O. 14192 by classifying it as an "immigration-related function." However, Oregon Department of Transportation said that if the rule is not based on safety data, and FMCSA lacks immigration enforcement authority, then the agency cannot reasonably claim either a safety or immigration basis for the rule.

FMCSA Response

As stated above, this final rule is based solely on safety and the associated authorities that FMCSA operates under. The determination that the IFR was issued with respect to an immigration-related function was limited to the scope of E.O. 14192 and the exemption from its requirements. This determination does not rely on immigration authority.

d. Regulatory Flexibility Act

An individual asserted that 90 percent of trucking companies in the U.S. are small businesses, many of which are immigrant-owned or immigrant-dependent. The individual stated that the burden of the IFR will fall disproportionately on small operators and stated that FMCSA has violated the Regulatory Flexibility Act (RFA) because no initial or final regulatory flexibility analysis was conducted. Accion Opportunity Fund stated that FMCSA did not publish a comprehensive small entity analysis under the RFA. Two individuals noted that an RFA analysis was not completed and requested that FMCSA complete one. An individual noted that the FMCSA failed to consider alternatives as required under the RFA.

FMCSA Response

As discussed in the IFR, FMCSA asserted that it was not required to conduct a regulatory flexibility analysis under the RFA.⁶⁸ This final rule contains an updated discussion of the agency's requirements under the RFA. Based on the rationale below, FMCSA

⁶⁸ 90 FR 46521.

certifies that this action will not have a significant economic impact on a substantial number of small entities, and therefore no regulatory flexibility analysis is required. In addition, as stated in the regulatory analysis below, the agency has met its requirements under E.O. 12866, UMRA, and OMB Circular A-4.

e. Information Collection

The joint AG comment stated that FMCSA's information collection is not "necessary for the proper performance of the functions of the agency" per the Paperwork Reduction Act (PRA) because the agency lacks statutory authority over immigration, as even FMCSA admits there is no evidence linking immigration status to CDL driver safety. The joint submission said requiring SDLAs to retain and produce immigration documents and SAVE query results duplicates DHS responsibilities and is unnecessary for the proper performance of FMCSA's functions. In addition, the joint submission said the IFR does not "reduce[] to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency" per the PRA. Rather, it places considerable burden on SDLAs, as it contains no limitation on documents and requires that SDLAs provide documents on a 48-hour turnaround. The joint submission said FMCSA provides no explanation for the new requirement, especially given existing regulations that already mandate APRs and information sharing. An individual asserted that the small entity impacts and PRA impacts are understated. SBTC stated that: (1) the proposed information collection is necessary; (2) they do not contest the accuracy of the estimated burden; (3) they have no suggestions on ways for FMCSA to enhance the quality, usefulness, or clarity of the collected information; and (4) they can offer no information on ways the burden could be minimized without reducing the quality of the collected information.

FMCSA Response

The information collection requirements in the IFR and the final rule are necessary. FMCSA has extensive authority over the CDL issuance process and the review of State licensing programs. As discussed above, the APRs highlighted a lack of available information at the State-level regarding non-domiciled CLPs and CDLs that were issued and the documentation that was provided during the application process for those non-domiciled CLPs and CDLs. This led to difficulties for the agency during the APR process. It became clear

during the APR process that the prior information collection and retention requirements were not sufficient to ensure FMCSA has the ability to review non-domiciled CLP and CDL issuance by SDLAs in a reasonable timeframe. The requirement for SDLAs to retain copies of the information relied on during the non-domiciled application process is not only a minor burden, but it also ensures that FMCSA has access to the necessary information during the APR process and other audits in the future. The requirement for producing those copies within 48 hours of a request from FMCSA ensures that the agency has adequate access to the records. The information collection is neither duplicative nor unlimited. It requires copies to be made of the two specific identification documents used in the application process for a non-domiciled CLP or CDL, both of which must already be inspected by the SDLA, and a copy of the required SAVE query. Commenters do not provide a citation to a specific, currently approved information collection containing a duplicative requirement for retention of these documents.

f. Privacy

The joint AG comment stated that, although FMCSA claims the rule does not involve collecting PII, it requires SDLAs to retain and share immigration documents (e.g., passports and I-94s) that contain PII. The joint submission said FMCSA's failure to comply with the statutory requirement to assess the privacy impact of the PII collection was arbitrary and capricious. The joint submission and Asian Law Caucus said FMCSA provided no opportunity to review the supporting Privacy Impact Analysis despite stating that it would be available for review in the docket.

FMCSA Response

The IFR and final rule do not involve any new collection of PII because the prior regulations already allowed for the use of a passport and I-94/94A during the application process. The only change made to the document requirements was removal of the EAD as an approved option. This revision does not result in a new collection of PII that would necessitate a PIA. In addition, because the SDLAs are already charged with protecting the PII that they collect during the licensing process, they should already have adequate system security features in place to guard against improper access to or release of PII.

FMCSA inadvertently stated that a PIA was in the docket, however the rest

of the privacy discussion in the IFR made clear why a PIA was not prepared.

8. Alternatives

a. Alternatives to Employment-Based Nonimmigrant Status

Citizens Rulemaking Alliance, Potential Development Association, and three individuals, stated that FMCSA failed to consider reasonable alternatives to the rule that would have been less restrictive while still addressing safety concerns. An individual suggested that FMCSA could have strengthened the SAVE verification system rather than implementing blanket restrictions based on immigration status.

An individual recommended that FMCSA focus on systemic safety improvements rather than driver removal, suggesting that the agency prioritize solutions that target unsafe driving and deficient training across the entire industry.

Numerous individuals suggested a more individualized approach to assessing driver safety, in contrast to restrictions based on immigration status, with some suggesting approaches like individualized renewal processes, appeal processes for drivers, or other testing as described below. Representative Josh Harder suggested that FMCSA pause issuance of new CDLs to ensure applicants have valid work authorization. The City of Manteca and numerous individuals suggested improved background checks as an alternative to the IFR. The Potential Development Association recommended an enhanced background investigation (in addition to SAVE verification) to include Form I-94 or a valid EAD, clean criminal history from the United States and their country of origin, clean driving record, and notarized reference letters. Numerous individuals supported a review of CDL holders' driving records. Many individuals suggested verification of addresses/residency. Numerous individuals supported retesting existing CDL applicants or audits to verify compliance in lieu of the IFR. Several individuals supported recertification or re-verification of legal status for CDL holders (with some suggesting this could occur on an annual basis or at license renewal). Three individuals suggested additional or improved medical testing for CDL holders. Accion Opportunity Fund requested adding reporting, auditing, and data-sharing requirements into any revised rule to collect and publish metrics on CDL issuance, renewals, and SAVE-related errors. Some individuals suggested that drivers could obtain

additional certifications for their CDL, instead of prohibiting them altogether. It also suggested improving communication and training programs.

Washington Trucking Associations urged FMCSA to strengthen the CDL program through a holistic, evidence-based approach rather than relying on narrow employment definitions. Rather than relying on the IFR's narrow definition of permissible employment categories, Washington Trucking Associations said FMCSA should base eligibility standards on research-supported indicators that more accurately reflect a driver's likelihood of safe performance. Washington Trucking Associations suggested targeting high-risk behaviors and violations; considering a one-year non-commercial driving experience requirement for new entrants; enhancing Entry-Level Driver Training oversight and removing non-compliant schools; and modernizing data systems to prevent multi-State fraud and close gaps in carrier safety ratings.

Many individuals suggested improved training, stricter skills testing, or mandatory training periods for CDLs in lieu of the IFR. An individual requested that the IFR clarify whether non-domiciled CDL holders remain eligible for special endorsements (e.g., hazardous materials or Transportation Worker Identification Credential) or retain cross-border privileges under the North American Free Trade Agreement and the United States-Mexico-Canada Agreement. An individual suggested that the final rule should explicitly require any organization conducting commercial driver examinations to collect and validate the same documentation and complete the same SAVE checks as the SDLA. An individual stated that by placing restrictions on an EAD holder's ability to drive a commercial vehicle, FMCSA is improperly attempting to re-classify the scope of Federal work authorization, which the commenter stated is a function that belongs exclusively to immigration agencies. An individual recommended support programs for low-income individuals and education resources to help individuals understand the requirements.

Multiple individuals suggested that FMCSA should focus on removing drivers with poor safety records or who obtained their licenses illegally rather than targeting drivers based on immigration status. An individual suggested increasing the standards for everyone, reasoning that a person does not have to be foreign to be a bad driver. Three individuals expressed willingness to undergo additional testing or

verification to demonstrate their qualifications and commitment to safety. An individual stated that the IFR addresses safety and security gaps, but that it is incomplete, and should focus on data-driven improvements.

Easy CDL Trucking School recommended that instead of targeting the immigrant population, FMCSA should reinstate the old CDL exam to the version that was revised in recent years to help with the driver shortage. An individual wrote that they agree with improving safety and integrity but suggested that FMCSA include clear provisions protecting individuals with work authorization.

An individual recommended implementing a dedicated vetting process for asylees using SAVE verification. An individual recommended requiring SDLAs to verify EAD validity electronically with SAVE. Another individual recommending allowing renewals for EAD holders verified through SAVE. Another individual recommended allowing drivers with valid EADs and legal work authorization to continue operating, as long as their documents are verified through SAVE and regularly updated. Another individual recommended more frequent, targeted compliance checks focused on high-error rate jurisdictions and credential processing procedures.

An individual stated that those who attended CDL school, passed exams and English proficiency tests with success, and are in normal immigration proceedings with USCIS should have their CDLs issued again by SDLAs.

Another individual suggested going back to the 50-mile radius limit within U.S. borders for non-domiciled CDL holders, stating that this would improve safety, increase wages for drivers, and limit drug and human trafficking.

An individual stated that having a green card or passport does not guarantee that a driver will be safe on the road. They said that only drivers with legal status in the United States who can prove their knowledge and skills should qualify for a CDL. Another individual stated that primary residency should be a minimum requirement. The California Bus Association wrote that drivers should be evaluated based on competence, performance, and safety compliance and not immigration status. Three individuals said that CDL holding should be based on points, not on immigration status.

STR Bros LLC and multiple individuals suggested that instead of a blanket restriction on non-domiciled CDLs, the agency should implement more targeted measures to address safety concerns, including enhanced

English language testing, additional safety checks, or focusing enforcement on drivers with poor safety records. Multiple individuals wrote that instead of restricting non-domiciled CDLs, FMCSA should prioritize auditing trucking schools, State Departments of Motor Vehicles (DMVs), and drivers at weigh stations to ensure proper qualification and compliance. Multiple individuals suggested that drivers should be evaluated based on their individual driving records, safety performance, and compliance history, rather than their immigration status. Golden Rolls Trucking Inc. and five individuals proposed that FMCSA concentrate on addressing issues such as hours-of-service violations, ELD manipulation, and other safety-related behaviors rather than targeting drivers based on their immigration status. ETA Trans Inc., Roadking Freightline, and multiple individuals wrote that enforcing stricter training requirements, implementing more rigorous testing procedures, and improving the quality of CDL training programs nationwide would be more effective approaches to addressing safety concerns. Five individuals also expressed support for stricter retesting requirements. Relatedly, four individuals stated that FMCSA should improve CDL training requirements for all drivers if the true concern is safety. Five individuals wrote that issues with how certain States issued non-domiciled CDLs could be addressed by improving verification systems. Prime Transport and multiple individuals recommended implementing English proficiency tests.

Multiple individuals suggested ending the issuance of non-domiciled CDLs altogether to address deflating wages and safety concerns. Many individuals stated that the IFR did not go far enough in restricting eligibility, and that only U.S. citizens and green card holders should be able to hold a CDL.

FMCSA Response

FMCSA has already taken the action in many of the areas suggested as alternative approaches. Some commenters mention taking actions that are not in the scope of this rulemaking, which the agency does not believe are appropriate for this final rule to address. FMCSA disagrees with individuals who stated that FMCSA failed to consider reasonable alternatives to the rule that would have been less restrictive. As discussed below in X.A., the agency specifically considered a range of options and determined that there are no alternatives that would be reasonable

for the States to implement and administer.

FMCSA does not agree with commenters that non-domiciled CLPs and CDLs should not be issued at all and has sought a framework that balances the need for adequate vetting of a driver's safety fitness while still allowing access to non-domiciled CLPs and CDLs for some individuals. In addition, the agency is not restricting non-domiciled licenses further or and reiterates that the final rule does not apply retroactively.

One commenter believed strengthening SAVE was an option, however, SAVE is not a system administered by DOT. Therefore, FMCSA has no control over the development or maintenance of the system. If this commenter intended to say that FMCSA could ensure States use SAVE more effectively, the States have already demonstrated that they are not capable of doing so on a large scale, as highlighted by the findings from the APRs. Because relying on more effective use of Save by SDLAs is not practicable based on the issues with relying solely on SAVE, more restrictive regulations limiting and clarifying the scope of individuals eligible for non-domiciled CLPs and CDLs are necessary to ensure roadway safety by not allowing ineligible drivers to operate CMVs.

FMCSA notes that this rulemaking is a systemic safety improvement. Moreover, it is part of a constellation of actions the agency has taken, and continues to undertake, that focus on systemic safety improvements.

b. Additional Oversight of SDLAs

AWM Associates, LLC, Representative Josh Harder, the City of Manteca, Safety Management Inc., and numerous individuals suggested better enforcement would be the most effective way of achieving the goals set out in the IFR. The City of Manteca expressed support for ensuring proper issuance of CDLs by SDLAs. AWM Associates, LLC and numerous individuals described issues with State CDL office implementation. NJSBCA requested development of a re-certification process for States' non-domiciled CDL programs to verify compliance with Federal requirements. NJSBCA asked for a verification framework to ensure expedited review of compliance for non-domiciled CDLs or CLPs for essential service providers such as school bus drivers. Accion Opportunity Fund suggested that instead of the IFR, State non-compliance would be better addressed with Federal technical assistance to upgrade SDLA data systems and for digital document

retention and SAVE integration; staff training with non-compliance penalties; and multilingual outreach materials to educate small carriers and drivers on compliance. Accion Opportunity Fund suggested a targeted grant or technical assistance program to help with these upgrades for SDLAs, which vary widely in capacity and technology. ATA said further strengthening Federal and State oversight of all CDL training, testing, and issuance is a crucial step to help identify and correct improper licensing practices, ensure verification of Federal qualifications before issuance, and support the removal of noncompliant training providers.

