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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1145

[Doc. No. AMS–DA–25–0782]

RIN 0581–AE53

Reauthorization of Dairy Forward Pricing Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule updates the Dairy Forward Pricing Program (DFPP) regulations in accordance with the Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026 (Continuing Extensions Act). The Continuing Extensions Act reauthorizes the DFPP program to allow handlers to enter into new contracts until September 30, 2026. Any forward contract entered prior to the September 30, 2026, deadline is subject to a September 30, 2029, expiration date.

DATES: March 2, 2026.

FOR FURTHER INFORMATION CONTACT: Erin Taylor, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Division, STOP 0231–Room 2530, 1400 Independence Avenue SW, Washington, DC 20250–0231; telephone (202) 720–7311; email: *Erin.Taylor@usda.gov.*

SUPPLEMENTARY INFORMATION: The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) [1] initially established the DFPP.[2] The DFPP allows milk handlers, under the Agricultural Marketing Agreement Act of 1937 (AMAA),[3] to pay producers or cooperative associations of producers a negotiated price for producer milk, rather than the Federal order minimum blend price for non-fluid classes of milk (Classes II, III, and IV under the Federal Milk Marketing Order (FMMO) system). The DFPP does not allow for forward contracting Class I, or fluid, milk.

Following the initial expiration of the DFPP, which prevented the establishment of new contracts after September 30, 2012, the American Taxpayer Relief Act of 2012 (ATRA) [4] revised the program to allow handlers to enter into new contracts until September 30, 2013. The Agricultural Act of 2014 (2014 Farm Bill) [5] then extended the program to allow new contracts until September 30, 2018. The Agriculture Improvement Act of 2018 (2018 Farm Bill) [6] reauthorized the program to allow handlers to enter into new contracts until September 30, 2023. The Further Continuing Appropriations and Other Extensions Act of 2024 reauthorized the program to allow handlers to enter into new contracts until September 30, 2024.[7] The Relief Act of 2025 [8] reauthorized the program to allow handlers to enter into new contracts until September 30, 2025. The Continuing Extensions Act extends the program to allow handlers to enter into new contracts until September 30, 2026, subject to a September 30, 2029, expiration date.[9]

Participation in the DFPP is voluntary for dairy farmers, dairy farmer cooperatives, and handlers. Handlers may not require producer participation in a forward pricing program as a condition for accepting milk. USDA, including Market Administrator personnel, does not determine the terms of forward contracts or enforce negotiated prices. This regulation also does not affect contractual arrangements between a cooperative association and its members.

Under the DFPP, regulated handlers must still account to the FMMO pool for the classified use value of their milk. Regulated handlers claiming exemption from the Federal order minimum pricing provisions must submit to the Market Administrator a copy of each forward contract. The contract must contain a disclosure statement—either as part of the contract itself or as a supplement—to ensure producers understand the nature of the program as well as the basis on which they will be paid for their milk. Contracts that do not contain a disclosure statement are deemed invalid and returned to the handler. Signed contracts must be received by the Market Administrator before the first of a month in order to be effective for the month. For example, contracts must be received by the Market Administrator by December 31, 2025, to be effective for the month of January 2026.

Handlers with forward contracts remain subject to all other Federal milk marketing order provisions. Payments specified under a forward contract must be made on or before the same date as the Federal milk marketing order payments they replace. Required payment dates are specified in 7 CFR 1145.2(e).

This final rule reflects the latest statutory changes that reauthorized producers and cooperative associations of producers to enter into forward price contracts under the DFPP through September 30, 2026. All terms of the new forward contracts must expire prior to September 30, 2029. All other provisions and requirements of the program as provided for in the final rule published October 31, 2008,[10] are still in effect.

Executive Orders 12866 and 13563

USDA is issuing this rule in conformance with Executive Orders (E.O.) 12866, ''Regulatory Planning and Review,'' and E.O. 13563, ''Improving Regulation and Regulatory Review.'' This rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule does not have a retroactive effect. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

Executive Order 13175

This rule has been reviewed under Executive Order 13175, ''Consultation

[1] Public Law 110–234.
[2] 73 FR 64868.
[3] 7 U.S.C. 601–614.
[4] Public Law 112–240.
[5] Public Law 113–79.
[6] Public Law 115–334.
[7] Public Law 118–22.
[8] Public Law 118–158.
[9] Public Law 119–37.
[10] 73 FR 64868.

and Coordination with Indian Tribal Governments,'' which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this rule is unlikely to 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.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified this rule will not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. A small dairy farm as defined by the Small Business Administration (SBA) (13 CFR 121.201) (NAICS Code 112120) is one that has an annual gross revenue of $3.75 million or less, and a small dairy products manufacturer is one that has no more than the number of employees listed in the chart below:

NAICS code	NAICS U.S. industry title	Size standards in number of employees
311511	Fluid Milk Manufacturing	1,150
311512	Creamery Butter Manufacturing	750
311513	Cheese Manufacturing	1,250
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	1,000

To determine which dairy farms are ''small businesses,'' the $3.75 million per year income limit was used to establish an annual milk marketing threshold of 17.9 million pounds. Although this threshold does not factor in additional monies that may be received by dairy producers, it should be an accurate standard for most ''small'' dairy farmers. Based on the U.S. 2024 average yield per cow (as calculated by the Economic Research Service [ERS]) and average All-Milk price (as calculated by the National Agricultural Statistics Service [NASS]), a dairy farm with approximately 740 cows or fewer would meet the definition of a small business. According to NASS, in 2024, there were 24,811 Licensed Dairy Herds in the U.S., of which AMS determined approximately 20,168 had milk regulated on an FMMO for at least one month of the year. Based on the 2022 Census of Agriculture, Milk Cow Herd Size by Inventory and Sales, an estimated 92 percent of operations with milk sales are likely to be small businesses.

To determine a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 750-employee limit for creamery butter manufacturing; the 1,000-employee limit for dry, condensed, and evaporated dairy product manufacturing; the 1,150-employee limit for fluid milk manufacturing; or the 1,250-employee limit for cheese manufacturing; the plant is considered a large business even if the local plant does not exceed the 750, 1,000, 1,150, or 1,250-employee limit, respectively.

In 2024, 287 dairy plants were regulated for at least one month of the year in an FMMO. According to the 2022 Statistics of U.S. Businesses, published by the U.S. Census Bureau, more than 80 percent of fluid milk manufacturing plants, 91 percent of cheese plants, 74 percent of dry products plants, and 77 percent of butter plants met the SBA definition of small businesses. As the report does not break out any categories over 500 employees, the percentage of small businesses is larger than the calculations.

Producers and handlers use the DFPP as a risk management tool. Under the DFPP, producers and handlers can ''lock-in'' prices, thereby minimizing risks associated with price volatility that are particularly difficult for small businesses to mitigate.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Section 1601(c)(2)(B) of the 2014 Farm Bill provides that the administration of the DFPP shall be made without regard to the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35. Section 1701 of the 2018 Farm Bill extended that Congressional direction through September 30, 2023. Congress again extended the direction through September 30, 2024, by the Further Continuing Appropriations and Other Extensions Act, 2024. That direction was again extended to September 30, 2025, by the Relief Act. That direction is further extended to September 30, 2026, by the current reauthorization of the DFPP through the Continuing Extensions Act. [11] Thus, any information collection conducted for the DFPP is not subject to the PRA.

Final Action

In accordance with the Continuing Extensions Act, this final rule extends the DFPP to all Federal milk marketing orders. New contracts under the program may be entered into until September 30, 2026. Any forward contract entered into up to and until the September 30, 2026, deadline is subject to a September 30, 2029, expiration date.

Section 1601(c)(2)(A) of the 2014 Farm Bill provides that the promulgation of the regulations to implement the reauthorization of the DFPP shall be made without regard to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553. Section 5002 of the Continuing Extensions Act extends that direction to the current reauthorization of the DFPP. It is unnecessary and contrary to the public interest to delay the effective date of the final rule. Dairy stakeholders have been unable to enter into contracts since the DFPP expired on September 30, 2025. Producers and handlers have thus been unable to rely on the forward contracts as a risk management tool. Stakeholders have inquired about when the program will be reimplemented and have signaled they intend to immediately enter into new contracts. Further, all contracts are voluntary. AMS, therefore, is issuing this final rule with an effective date one day after publication, without prior notice or public comment.