ATA also urged FMCSA to improve tracking of the number of new CDLs issued annually on a State-by-State basis, including non-domiciled CDLs. An individual recommended addressing operational gaps with fallback measures, measurable benchmarks, and harmonized workflows, all of which would help SDLAs implement the new standards effectively.

FMCSA Response

FMCSA continues to review SDLA implementation through the APR process. In addition, the agency will continue to utilize its oversight authorities and support mechanisms, such as grants, to support SDLAs in implementing the requirements in this final rule to the extent practicable.

c. Additional Enforcement Measures

Numerous individuals suggested that stricter penalties for violations would be a more effective approach for addressing safety. Martin Luther King County requested that FMCSA more actively enforce pre-existing CDL requirements. An individual stated that if a person obtained a fraudulent CDL, they along with the entity that issued them the license, should be prosecuted. An individual wrote that individuals, including those in law enforcement, that allow foreign persons to drive with illegal licenses should be held accountable. Similarly, an individual stated that accountability belongs to the agency that issued the CDL improperly, but not with law abiding drivers. An individual wrote that non-domiciled CDLs should not be banned, but that the government should investigate fake licenses and suspend all work authorized licenses in California.

FMCSA Response

FMCSA has already been engaged in enforcement of the non-domiciled regulations through the APR process, as discussed above in VI.A.3.a. The agency

will continue to enforce the FMCSRs to promote safety.

d. Safe Driving History and Grandfathering

Several individuals expressed that the IFR will negatively impact individuals who have been driving safely for years and who have obtained their licenses through proper legal channels. Two individuals wrote that they support the focus on improving safety but stated that there are many drivers who have not broken any rules and need CDLs to support themselves and their families. The Asian Law Caucus, the Joint Organization comment, and numerous individuals provided personal anecdotes or discussed that many non-domiciled drivers have worked for years without violations, have worked for years without tickets, have not been in any accidents, have a history of clean inspections, do not have criminal records, or are experienced professionals with previous driving experience in other countries before working in the United States. Numerous individuals expressed concern that drivers impacted by the IFR follow the rules and care about safety. The California Bus Association stated that revoking or restricting the ability of non-domiciled CDL holders to work ignores documented histories of safe operation. Four individuals reasoned that not all immigrants are violators or irresponsible drivers.

Many individuals requested that FMCSA grandfather in existing CDL holders, or people who are in the process of obtaining their CDLs. An individual stated that adding this protection for existing non-domiciled CDL holders, at least for the duration of their current license term, balances security with fairness and prevents needless harm to hard-working individuals. Two individuals said that drivers that have held a CDL for more than 2 years with a clean record must be allowed to renew their licenses. An individual suggested that drivers with clean safety records and neither drug nor alcohol violations should be temporarily grandfathered and required to pass expedited, standardized re-testing within 6 months. An individual requested clarification regarding grandfathering for current non-domiciled CDL holders.

FMCSA Response

Grandfathering existing non-domiciled CLP and CDL holders would contradict the purpose of this rule. These drivers obtained their licenses under the prior regulations and their safety fitness was not adequately

verified by SDLAs as they would be under the enhanced procedures for the employment-based nonimmigrant statuses included in this final rule. Allowing those individuals to retain their non-domiciled CLPs and CDLs would continue to allow unvetted drivers to operate CMVs, which is the exact problem this rule is intended to address.

In addition, the recommended provisions or exceptions for drivers with clean driving records would unduly burden and complicate the administration of the CDL regulations in a system that was already failing to administer the less complicated approach properly. This rule closes a critical safety gap in FMCSA's regulations and necessarily narrows the eligibility to those employment-based nonimmigrant categories that can be appropriately vetted without creating an unworkable framework for the SDLAs.

Finally, a non-domiciled CDL is inextricably tethered to the holder's underlying temporary immigration status. That status is, by definition, finite, revocable, and subject to change at the discretion of federal immigration authorities. The agency cannot be held to grandfather a population of drivers whose very eligibility was conditional from the moment of issuance. To find otherwise would be to convert a temporary regulatory privilege into a permanent right.

9. Other General Comments

a. English Language Proficiency (ELP)

Numerous individuals discussed that the IFR disproportionately impacts non-English speaking drivers. Some individuals expressed concern about non-domiciled drivers' inability to read and understand English. Multiple individuals described situations where drivers missed important safety warnings, speed limits, weight restrictions, and construction zone notifications because they could not comprehend the highway signs. Five individual commenters mentioned that this inability to understand signs led to dangerous situations, including wrong-way driving and illegal maneuvers. Similarly, America First Legal Foundation and two individuals described incidents where drivers took routes prohibited for trucks, attempted dangerous U-turns, or failed to slow down in construction zones because they could not read the warning signs. Three individuals stated that they had personally intervened to prevent accidents caused by non-domiciled drivers who misunderstood signage.

Six individuals mentioned communication barriers as a significant safety concern. Five individuals described situations where non-domiciled drivers were unable to communicate with law enforcement, emergency responders, shippers, receivers, and other drivers. Three individuals shared experiences of non-domiciled drivers using translation apps or requiring interpreters for basic interactions, which they viewed as inadequate for emergency situations. Two individuals expressed concern that in emergency situations, these communication barriers could prevent timely response or coordination.

Representative Josh Harder, Taj motors, and many individuals suggested that FMCSA should pursue increased ELP testing rather than restrictions based on immigration status to address the goals of the IFR. Numerous individuals suggested specific ELP tests like International English Language Testing System or Test of English as a Foreign Language. AWM Associates, LLC stated that 49 CFR 383.133(c)(5) requires CDL skills tests to be conducted in English. Two individuals said that when licenses come up for renewal, the driver should be required to pass an English test. An individual stated that enforcement of English language requirements in 49 CFR 391.11(b)(2) has varied widely across States. AWM Associates, LLC stated that the issue of drivers lacking English proficiency stems from non-compliance by States and FMCSA in following the FMCSRs.

FMCSA Response

Commenters correctly point to the ELP requirement in 49 CFR 391.11(b)(2) and the requirement in 49 CFR 383.133(c)(5) for CDL skills tests to be conducted in English. The ELP requirement in 49 CFR 391.11(b)(2) has been in place for decades and interstate drivers, regardless of their nationality, have been required to meet those requirements. As stated above, the enhanced screening and vetting procedures from the U.S. Department of State require "that applicants can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records." This requirement ensures that non-domiciled drivers can meet the driver qualification requirements of § 391.11(b)(2) and possess the basic English skills necessary to operate a CMV safely.

In addition, FMCSA has taken actions outside of this rulemaking to address

the ELP requirement in § 391.11(b)(2). In May 2025, FMCSA issued a new internal policy memo and a guidance question on ELP to clarify the enforcement of ELP violations.⁶⁹

b. Training and Testing Requirements

ATA stated that FMCSA's safety monitoring, auditing, and enforcement actions need to increase to address limitations in the Training Provider Registry (TPR) to shield prospective drivers and the public from fraudulent and non-compliant training entities.

An individual elaborated stating that the requirements for truck driving schools do not ensure safe drivers because schools just teach students to pass the test without offering any real-world experience. Similarly, another individual expressed concern that critical checks in schools are often skipped and large companies without proper oversight increase safety risks. Another individual wrote that CDL driving schools should be investigated for corruption. An individual stated that some Class A training programs have been shortened to meet industry demand, often preparing students for the test but not for real-world scenarios such as mountain driving, winter weather, jackknife risks, or backing long trailers.

FMCSA Response

These comments on training and testing requirements are not within the scope of the rulemaking because they do not impact the scope of drivers eligible for non-domiciled CLPs and CDLs under the IFR and final rule. FMCSA does however want to highlight for commenters that the agency is taking other actions on these concerns and has specifically taken enforcement actions against nearly 6,700 training providers for not meeting the Entry Level Driver Training standards found in the FMCSRs, and is considering other actions to strengthen training and testing standards and provide greater oversight of CDL schools and testing facilities.

c. General Safety

ADK TRANS LLC and many individuals expressed that the rule prevents crashes and saves lives by ensuring only qualified drivers operate CMVs. Multiple individuals mentioned that the rule restores integrity to the CDL issuance process and protects the public from unqualified drivers. One

⁶⁹ See FMCSA-DQ-391.11-FAQ001(2025-05-22), available at <https://www.fmcsa.dot.gov/regulations/what-should-motor-carrier-do-assess-cmv-drivers-english-language-proficiency-elp-during>.

individual stated that the rule will ensure that the higher standards for obtaining a CLP or CDL, compared to a regular license, are acknowledged since obtaining such credentials requires extensive training, expenses, and passing certain tests to ensure proper use relative to the higher risk. Two individuals expressed that the rule will reduce the number of crashes involving CMVs. America First Legal Foundation and six individuals mentioned specific fatal crashes that could have been prevented if stricter CDL requirements had been in place earlier. America First Legal Foundation stated that States are violating Federal law by not enforcing critical CDL and CLP standards and the rule will reduce Americans' risk of injury on roadways by reducing the number of noncompliant drivers of large trucks.

CPAC Foundation's Center for Regulatory Freedom said the decision to narrow non-domiciled CLP and CDL eligibility to only those law-abiding citizens with lawful immigration status will improve the overall safety of America's roadways and further strengthen the Federal Government's larger efforts to identify and apprehend threats to the national security of the United States.

Five individuals described witnessing non-domiciled drivers engaging in reckless driving behaviors, including speeding, tailgating, improper lane changes, and aggressive driving. Six individuals said reckless behavior resulted in near-misses and hazardous situations, particularly in construction zones or adverse weather conditions. Several individuals expressed concern that non-domiciled drivers lack proper training and qualifications to operate commercial vehicles safely in the United States. Seven individuals believe non-domiciled drivers have an inadequate understanding of U.S. traffic laws, insufficient experience with American roadway conditions, and limited familiarity with industry standards and practices. Six individuals expressed concern that some drivers received minimal training before being placed in charge of large CMVs. Two individuals mentioned "CDL mills" that allegedly provided inadequate training to non-domiciled drivers, focusing only on helping them pass licensing tests rather than developing comprehensive skills.

FMCSA Response

As discussed throughout the comment responses above the primary purpose of the IFR and this final rule is to ensure that all CMV drivers are subject to sufficient vetting to ensure that non-

domiciled drivers are as safe as practicable before allowing them to operate CMVs on our roadways. This rule rectifies a bifurcated safety standard that currently subjects domestic and foreign drivers to different standards, which compromises public safety. While domestic driving records are obtained through established systems (outlined earlier in this final rule), no comparable, credible, or standardized source of foreign driving data exists for non-domiciled applicants. SDLAs are fundamentally incapable of performing the driver's record checks required by 49 CFR 383.73(b)(3) for foreign nationals. Consequently, non-domiciled applicants are effectively vetted against a materially lower standard, with their foreign driving histories—including disqualifying offenses or crashes—remaining entirely unknown. This regulatory blind spot permits individuals with potentially poor safety records or permanently disqualifying convictions to obtain non-domiciled CDLs, placing all roadway users at risk. Heightened interagency Federal vetting is therefore the only mechanism available to approximate the domestic safety standard and mitigate the risk of licensing unverified foreign-domiciled drivers.

The employment-based nonimmigrant categories that are eligible for a non-domiciled CLP or CDL under this final rule are the only nonimmigrant statuses that have vetting of an individual's safety risk associated with driving a CMV sufficiently similar to the requirements for U.S.-domiciled applicants. The relevant vetting that occurred through the visa application and labor certification processes for the eligible nonimmigrant status holders were thoroughly detailed in the IFR.⁷⁰ In addition to the thorough vetting process detailed in the IFR, the U.S. Department of State has recently implemented enhanced vetting processes for non-domiciled drivers entering the United States, as discussed in the responses to comments above. The enhanced vetting procedures ensure that individuals seeking entry to the United States under these employment-based nonimmigrant categories for the purposes of driving a CMV can meet ELP requirements, show proof that they can properly operate a CMV, and meet other requirements under the FMCSRs (such as not having a disqualifying conviction on their driving record). These additional steps in the vetting and verification process for non-domiciled individuals ensure that the

employment-based nonimmigrant categories allowed to obtain non-domiciled CLPs and CDLs under this final rule are subject to the most stringent standards possible, just as their U.S. domiciled counterparts.

No additional nonimmigrant categories will be allowed to obtain a non-domiciled CLP or CDL under this final rule. The limited scope of nonimmigrant categories subject to the heightened vetting processes limits the scope of individuals who can be given a non-domiciled credential with a sufficient degree of confidence in their ability to drive safely on the Nation's roadways. Commenters were unable to present any process comparable to the vetting process for individuals seeking H-2A, H-2B, and E-2 nonimmigrant statuses laid out in the IFR for any other nonimmigrant status, and further fail to present anything comparable to the heightened vetting procedures that have since been implemented by the U.S. Department of State. Without evidence of a comparable process for any other nonimmigrant categories, FMCSA cannot include any other categories of nonimmigrants as eligible for non-domiciled CLPs and CDLs while ensuring the same level of safety granted by the U.S. Department of State vetting. The comments submitted on the IFR do not present any practicable alternative that can adequately account for the lack of driving history for non-domiciled drivers.

d. General Support/Opposition

The California Bus Association, the Sikh Coalition, and numerous individuals expressed concern that the IFR will unfairly strip non-domiciled drivers who lawfully obtained their CDLs of their ability to work due to the mistakes of other immigrants. The American Federation of Labor & Congress of Industrial Organizations (AFL-CIO) and numerous individuals stated that the IFR is not safety policy, but rather discrimination based on national origin. An individual remarked that changing the rules now unjustly penalizes people who have built their lives and careers under the previous standards. Some individuals said that the IFR could be considered a discriminatory measure by limiting access to a means of livelihood for a specific population without offering alternatives.

Numerous individuals expressed concern that the IFR infringes on human rights or the rights of vulnerable communities. An individual stated that legal work is everyone's right. Numerous individuals remarked that non-domiciled drivers have proven their

⁷⁰ See 90 FR 46515–46516.

commitment or dedication to serving the country. AFL-CIO and multiple individuals stated that these drivers are hardworking, law-abiding individuals who contribute to communities and keep goods moving across America. The Sikh American Legal Defense and Education Fund (SALDEF) remarked that the IFR will prevent many qualified individuals from getting their licenses. Two individuals expressed concern that immigrants willing to work for the good of the country will be forced to leave as a result of the IFR. Numerous individuals stated that they did not come to the United States to receive handouts, special treatment, or other financial support from the Federal Government. Numerous individuals provided personal anecdotes discussing that they came to the United States to save themselves and their families from war or political persecution in other countries. Justice at Work stated that the IFR will make it more difficult for the vulnerable population of immigrant drivers to rebuild their lives in recovering from unstable and oppressive circumstances.

Numerous individuals expressed concern that the IFR creates unnecessary barriers for current and future non-domiciled CDL holders without improving safety. Specifically, one individual discussed that the IFR may create hardship for individuals with limited income, education, or resources trying to become drivers. Multiple individuals stated that the IFR equates lawfully present immigrants that follow all legal procedures with illegal immigrants or criminals.

Numerous individuals stated that non-domiciled drivers deserve equal opportunity. Three individuals stated that laws should protect opportunity and fairness, not take them away. An individual stated that imposing categorical restrictions without evidence that citizenship correlates with safety raises concerns of unequal protection and selective enforcement. Five individuals stated that the IFR should not come at the cost of experienced, responsible professionals. Six individuals specifically requested that FMCSA focus on fair treatment for all drivers. One individual requested that DOT align the IFR with Federal immigration law.

Numerous individuals stated that they are immigrants with legal status in the United States, such as pending immigration cases with valid work authorizations, and therefore are lawful CDL holders. Multiple individuals questioned why immigrants with the legal right to live and work in the United States will no longer be able to

obtain a CDL. The Joint Organization comment and numerous individuals added that granting CDL renewal for individuals with legal work authorization is a matter of economic stability and public interest. Numerous individuals provided personal anecdotes or discussed that many non-domiciled CDL drivers have waited for years for their immigration cases to be heard in court. One individual remarked that the IFR punishes non-domiciled drivers for an immigration process outside of their control. Another individual reasoned that the options proposed in the IFR for non-domiciled drivers to obtain a green card, U.S. passport, or specific employment-based visas are unrealistic for most individuals due to timing and accessibility issues.

Numerous individuals discussed that they completed CDL training or passed required testing in the United States. Many individuals stated that they speak English, which supports their ability to understand road signs, follow traffic laws, or communicate with law enforcement.

The American Federation of State, County and Municipal Employees (AFSCME), the Asian Law Caucus, Justice at Work, the Joint Organization comment, and numerous individuals expressed concern that the IFR would threaten the livelihoods and well-being of legal CDL holders. Numerous individuals stated that the IFR would lead to financial hardship for non-domiciled drivers. Numerous individuals also discussed that non-domiciled drivers support essential industries, or that they need their CDLs to survive. Numerous individuals stated that trucking is their only source of income.

Relatedly, three individuals expressed concern that the IFR could push non-domiciled drivers to pursue work lacking in regulatory oversight. Numerous individuals requested that FMCSA not take away jobs.

SALDEF and numerous individuals expressed general concern that the IFR will subject thousands of families to serious difficulties or leave them without income. Numerous individuals also stated that the IFR could leave drivers and their families homeless. Numerous other individuals expressed concern that the IFR will subject families to poverty or hunger. AFSCME, the Asian Law Caucus, and numerous individuals provided personal anecdotes or discussed that CDLs allow non-domiciled drivers to support their families. A joint comment between organizations supporting immigrants stated that, on top of existing U.S.

Citizenship and Immigration Services (USCIS) delays in processing work authorizations, the IFR will worsen the ability of impacted drivers to provide for their families. Justice at Work and numerous individuals provided personal anecdotes or discussed that many non-domiciled CDL drivers are the sole providers for their families. Many individuals expressed concern that they and their children rely on a family member's CDL for income, which in turn supports housing, food, or stability.

Many individuals stated that the IFR will harm or impact the ability of non-domiciled individuals to provide for U.S. citizen children. Numerous individuals discussed that the income earned from non-domiciled CDLs pays for their children's education. One individual stated that the IFR undermines efforts in the school transportation sector to integrate immigrants into their communities through driving and to ensure children have a safe and reliable way to get to school. Another individual added that not being able to afford education expenses could reduce the number of future doctors, engineers, scientists, and professionals available to serve America. Multiple individuals also discussed that some non-domiciled drivers use their CDL income to pay for childcare or activities for their kids, such as sports programs. An individual expressed concern that their family will be forced to leave the country because of a lack of work, which would cause enormous stress for their children. Another individual expressed concern that a lack of work for non-domiciled drivers could contribute to other mental health issues like depression, anxiety, and post-traumatic stress disorder for both children and spouses. Numerous individuals expressed concern that without a CDL, they will not be able to cover healthcare expenses or medical bills for their families. Relatedly, eight individuals stated that the income from a non-domiciled CDL helps to support their elderly parents.

Multiple individuals expressed general concern regarding the ability of non-domiciled CDL holders to afford payments without a job. Relatedly, some individuals expressed concern that the IFR will take away non-domiciled drivers' ability to live with dignity, independence, or safety. USW and some individuals discussed that the income or work from CDLs allows non-domiciled drivers to contribute to the economy. Multiple individuals also stated that they want or have worked to integrate into American society. Numerous individuals expressed

concern that without the ability to work, non-domiciled CDL holders will not be able to cover basic expenses such as rent and living costs. Some individuals provided personal anecdotes or discussed that many non-domiciled drivers consistently pay their mortgages and credit obligations. Six individuals stated that inability to meet these financial obligations could lead to increased foreclosures of homes.

Another individual stated the IFR will also impact their ability to make other payments, including for: utilities, mobile service and internet, clothing, household goods, electronics, groceries, car loans and maintenance, and fuel. Numerous individuals provided specific cost data totaling several thousand dollars per month or year for expenses such as taxes, mortgages or homeowners' association fees, personal vehicles, childcare, and family education. One individual stated that the income from their CDL provides the means to afford the legal fees related to their immigration case and residency application. Numerous individuals requested that non-domiciled drivers be able to continue to work, contribute to the economy, or build a better future.

Multiple individuals questioned what they are supposed to do or where they should go without their CDLs. One individual expressed concern that they will have to change their profession and start from scratch. Another individual stated there are no other jobs to help them pay their bills. Multiple individuals discussed that they take pride in or love their professions as commercial drivers. Relatedly, six individuals discussed that the IFR will take away the lifestyle that trucking provides.

Multiple individuals expressed concern that the IFR will have real consequences for ordinary people. USW and numerous individuals also discussed that the IFR has left non-domiciled drivers feeling depressed, stressed, or scared. The Sikh Coalition stated that the IFR presents cascading harm at multiple levels of society, depriving individual drivers and families of their livelihoods while creating confusion, increasing the well-documented strain on remaining drivers, and undermining public safety. They discussed that Sikh truck drivers have faced a surge in harassment following the issuance of the IFR, undermining drivers' sense of safety and belonging. An individual expressed concern how the IFR may affect religious minorities.

Dev Trucking, MMAB Trans Inc., and numerous individuals, expressed general opposition to the IFR. The

National Education Association stated the IFR is discriminatory, arbitrary, and capricious. Multiple individuals called for the IFR to be withdrawn, arguing that it will have negative impacts. TOSAM LLC and several individuals asked FMCSA to reconsider the IFR and better examine the consequences of its implementation.

STR Bros LLC and multiple individuals stated that the rule unfairly targets individuals who are legally present and authorized to work in the United States. Multiple individuals said that these drivers have valid work permits, paid taxes, and follow all applicable laws and regulations.

Multiple individuals addressed the safety rationale behind the IFR, questioning whether immigration status is a valid indicator of driving safety. An individual wrote that they are not opposed to tighter regulations but some businesses rely on truckers.

Multiple individuals expressed the need for the IFR, citing concerns about fraud and lack of integrity in the CDL issuance process for non-domiciled drivers.

Two individuals suggested that a comprehensive audit of all non-domiciled CDLs should be conducted to verify their legitimacy. An individual further stated that this review of non-domiciled licenses is needed to improve safety on the roads. Two individuals expressed frustration that they had to comply with strict requirements to obtain and maintain their CDLs while they perceived others were circumventing the system.

Three individuals expressed concern that the non-domiciled CDL program was being used to exploit foreign labor, driving down wages in the trucking industry. An individual described scenarios where non-domiciled drivers were being pressured to violate safety regulations due to their vulnerable status.

An individual also expressed concern that the IFR could create inconsistent standards across States. Similarly, an individual wrote that if States do not have the same standards, unqualified applicants will flock to States with lower standards.

While commending FMCSA's efforts, ATA supported a holistic approach to CDL credentialing and CMV safety. The commenter suggested that additional targeted reforms will further reinforce CDL testing and issuance standards and strengthen the broader safety framework around commercial driver qualification and vetting.

An individual stated that by restricting eligibility for non-domiciled CDLs to lawful employment-based

nonimmigrant categories and mandating SAVE verification, FMCSA is restoring the credibility of a credential that underpins the safety of every road in America.

FMCSA Response

Again, as discussed throughout the comment responses above, the primary purpose of the IFR and this final rule is to ensure that all CMV drivers are subject to sufficient vetting to ensure that non-domiciled drivers are as safe as practicable before allowing them to operate CMVs on our roadways. FMCSA has detailed in the comment responses above why this final rule is necessary to achieve the agency's goal of safety. The individual concerns and impacts raised in these comments do not outweigh the safety benefits that will be realized under this final rule.

VII. Changes From the IFR

FMCSA makes minor changes from the IFR. Most of the changes are technical in nature and are intended to increase clarity. First, the agency revises the definition for *evidence of lawful immigration status* to require an unexpired Admit Until Date on a Form I-94/94A instead of requiring an unexpired Form I-94/94A. This technical change reflects language used by DHS when referring to the period of validity for a Form I-94/94A.

The second revision made in this final rule is the addition of clarifying language to 49 CFR 383.73(f)(2)(iv) that provides that a State must never issue a non-domiciled CLP or CDL with a period of validity longer than one year. This change is also a technical revision to increase clarity and ensure that there is no confusion regarding the maximum validity period for a non-domiciled CLP or CDL. In addition, FMCSA corrects a cross-reference to paragraph (1)(ii) of the definition of *evidence of lawful immigration status* in section 383.73(f)(5). There was a typographical error in the definition cross-referencing paragraph (1)(iii) in the IFR.

Paragraph (f)(6) of section 383.73 is revised to clarify that every non-domiciled CLP or CDL issuance (which includes amending, correcting, reprinting, or otherwise duplicating a previously issued CLP or CDL), transfer, renewal, or upgrade be conducted in-person only and that issuance, transfer, renewal, or upgrade by mail or electronic means is not allowed. This additional language further clarifies what was plainly stated in the IFR regarding the in-person requirements for the non-domiciled licensing process.

The heading of section 383.73(m)(2) and text of section 384.212(a)(1)(i) are

revised to reference retention in addition to document verification. In addition, section 383.212(a)(1)(ii) is deleted and paragraph (iii) is renumbered to (ii). These changes reflect a clarification of the documentation verification and retention requirements in these sections while removing the duplicative paragraph at section 383.212(a)(1)(ii). These changes do not alter any of the regulatory requirements.

In addition, FMCSA makes a clarifying edit to the parenthetical that follows issue, issuing, and issuance in various sections amended by the IFR. The parenthetical in the IFR included amending, correcting, reprinting, or otherwise duplicating a previously issued CLP or CDL. The agency adds reinstating to that list to ensure complete clarity to the regulated public in the list of actions considered to be issuance of a non-domiciled CLP or CDL. This change does not add a substantially new regulatory requirement from the IFR since a reinstatement would likely be the same as an upgrade, reissuance, or one of the categories of actions in the parenthetical for issuance under the IFR.

Finally, FMCSA updates the dates in sections 383.73(f)(3)(ii)(A) and 384.301(q) to the effective date of this final rule.

VIII. International Impacts

Motor carriers and drivers are subject to the laws and regulations of the countries where they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences between nations in which they operate.

This rule will not impact drivers domiciled in Canada or Mexico. FMCSA has previously determined that CDLs issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code and “Licencias Federales de Conductor” issued by the United Mexican States are in accordance with the standards of 49 CFR part 383. Under these reciprocity determinations, drivers that live in Canada and Mexico would operate in the United States with the license issued by their country of domicile. Therefore, under the single license provision of section 383.21, a driver holding a CDL issued under the Canadian National Safety Code or a “Licencia Federal de Conductor” issued by Mexico is prohibited from obtaining a non-domiciled CDL, or any other type of driver’s license, from a State or other jurisdiction in the United States.

IX. Section-by-Section Analysis

This section-by-section analysis describes the changes to the regulatory text in numerical order.

A. Regulatory Provisions

Section 383.5 Definitions

FMCSA amends the definition for *evidence of lawful immigration status* by revising paragraph (1)(ii) to require “an unexpired Admit Until Date” on a Form I-94/94A instead of requiring “an unexpired Form I-94/94A.”

Section 383.73 State Procedures

FMCSA revises paragraph (f)(2)(iv) to add language which provides that a State must never issue a non-domiciled CLP or CDL with a period of validity longer than 1 year. In addition, in paragraph (f)(5), the agency replaces a cross-reference to paragraph (1)(iii) of the definition of evidence of lawful immigration status with a cross reference to paragraph (1)(ii).

Paragraph (f)(6) of § 383.73 is revised to clarify that every non-domiciled CLP or CDL issuance (which includes amending, correcting, reprinting, *reinstating*, or otherwise duplicating a previously issued CLP or CDL), transfer, renewal, or upgrade be conducted in-person only and that issuance, transfer, renewal, or upgrade by mail or electronic means is not allowed.

The heading of § 383.73(m)(2) is revised to reference retention in addition to document verification.

The word “reinstating” is added to the parentheticals after “issue,” “issuing,” or “issuance,” as appropriate in paragraphs (f)(3)(ii)(A), (f)(3)(ii)(B), (f)(5), (m)(2), (m)(2)(i), (m)(2)(ii), and (m)(2)(iii). The effective date in paragraph (f)(3)(ii)(A) is revised to match the effective date of this final rule.