[11] Public Law 119–37.

List of Subjects in 7 CFR Part 1145

Forward pricing contracts, Milk marketing orders, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 1145 as follows:

PART 1145—DAIRY FORWARD PRICING PROGRAM

■ 1. The authority citation for part 1145 continues to read as follows:

Authority: 7 U.S.C. 8772.

■ 2. Amend § 1145.2 by revising paragraph (b) to read as follows:

§ 1145.2 Program.

* * * * *

(b) No forward price contract may be entered into under the program after September 30, 2026, and no forward contract entered into under the program may extend beyond September 30, 2029.

* * * * *

Erin Morris,

Administrator, Agricultural Marketing Service.

[FR Doc. 2026–03985 Filed 2–26–26; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003, 1208, and 1240

[Docket No. EOIR–26–AB37; Dir. Order No. 03–2026]

RIN 1125–AB37

Appellate Procedures for the Board of Immigration Appeals; Extension of Comment Period

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

ACTION: Interim final rule; extension of comment period.

SUMMARY: On February 6, 2026, the Executive Office for Immigration Review (''EOIR'') published in the **Federal Register** the interim final rule (''IFR'') ''Appellate Procedures for the Board of Immigration Appeals'' with comments originally due March 9, 2026. This document extends the deadline for written comments to April 8, 2026.

DATES: The comment period for the IFR published February 6, 2026, at 91 FR 5267, is extended. Comments must be received by EOIR no later than April 8, 2026.

ADDRESSES: If you wish to provide comments regarding this rulemaking, you must submit your comments, identified by the agency name and reference RIN 1125–AB37 or EOIR Docket No. EOIR–26–AB37, by one of the two methods below.

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the website instructions for submitting comments.

• *Mail:* Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of electronic submission, please direct the mail/shipment to: Jamee E. Comans, Acting Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041. To ensure proper handling, please reference the agency name and RIN 1125–AB37 or EOIR Docket No. EOIR–26–AB37 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

A summary of this rule may be found in the docket for this rulemaking at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jamee E. Comans, Acting Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041; telephone (703) 305–0289.

SUPPLEMENTARY INFORMATION: On February 6, 2026, EOIR published in the **Federal Register** the IFR titled ''Appellate Procedures for the Board of Immigration Appeals'', 91 FR 5267, which amended Department of Justice regulations to streamline administrative appellate review by the Board of Immigration Appeals (''Board'') of decisions by Immigration Judges by making review of such decisions on the merits discretionary, by setting appropriate times for briefing in cases that are reviewed on the merits, and by streamlining other aspects of the appellate process to ensure timely adjudications and avoid adding to the already sizeable backlog at the Board. Additionally, the IFR made various technical and non-substantive changes to the Department's regulations.

As explained in the IFR, it is exempt from the Administrative Procedure Act's notice-and-comment requirements. *See* 91 FR 5274–75. However, in response to a request from a group of interested organizations, and to allow for commenters to have additional time to review and submit comments, the EOIR Director, by authority delegated to him by Attorney General Order Number 6260–2025, is extending the comment period for this rule (RIN 1125–AB37) by 30 days.

Daren K. Margolin,

Director, Executive Office for Immigration Review, Department of Justice.

[FR Doc. 2026–03932 Filed 2–26–26; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF COMMERCE

Office of the Under Secretary for Economic Affairs

15 CFR Part 1500

[Docket No. 260224–0056]

RIN 0605–AA86

Streamlining the Regulations Related to Concrete Masonry Research, Education, and Promotion

AGENCY: Office of the Under Secretary for Economic Affairs, U.S. Department of Commerce (Department).

ACTION: Final rule.

SUMMARY: By this rule, the Department clarifies and streamlines the regulations related to concrete masonry research, education, and promotion. Specifically, this rule adds language to clarify the purpose of these regulations, removes all of the sections that merely restate definitions provided in the underlying statute, clarifies the Secretary of Commerce's appointment authority, and streamlines the section governing disqualification and removal with respect to the Concrete Masonry Product Board (Board). This action is necessary and intended to promote clarity, simplicity, efficiency, and statutory conformity.

DATES: The rule is effective February 27, 2026.

FOR FURTHER INFORMATION CONTACT: Daniel Sweeney, Senior Counsel, Office of the General Counsel, at (202) 482–1395.

SUPPLEMENTARY INFORMATION: This action amends the Department's regulations at 15 CFR part 1500, subpart A, which implement the Concrete Masonry Products Research, Education, and Promotion Act of 2018 (15 U.S.C. 8701–8717). Subpart A of part 1500 was added by final rule on September 15, 2021. 86 FR 51456. This rule amends that subpart in the following ways.

First, this rule adds, as a new first section, language clarifying the purpose of these regulations and citing the underlying statute. This language will properly situate and orient the reader, thereby promoting clarity.

Second, this rule removes all of the sections that merely restate definitions set forth in the underlying statute. *See* 15 U.S.C. 8702 (specifically and sufficiently defining the terms ''block machine,'' ''board,'' ''cavity,'' ''concrete masonry products,'' ''concrete masonry unit,'' ''conflict of interest,'' ''Department,'' ''dry-cast concrete,'' ''education,'' ''machine cavities,'' ''machine cavities in operation,'' ''manufacturer,'' ''masonry unit,'' ''person,'' ''promotion,'' ''research,'' ''Secretary,'' and ''United States''). Based on that removal, this rule also consolidates the three remaining, meaningfully-supplemental definitions—for ''Order,'' ''Act,'' and ''Geographic regions''—into a single section. These changes will reduce redundancy and will streamline and simplify part 1500.

Third, this rule removes duplicative language, as well as an unnecessary constraint on the Secretary of Commerce's discretion, related to making appointments to the Concrete Masonry Product Board. As currently written, § 1500.41 applies to the initial Board, but it is meant to apply to the Board in perpetuity. Section 1500.41 also arbitrarily limits to six the Secretary's ability to appoint alternates (nonvoting members), and it contains several repetitive statements. This amendment removes references to the ''initial'' Board and the number limit regarding alternates, and it tightens the language by removing repetitive statements (and obviates the need for § 1500.43), thus reinforcing the Secretary's authority to make appointments and to appoint alternates as the Secretary deems appropriate.

Fourth, this rule amends and streamlines § 1500.44, which pertains to disqualification and removal of members of the Board. Currently, § 1500.44(a) establishes that any Board member who ''ceases to qualify as a manufacturer . . . shall be disqualified from serving on the Board,'' either at the Secretary's initiative or upon the Board's recommendation; § 1500.44(b) establishes that the Board may recommend removal of a member if the member ''consistently refuses to perform'' their duties or engages in ''acts of dishonesty or willful misconduct''; and § 1500.44(c) establishes that ''[a]ll members serve at the pleasure of the Secretary.'' Considering the broad discretion afforded to the Secretary by § 1500.44(c), the Department finds it appropriate to remove the final sentence of § 1500.44(a) and § 1500.44(b) in its entirety, and to add language to § 1500.44(c) generally establishing that the Board may recommend to the Secretary that a member be removed. These changes will reduce redundancy and remove any arbitrary restrictions imposed on the Board's ability to make recommendations to the Secretary, without changing the Secretary's current authority, thereby promoting efficiency.

Regulatory Classifications

A. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), the Department finds good cause to waive the prior notice and opportunity for public participation requirements of the Administrative Procedure Act for this final rule. The Department considers this rule to be uncontroversial, and has determined that prior notice and opportunity for public participation is unnecessary, because this rule only adds a section clarifying the purpose of part 1500, removes an arbitrary limit on and clarifies the Secretary's authority to make appointments, removes regulatory language that restates definitions set forth in the underlying statute, and streamlines the language governing disqualification and removal of members of the Concrete Masonry Product Board—all without changing the substantive authority and discretion already afforded to the Secretary of Commerce by statute. All four of these changes are consistent with the Concrete Masonry Products Research, Education, and Promotion Act of 2018 and with the Department's broader regulatory policy; public participation would not justify the continued lack of an introductory purpose section or the continued maintenance of the excessive regulatory language at issue. For the same reason, the Department has determined that delaying the effectiveness of this elimination would be contrary to the public interest. The four changes described above will immediately promote clarity, simplicity, and efficiency—thereby benefiting the public—at little to no cost. The Department therefore finds good cause to waive the public notice and comment period under 553(b)(B) and to waive the 30-day delay in effectiveness under 553(d).

B. Executive Orders 12866, 14192, and 13132

The Office of Management and Budget has determined this rule is not significant pursuant to Executive Order (E.O.) 12866. This rule is an E.O. 14192 deregulatory action. This rule does not contain policies having federalism implications as the term is defined in E.O. 13132.

C. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public participation are not required to be given for this rule by 5 U.S.C. 553(b)(B), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

D. Paperwork Reduction Act

This rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects for 15 CFR Part 1500

Administrative practice and procedure, Concrete masonry promotion.

Dated: February 25, 2026.

Joyce Meyer,

Under Secretary for Economic Affairs.

Accordingly, for the reasons set forth above and under the authority of 15 U.S.C. 8713, the Department amends part 1500 of title 15 of the Code of Federal Regulations to read as follows:

PART 1500—CONCRETE MASONRY RESEARCH, EDUCATION, AND PROMOTION

■ 1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 8701–8717.

Subpart A—Concrete Masonry Products Research, Education, and Promotion Order

■ 2. Revise the undesignated center heading for §§ 1500.0 through 1500.21 to read as follows:

Purpose and Definitions

■ 3. Revise § 1500.0 to read as follows:

§ 1500.0 Purpose.

The purpose of these regulations is to set out the Department of Commerce's policies and procedures under the Concrete Masonry Products Research, Education, and Promotion Act of 2018.

■ 4. Revise § 1500.1 to read as follows:

§ 1500.1 Definitions.

(a) *Order* means this subpart A, Concrete Masonry Products Research, Education, and Promotion Order.

(b) *Act* means the Concrete Masonry Products Research, Education, and Promotion Act of 2018 (15 U.S.C. 8701 *et seq.;* Pub. L. 115–254, section 1301, 132 Stat. 3469–3485 (2018)), and any amendments thereto.

(c) *Geographic regions* means the groupings of states as delineated in this

Order (at § 1500.40(c)), for the purpose of supporting research, education, and promotion plans and projects.

§§ 1500.2 through 1500.15 [Removed and Reserved]

■ 5. Remove and reserve §§ 1500.2 through 1500.15.

§§ 1500.17 through 1500.21 [Removed and Reserved]

■ 6. Remove and reserve §§ 1500.17 through 1500.21.

■ 7. Revise § 1500.41 to read as follows:

§ 1500.41 Nominations and Appointments.

(a) The Secretary shall appoint not fewer than 15 and not more than 25 members to the Board, and alternate members as deemed appropriate. Alternate members participate in meetings but do not vote as members of the Board. The Secretary shall consider nominations submitted from the Board as well as other manufacturers as the Secretary deems appropriate.

(b) In the event a voting member vacates their appointment, the Secretary will appoint an alternate member to fill the unexpired term. If the Board fails to submit nominations for any open position, the Secretary shall appoint a member qualifying for the position under criteria set forth in 1500.40.

A maximum of two individuals from any single company or its affiliates may serve on the Board at any one time, and current members will not necessarily be replaced with another representative of the same company.

§§ 1500.43 [Removed and Reserved]

■ 8. Remove and reserve § 1500.43.

■ 9. Revise § 1500.44 to read as follows:

§ 1500.44 Disqualification and Removal.

(a) In the event that any Board member or alternate Board member who was appointed as a manufacturer ceases to qualify as a manufacturer, such Board member or alternate Board member shall be disqualified from serving on the Board.

(b) [Reserved]

(c) All members serve at the pleasure of the Secretary. The Board may recommend to the Secretary that a member be removed from office.

[FR Doc. 2026–04005 Filed 2–26–26; 8:45 am]

BILLING CODE 3150–20–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

RIN 3142–AA21

Withdrawal of 2023 Standard for Determining Joint Employer Status

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: On October 27, 2023, the Board published a final rule (2023 Rule) that rescinded and replaced a prior rule regarding the standard for determining joint employer status under the National Labor Relations Act. On March 8, 2024, the U.S. District Court for the Eastern District of Texas issued an order vacating the 2023 Rule. The Board is therefore revising its rules and regulations to replace the vacated regulatory text with the previous version of its rules that remain in effect due to the vacatur.

DATES: This rule is effective February 27, 2026.

FOR FURTHER INFORMATION CONTACT: Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half St. SE, Washington, DC 20570–0001, (202) 273–1940 (this is not a toll-free number) or 1–844–762–NLRB (6572) (this is a toll-free number). Hearing impaired callers who wish to speak to an NLRB representative should contact T-Mobile Relay Conference Captioning by visiting its website at *https://www.tmobileaccess.com/federal,* and submitting a form asking its Communications Assistant to call our toll free number at 1–844–762–NLRB (6572).

SUPPLEMENTARY INFORMATION: On October 27, 2023, the National Labor Relations Board published a final rule intended to rescind and replace a 2020 rule governing joint employer status under the National Labor Relations Act. (88 FR 73946, Oct. 27, 2023). The 2023 Rule, titled ''Standard for Determining Joint Employer Status,'' established a new standard for determining whether two employers, as defined in the Act, are joint employers of particular employees within the meaning of the Act.

On November 19, 2023, a challenge to the 2023 Rule was filed in the U.S. District Court for the Eastern District of Texas. *Chamber of Commerce* v. *NLRB,* No. 6:23–CV–00553 (E.D. Tex.). On March 8, 2024, the district court vacated the rule. 723 F.Supp. 3d 498, 519 (E.D. Tex. 2024). As the 2023 Rule has never taken effect, the prior rule titled ''Joint Employer Status Under the National Labor Relations Act,'' which was promulgated on February 26, 2020 (2020 Rule), remains the operative rule for determining joint employer status. 85 FR 11184 (Feb. 26, 2020), *codified at* 29 CFR 103.40. In accordance with the district court's order, the Board hereby revises 29 CFR subpart D to replace the text of the vacated 2023 Rule with the text of the 2020 Rule, which remains in effect.[1]

Procedural and Other Matters

Section 553 of the Administrative Procedure Act provides that when an agency for good cause finds that notice and public comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment.[2] The Board has determined that there is good cause for making today's amendment to the 2023 Rule final without prior proposal and opportunity for comment. Because of the Court order vacating the 2023 Rule, the Board's action is ministerial in nature. Accordingly, the Board for good cause finds that a notice and comment period is unnecessary.[3]

The Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[4] This requirement, however, does not apply if the agency finds good cause for making this action to amend the 2023 Rule effective sooner. For the reasons discussed above, the Board finds that there is good cause to make repeal and replacement of the rule effective immediately.

The Board considers the costs and benefits of its rules and regulations. As discussed above, the 2023 Rule was vacated by the district court and the

[1] In accordance with the district court's vacatur of the 2023 Rule, Member Prouty joins in replacing the 2023 Rule with the 2020 Rule. However, he notes that was not a member of the Board when the 2020 Rule was promulgated and, for the reasons set forth in the preamble to the 2023 Rule, he does not believe that the 2020 Rule sets forth the proper standard for determining when an entity is a joint employer.

[2] 5 U.S.C. 553(b)(B).

[3] This finding also satisfies the requirements of 5 U.S.C. 808(2) (if a Federal agency finds that notice and public comment are ''impracticable, unnecessary or contrary to the public interest,'' a rule ''shall take effect at such time as the Federal agency promulgating the rule determines''), allowing the withdrawal to become effective notwithstanding the requirement of 5 U.S.C. 801. No analysis is required under the Regulatory Flexibility Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility analysis, the term ''rule'' means any rule for which the agency publishes a general notice of the proposed rulemaking).