Section 384.212 Domicile Requirement

FMCSA revises paragraph (a)(1)(i) to reference retention in addition to document verification. In addition, paragraph (a)(1)(ii) is removed and paragraph (a)(1) (iii) is redesignated as (a)(1)(ii). The word “reinstating,” is added to the parenthetical after “issuing” in paragraph (a)(1)(i).

Section 384.301 Substantial Compliance-General Requirements

Paragraph (q) is amended by adding the word “reinstating,” is to the parenthetical after “issuing” and the effective date is revised to match the effective date of this final rule.

B. Guidance Statements and Interpretations

This final rule amends a regulation that has associated guidance statements. Such guidance statements do not have the force and effect of law, are strictly advisory, and are not meant to bind the public in any way. Conformity with guidance statements is voluntary. Guidance is intended only to provide information to the public regarding existing requirements under the law or FMCSA policies. A guidance statement does not alter the substance of a regulation. The guidance and interpretation(s) that follow were rescinded via an interim final rule (IFR) published on September 29, 2025 (90 FR 46509, 46517), but remained in effect due to a stay order issued by the U.S. Court of Appeals for the District of Columbia on November 13, 2025. The stay paused the effective date of the IFR, which reinstated the guidance below.

Therefore, FMCSA now re-rescinds the following guidance:

1. FMCSA-CDL-383.23-FAQ001(2023-05-08):⁷¹

FMCSA rescinds this guidance document, which refers to individuals present under the DACA immigration policy as citizens of Mexico. It is no longer applicable under the new requirements to provide evidence of legal status.

2. FMCSA-CDL-383.23-Q1:⁷²

FMCSA rescinds this guidance document, which refers to foreign drivers with employment authorization documents. Foreign drivers must meet the new requirements in this rule to obtain non-domiciled CLPs and CDLs and the rest of the guidance is unnecessary as it is simply a restatement of what is already explained in footnote 1 to 49 CFR 383.23.

3. Nomenclature for Non-Domiciled CLPs and CDLs

In addition, some SDLAs were operating under informal guidance previously issued by FMCSA that permitted States to refer to their non-domiciled credentials under different nomenclature. FMCSA notes that during the 2025 APRs, SDLA use of these disparate terms generated confusion for some SDLAs because it made it difficult to determine whether the State did in fact issue non-domiciled credentials in the first place. This final rule

⁷¹ <https://www.fmcsa.dot.gov/registration/commercial-drivers-license/may-state-drivers-licensing-agency-sdla-issue-non-domiciled>.

⁷² <https://www.fmcsa.dot.gov/registration/commercial-drivers-license/may-foreign-driver-employment-authorization-document-obtain>.

supersedes any past guidance on this issue and clarifies that sections 383.73(f)(2)(ii) and 383.153(c) require that the word “non-domiciled” appear across a CLP or CDL and must “be conspicuously and unmistakably displayed” on the face of the CLP or CDL when a State issues a non-domiciled CLP or CDL. States may not use other nomenclature (such as “limited term” or “temporary”) as a substitute for “non-domiciled,” use restriction codes that require the examination of fine print on the back of the license as a substitute for “non-domiciled” on the face of the credential, or use any other alternatives to conspicuously and unmistakably displaying “non-domiciled” on the face of the CDL or CLP.

X. Regulatory Analyses

A. E.O. 12866 (Regulatory Planning and Review), and DOT Regulatory Policies and Procedures

OMB has determined that this rulemaking is a significant regulatory action under E.O. 12866 (58 FR 51735), Regulatory Planning and Review, because of the substantial Congressional and public interest concerning issuance of non-domiciled CLPs and CDLs. The rulemaking is also significant under DOT Order 2100.6B, Policies and Procedures for Rulemakings.⁷³

This final rule amends the Federal regulations for SDLAs issuing commercial driving credentials to foreign-domiciled individuals. Through this rulemaking, FMCSA restores the integrity of the CDL issuance processes by significantly limiting the authority for SDLAs to issue and renew non-domiciled CLPs and CDLs to individuals domiciled in a foreign jurisdiction.

The analysis below discusses the affected entities, the need for the regulation, and the costs, benefits, and transfers that may result from this final rule. FMCSA has not made significant changes to the RIA that was prepared for the IFR. This RIA provides additional detail on the impact to motor carriers and drivers that could result from the rule, provides more information regarding the CDL composite wage rate, and more detail surrounding underlying analysis inputs. Most notably, as discussed below, FMCSA found evidence suggesting that most foreign-domiciled CDLs were likely issued with five-year expiration dates and updated this assumption from the two-year expiration date in the IFR. The analysis

includes additional crashes that have been identified since the publication of the IFR.

Analysis Inputs

Baseline

OMB circular A–4 instructs agencies to identify a baseline, or an assessment of the way the world would look absent the rulemaking such that the costs and benefits of the rulemaking can be defined in comparison to the clearly identified baseline. The choice of baseline is not always simple, and in this case takes careful consideration. The IFR assumed the current environment at the time to be the baseline. That is to say, that the acute systemic problems regarding non-domiciled CDL issuance across the country had not been addressed, and would not have been addressed absent the IFR. Since that time, and as discussed above, many States have been required to pause issuance of all non-domiciled CDLs as part of the corrective action plan for the deficiencies discovered under the APR and others have voluntarily paused issuance of all non-domiciled CDLs to conduct internal audits of their issuance procedures and processes apart from FMCSA’s APR process. The question then becomes whether the baseline should now be the current, post-IFR world where some States are no longer issuing non-domiciled CDLs. FMCSA believes that the States are working diligently to restore integrity to their programs, and other States are waiting to see what actions FMCSA takes in the coming months. This has also been documented in industry publications.⁷⁴ FMCSA thus considers, absent this rulemaking, any pause in non-domiciled CDL issuance to be temporary, with the future reverting back to the pre-IFR standards for issuance. This rule sets out a clearly defined standard for non-domiciled CDL issuance that will remain in effect unless changed by a future rulemaking. Therefore, in order to provide a clear picture of the impact of this policy change, FMCSA has concluded that it is appropriate to use the pre-IFR baseline and estimates the following costs and benefits accordingly.

Wage Rates

FMCSA computes its estimates of labor costs using data gathered from several sources. Labor costs are comprised of wages, fringe benefits, and overhead. Fringe benefits include paid

leave, bonuses and overtime pay, health and other types of insurance, retirement plans, and legally required benefits (Social Security, Medicare, unemployment insurance, and workers compensation insurance). Overhead includes any expenses to a firm associated with labor that are not part of employees’ compensation; this typically includes many types of fixed costs of managing a body of employees, such as management and human resource staff salaries or payroll services. The economic costs of labor to a firm should include the costs of all forms of compensation and labor related expenses.

FMCSA used the driver wage rate to represent the value of the drivers’ time that, in the absence of the rule, would have been spent gainfully employed and performing duties as a CMV driver. The source for driver wages is the median hourly wage data (May 2024) from DOL, BLS, Occupational Employment Statistics (OES).⁷⁵ The CMV driver wage is a weighted average of three occupational codes that require a CDL: 53–3032 Heavy and Tractor-Trailer Truck Drivers, 53–3051 Bus Drivers, School, and 53–3052, Bus Drivers, Transit and Intercity. BLS does not publish data on fringe benefits for specific occupations, but it does for the broad industry groups in its Employer Costs for Employee Compensation release. To calculate the fringe benefits rate, this analysis uses an average hourly wage of \$32.71 and average hourly benefits of \$14.99 for private industry workers in “transportation and warehousing”⁷⁶ to estimate that fringe benefits are equal to 45.83 percent ($\$14.99 \div \32.71) of wages.⁷⁷

⁷⁵ DOL, BLS. *Occupational Employment Statistics (OES)*, National, May 2024, available at: <https://www.bls.gov/oes/tables.htm> (accessed Aug. 27, 2025).

⁷⁶ DOL, BLS. *Table 4: Employer Costs for Employee Compensation for private industry workers by occupational and industry group*, December 2024, available at: https://www.bls.gov/news.release/archives/eccec_03142025.htm (accessed Sep. 9, 2025).

⁷⁷ FMCSA’s standard approach to accounting for the opportunity cost of drivers’ time considers hourly base wage plus fringe benefits, but exclusive of overhead, representing the value to the driver of his or her forgone best alternative (*i.e.*, in the absence of this rule it is assumed these individuals would be working during that time and as such, the analysis values that time at the same amount that they accept in exchange for it, that is, their base wage plus fringe benefits). Including an overhead rate as a component element of the driver wage rate, over and above the base wage and fringe benefits, for the purposes of evaluating the opportunity cost to drivers does not accurately reflect the value as incident upon the driver (because the value of the overhead component of wage rates is not incident upon, nor received as compensation by, the driver, as are base wages and fringe benefits).

⁷³ Available at <https://www.transportation.gov/regulations/dot-order-21006b-policies-and-procedures-rulemakings> (Mar. 10, 2025).

⁷⁴ <https://www.overdriveonline.com/regulations/article/15814539/new-jersey-resumes-nondomiciled-cdl-issuance-after-fmcsa-crackdownZ>.

TABLE 1—CDL HOLDER COMPOSITE HOURLY MEDIAN WAGE RATE AND FRINGE BENEFITS

Occupation (SOC code)	Employment	Hourly median wage	Fringe benefits rate (%)	Median hourly base wage + fringe benefits
Heavy and Tractor-Trailer Truck Drivers (53–3032)	2,070,480	\$27.62	45.83	\$39.19
Bus Drivers, School (53–3051)	387,920	22.62		
Bus Drivers, Transit and Intercity (53–3052)	148,980	27.61		
CDL Holder Composite Wage .....	.....	26.88		

Current CDL holders that will no longer be eligible for a CDL will likely look for employment in other occupations. The following table provides an overview of median hourly wage rates for some occupations that are in transportation or transportation-

adjacent industries for which CDL holders would generally have the necessary skills to be successful, and therefore could be alternatives to positions requiring a CDL, which shows a weighted median wage rate of \$21.62 and a loaded composite wage rate of

\$31.53. FMCSA presents this information for illustrative purposes only and is not suggesting that this is the maximum wage available to non-domiciled CDL holders.

TABLE 2—HOURLY MEDIAN WAGE AND FRINGE BENEFITS FOR NON-CDL REQUIRING OCCUPATIONS

Occupation (SOC code)	Employment	Hourly median wage	Fringe benefits rate (%)	Median hourly base wage + fringe benefits
Shipping, Receiving, and Inventory Clerks (43–5071)	4,900	\$21.74	45.83	\$31.53
Agricultural Equipment Operators (45–2091)	420	23.88		
Construction Equipment Operators (47–2070)	3,420	24.30		
Light Truck Drivers (53–3033)	49,890	21.65		
Cleaners of Vehicles and Equipment (53–7061)	3,760	18.56		
Laborers and Freight, Stock, and Material Movers, Hand (53–7062)	107,290	21.62		
Tank Car, Truck, and Ship Loaders (53–7121)	250	20.68		
Composite Non-CDL Holder Wage .....	.....	21.62		

FMCSA used the wage rate for employees in office and administrative support to represent the value of the SDLA employees' time that, in the absence of the rule, would have been spent performing other duties and responsibilities. The source for SDLA employees' wages is the median hourly wage data (May 2024) from the BLS' OES. To calculate the fringe benefits rate, this analysis uses an average hourly wage of \$25.56 and average hourly benefits of \$18.95 for State and local government workers in "office and administrative support" to estimate that fringe benefits are equal to 74.14 percent ($\$18.95 \div \25.56) of wages. FMCSA uses the Census Bureau's Service Annual Survey (SAS) Table 5 data to calculate overhead expenses and their ratio to gross annual payroll expenses for the North American Industry Classification System (NAICS) 484 (Truck Transportation) and NAICS 485 (Transit and Ground Passenger) industries.⁷⁸

FMCSA reviewed SAS data from 2013 through 2021, finding 2015 to be the most appropriate baseline from which to estimate industry overhead rates. While it is typically preferable to use the most recent information, data from 2020 was an anomalous year with especially high overhead rates, likely due to the COVID–19 pandemic and subsequent business disruptions. For the 2018 and 2019 SAS tables, Census greatly reduced the number of expenses published in Table 5.

Based on the assigned expense categories as overhead, FMCSA followed two steps to calculate the overhead rate. First, FMCSA added together the seven overhead expense categories (expensed purchases of software; data processing and other purchased computer services; purchased computer services; purchased repairs and maintenance to buildings, structures, and offices; lease and rental payments for land, buildings, structures, store spaces, and offices;

purchased advertising and promotional services; purchased professional and technical services; and cost of insurance). FMCSA then divided the sum of the overhead expense categories by gross annual payroll. Following this approach including only the seven expense categories most focused on firm fixed expenses, the 2015 overhead expenses in truck transportation would be \$13.0 billion.⁷⁹ Dividing the \$13.0 billion overhead by \$62 billion gross annual payroll gives a 21 percent overhead rate for NAICS 484. The 2015 overhead expenses in passenger and ground transportation would be \$3.1 billion. Dividing the \$3.1 billion overhead by the \$13 million gross annual payroll gives a 23 percent overhead rate for NAICS 485. FMCSA then combined the expense and payroll categories for both industries to calculate an average transportation industry overhead rate of 21 percent for use in this analysis.

⁷⁸ See SAS Table 5, available at: <https://www.census.gov/programs-surveys/sas/data/tables.html> (accessed: Sept. 10, 2025).

⁷⁹ The seven expense categories included in this overhead estimate are: "Expensed purchases of

software" (\$321 million), "Data processing and other purchased computer services" (\$320 million), "Purchased repairs and maintenance to buildings, structures, and offices" (\$541 million), "Lease and rental payments for land, buildings, structures,

store spaces, and offices" (\$3,067 million), "Purchased advertising and promotional services" (\$507 million), "Purchased professional and technical services" (\$1,782 million), and "Cost of insurance" (\$6,535 million).

TABLE 3—SDLA HOURLY MEDIAN WAGE RATE, FRINGE BENEFITS, AND OVERHEAD RATES

BLS occupation code	Occupation	Hourly median wage	Fringe benefits rate (%)	Overhead rate (%)	Median hourly base wage + fringe benefits	Median hourly base wage + fringe benefits + overhead
43-1011	First-Line Supervisors of Office and Administrative Support Workers.	\$31.80	74.14	21	\$55.38	\$62.05

Average SDLA Fee for License Renewal

FMCSA reviewed fees for CDL renewal across all 51 (50 States and the District of Columbia) jurisdictions and found that renewal fees range from \$5 to \$164.50. The average renewal fee is \$55.28, and FMCSA uses an estimate of \$55 to represent the renewal fee paid by non-domiciled CDL applicants.

Crash Costs

FMCSA uses crash cost values to assess and estimate the safety benefits of various regulatory initiatives. FMCSA publishes its methodology for calculating crash costs for fatal, injury, and non-injury crashes on its website.⁸⁰ The values below incorporate the most recent crash data from the National Highway Traffic Safety Administration, from calendar year 2023, inflated to 2024 values based on the Consumer Price Index for All Urban Consumers.

TABLE 4—CMV CRASH COST, BY CRASH TYPE
[In 2024 dollars]

Crash type	CMV crash costs
Cost per non injury crash	\$52,864
Cost per injury crash	400,025
Cost per fatal crash	15,739,682

Driver Turnover and Churn Rates

Employment turnover and churn are well-documented features of the CMV industry. The 2025 update to ATRI's Analysis of the Operational Costs of Trucking reports that the average driver turnover rate, weighted by sector representation was 48 percent in 2024.⁸¹ Driver turnover in the truckload sector ranges from 44.3 percent to 72.1 percent depending on the size of the carrier. The

OOIDA foundation finds that while driver churn affects large truckload carriers to a greater extent than small carriers, it is endemic to the entire industry, and something that carriers have been managing for many years.⁸² ATA published data showing the over-the-road for-hire truck driver turnover for large truckload carriers ranged from 81 to 90 percent between 2016 and 2020.⁸³ For small truckload carriers, the turnover ranged from 69 to 79 percent. Other sources also highlight these industry trends with Tenstreet reporting that about 30 percent of drivers leave their carrier after 3 months, and only roughly 40 percent stay with that carrier for an entire year.⁸⁴ Outside of the private truckload carriers, many drivers routinely move from carrier to carrier or exit the market based on various factors. This phenomenon is not confined to the trucking industry. The American Public Transportation Association reports that 59 percent of departures happen within the first two years of employment.⁸⁵

Non-Domiciled CDL Expiration Date and Attrition Rate

Properly issued non-domiciled CDLs contain an expiration date in-line with the documentation provided to the SDLA (e.g., EAD). During the APR process FMCSA reviewed thousands of non-domiciled CDL credentials and found that properly issued non-domiciled CDLs have expiration rates up-to five years⁸⁶ following the date of

issuance. As such, FMCSA estimates that drivers who will no longer be eligible for a non-domiciled CDL will exit the market over the course of the next five years when their license comes up for renewal.

Affected Entities

SDLAs

This final rule will impact the SDLAs in 47 States that issued non-domiciled CDLs prior to the publication of the IFR (AL, MS, TN, and WV do not issue non-domiciled CDLs).

Drivers

This final rule will impact current and prospective non-domiciled CDL holders. Drivers will be required to provide additional documentation, and in some cases will no longer be eligible for a non-domiciled CDL. FMCSA gathered information on current CLP and CDL holders during the APRs discussed earlier in the preamble and estimates that there are approximately 200,000 non-domiciled CDL holders, and approximately 20,000 non-domiciled CLP holders. Upon renewal, some number of these individuals will no longer be eligible for a non-domiciled CDL and will have their credential downgraded. In an effort to determine the number of drivers that will still be eligible for non-domiciled CDLs, FMCSA spoke with other Government agencies and reviewed data from SDLAs and other on-line resources. Approximately 500 to 600 individuals receive a H-2B status with the intent to operate a CMV each year. This nonimmigrant classification can be granted for up to the period of time authorized on the temporary labor certification and may be extended for qualifying employment in increments of

⁸⁰ Available at https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2024-12/FMC-PRE-240812-001-Federal%20Motor%20Carrier%20Safety%20Administration%20Crash%20Cost%20Methodology%20Report-2024_0.pdf.

⁸¹ ATRI, Analysis of the Operational Cost of Trucking: 2025 Update, Page 48, available for download at <https://truckingresearch.org/about-atri/atri-research/operational-costs-of-trucking/>.

⁸² <https://www.ooida.com/wp-content/uploads/2025/04/The-Churn-A-Brief-Look-at-the-Roots-of-High-Driver-Turnover-in-U.S.-Trucking.pdf>.

⁸³ <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2021-07/MCSAC%20Truck%20Driver%20Market%20Update%20-%20July%202021.pdf>.

⁸⁴ Tenstreet, Q1 Insights on Recruiting and Retention, page 10. Available at: <https://www.tenstreet.com/wp-content/uploads/2023/05/Tenstreet-Q1-Recruiting-and-Retention-eBook.pdf>.

⁸⁵ <https://www.apta.com/wp-content/uploads/APTA-Transit-Workforce-Shortage-Report.pdf>.

⁸⁶ FMCSA acknowledges that this is a significant change from the IFR. However, this is consistent with the September 27, 2023 USCIS Policy Alert that extended the maximum validity period for EADs for many statuses from 1 or 2 years to 5 years. See <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230927->

[EmploymentAuthorizationValidity.pdf](https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251204-EmploymentAuthorizationValidity.pdf). USCIS issued a Dec. 4, 2025 Policy Alert that superseded the 2023 policy (see <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251204-EmploymentAuthorizationValidity.pdf>); however, FMCSA believes that the majority of the non-domiciled CDLs and CLPs relevant to this analysis were issued during the time that the 2023 policy was in effect.

up to 1 year.⁸⁷ FMCSA thus assumes that 500 to 600 individuals will seek a non-domiciled CDL, including renewals or extensions, each year. FMCSA does not have clear estimates of the number of H-2A workers that intend to operate a CMV because it is often incidental to the work they are doing. The Office of Homeland Security Statistics yearbook estimates that approximately 27,240 H-2A visas were issued to individuals from countries other than Canada and Mexico in 2023.⁸⁸ This represents an upper bound in that it is highly unlikely that all of these individuals would seek a CDL. The BLS reports employment based on industry and occupational code. In 2024, BLS estimates that there were approximately 15,000 heavy and tractor-trailer truck drivers in the agricultural industry.⁸⁹ Many of these drivers are U.S. citizens and would not seek a non-domiciled CDL. FMCSA makes the simplifying assumption that $\frac{1}{3}$ of these individuals hold H-2A status, are not domiciled in either Canada or Mexico, and will be applying for non-domiciled CDLs each year. FMCSA was unable to find data specific to the number of E-2 visa holders that would apply for a non-domiciled CDL but estimates that the number would not exceed 300 drivers. Including the individuals in all applicable nonimmigrant categories (H-2A, H-2B, and E-2) FMCSA estimates that SDLAs will issue approximately 6,000 non-domiciled CDLs per year. The remaining roughly 194,000 current non-domiciled CDL holders will exit the freight market, which is discussed in more detail in the cost section.

Motor Carriers

This final rule will impact motor carriers that currently, or intend to, employ non-domiciled CDL holders that are no longer eligible to receive a credential. There are approximately 785,000 for-hire and private motor carriers. Assuming that each impacted motor carrier employs one non-domiciled CDL holder, a maximum of 194,000 (or 25 percent) could be impacted by this rulemaking.⁹⁰ To be clear, the maximum of 194,000 is an extreme upper bound estimate based on an assumption that no single motor carrier employs more than one non-

domiciled CDL holder. Therefore, it is extremely unlikely that 25 percent of motor carriers will be impacted by this rule.

Need for the Regulation

This final rule builds on and makes minor revisions to the regulatory changes in the IFR published on September 29, 2025 titled, "Restoring Integrity to the Issuance of Non-Domiciled Commercial Drivers Licenses (CDL)" (90 FR 46509). In reaffirming the changes made in the IFR and making some revisions for clarity, this final rule rectifies a critical safety gap in the Nation's commercial drivers licensing system that has manifested in two ways: (1) the issuance of licenses to individuals whose safety fitness cannot be adequately verified by SDLAs; and (2) the reliance on Employment Authorization Documents (EAD), which has proven administratively unworkable and resulted in widespread regulatory non-compliance.

Costs

This final rule will require States and their SDLAs to verify additional documentation, utilize SAVE, and retain copies of the verified documents in their records. FMCSA anticipates that States will issue fewer non-domiciled CDLs, but that each credential will require additional time to verify and retain documents. Currently, States are not required to pay transaction fees to query SAVE, and FMCSA does not estimate a fee impact for that transaction, nor does it believe that the additional queries resulting from this rule would have more than a de minimis impact on the cost of operating the SAVE system. Lastly, States that choose to issue non-domiciled CDLs and CLPs will be required to pause issuance of those CDLs and CLPs until they can ensure compliance with the updated regulations. FMCSA anticipates that States will incur costs in the process of realigning their non-domiciled CDL program issuance with the standards set forth in this final rule. However, SDLAs are able to apply for and use CDLPI grants to come into or maintain compliance with the requirements of this rule.

FMCSA estimates that verifying and retaining additional documentation and running a SAVE query will require approximately 15 minutes of time per query for SDLA personnel. FMCSA estimates that the total cost, across all impacted SDLAs, will total approximately \$93,075 per year (6,000 applicants $\times$ \$62.05 wage rate $\times$ 15 minutes). During the APRs FMCSA determined that some States were

already running SAVE queries as part of their business process. To the extent that States were already in compliance with this requirement (*i.e.*, running a SAVE query or a functional equivalent that is merely a pass-through to SAVE to verify lawful permanent residence), they would not experience additional costs to comply with this regulation.

Each SDLA has developed a process that is unique to their State, and as such, will incur different costs to adjust their program. Some program adjustments could include reprogramming the IT system to interpret SAVE results in alignment with the new standards, changing the credential that is issued to ensure that "non-domiciled" is conspicuously and unmistakably displayed on the face of the CLP or CDL, and ensuring that SDLA employees are properly issuing non-domiciled CDLs and retaining appropriate records. FMCSA is unable to estimate a specific cost for each SDLA due to the variance in current non-domiciled CDL issuance (*e.g.*, many SDLA systems already issue credentials with "non-domiciled" displayed on the face of the credential and some SDLAs were already retaining appropriate records to document the issuance process). FMCSA has previously estimated costs of approximately \$70,000 (in 2024 dollars) to develop an interface between the Drug and Alcohol Clearinghouse and the SDLA IT system.⁹¹ This would likely overestimate the cost of reprogramming State IT systems to interpret SAVE results because SDLAs are already interfacing with SAVE for purposes of REAL ID and this change will represent an adjustment to the existing interface. It is, however, a reasonable estimate of the average impact for States to align their non-domiciled CDL program with the standards set forth in this rule (inclusive of IT system upgrades, credential updates, and ensuring staff are properly issuing credentials). FMCSA thus assumes that each of the 47 affected SDLAs will incur costs of \$70,000 in the first year of the analysis, on average, resulting in total first year costs for program realignment of \$3.3 million (47 SDLAs $\times$ \$70,000 = \$3,290,000).

This final rule will also result in costs to non-domiciled CDL drivers as they will now be required to renew their license in person every year, which increases the amount of time needed to renew the license. Previously, some drivers were likely able to renew online or via mail and had expiration dates beyond a one-year timeframe, up to five

⁹¹ Controlled Substances and Alcohol Testing 86 FR 55718.

⁸⁷ See <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers>.

⁸⁸ Available at <https://ohss.dhs.gov/topics/immigration/yearbook/2023/table25>.

⁸⁹ Available at <https://data.bls.gov/projections/nationalMatrix?queryParams=111000&ioType=i>.

⁹⁰ FMCSA Pocket Guide to Large Truck and Bus Statistics. Available at: <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2025-09/FMCSA%20Pocket%20Guide%202024-v6%20508%20.pdf>.

years. FMCSA assumes that non-domiciled CDL holders will renew their license at the time of expiration printed on their existing credential such that only $\frac{1}{5}$ of drivers will incur a renewal cost in the first year, $\frac{2}{5}$ of drivers in the second year, and so forth. Beginning in the fifth year, all 6,000 non-domiciled CDL holders will be renewing in person each year. FMCSA further assumes that renewal on-line or via mail requires about one hour of time, and that in-person renewal requires approximately four hours. The additional time allows for commuting to and from the SDLA and any appointment delays and wait times associated with in-person service. Consequently, the change in renewal impact is based on the period of validity for the credential and the difference in time associated with in-person renewal. Individuals with a one-year validity period will experience an increase of three hours each year, while individuals with a five-year validity period will see an annual average increase of 3.8 hours (4 hours – (1 hour ÷ 5 years) = 3.8). The average increase across all validity periods is 3.54 hours (4 hour in-person renewal minus 0.46 average annual renewal time across all validity periods). In the first year of the analysis period, only $\frac{1}{5}$ of the 6,000 non-domiciled CDL holders will renew their licenses, at a cost of \$166,636 (6,000 × $\frac{1}{5}$ × \$39.19 × 3.54 hours). FMCSA estimates that in the fifth year of the analysis period, all 6,000 non-domiciled CDL holders will renew their license in person, resulting in total annual costs of \$833,179 (6,000 applicants × \$39.19 × 3.54 hours).