[4] 5 U.S.C. 553(d).

action the Board takes today merely implements the Court's decision. Our action is ministerial and therefore will have no separate economic effect.

Finally, the Congressional Review Act[5] generally provides that before certain actions make take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of Congress and to the Comptroller General of the United States. Because this action only implements the Court vacatur, and the agency has made a good cause finding that notice and comment is unnecessary, it is not subject to the Congressional Review Act.

Final Rule

This rule is published as a final rule.

List of Subjects in 29 CFR Part 103

Jurisdictional standards, Election procedures, Appropriate bargaining units, Joint employers, Remedial orders.

For the reasons set forth in the preamble, the National Labor Relations Board amends 29 CFR part 103 as follows:

PART 103—OTHER RULES

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 29 U.S.C. 156, in accordance with the procedure set forth in 5 U.S.C. 553.

■ 2. Revise § 103.40, to read as follows:

§ 103.40 Joint employers.

(a) An employer, as defined by section 2(2) of the National Labor Relations Act (the Act), may be considered a joint employer of a separate employer's employees only if the two employers share or codetermine the employees' essential terms and conditions of employment. To establish that an entity shares or codetermines the essential terms and conditions of another employer's employees, the entity must possess and exercise such substantial direct and immediate control over one or more essential terms or conditions of their employment as would warrant finding that the entity meaningfully affects matters relating to the employment relationship with those employees. Evidence of the entity's indirect control over essential terms and conditions of employment of another employer's employees, the entity's contractually reserved but never exercised authority over the essential terms and conditions of employment of another employer's employees, or the entity's control over mandatory subjects of bargaining other than the essential terms and conditions of employment is probative of joint-employer status, but only to the extent it supplements and reinforces evidence of the entity's possession or exercise of direct and immediate control over a particular essential term and condition of employment. Joint-employer status must be determined on the totality of the relevant facts in each particular employment setting. The party asserting that an entity is a joint employer has the burden of proof.

(b) *Essential terms and conditions of employment* means wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction.

(c) *Direct and immediate control* means each respective essential employment term or condition in paragraphs (c)(1) through (8) of this section:

(1) *Wages.* An entity exercises direct and immediate control over wages if it actually determines the wage rates, salary or other rate of pay that is paid to another employer's individual employees or job classifications. An entity does not exercise direct and immediate control over wages by entering into a cost-plus contract (with or without a maximum reimbursable wage rate).

(2) *Benefits.* An entity exercises direct and immediate control over benefits if it actually determines the fringe benefits to be provided or offered to another employer's employees. This would include selecting the benefit plans (such as health insurance plans and pension plans) and/or level of benefits provided to another employer's employees. An entity does not exercise direct and immediate control over benefits by permitting another employer, under an arm's-length contract, to participate in its benefit plans.

(3) *Hours of work.* An entity exercises direct and immediate control over hours of work if it actually determines work schedules or the work hours, including overtime, of another employer's employees. An entity does not exercise direct and immediate control over hours of work by establishing an enterprise's operating hours or when it needs the services provided by another employer.

(4) *Hiring.* An entity exercises direct and immediate control over hiring if it actually determines which particular employees will be hired and which employees will not. An entity does not exercise direct and immediate control over hiring by requesting changes in staffing levels to accomplish tasks or by setting minimal hiring standards such as those required by government regulation.

(5) *Discharge.* An entity exercises direct and immediate control over discharge if it actually decides to terminate the employment of another employer's employee. An entity does not exercise direct and immediate control over discharge by bringing misconduct or poor performance to the attention of another employer that makes the actual discharge decision, by expressing a negative opinion of another employer's employee, by refusing to allow another employer's employee to continue performing work under a contract, or by setting minimal standards of performance or conduct, such as those required by government regulation.

(6) *Discipline.* An entity exercises direct and immediate control over discipline if it actually decides to suspend or otherwise discipline another employer's employee. An entity does not exercise direct and immediate control over discipline by bringing misconduct or poor performance to the attention of another employer that makes the actual disciplinary decision, by expressing a negative opinion of another employer's employee, or by refusing to allow another employer's employee to access its premises or perform work under a contract.

(7) *Supervision.* An entity exercises direct and immediate control over supervision by actually instructing another employer's employees how to perform their work or by actually issuing employee performance appraisals. An entity does not exercise direct and immediate control over supervision when its instructions are limited and routine and consist primarily of telling another employer's employees what work to perform, or where and when to perform the work, but not how to perform it.

(8) *Direction.* An entity exercises direct and immediate control over direction by assigning particular employees their individual work schedules, positions, and tasks. An entity does not exercise direct and immediate control over direction by setting schedules for completion of a project or by describing the work to be accomplished on a project.

(d) *Substantial direct and immediate control* means direct and immediate control that has a regular or continuous consequential effect on an essential term or condition of employment of another employer's employees. Such control is not ''substantial'' if only exercised on a sporadic, isolated, or de minimis basis.

(e) *Indirect control* means indirect control over essential terms and conditions of employment of another employer's employees but not control or

[5] 5 U.S.C. 801.

influence over setting the objectives, basic ground rules, or expectations for another entity's performance under a contract.

(f) *Contractually reserved authority over essential terms and conditions of employment* means the authority that an entity reserves to itself, under the terms of a contract with another employer, over the essential terms and conditions of employment of that other employer's employees, but that has never been exercised.

Dated: February 25, 2026.

Roxanne L. Rothschild,

Executive Secretary.

[FR Doc. 2026–03955 Filed 2–26–26; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF EDUCATION

34 CFR Part 602

Regulatory Guidance Relating to the Criteria and Process for Initial Recognition of an Accrediting Agency

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Interpretive rule.

SUMMARY: This interpretive rule sets forth the Department's interpretation of certain regulations at the Criteria for Recognition, and the Recognition Process, governing an accrediting agency's submission of a written application seeking initial recognition. In general, the provisions in this interpretive rule are designed to reduce unnecessary barriers to the recognition of accrediting agencies to promote competition in the market for assessing the quality of education or training offered by postsecondary institutions and programs.

DATES: February 27, 2026.

FOR FURTHER INFORMATION CONTACT: Elizabeth Daggett, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Email: *elizabeth.daggett@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Background

For decades, the Department has utilized 34 CFR part 602 ('Part 602'), Subpart B, the Criteria for Recognition, to govern the eligibility requirements that an accrediting agency must meet before submitting a written application for initial recognition to the Secretary; and, after submitted, Part 602, Subpart C, the Recognition Process, to govern the procedures for the Department's processing, analysis, and decision to approve or deny an application seeking initial recognition. Since 1999, the Department has only recognized four (4) new accrediting agencies with the authority to establish institutional eligibility to participate in the Federal financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended, (''HEA'').[1] In fact, only seven institutional accrediting agencies collectively serve as gatekeepers for more than three thousand (3,000) U.S. institutions' eligibility for title IV, HEA programs.

On April 23, 2025, President Donald J. Trump issued Executive Order 14279, Reforming Accreditation to Strengthen Higher Education, (''E.O. 14279''), which called for the Department to take action to reform the ''dysfunctional accreditation system.'' Specifically, E.O. 14279 directs the Department, among other things, to:

''(i) resume recognizing new accreditors to increase competition and accountability in promoting high-quality, high-value academic programs focused on student outcomes;''

''(v) increase the consistency, efficiency, and effectiveness of the accreditor recognition review process, including through the use of technology;''

''(vi) streamline the process for higher education institutions to change accreditors to ensure institutions are not forced to comply with standards that are antithetical to institutional values and mission;'' and

''(vii) update the Accreditation Handbook to ensure that the accreditor recognition and reauthorization process is transparent, efficient, and not unduly burdensome.''