FMCSA anticipates that drivers who will no longer be eligible for a non-domiciled CDL will be able to find similar employment in other sectors or occupations within the transportation sector (e.g., construction, driving vehicles that do not require a CDL, etc.). As discussed above, turnover has been an integral component in the industry for many years, and drivers are constantly looking for different opportunities. FMCSA anticipates, based on well-documented historical trends, that many of these non-domiciled CDL holders would have been looking for new employment opportunities regardless of this final rule, particularly given the temporary nature of non-domiciled CDLs. Those drivers that would have continued driving a vehicle requiring a CDL will experience an opportunity cost as they transition to their next best alternative. That cost can be represented as the difference in wage between the CDL holder (\$39.19) and the next best

available opportunity (\$31.53). FMCSA notes that some of this wage differential likely accounts for the challenges inherent to long haul trucking and transit and intercity bus service such as limited home time and long work days. For an individual driver, the representative annual impact would be approximately \$16,000 (((\$39.19 – \$31.53) × 2,080 working hours per year). FMCSA does not expect individual drivers to experience prolonged unemployment as a result of the final rule due to the interconnected nature of CDL-holding occupations with adjacent industries that employ individuals in the occupations considered among the next best available opportunities. In addition, with up to five years before the expiration of NDCDLs, individuals have ample time to proactively locate employment that does not require a CDL, whether in the occupations FMCSA considered or in other career paths. FMCSA stresses that the majority of these drivers are likely to have left the industry regardless of this rule given the high rate of churn inherent to the industry and that this impact is provided to demonstrate that, regardless of the ability to continue to hold a CDL, these individuals will still have opportunities to be gainfully employed. This estimate is included for illustrative purposes, but FMCSA does not consider it to be a cost of the final rule.

Motor carriers that currently employ non-domiciled CDL holders will have ample time to adjust to the change as the drivers will be aware if their license will not be renewed under the standards set forth in this final rule. Further, non-domiciled CDL credentials were never meant to be permanent documents, but to have an expiration date based on the length of the individual's employment authorization. As such, motor carriers should have been aware that these drivers might have been unable to continue holding a CDL based on the individual's employment authorization. Lastly, given the industry norm regarding movement of drivers and the constant need for hiring, FMCSA considers motor carriers to be well equipped to handle any driver replacement necessitated by this rule. Further, the five-year attrition will assist in mitigating any impacts to motor carriers. While this exit from the market might come earlier than anticipated in some instances, the non-domiciled CDL credentials were always meant to be temporary with expiration dates based on the individual's employment authorization. At most, this rule would result in a temporal shift in impact

related to that subset of non-domiciled CDL holders that would not have looked for alternative employment within five years but, given the high rate of churn in the industry, would have sought alternative employment at a later date.

Regarding potential economic impacts within the freight market, FMCSA looked at data during and after the COVID-19 pandemic to understand how the market may react to a reduction in CDL holders and found that the freight market tends to be flexible and responsive to external factors. During the COVID-19 pandemic the industry saw a historic increase in spot market rates, followed by a record influx of motor carriers and drivers entering the market to meet the increased demand.⁹² In 2021 there was a nearly 20 percent increase in the number of interstate motor carriers and a 6 percent increase in the number of interstate CDL drivers.⁹³ Since that time, the rates have fallen, as have load volumes and the number of motor carriers.⁹⁴ This market fluctuation is also evidenced by the Cass Shipment Index, the Cass Truckload Line Haul Index, and the BLS General Freight Long-Distance Truckload Employment figures which collectively show a spike in demand from 2020 to 2021 that has trended downward thereafter.⁹⁵ There are roughly 200,000 non-domiciled CDL holders, which is approximately five percent of the 3.8 million active interstate CDL holders in 2024. FMCSA anticipates that these drivers will exit the market over approximately five years as their credentials come up for renewal, and that the market will respond to this change in capacity as it has in the past, with drivers and carriers responding to market signals and ensuring that freight is delivered.

Current conditions in the freight market are conducive to just this type of adjustment. Carriers have been struggling with excess capacity since the freight recession began in 2022. Some

⁹² Available at <https://www.bts.gov/freight-indicators#spot-rates>.

⁹³ Data available from MCMIS.

⁹⁴ Bureau of Transportation Statistics. Truck Spot Rates Jan 2015–Oct 2023. Available at: <https://www.bts.gov/browse-statistical-products-and-data/info-gallery/truck-spot-rates-jan-2015-oct-2023>.

⁹⁵ FMCSA 2024 Pocket Guide to Large Truck and Bus Statistics. Table 1–8. Available at: <https://www.fmcsa.dot.gov/safety/data-and-statistics/commercial-motor-vehicle-facts>.

⁹⁶ Cass Shipment Index: <https://www.cassinfo.com/freight-audit-payment/cass-transportation-indexes/cass-freight-index> Cass Truckload Line Haul Index: <https://www.cassinfo.com/freight-audit-payment/cass-transportation-indexes/truckload-linehaul-index> BLS General Freight Long-Distance Truckload Employment: <https://data.bls.gov/dataViewer/view/timeseries/CES4348412101>.

describing the “Great Freight Recession [as] defined not by a dramatic crash but by its grinding duration.”⁹⁷ JB Hunt, in a 2024 letter to their shareholders and employees, stated that “more than 30 months into this unprecedented freight recession marked by too much industry capacity, we continue to be challenged . . . across our organization.”⁹⁸

Further, drivers have increased their dead-head miles, and trucks have been sidelined as the freight recession has continued.⁹⁹

Available unemployment data from BLS on the broader Transportation and Utilities sector also supports this assumption. BLS does not directly track the unemployment rate of CDL holders, however, it publishes data on the broader Transportation and Utilities sector, reporting a 4.4 percent unemployment rate, or 371,000 unemployed persons in the sector as of November 2025.¹⁰⁰ While this is not the sole sector in which CDL holders are employed, it is the closest official proxy

available and suggests that the labor supply is not constrained to the extent that the periodic attrition over five years of non-domiciled CDL holders impacted by the final rule is likely to overburden the CDL holder labor supply. Therefore, due to the prolonged five-year period of attrition, motor carriers will have time to adjust their hiring based on the requirements set forth in this final rule, including by marketing available positions to drivers with the proper qualifications to obtain a CDL, many of whom have been sidelined in recent years due to the freight recession.

Transfers

Drivers who previously paid the renewal fee at the end of the validity will now pay that fee annually. As discussed above, the average renewal fee is \$55, and will now be paid annually instead of at the end of the validity period, which results in an average increase across all validity periods of approximately \$29.88 per

year. FMCSA anticipates that one-fifth of the 6,000, or 1,200, will be required to renew in the first year of the analysis at a cost of \$35,860. FMCSA anticipates that by the fifth year of the analysis period, drivers will incur additional fees of approximately \$179,300 per year (6,000 drivers × \$29.88). Fees are considered transfer payments, or monetary payments from one group to another that do not affect the total resources available to society, and therefore do not represent actual costs or benefits of the rule.

Quantified Costs and Transfers

As shown in the table below, FMCSA estimates that a quantified portion of the 10-year costs of the rulemaking (excluding transfers) is approximately \$9.5 million discounted at three percent and \$8.1 million discounted at seven percent. quantified annualized impacts range from \$1.4 million discounted at three percent to \$1.2 million discounted at seven percent.

TABLE 5—QUANTIFIED COSTS AND TRANSFERS

[In 2024 dollars]

Analysis year	Quantified state cost	Quantified driver cost	Total transfers	Quantified cost (excluding transfers)	Quantified cost (discounted at 3 percent)	Quantified cost (discounted at 7 percent)
1	\$3,383,075	\$166,636	\$165,000	\$3,549,711	\$3,446,321	\$3,317,487
2	93,075	333,272	165,000	426,347	401,873	372,388
3	93,075	499,908	165,000	592,983	542,663	484,050
4	93,075	666,544	165,000	759,619	674,911	579,509
5	93,075	833,179	165,000	926,254	798,995	660,407
6	93,075	833,179	165,000	926,254	775,723	617,202
7	93,075	833,179	165,000	926,254	753,130	576,825
8	93,075	833,179	165,000	926,254	731,194	539,088
9	93,075	833,179	165,000	926,254	709,897	503,821
10	93,075	833,179	165,000	926,254	689,220	470,861
Total	930,750	6,665,435	1,650,000	10,886,185	9,523,927	8,121,638
Annualized .....	.....	.....	.....	.....	1,355,993	1,156,339

Benefits

FMCSA anticipates that restoring the integrity of non-domiciled CDL license issuance and limiting non-domiciled CDL issuance to those who have gone through thorough vetting will enhance the safety of CMV operations and is likely to result in improved safety outcomes, such as the reduced frequency and/or severity of crashes or reduced frequency of violations. Driving history has consistently been shown to be a strong predictor of future driving

safety outcomes. In the *Safety Performance of Passenger Carrier Drivers* report, prior crash involvement and past out-of-service violations were both found to increase the likelihood of a driver being involved in future crashes significantly, even after controlling for demographic characteristics and carrier type.¹⁰¹ The report focuses on passenger carrier drivers with findings suggesting that the following factors are significantly related to the likelihood of a crash occurrence: driver weight,

height, sex, and employment stability as well as previous driver and vehicle violations and past crashes. ATRI has published similar findings for the truck transportation industry in their report, *Predicting Truck Crash Involvement*. Repeated multiple times since 2005, the top five stable predictors of crash risk include reckless driving violations and past crashes.¹⁰² Similarly, the *Commercial Driver Safety Risk Factors* study found that prior moving violations in the last three years were

⁹⁷ <https://tanktransport.com/2025/08/great-freight-recession-2025/>.

⁹⁸ <https://investor.jbhunt.com/~media/Files/JJB-hunt-ir/documents/annual-reports/annual-report-2024.pdf>.

⁹⁹ ATRI Operational Cost of Trucking, p. 54, available for download at <https://truckingresearch.org/about-atri-research/operational-costs-of-trucking/>.

¹⁰⁰ Bureau of Labor Statistics, Unemployment rate and unemployed persons data. Available at <https://data.bls.gov/dataViewer/view/timeseries/>

LNU04032236 and <https://data.bls.gov/dataViewer/view/timeseries/LNU03032236>, respectively (accessed January 7, 2026).

¹⁰¹ <https://rosap.nhtl.bts.gov/view/dot/7>.

¹⁰² <https://truckingresearch.org/2022/10/predicting-truck-crash-involvement-2022-update/>.

associated with increased crash and moving violation risk.¹⁰³ Finally, an FMCSA commissioned report titled *Driver Issues: Commercial Motor Vehicle Safety Literature Review* examined published literature on commercial motor vehicle safety that utilized MCMIS and CDLIS data, and concluded that drivers with prior crash involvement were 87 percent more likely to be involved in a future crash. Results also showed that drivers who had been cited for reckless driving violations and improper turn violations were, respectively, 325 percent and 105 percent more likely to be involved in future crashes.¹⁰⁴ Together, these findings underscore a consistent conclusion across studies: a driver's historical performance, whether measured through crashes, violations, or observable risky behaviors, provides a robust basis for predicting future safety outcomes on the road. Given this research, FMCSA finds it imperative that all drivers able to obtain a CDL credential undergo thorough vetting procedures.

In addition to the thorough vetting process detailed in the IFR, the U.S. Department of State has developed procedures for increased screening and vetting of visa applicants seeking to operate CMVs in the United States under the eligible nonimmigrant statuses in the IFR.¹⁰⁵ These enhanced screening and vetting procedures help close the gap between the differences in vetting for U.S.-domiciled and non-domiciled drivers for these statuses, by ensuring that individuals seeking entry to the United States under these employment-based nonimmigrant categories for the purposes of driving a CMV can meet English language proficiency requirements, show proof that they can properly operate a CMV, and meet other requirements under the FMCSR. These additional steps in the vetting and verification process for non-domiciled individuals ensure that visa applicants in the employment-based nonimmigrant categories allowed to obtain non-domiciled CLPs and CDLs under this final rule are subject to sufficient vetting to ensure that non-domiciled drivers are as safe as

practicable before allowing them to operate CMVs on our roadways.

As discussed previously, data limitations in existing crash reporting requirements do not provide the granular detail required to estimate quantitatively the risk associated with non-domiciled CDL holders.

As is discussed in detail in the preamble above, FMCSA has identified 17 fatal crashes over the course of 2025 in which the CMV driver responsible for the crash held a non-domiciled CDL that would likely not have been issued under this final rule. It is important to note that these crashes do not represent the total universe of crashes, or the total universe of fatal crashes, caused by non-domiciled CDL holders. The necessary level of detail regarding the type of CDL held by the drivers involved in these crashes is not available. For example, in the FARS data for fatal crashes, only the status of the CDL and compliance with any required endorsements are recorded. FMCSA could not query either MCMIS or FARS to ascertain the number of crashes that would be within scope, and instead independently investigated and verified significant crash reports through the SDLAs and with the Police Accident Reports that occurred in 2025 and cross-referenced driver information from MCMIS to determine that at least 17 fatal crashes, resulting in 30 fatalities, were caused by the actions of non-domiciled CDL holders who not would be eligible to hold a non-domiciled CDL under the regulations adopted in this rule. Therefore, FMCSA is of the opinion that this rule would reduce the crash risk associated with such fatal crashes that the benefits of the final rule are likely to exceed its costs, including costs discussed above that are unquantified, but that are not expected to be large.

Alternatives

FMCSA considered further limiting non-domiciled CDL issuance to US citizens and lawful permanent residents. This would have been more restrictive than the final rule and removed an approximate 6,000 more CDL holders from the pool of potential CMV drivers. This rule determines which foreign-domiciled drivers are exempted by aligning FMCSA's fitness determination with the U.S. Department of State's enhanced vetting protocols. By limiting eligibility to H-2A, H-2B, and E-2 nonimmigrant status holders, FMCSA ensures that non-domiciled drivers undergo rigorous driver history checks that SDLAs are incapable of performing independently. This ensures all drivers on U.S. roadways satisfy a comparable standard of background and

driver history vetting. For these reasons, FMCSA determined that the less burdensome final rule balances safety and costs in a more appropriate way to reach the objective.

FMCSA also discussed less restrictive, potentially feasible, alternatives, such as adjustments to SAVE vetting and adjustments to eligibility for a non-domiciled CDL. However, SAVE is not administered by FMCSA and the agency does not have control over development or maintenance of the system. Regarding DACA recipients and other EAD holders, this rule replaces a complex framework with a "bright-line" eligibility standard. SDLAs have demonstrated a pattern of not being able to reliably distinguish between EAD codes and language that indicate a permissible basis for issuance of a non-domiciled CDL (C33—"Deferred Action for Childhood Arrivals") and those codes that indicate an impermissible basis (C14—"Deferred Action" or "Alien Granted Deferred Action"), leading to the improper issuance of non-domiciled CDLs to drivers domiciled in Canada or Mexico who were not DACA recipients. To restore system integrity, FMCSA determined that the final rule approach requiring an unexpired foreign passport and an I-94 corresponding to a specific employment-based nonimmigrant status strikes the right balance between safety and costs. This objective standard eliminates the burden on SDLAs to interpret complex immigration codes and ensures that eligibility is restricted to statuses subject to consular vetting and interagency screening.

B. E.O. 14192 (Unleashing Prosperity Through Deregulation)

E.O. 14192, *Unleashing Prosperity Through Deregulation*, issued on January 31, 2025 (90 FR 9065), requires that, for every new regulation issued by an agency, at least 10 prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. Final implementation guidance addressing the requirements of E.O. 14192 was issued by OMB on March 26, 2025. This rule does not meet the definition of "rule" or "regulation" as defined in section 5 of E.O. 14192, because it is issued with respect to an immigration-related function of the United States per section 5(a) of E.O. 14192.

¹⁰³ Commercial Driver Safety Risk Factors (CDSRF) available at: <https://rosap.ntl.bts.gov/view/dot/49620>.

¹⁰⁴ Driver Issues: Commercial Motor Vehicle Safety Literature Review available at: <https://rosap.ntl.bts.gov/view/dot/11259>.

¹⁰⁵ While the vetting procedures are an internal U.S. Department of State document, FMCSA has thoroughly reviewed those vetting procedures. The agency also coordinated with U.S. Department of State to provide relevant summaries from that document in the discussion for this final rule.

C. Congressional Review Act

This rule is not a *major rule* as defined under the Congressional Review Act (5 U.S.C. 801–808).¹⁰⁶

D. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,¹⁰⁷ requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact for any rule subject to notice-and-comment rulemaking under the APA unless the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule has the potential to impact States, drivers, and motor carriers. Under the standards of the RFA, as amended, States are not small entities because they do not meet the definition of a *small entity* in section 601 of the RFA. Specifically, States are not small governmental jurisdictions under section 601(5) of the RFA, both because State government is not among the various levels of government listed in section 601(5), and because, even if this were the case, no State, including the District of Columbia, has a population of less than 50,000, which is the criterion to be a small governmental jurisdiction under section 601(5) of the RFA.

CDL holders are not considered small entities because they do not meet the definition of a small entity in Section 601 of the RFA. Specifically, drivers are considered neither a small business under Section 601(3) of the RFA, nor are they considered a small organization under Section 601(4) of the RFA. Therefore, this rule would not impact a substantial number of small entities.

Motor carriers that employ non-domiciled CDL holders as drivers could be impacted by this rule as these drivers exit the market over the course of the next five years. There are approximately 785,000 for-hire and private motor carriers, of which a maximum of 194,000 (or 25 percent) could be impacted by this rulemaking. To be

clear, the maximum of 194,000 is an extreme upper bound estimate based on an assumption that no single motor carrier employs more than one non-domiciled CDL holder. Therefore it is extremely unlikely that 25 percent of motor carriers will be impacted by this rule. FMCSA does not know the number of small motor carriers that employ non-domiciled CDL holders who will no longer be eligible for a CDL. Considering that the majority of motor carriers are considered small based on SBA size standards, it is safe to assume that the majority of impacted motor carriers would also be small. As discussed in the regulatory analysis section, FMCSA anticipates that motor carriers will have some time to adjust to the change as the drivers will be aware if their license will not be renewed under the standards set forth in this final rule. In addition, high turnover and churn rates are well-documented features of the industry, with many drivers leaving their carrier within 12 months of being hired, such that the impact of finding a replacement driver on any specific motor carrier is likely to already be incorporated into their business model and incurred regardless of this rulemaking. Given the industry norm regarding movement of drivers, constant need for hiring, and BLS data indicating a 4.4 percent unemployment rate in the Transportation and Utilities sector as of November 2025, FMCSA considers motor carriers to be well equipped to handle any driver replacement necessitated by this final rule. Further, the five-year attribution will assist in mitigating any impacts to motor carriers.

For these reasons, FMCSA certifies that this action will not have a significant economic impact on a substantial number of small entities.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture

Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see <https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman>) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

UMRA (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$206 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2024 levels) or more in any one year. Though this final rule would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, FMCSA discusses the effects of this rule elsewhere in this preamble.

G. Paperwork Reduction Act

This final rule contains information collection requirements under the PRA (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), *collection of information* comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Non-Domiciled Commercial Driver's License Records.

OMB Control Number: 2126–0087.

Summary of the Information Collection: This information collection request (ICR) covers the collection and retention of the documentation provided to a SDLA during the application process for a non-domiciled CLP or CDL.

Need for Information: The licensed drivers in the United States deserve reasonable assurances that their fellow motorists are properly qualified to drive the vehicles they operate. Under

¹⁰⁶ A *major rule* means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804 (2)).

¹⁰⁷ Public Law 104–121, 110 Stat. 857, (Mar. 29, 1996).

CMVSA (49 U.S.C. 31301 *et seq.*), as amended, FMCSA established the CDL program and the performance standards with which State CDL programs must comply. The CDL regulations in 49 CFR part 383 prescribe uniform minimum standards for testing and ensuring the fitness of individuals who operating commercial motor vehicles (CMVs), and State compliance with the CDL program is addressed in part 384. In particular, States that issue non-domiciled CDLs must do so in accordance with sections 383.71, 383.73 and 384.212.

This collection is intended to ensure that States retain all documents involved in the licensing process for non-domiciled CLP and CDL holders for a period of no less than two years from the date of issuing (which includes amending, correcting, reprinting, or otherwise duplicating a previously issued CLP or CDL), transferring, renewing, or upgrading a non-domiciled CLP or CDL. If States do not retain this documentation, FMCSA is severely hindered in its efforts to ensure compliance with the regulatory requirements because States are unable to determine accurately the number of non-domiciled CLPs and CDLs they have issued, or to prove to FMCSA officials that such CLPs and CDLs were properly issued.

Proposed Use of Information: State officials use the information collected from non-domiciled CDL applicants to determine whether an individual is eligible to receive a non-domiciled CDL and to prevent unqualified, and/or disqualified CLP and CDL holders and applicants from operating CMVs on the Nation's highways. During State CDL compliance reviews, FMCSA officials review this information to ensure that the provisions of the regulations are being carried out. Without the aforementioned requirements, there would be no uniform control over driver licensing practices to prevent uncertified and/or disqualified foreign drivers from being issued a non-domiciled CLP or CDL. Failure to collect this information would render the regulations unenforceable.

Description of the Respondents: SDLAs issuing non-domiciled CDLs.

Number of Respondents: 51.¹⁰⁸

Frequency of Response: Ongoing.

Burden of Response: 6,000 responses. The associated cost burden is \$93,075.

Estimate of Total Annual Burden: 1,500 hours.

In accordance with 44 U.S.C. 3507(d), FMCSA published a Notice in the **Federal Register** on January 30, 2026, stating that FMCSA will submit the information collection to OIRA at OMB for approval. (91 FR XXXX) Directions on submitting comments on the information collection summarized above can be found in that January 30 notice. FMCSA addressed comments on the information collection, submitted in response to the IFR, in section 7.e. of the comment discussion, earlier in this final rule. There are no changes to the information collection in response to comments.

OMB approved this information collection in September 2025, and it is currently set to expire on February 28, 2026.

H. E.O. 13132 (Federalism)

FMCSA has analyzed this rule in accordance with the principles and criteria of E.O. 13132, Federalism, and has determined that it does not have federalism implications. E.O. 13132 applies to "policies that have federalism implications," defined as regulations and other actions that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government" (Sec. 1(a)). The key concept here is "substantial direct effects on the States." Section 3(b) of the E.O. provides that "[n]ational action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance."

The rule amends a single aspect of the CDL program authorized by the CMVSA (49 U.S.C. chapter 313). States have been required to issue all CDLs in accordance with Federal standards for decades and have been required to issue all CLPs in accordance with Federal standards since 2011. Moreover, the CDL program does not have preemptive effect; it is voluntary, and States may withdraw at any time, though doing so will result in the loss of certain Federal-aid highway funds pursuant to 49 U.S.C. 31314. Because this IFR makes only a modest change to requirements already imposed on participating States, FMCSA has determined that it does not have substantial direct effects on the States, on the relationship between the Federal and State governments, or on the distribution of power and

responsibilities among the various levels of government.

Nonetheless, FMCSA recognizes that this rule has an impact on the States and their commercial driver licensing operations. Most notably, it requires all States that issue non-domiciled CLPs and CDLs to amend their existing procedures. The agency continually works with the States to identify CDL program deficiencies that need to be addressed, and it was mostly through these APRs that systemic deficiencies with the non-domiciled CLP and CDL issuance process were identified. Therefore, States that issue non-domiciled CLPs and CDLs were generally already on notice prior to publication of the IFR that FMCSA was scrutinizing this aspect of the CDL program. While FMCSA finds that the rule will not impose substantial direct compliance costs on State and local governments, in keeping with the spirit of Section 6(b) of E.O. 13132, FMCSA sought and received input from States after the publication of the IFR, which was used in developing this final rule.

I. Privacy

The Consolidated Appropriations Act, 2005,¹⁰⁹ requires agencies to assess the privacy impact of a regulation that will affect the privacy of individuals. This rule would not require any new collection of PII.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program. This rule does not impact a system of records.

The E-Government Act of 2002,¹¹⁰ requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

FMCSA will complete a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the rulemaking might have on collecting, storing, and sharing personally identifiable information. The PTA will be submitted to FMCSA's Privacy Officer for review and preliminary adjudication and to DOT's Privacy Officer for review and final adjudication.

¹⁰⁹ Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

¹¹⁰ Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

¹⁰⁸ Although not all of the 51 jurisdictions identified as respondents currently issue non-domiciled CLPs and CDLs, FMCSA has determined it is appropriate for all possible jurisdictions be included in this information collection to ensure that it considers the impacts on all possible jurisdictions and allow for the possibility that all jurisdictions choose to issue non-domiciled CLPs and CDLs in the future.

J. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

K. National Environmental Policy Act of 1969

FMCSA analyzed this final rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). FMCSA believes this final rule will not have a reasonably foreseeable significant effect on the quality of the human environment. This action falls under a published categorical exclusion and is thus excluded from further analysis and documentation in an environmental assessment or environmental impact statement under DOT Order 5610.1D,¹¹¹ Subpart B, paragraph (e)(6)(s)(7), and (e)(6)(t)(2), which cover regulations pertaining to requirements for State-issued commercial license documentation and having the appropriate laws, regulations, programs, policies, procedures and information systems concerning the qualification and licensing of persons who apply for a CDL, and persons who are issued a CDL.

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

Accordingly, FMCSA amends 49 CFR parts 383 and 384 as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 1. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat.

405, 830; sec. 23019 of Pub. L. 117–58, 135 Stat. 429, 777; and 49 CFR 1.87.

■ 2. Amend § 383.5 by revising paragraph (1)(ii) in the definition for “Evidence of lawful immigration status” to read as follows:

§ 383.5 Definitions.

* * * * *

Evidence of lawful immigration status for purposes of subpart B of this part, means:

(1) * * *

(ii) A Form I–94/94A issued by the U.S. Department of Homeland Security with an unexpired Admit Until Date indicating one of the following classifications: H–2A–Temporary Agricultural Workers, H–2B–Temporary Non-Agricultural Workers, or E–2–Treaty Investors.

* * * * *

■ 3. Amend § 383.73 by revising paragraphs (f)(2)(iv), (f)(3)(ii), (f)(5), (f)(6), and (m)(2) to read as follows:

§ 383.73 State procedures.

* * * * *

(f) * * *

(2) * * *

(iv) For applicants domiciled in a foreign jurisdiction, the State must ensure that the period of validity of the non-domiciled CLP or CDL does not exceed the Admit Until Date or expiration date on the applicant's I–94/A or 1 year, whichever is sooner. In any case (including where the applicant's I–94/A contains no end date or is marked “D/S” to show it is valid for the duration of status) a State must not issue a non-domiciled CLP or CDL with a period of validity longer than 1 year.

(3) * * *

(ii) *Applicants domiciled in a foreign jurisdiction.* (A) Beginning March 16, 2026, the State must not issue (which includes amending, correcting, reprinting, reinstating, or otherwise duplicating a previously issued CLP or CDL), transfer, renew, or upgrade a non-domiciled CLP or CDL unless, at the time of the transaction, the applicant provides *evidence of lawful immigration status* as defined under § 383.5.

Applicants for a non-domiciled CLP or CDL who do not provide evidence of lawful immigration status as required under § 383.71(f)(3)(i)(B) are not eligible for a non-domiciled CLP or CDL.

(B) States must comply with the document verification requirements for applicants domiciled in a foreign jurisdiction set forth in § 383.73(m)(2) before issuing (which includes amending, correcting, reprinting, reinstating, or otherwise duplicating a previously issued CLP or CDL),

transferring, renewing, or upgrading a non-domiciled CLP or CDL.

(C) States are prohibited from granting non-domiciled CLP or CDL privileges on a temporary or interim basis pending review and validation of an applicant's evidence of lawful immigration status.

* * * * *

(5) *Downgrade.* If after issuing (which includes amending, correcting, reprinting, reinstating, or otherwise duplicating a previously issued CLP or CDL), transferring, renewing, or upgrading a non-domiciled CLP or CDL, the State receives information from FMCSA, the Department of Homeland Security, the U.S. Department of State, or other Federal agency with jurisdiction that the applicant no longer has lawful immigration status in the United States in a category specified in paragraph (1)(ii) of the definition of *Evidence of lawful immigration status* in § 383.5 of this part, the State must initiate established State procedures for downgrading the non-domiciled CLP or CDL. The downgrade must be completed and recorded on the CDLIS driver record within 30 days of the State's receipt of such information. As used in this paragraph, the term “downgrade” means the State's removal of the CLP or CDL privilege from the driver's license, as set forth in paragraph (4) the definition of *CDL downgrade* in § 383.5.

(6) *Non-domiciled CDL renewal.* States must require every non-domiciled CLP or CDL issuance (which includes amending, correcting, reprinting, reinstating, or otherwise duplicating a previously issued CLP or CDL), transfer, renewal, or upgrade be conducted in-person only and must not permit issuance, transfer, renewal, or upgrade by mail or electronic means.