Upon the issuance of E.O. 14279, the Secretary of Education stated: ''[E.O. 14279] will bring long-overdue change by accelerating the recognition of new accreditors and refocusing existing accreditors on helping member institutions improve the student outcomes families care most about. Instead of pushing schools to adopt a divisive DEI ideology, accreditors should be focused on helping schools improve graduation rates and graduates' performance in the labor market. The Department of Education will create a competitive marketplace of higher education accreditors, which will give colleges and universities incentives and support to focus on lowering college costs, fostering innovation, and delivering a high-quality postsecondary education.'' [2]

As the Department observed in the Preamble of the 2019 revisions to Part 602, ''[w]e believe the dearth of new agencies shows that the barriers to entry for new accrediting agencies were so significant that they discouraged new entrants.'' [3] A primary obstacle to effectuating E.O. 14279's mandate to recognize new accrediting agencies is the existing regulatory requirement that an agency seeking initial recognition from the Secretary must have ''[c]onducted accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, for at least two years prior to seeking recognition.'' 34 CFR 602.12(a). Coupled with the Department's current processing procedures under Part 602, Subpart C, the Recognition Process, an accrediting agency typically faces a two-to-three year period for the Department to evaluate and approve or deny the initial application for recognition, resulting in a cumulative four-to-five year timeframe for a new accrediting agency to be recognized by the Secretary. As a practical matter, this delay creates a significant barrier to entry for new institutional accrediting agencies as potential member-institutions are often unwilling or unable to simultaneously maintain accreditation with an already-recognized accrediting agency—which is necessary for continued participation in title IV and other Federal programs—and apply for and maintain accreditation with a new accrediting agency while that agency undergoes a

[1] U.S. Dep't of Ed., *Institutional Accrediting Agencies, www.ed.gov* (September 17, 2025) available at *https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/college-accreditation/institutional-accrediting-agencies.* Specifically, the Midwifery Education Accreditation Council (2001), Commission on Massage Therapy Accreditation (2002), Commission on English Language Program Accreditation (2003)(though an institutional accreditor, CEA does not recognize institutions for Title IV program purposes), Middle State Commission on Secondary Schools, which has jurisdiction over vocational/technical institutions that offer non-degree, postsecondary education (2004), and the Association of Institutions of Jewish Studies (2015).

[2] U.S. Dep't of Ed., *Secretary of Education Statements on President Trump's Education Executive Orders, www.ed.gov* (April 23, 2025) available at *https://www.ed.gov/about/news/press-release/secretary-of-education-statements-president-trumps-education-executive-orders.* (Last Accessed February 23, 2026).

[3] Student Assistance General Provisions, The Secretary's Recognition of Accrediting Agencies, The Secretary's Recognition Procedures for State Agencies, 84 FR 58834, 58853 (Nov. 1, 2019) (codified at 34 CFR part 602).

four-to-five year initial recognition process.

The HEA requires that an accrediting agency seeking initial recognition by the Department ''demonstrate the ability and the experience to operate as an accrediting agency or association within the State, region, or nationally, as appropriate.'' 20 U.S.C. 1099b(a)(1). Indeed, under the HEA, an accrediting agency must demonstrate that it ''consistently applies and enforces standards that respect the stated mission of the institution of higher education, including religious missions, and that ensure that the courses or programs of instruction, training, or study offered by the institution of higher education, including distance education or correspondence courses or programs, are of sufficient quality to achieve, for the duration of the accreditation period, the stated objective for which the courses or the programs are offered.'' 20 U.S.C. 1099b(a)(4)(A). The Secretary ''shall by regulation provide procedures for the recognition of accrediting agencies or associations and for the appeal of the Secretary's decisions.'' 20 U.S.C. 1099b(o). Through 34 CFR 602.12(a), the Department adds additional barriers that are not directly required by the HEA, requiring an accreditation agency to ''conduct accrediting activities for at least two years.'' 34 CFR 602.12(a). The Department issues this interpretive rule to provide prospective accrediting agencies with additional clarity regarding the recognition process pursuant to E.O. 14279.[4]

II. 34 CFR, Part 602, Subpart B—The Criteria for Recognition

To further implement E.O. 14279, the Department provides the following interpretation related to certain regulatory requirements an accrediting agency must meet to submit a complete written application when seeking initial recognition under Part 602, Subpart B, specifically 34 CFR 602.12. Interpretations of specific regulatory provisions are provided below. The Department notes that many of the terms discussed in this interpretive rule have not been formally interpreted in the past in a published format. However, we are not breaking new ground with most of the terms discussed herein. Where the Department's interpretation departs from past interpretations, we note the novelty of it explicitly.

Accrediting Experience (34 CFR 602.12(a)(1)): The Department finds that the phrase ''Granted accreditation or pre-accreditation'' in 34 CFR 602.12(a)(1) means a decision by an accrediting agency to award accreditation or preaccreditation to an institution of higher education, a proprietary institution of higher education, or postsecondary vocational institution as those terms are defined at 34 CFR 600.4, 600.5, and 600.6, or to a program as defined at 34 CFR 602.3. The Department believes that the regulation is not ambiguous and that this is the only reasonable interpretation of the regulation because it aligns with the plain meaning of the regulation and is consistent with the longstanding interpretation and application of these terms.

Scope of Activities (34 CFR 602.12(a)(1)(ii)): The Department finds that the phrase ''[C]overs the range of the specific degrees, certificates, institutions, and programs for which it seeks recognition'' in 34 CFR 602.12(a)(1)(ii) means that an institution or program accredited by the accrediting agency is an institution or program that (a) operates within the scope of recognition sought by the agency and (b) offers one or more of the degrees, certificates, and programs for which the agency seeks to be recognized. The Department does not believe this regulatory provision is ambiguous and finds that the interpretation is the only reasonable reading because it hues closely to the actual text of the regulation in addition to its plain meaning.

Geographic Area (34 CFR 602.12(a)(1)(iii)): The Department finds that the phrase ''In the geographic area'' in 34 CFR 602.12(a)(1)(iii) means an institution or program must be located within the geographic area for which the accrediting agency is seeking recognition, to the extent that the agency intends to limit itself by geographic area. The Department does not believe this regulatory provision is ambiguous and finds that the interpretation is the only reasonable reading of the regulation because it is aligned with the exact words of the regulation.

Nature of Accrediting Activities (34 CFR 602.12(a)(2)): There is significant confusion regarding the implementation of 34 CFR 602.12(a)(2) and the types of accrediting activities that must be conducted for two years prior to the Secretary recognizing an accrediting agency. 34 CFR 602.12(a)(2) provides that the accrediting agency must conduct accrediting activities, which includes granting or denying accreditation or preaccreditation to an institution or program. These examples of accrediting activities are illustrative, not exhaustive, and the two-year time clock may start before the issuance of accreditation or preaccreditation. If the two-year time clock were only to start after an accrediting agency grants accreditation or preaccreditation, the requirement in 34 CFR 602.12(a)(1) would be redundant, as that regulation requires an agency to grant accreditation or preaccreditation to an institution or program prior to the Secretary recognizing the agency. The Department does not think that is a plausible reading of 34 CFR 602.12(a)(2), and as such, provides greater clarity regarding how we interpret the phrase ''Conducted accrediting activities'' as it exists under 34 CFR 602.12(a)(2).

The Department interprets ''conducted accrediting activities'' in 34 CFR 602.12(a)(2) as requiring a new accrediting agency to be formed as a corporation and have conducted accrediting activities. This means that the new agency has: (1) filed articles of incorporation in the relevant jurisdiction and the governing entity of the corporation has adopted bylaws,[5] and (2) conducted at least one type of accrediting activity as included in the list below. After the accrediting agency satisfies (1) and (2), the two-year clock begins, meaning the Secretary may recognize the accrediting agency two years after such date. Nothing in the regulation precludes Department staff or the National Advisory Committee on Institutional Quality and Integrity (NACIQI) from making a recommendation regarding whether the Secretary should recognize the accrediting agency prior to the two-year clock being satisfied, but neither the senior Department official (SDO) nor the Secretary may make a final decision to recognize the accrediting agency prior to the agency having met the two-year requirement. This means that

[4] This interpretive rule is also issued in pursuance of the President's Executive Order 14267 of April 9, 2025, *Reducing Anti-Competitive Regulatory Barriers,* in which the President directed Agency heads to ''complete a review of all regulations subject to their rulemaking authority and identify those that: . . . (iv) create or facilitate licensure or accreditation requirements that unduly limit competition.''

[5] During the ''pre-application period'' (*i.e.,* the period before a new accrediting agency submits a complete written application seeking initial recognition during which the agency takes formative actions to meet the requirements of Part 602, Subpart B), the Department intends to generally coordinate with a new accrediting agency seeking recognition, including (a) granting access to the E-recognition portal to allow the agency to draft narrative responses and collect supporting documentation required for a complete application and (b) scheduling and planning required observations under 34 CFR 602.32(d)(1), to facilitate the efficient submission of the agency's complete written application upon conclusion of the pre-application period.

Department staff and NACIQI may prospectively recommend approval (or disapproval) in advance of the accrediting agency having satisfied the two-year requirement. For the purposes of 34 CFR 602.12(a)(2), accrediting activities include:

(i) adopting accreditation standards consistent with 34 CFR 602.16;

(ii) granting or denying accreditation or preaccreditation consistent with 34 CFR 602.17–18;

(iii) conducting a site visit at an institution or program consistent with 34 CFR 602.17(c);

(iv) adopting operating procedures consistent with 34 CFR 602.23; or

(v) establishing a process to accept applications for accreditation consistent with 34 CFR 602.17.

The Department acknowledges that these provisions in 34 CFR 602.12(a)(2) are ambiguous but finds this construction of the regulation to be the most reasonable. Indeed, this interpretation ensures that accrediting agencies have at least two years of operational experience and have, at a minimum, granted preaccreditation or accreditation to at least one institution prior to recognition. By its own terms, 34 CFR 602.12(a)(2) requires nothing more.

Letters from Institutions in the Application Process (34 CFR 602.32(b)(2)): The Department finds that the phrase ''Letters from at least one program or institution that will rely on the agency as its link to a Federal program upon recognition of the agency or intends to seek multiple accreditations which will allow it in the future to designate the agency as its Federal link'' in 34 CFR 602.32(b)(2) means a letter from an institution or program in which the institution or program: (a) commits to consider designating the new agency as its Federal link to the HEA or other Federal programs once the agency is recognized; or (b) states its intention to seek multiple accreditations, one of which will be from the agency seeking initial recognition. The Department finds this regulation is not ambiguous and that this is the only reasonable interpretation of the regulation as it aligns closely to the actual words of the regulation and is consistent with the ordinary meaning of those words.

Analysis of Applications for Initial or Renewed Recognition (34 CFR 602.32(d)): To encourage accrediting agencies to seek recognition, the Department herein announces that it intends to complete the staff analysis determining whether or not the accrediting agency has met the basic eligibility requirements within 60 calendar days from the agency's submission of its application. Once Department staff have determined that the accrediting agency has met the basic eligibility requirements, the Department intends to complete the review of the agency's complete written petition within six (6) months but no more than 12 months. Nothing in this interpretive rule binds the Department to any specific timeline. Indeed, the regulations do not specifically call for a 60-calendar day review period. However, the Department believes it is important to give notice to prospective accrediting agencies regarding the likely length of the review process so they can plan accordingly.

Site Visit Observations and Review of Files (34 CFR 602.32(d)(1)(i)–(iii)): The Department finds the phrases ''observations from site visits . . . to the agency'' and ''a file review at the agency of documents'' mean observations of accrediting activities conducted and review of files maintained, respectively, in the ordinary course of the agency's business with its existing portfolio of member institutions or programs. ''Observations from site visits . . . to one or more of the institutions or programs the agency accredits or preaccredits'' means that the Department will not require the agency to work with any institution or program other than the institution(s) or program(s) accredited or preaccredited by the agency. The Department finds this regulation is not ambiguous. The Department believes that this is the only reasonable interpretation of the regulation as it would not make sense to take, nor does the regulation contemplate, a broader reading where accreditors must conduct site visits outside of the ordinary course of business.

Failure to Demonstrate Compliance (34 CFR 602.32(g)): The Department finds the phrase ''[D]etermines that the agency fails to demonstrate compliance with the basic eligibility requirements'' means that the agency is unable to demonstrate full or substantial compliance with one or more requirements of 34 CFR 602.10 through 602.15 within the period of the Department's analysis of its application. The Department finds this regulation is not ambiguous. The Department finds this to be the only reasonable interpretation because the phrase ''basic eligibility requirements'' is not defined and the only other eligibility requirements in Part 602, relate to demonstrating full or substantial compliance with the recognition criteria. Because there are no other eligibility requirements in Part 602, this interpretation is the only logical construction that is consistent with the broader construction of the regulation.

Findings of Full, Substantial, or Noncompliance with Recognition Criteria (34 CFR 602.32(h)(4)(i)): The Department interprets the phrase ''indicating that the agency is in full compliance, substantial compliance, or noncompliance with each of the criteria for recognition'' to mean that the Department's final staff analysis of the agency's complete written application seeking initial recognition submitted to NACIQI may include findings of full compliance, substantial compliance, or noncompliance with each of the criteria for recognition. For any findings of noncompliance, the Department reserves the right to deny recognition to the accrediting agency. The Department finds this regulation is not ambiguous and that this is the only reasonable interpretation of the regulation because it aligns with the ordinary meaning of the words in the regulation.

III. Effective Date

Interpretive rules cannot have effective dates. Rather, this interpretive rule informs the public of the Department's interpretation of the law. *See Guedes* v. *Bureau of Alcohol, Tobacco, Firearms & Explosives,* 920 F.3d 1, 20 (D.C. Cir. 2019) (holding that an interpretive rule cannot have an effective date and is instead an interpretation of how the law should be interpreted, past and present). This interpretation represents the Department's current position on the issues discussed herein and may be referenced when administering 34 CFR part 602, but nothing in this interpretive rule is binding upon the Department, recognized accrediting agencies, accrediting agencies seeking recognition, or any other parties.

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in

text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

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

Authority: Section 496 of the HEA of 1965, as amended. 20 U.S.C. 1099b.

David Barker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2026–03953 Filed 2–26–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF VETERANS AFFAIRS

[Docket No. VA–2026–VBA–0067]

38 CFR Part 4

RIN 2900–AS49

Rescission of Interim Final Rule, Evaluative Rating: Impact of Medication

AGENCY: Department of Veterans Affairs (VA).

ACTION: Final rule; rescission of interim final rule.

SUMMARY: VA is rescinding the interim final rule, Evaluative Rating: Impact of Medication, published on February 17, 2026, and restoring the prior regulatory text. This rescission is effective immediately upon publication.

DATES: This final rule rescinding the interim final rule, published at 91 FR 7118 on February 17, 2026, is effective February 27, 2026.

FOR FURTHER INFORMATION CONTACT: Ethan Kalett, Executive Director, Office of Regulatory Oversight and Management, (202) 461–9700.

SUPPLEMENTARY INFORMATION: VA announces an immediate rescission of the interim final rule, Evaluative Rating: Impact of Medication, published in the **Federal Register** on February 17, 2026. 91 FR 7118. VA issued the rule to clarify existing policy and protect veterans' benefits in the wake of an ongoing court action. VA always takes veterans' concerns seriously and recognizes that many commenters construed the interim final rule as something that could result in adverse consequences.

VA remains committed to its mission of ensuring that every claimant applying for benefits—especially veterans who have earned disability compensation through their honorable service to the Nation—receives all benefits to which they are entitled under the law as expeditiously as possible. To ensure that VA can fulfill this mission while maintaining the trust and confidence of our Nation's veterans, as well as their families, caregivers, and survivors, the Department hereby advises that the interim final rule is rescinded effective immediately.

Good Cause Justification: Under 5 U.S.C. 553(b)(B) and (d)(3), VA finds that prior notice and comment for this rescission is impracticable and contrary to the public interest. Some stakeholders have expressed uncertainty about the interim final rule's effect on claims, and leaving the rule in place during a lengthy rulemaking process could undermine confidence in the benefits system. Immediate rescission ensures continuity in adjudication and preserves the status quo. This action does not resolve the legal questions now before the courts; it simply restores prior regulatory text to maintain stability.