* * * * *

(m) * * *

(2) *Document verification and retention for applicants domiciled in a foreign jurisdiction.* States must verify evidence of lawful immigration status for applicants domiciled in a foreign jurisdiction before initial issuance and before any subsequent issuance (which includes amending, correcting, reprinting, reinstating, or otherwise duplicating a previously issued CLP or CDL), transfer, renewal, or upgrade of a non-domiciled CLP or CDL.

(i) For offices with only one staff member, all documents must be processed or verified by a supervisor before issuing (which includes amending, correcting, reprinting, reinstating, or otherwise duplicating a previously issued CLP or CDL),

¹¹¹ Available at <https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts>.

transferring, renewing, or upgrading a non-domiciled CLP or CDL.

(ii) In reviewing the evidence of lawful immigration status an applicant domiciled in a foreign jurisdiction (except an applicant domiciled in Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa or the Commonwealth of the Northern Mariana Islands), the State must query the Systematic Alien Verification for Entitlements (SAVE) system (administered by U.S. Citizenship and Immigration Services). If the SAVE final response, including additional verification if needed, does not confirm the applicant's claim to be in lawful immigration status in a category specified in paragraph (1)(ii) of the definition of *evidence of lawful immigration status* in § 383.5 of this part, the State must not issue (which includes amend, correct, reprint, reinstating, or otherwise duplicate a previously issued CLP or CDL), transfer, renew, or upgrade a non-domiciled CLP or CDL, and must initiate downgrade procedures in accordance with paragraph (f)(5) of this section if the applicant holds an unexpired non-domiciled CLP or CDL.

(iii) The State must retain copies of all documents involved in the licensing process, including documents provided by the applicant to prove lawful immigration status and documents showing the results of any SAVE query

to verify an applicant's lawful immigration status, and a supervisor must verify them within one business day of issuing (which includes amending, correcting, reprinting, or otherwise duplicating a previously issued CLP or CDL), transferring, renewing, reinstating, or upgrading a non-domiciled CLP or CDL. The State must retain the documents for no less than 2 years from the date of issuing (which includes amending, correcting, reprinting, reinstating, or otherwise duplicating a previously issued CLP or CDL), transferring, renewing, or upgrading a non-domiciled CLP or CDL.

* * * * *

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 4. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301, *et seq.*, and 31502; secs. 103 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

■ 5. Amend § 384.212 by revising paragraph (a)(1) to read as follows:

§ 384.212 Domicile requirement.

(a) * * *

(1) For applicants domiciled in a foreign jurisdiction, the State must:

(i) Comply with the document verification and retention requirements set forth in § 383.73(m)(2) before issuing (which includes amending, correcting, reprinting, reinstating, or otherwise duplicating a previously issued CLP or CDL), transferring, renewing, or upgrading a non-domiciled CLP or CDL; and

(ii) Provide copies of all documents involved in the licensing process to FMCSA within 48 hours after request.

* * * * *

■ 6. Amend § 383.301 by revising paragraph (q) to read as follows:

§ 384.301 Substantial compliance-general requirements.

* * * * *

(q) A State must come into substantial compliance with the requirements of subpart B of this part and part 383 of this chapter related to non-domiciled CLPs and CDLs, effective March 16, 2026, prior to issuing (which includes amending, correcting, reprinting, reinstating, or otherwise duplicating a previously issued CLP or CDL), transferring, renewing, or upgrading a non-domiciled CLP or CDL.

Issued under authority delegated in 49 CFR 1.87.

Derek Barrs,

Administrator.

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Part IV

The President

Proclamation 11010—Ensuring Affordable Beef for the American Consumer

Presidential Documents

Title 3—

Proclamation 11010 of February 6, 2026

The President

Ensuring Affordable Beef for the American Consumer

By the President of the United States of America

A Proclamation

1. Cattle ranchers have played an integral role in United States history, helping to forge an American identity and an American diet with beef as a key staple food. Today, beef remains vital in the American diet, evidenced by the fact that the United States is the largest consumer of beef by volume, followed closely by China and Brazil. And the United States ranks second in per capita beef consumption globally.

2. But in 2022, the United States faced a widespread and severe drought, affecting beef-producing States, such as Texas, Oklahoma, Missouri, Nebraska, South Dakota, and Kansas. Texas and Kansas, for example, continue to face persistent drought conditions. The effects of drought are particularly pronounced for livestock producers as many of their operations rely on precipitation to grow forage crops to feed their herds.

3. In addition to droughts, wildfires have affected the grasslands of the western United States, including America's cattle-producing States. Apart from the direct threat of burns and burn-associated deaths to cattle, cattle ranchers have had to adapt to indirect effects of wildfires, including changes in grazing patterns, loss of feed supplies, and suboptimal animal health for those cattle surviving the wildfires.

4. Given the demand for beef, certain United States cattle farmers and ranchers supplement their herds, specifically their feedlot stocks, with cattle (calves) imported from Mexican ranchers. But following new detections of the New World screwworm in Mexico in May 2025, the Department of Agriculture Animal Plant and Health Inspection Service, in conjunction with U.S. Customs and Border Protection (CBP), restricted the importation of live animal commodities from or transiting through Mexico, further limiting domestic feedlot stock supplies.

5. These factors have combined to result in the United States cattle herd contracting to record lows. As of July 2025, the United States cattle inventory totaled 94.2 million head, including 28.7 million beef cows. This is one percent lower than the United States cattle inventory surveyed in July 2023, continuing the downward trend of cattle inventory in the United States.

6. The abovementioned factors have also cumulatively resulted in higher beef prices for United States consumers, including for ground beef. Since January 2021, ground beef prices have continued to rise, reaching an average of \$6.69 per pound in December 2025, according to the Bureau of Labor Statistics—the highest since the Department of Labor started tracking beef prices in the 1980s.

7. Despite the increased prices and the availability of more affordable protein alternatives, United States consumers' demand for beef remains strong. The United States imported a record high amount of beef in 2024, reaching 4.64 billion pounds, a more than 24 percent increase in beef imports since 2023. Among the beef products the United States imports are lean trimmings, which are blended with fattier domestic trimmings to produce ground beef products, such as hamburgers.

8. The Secretary of Agriculture has monitored the domestic supply of beef products subject to a tariff-rate quota (TRQ), including lean beef trimmings falling under Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 0201.30.5091, 0201.30.5097, 0202.30.5091 and 0202.30.5097, and noted the domestic supply of such products and substitutable products combined with the estimated imports of such products under the United States beef import TRQ. The Secretary of Agriculture also advised on related domestic demand and pricing.

9. As President of the United States, I have a responsibility to ensure that hard-working Americans can afford to feed themselves and their families. After considering the information provided to me by the Secretary of Agriculture, among other relevant information, I am taking action to temporarily increase the quantity of in-quota imports of lean beef trimmings under the United States beef TRQ to increase the supply of ground beef for United States consumers.

10. Section 404 of the Uruguay Round Agreements Act (URAA) (Public Law 103–465, 108 Stat. 4809, 4959–61 (19 U.S.C. 3601)) authorizes the President, in certain circumstances, to modify TRQs on certain agricultural products. In particular, section 404(b) of the URAA (19 U.S.C. 3601(b)) provides that where imports of an agricultural product are subject to a TRQ, and where the President determines and proclaims that the supply of the same or directly competitive or substitutable agricultural product will be inadequate, because of a natural disaster, disease, or major national market disruption, to meet domestic demand at reasonable prices, the President may temporarily increase the quantity of imports of the agricultural product that is subject to the in-quota rate of duty established under the TRQ. And section 404(d)(3) of the URAA (19 U.S.C. 3601(d)(3)) provides that the President may allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas and may modify any allocation as determined appropriate by the President.

11. After considering the information provided to me by the Secretary of Agriculture, among other relevant information, I find that imports of lean beef trimmings into the United States are currently subject to the United States TRQ for beef and determine that the supply of lean beef trimmings or directly competitive or substitutable agricultural products will be inadequate to meet domestic demand at reasonable prices because of a natural disaster and major national market disruption. Accordingly, I determine that it is necessary and appropriate to temporarily increase the quantity of imports of lean beef trimmings subject to the in-quota rate of duty established under the beef TRQ. In addition, I determine that it is appropriate to allocate all of the increased in-quota quantity of beef, as established by this proclamation, to Argentina.

12. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTSUS the substance of statutes affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including section 404 of the URAA, section 604 of the Trade Act of 1974, as amended, and section 301 of title 3, United States Code, do hereby proclaim as follows:

(1) For calendar year 2026, the aggregate in-quota quantity for certain products described in Additional U.S. Note 3 of Chapter 2 of the HTSUS will be increased by 80,000 metric tons (mt).

(2) The additional 80,000 mt described in clause (1) of this proclamation will apply only to lean beef trimmings classifiable under HTSUS statistical reporting numbers 0201.30.5091, 0201.30.5097, 0202.30.5091, and 0202.30.5097.

(3) The additional 80,000 mt described in clauses (1) and (2) of this proclamation will be administered on a first-come, first-served basis in four quarterly tranches. The first tranche of 20,000 mt will open on February 13, 2026, and close on March 31, 2026. The second tranche of 20,000 mt will open on April 1, 2026, and close on June 30, 2026. The third tranche of 20,000 mt will open on July 1, 2026, and close on September 30, 2026. The fourth tranche of 20,000 mt will open on October 1, 2026, and close on December 31, 2026.

(4) The additional 80,000 mt described in clauses (1) and (2) of this proclamation is allocated in its entirety to Argentina.

(5)(a) To establish the TRQ amendments described in this proclamation, the HTSUS is modified as set forth in the Annex to this proclamation.

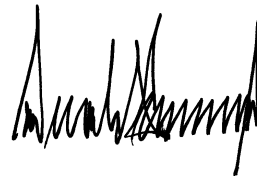
(b) The United States Trade Representative (Trade Representative), in consultation with CBP, shall determine whether any additional modifications to the HTSUS are necessary to effectuate this proclamation and shall make such modifications to the HTSUS through notice in the *Federal Register*, including any technical correction to the Annex to this proclamation.

(6) The Secretary of Agriculture shall continue to monitor the domestic supply of lean beef trimmings, as the Secretary considers appropriate, and shall advise me on the domestic supply of lean beef trimmings or directly competitive or substitutable products, combined with the estimated imports of such products under the TRQ as adjusted by this proclamation, and how such availability relates to domestic demand at reasonable prices. The Secretary of Agriculture, in consultation with the Trade Representative, shall inform me of any circumstances that, in the Secretary's opinion, might indicate the need for further action and shall recommend to me any additional action I should take, if necessary.

(7) Each executive department and agency (agency) is authorized to and shall take all appropriate measures within its authority to implement this proclamation. The head of each agency may, consistent with applicable law, including section 301 of title 3, United States Code, redelegate any of these functions within their respective agency.

(8) Any provision of previous proclamations and Executive Orders that is inconsistent with the actions taken in this proclamation is superseded to the extent of such inconsistency. If any provision of this proclamation or the application of any provision to any individual or circumstance is held to be invalid, the remainder of this proclamation and the application of its provisions to any other individuals or circumstances shall not be affected.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of February, in the year of our Lord two thousand twenty-six, and of the Independence of the United States of America the two hundred and fiftieth.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the upper right quadrant of the page.

ANNEX

MODIFICATIONS TO THE HARMONIZED
TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to articles of Argentina entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern time on February 13, 2026:

A. Additional U.S. note 3 to chapter 2 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by deleting “The aggregate quantity” and by inserting “(a) Except as provided in subsection (b) of this note, the aggregate quantity” in lieu thereof; and
2. by inserting in alphabetical order:

“(b) In addition to the aggregate quantity of beef of Argentina specified in subsection (a) of this note, an additional 80,000 metric tons of lean beef trimmings of Argentina may be entered for consumption, or withdrawn from warehouse for consumption, between 12:01 a.m. local port time on February 13, 2026 and 11:59 p.m. eastern time on December 31, 2026, under statistical reporting numbers 0201.30.5091, 0201.30.5097, 0202.30.5091, and 0202.30.5097, as specified in HTSUS heading 9903.54.01. The additional aggregate quantity of beef of Argentina specified under subsection (b) of this note shall be administered on a quarterly basis such that, in any quarter, the additional aggregate quantity of beef of Argentina entered under statistical reporting numbers 0201.30.5091, 0201.30.5097, 0202.30.5091, and 0202.30.5097 shall not exceed 20,000 metric tons.”

B. Subchapter III of chapter 99 of the HTSUS is modified:

1. by inserting a new heading 9903.54.01 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled “Heading/Subheading”, “Article Description”, “Rates of Duty 1-General”, “Rates of Duty 1-Special” and “Rates of Duty 2”, respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
“9903.54.01	In addition to the aggregate quantity of beef of Argentina specified in Additional U.S. Note 3(a) to chapter 2 of the tariff schedule for any calendar year, an additional 80,000 metric tons of lean beef trimmings of Argentina may be entered for consumption, or withdrawn from warehouse for consumption, between 12:01 a.m. local port time on February 13, 2026, and 11:59 p.m. eastern time on December 31, 2026, under statistical reporting numbers 0201.30.5091, 0201.30.5097, 0202.30.5091, and	No change	No change	No change”

	0202.30.5097, as provided in U.S. note 7 to this subchapter.			
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2. by inserting the following new U.S. note 7 to subchapter III of chapter 99 of the HTSUS:

“7. (a) As provided in Additional U.S. Note 3(b) to chapter 2 of the HTSUS and as provided in heading 9903.54.01, an additional 80,000 metric tons of lean beef trimmings of Argentina may be entered for consumption, or withdrawn from warehouse for consumption, between 12:01 a.m. local port time on February 13, 2026, and 11:59 p.m. eastern time on December 31, 2026, under statistical reporting numbers 0201.30.5091, 0201.30.5097, 0202.30.5091, and 0202.30.5097.

(b) The additional aggregate quantity of beef of Argentina specified under Additional U.S. Note 3(b) to chapter 2 of the HTSUS and as provided in heading 9903.54.01, shall be administered on a quarterly basis such that, in any quarter, the additional aggregate quantity of lean beef trimmings of Argentina, entered under Additional U.S. Note 3(b) to chapter 2 of the HTSUS, heading 9903.54.01 and statistical reporting numbers 0201.30.5091, 0201.30.5097, 0202.30.5091, and 0202.30.5097, shall not exceed 20,000 metric tons.”

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