List of Subjects in 38 CFR Part 4

Disability benefits, Veterans.

Signing Authority

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on February 24, 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.

Jennifer Williams,

Alternate Federal Register Liaison Officer, Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR part 4 as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

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

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart A—General Policy in Rating

■ 2. Revise and republish § 4.10 to read as follows:

§ 4.10 Functional impairment.

The basis of disability evaluations is the ability of the body as a whole, or of the psyche, or of a system or organ of the body to function under the ordinary conditions of daily life including employment. Whether the upper or lower extremities, the back or abdominal wall, the eyes or ears, or the cardiovascular, digestive, or other system, or psyche are affected, evaluations are based upon lack of usefulness, of these parts or systems, especially in self-support. This imposes upon the medical examiner the responsibility of furnishing, in addition to the etiological, anatomical, pathological, laboratory and prognostic data required for ordinary medical classification, full description of the effects of disability upon the person's ordinary activity. In this connection, it will be remembered that a person may be too disabled to engage in employment although he or she is up and about and fairly comfortable at home or upon limited activity.

[FR Doc. 2026–03940 Filed 2–26–26; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2025–0186; FRL–12720.1–02–OAR]

RIN 2060–AW76

Extending the Reporting Deadline Under the Greenhouse Gas Reporting Rule for 2025

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is promulgating this final rule to extend the reporting deadline under the Greenhouse Gas Reporting Rule for reporting year 2025 from March 31, 2026 to October 30, 2026. This final rule changes only the reporting deadline for annual greenhouse gas (GHG) reports for reporting year 2025 in response to comments received on the proposed rescission of the Greenhouse Gas Reporting Program (GHGRP). The EPA anticipates addressing the remainder of the proposed rule in one or more subsequent final actions.

DATES: This rule is effective February 27, 2026.

ADDRESSES: The EPA established a docket for this action under Docket Id. No. EPA–HQ–OAR–2025–0186. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Jennifer Bohman, Emissions Data and Assessments Branch, Natural Resources Division, Office of Clean Air Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9548; email address: *GHGReporting@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

CAA Clean Air Act
CBI confidential business information
CFR Code of Federal Regulations
CO_2 carbon dioxide
CRA Congressional Review Act
e-GGRT electronic Greenhouse Gas Reporting Tool
EPA U.S. Environmental Protection Agency
FR Federal Register
GHG greenhouse gas
GHGRP Greenhouse Gas Reporting Program
HCFC hydrochlorofluorocarbon
HFC hydrofluorocarbon
$MTCO_2e$ metric tons of CO_2 equivalent
NAICS North American Industry Classification System
NTTAA National Technology Transfer and Advancement Act
OAR Office of Air and Radiation
OMB Office of Management and Budget
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995

Background information. On September 16, 2025, the EPA proposed to permanently remove program obligations for 46 source categories of the GHGRP. Under the proposal, facilities, suppliers, and underground injection sites under these 46 source categories would no longer report to the EPA after reporting year (RY) 2024, meaning reporting would not be required for RY2025 and onward. For the petroleum and natural gas source category (subpart W), the EPA's proposed amendments consisted of two parts. First, the EPA proposed to permanently remove program obligations for facilities in the natural gas distribution segment. Under the proposal, facilities in the natural gas distribution segment of subpart W would no longer report to the EPA after RY2024. Second, for the remaining nine segments of subpart W, the EPA proposed to suspend program reporting requirements until reporting year 2034. Additionally, the EPA proposed to extend the March 31, 2026, reporting deadline for all 47 source categories until June 10, 2026. In this final rule, we are extending the reporting deadline under the Greenhouse Gas Reporting Program for reporting year 2025 and not taking final action on any other aspect of the proposed rule, which will be addressed in one or more subsequent final actions.

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I. General Information

A. Does this action apply to me?

Regulated entities. This final regulation affects entities that submit annual GHG reports pursuant to the GHGRP (40 CFR part 98). Entities affected by this action are owners or operators of facilities that are direct emitters or suppliers of GHGs or that sequester carbon dioxide (CO_2) gas underground. Regulated categories and entities include, but are not limited to, those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	North American Industry Classification System (NAICS)	Examples of facilities that may be subject to 40 CFR part 98
General Stationary Fuel Combustion Sources.	.....	Facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines.
	211	Extractors of crude petroleum and natural gas.
	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refineries, and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	North American Industry Classification System (NAICS)	Examples of facilities that may be subject to 40 CFR part 98
	622	Health services.
	611	Educational services.
Electric Power Generation	2211	Generation facilities that produce electric energy.
Adipic Acid Production	325199	All other basic organic chemical manufacturing: Adipic acid manufacturing.
Aluminum Production	331313	Primary aluminum production facilities.
Ammonia Manufacturing	325311	Anhydrous ammonia manufacturing facilities.
Calcium Carbide Production	325180	Other basic inorganic chemical manufacturing: calcium carbide manufacturing.
Carbon Dioxide Enhanced Oil Recovery Projects.	211120	Oil and gas extraction projects using carbon dioxide enhanced oil recovery.
Caprolactam, Glyoxal, and Glyoxylic Acid Production.	325199	All other basic organic chemical manufacturing.
Cement Production	327310	Cement manufacturing.
Ceramics Manufacturing	327110	Pottery, ceramics, and plumbing fixture manufacturing.
	327120	Clay building material and refractories manufacturing.
Coke Calcining	299901	Coke; coke, petroleum; coke, calcined petroleum.
Electronics Manufacturing	334111	Microcomputers manufacturing facilities.
	334413	Semiconductor, photovoltaic (PV) (solid-state) device manufacturing facilities.
	334419	Liquid crystal display (LCD) unit screens manufacturing facilities; Microelectro mechanical (MEMS) manufacturing facilities.
Electrical Equipment Manufacture or Refurbishment.	33531	Power transmission and distribution switchgear and specialty transformers manufacturing facilities.
Electricity generation units that report through 40 CFR part 75.	221112	Electric power generation, fossil fuel (*e.g.,* coal, oil, gas).
Electrical Equipment Use	221121	Electric bulk power transmission and control facilities.
Electrical transmission and distribution equipment manufacture or refurbishment.	33361	Engine, Turbine, and Power Transmission Equipment Manufacturing.
Ferroalloy Production	331110	Ferroalloys manufacturing.
Fluorinated Greenhouse Gas Production	325120	Industrial gases manufacturing facilities.
Geologic Sequestration	NA	CO_2 geologic sequestration sites.
Glass Production	327211	Flat glass manufacturing facilities.
	327213	Glass container manufacturing facilities.
	327212	Other pressed and blown glass and glassware manufacturing facilities.
Hydrochlorofluorocarbon (HCFC)-22 Production.	325120	Industrial gas manufacturing: HCFC gases manufacturing.
Hydrofluorocarbon (HFC)-23 destruction processes that are not collocated with a HCFC–22 production facility and that destroy more than 2.14 metric tons of HFC–23 per year.	325120	Industrial gas manufacturing: HFC gases manufacturing.
Hydrogen Production	325120	Hydrogen manufacturing facilities.
Industrial Waste Landfill	562212	Solid waste landfill.
Industrial Wastewater Treatment	221310	Water treatment plants.
Injection of Carbon Dioxide	211	Oil and gas extraction.
Iron and Steel Production	333110	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace (BOPF) shops.
Lead Production	331	Primary metal manufacturing.
Lime Manufacturing	327410	Lime production.
Magnesium Production	331410	Nonferrous metal (except aluminum) smelting and refining: Magnesium refining, primary.
Nitric Acid Production	325311	Nitrogenous fertilizer manufacturing: Nitric acid manufacturing.
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211120	Crude petroleum extraction.
	211130	Natural gas extraction.
Petrochemical Production	324110	Petrochemicals made in petroleum refineries.
Petroleum Refineries	324110	Petroleum refineries.
Phosphoric Acid Production	325312	Phosphatic fertilizer manufacturing.
Pulp and Paper Manufacturing	322110	Pulp mills.
	322120	Paper mills.
	322130	Paperboard mills.
Miscellaneous Uses of Carbonate	Facilities included elsewhere.	
Municipal Solid Waste Landfills	562212	Solid waste landfills.
	221320	Sewage treatment facilities.
Silicon Carbide Production	327910	Silicon carbide abrasives manufacturing.
Soda Ash Production	325180	Other basic inorganic chemical manufacturing: Soda ash manufacturing.
Suppliers of Carbon Dioxide	325120	Industrial gas manufacturing facilities.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	North American Industry Classification System (NAICS)	Examples of facilities that may be subject to 40 CFR part 98
Suppliers of Industrial Greenhouse Gases.	325120	Industrial greenhouse gas manufacturing facilities.
Suppliers of Coal-based Liquid Fuels	211130	Coal liquefaction at mine sites.
Suppliers of Natural Gas and Natural Gas Liquids.	221210	Natural gas distribution facilities.
	211112	Natural gas liquid extraction facilities.
Suppliers of Petroleum Products	324110	Petroleum refineries.
Titanium Dioxide Production	325180	Other basic inorganic chemical manufacturing: Titanium dioxide manufacturing.
Underground Coal Mines	212115	Underground coal mining.
Zinc Production	331410	Nonferrous metal (except aluminum) smelting and refining: Zinc refining, primary.
Importers and Exporters of Pre-charged Equipment and Closed-Cell Foams.	423730	Air-conditioning equipment (except room units) merchant wholesalers.
	333415	Air-conditioning equipment (except motor vehicle) manufacturing.
	423620	Air-conditioners, room, merchant wholesalers.
	449210	Electronics and Appliance retailers.
	326150	Polyurethane foam products manufacturing.
	335313	Circuit breakers, power, manufacturing.
	423610	Circuit breakers and related equipment merchant wholesalers.

Table 1 of this preamble is not intended to be exhaustive but rather provides a guide for readers regarding entities likely affected by this action. This table lists the types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities than those listed in the table could also be subject to this action. Many entities that are affected by 40 CFR part 98 have GHG emissions from multiple source categories listed in Table 1 of this preamble. If you have questions regarding the applicability of this action to a particular facility, consult the **FOR FURTHER INFORMATION CONTACT** section.

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

In addition to being available in the docket, an electronic copy of this final rule will also be available through the internet. In accordance with 5 U.S. Code (U.S.C.) 553(b)(4), a brief summary of this rule may be found at *https://www.regulations.gov,* Docket ID No. EPA–HQ–OAR–2025–0186. Following the Administrator's signature, a copy of this final rule will be posted on the EPA's GHGRP website at *www.epa.gov/ghgreporting.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version at this same website.

II. Background

A. What is the statutory authority for this action?

The GHGRP was promulgated pursuant to Clean Air Act (CAA) section 114 and under CAA section 136 for certain segments of the petroleum and natural gas source category (subpart W).[1] Under this action, the EPA is amending the RY2025 regulatory reporting deadline of the GHGRP.

This final rule is effective immediately upon publication. Section 553(d)(1) of the Administrative Procedure Act, 5 U.S.C. 553(d)(1), provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. Absent this action, regulated entities would have insufficient time to prepare and submit annual reports in the e-GGRT system, and this action relieves that restriction. Therefore, the normal 30-day minimum period between this action's dates of publication and effectiveness is not required. Accordingly, EPA is making this rule effective immediately upon publication.

The Administrator has determined that this action is subject to the provisions of CAA section 307(d) (*see* section IV.M. of this preamble for further discussion). Section 307(d) of this CAA contains a set of procedures relating to the issuance and review of certain CAA rules.[2]

B. What is the Greenhouse Gas Reporting Program?

The Greenhouse Gas Reporting Program (codified at 40 CFR part 98) applies to certain industrial facilities that emit GHGs (primarily large facilities emitting at least 25,000 metric tons of carbon dioxide equivalents ($MTCO_2e$)), upstream suppliers of fossil fuels and industrial GHGs (such as CO_2 and hydrofluorocarbons (HFCs)), and industries that capture and sequester CO_2. Approximately 8,200 facilities, suppliers, and CO_2 injection sites submit data each year. Facilities calculate emissions using methodologies that are specified under the regulations and report data to the EPA using the electronic Greenhouse Gas Reporting Tool (e-GGRT). Annual reports covering emissions from the prior calendar year are due to the EPA by March 31st of each year. Once data are submitted, the EPA conducts a multi-step verification process to ensure reported data are accurate, complete, and consistent. If the EPA identifies potential errors, it will notify the reporter, who can resolve the issue either by providing an acceptable response describing why the flagged issue is not an error or by correcting the flagged issue and resubmitting their annual GHG report. The reported data are made available to the public

[1] 42 U.S.C. 7414, 7436.

[2] 42 U.S.C. 7607.

typically seven to eight months after the reporting deadline of each year through several available tools, resources, and factsheets accessible via the internet.

C. What changes did we propose for the GHGRP in our September 16, 2025, proposed rulemaking?

On September 16, 2025, the EPA issued a proposed rule to rescind GHGRP obligations promulgated under CAA section 114 and revise GHGRP reporting obligations in other respects, including aspects of subpart W promulgated or amended under CAA section 136, effective for RY2025 and onward (''GHGRP Reconsideration Proposal'').[3] As relevant here, we further proposed to extend the deadline for submitting the calendar year 2025 report (*i.e.,* ''the RY2025 reporting deadline'') from March 31, 2026, to June 10, 2026. In support of this proposal, we asserted that such an extension would be necessary to allow time for the EPA to issue a final rule prior to the RY2025 reporting deadline and to allow regulated entities to adjust compliance efforts accordingly.

The EPA subsequently received over 50,000 comments on the GHGRP Reconsideration Proposal by the comment deadline of November 3, 2025, including public input received in connection with a public hearing held on October 1, 2025. Relatively few commenters opined specifically on the deadline extension aspect of the proposal, and the comments received on this issue were universally supportive of an extension. After considering these comments and for the reasons set out below, the EPA has decided to finalize this aspect of the proposal separately by extending the reporting deadline for calendar year 2025 to October 30, 2026. The Agency intends to separately consider all other aspects of the GHGRP Reconsideration Proposal in one or more subsequent final actions.

III. What is included in this final rule?

A. What are the final rule amendments?

In this final action, the EPA is amending subpart A (General Provisions) at 40 CFR 98.3(b) to add a new paragraph that will extend the reporting deadline for calendar year 2025 (RY2025) to October 30, 2026. This extension applies only to the RY2025 reporting deadline. The extension will allow the EPA time to consider comments on the GHGRP Reconsideration Proposal and to take any final actions before the revised RY2025 reporting deadline of October 30, 2026. In addition, this extension ensures that entities subject to the GHGRP could benefit from any burden reduction revisions that the EPA may make for the 2025 reporting year in any separate final actions following the GHGRP Reconsideration Proposal and/or have adequate time to prepare and submit RY2025 reports.

B. Summary of Significant Comments and Response

In September 2025, the EPA proposed changes to the GHGRP and anticipated finalizing substantive GHGRP changes by March 2026. This timeline would have provided an appropriate time period for sources and EPA to implement any necessary adjustments in advance of the proposed RY2025 reporting deadline in June 2026. Many industry commenters supported this approach, including a commenter who indicated that additional time might be more appropriate if the overall schedule were modified. At this time, EPA anticipates finalizing the rule by July 2026, which would provide a similar time period from July 2026 through October 2026 for sources and EPA to adjust to any changes in the final rule. The following provides additional information on the comments we received and our responses to those comments.

Although the EPA received a substantial number of comments on a wide range of issues in the GHGRP Reconsideration Proposal, we received only a few comments specific to the RY2025 reporting deadline. Several commenters supported the proposal to extend the reporting deadline for calendar year 2025 to June 10, 2026. Some commenters requested that we expedite issuance of a final rule extending the deadline sufficiently in advance of the current deadline to provide certainty to the regulated community. Other commenters requested that we allow affected entities sufficient time to work in the e-GGRT system to prepare submissions and to avoid unnecessary costs and effort. Finally, at least one commenter argued that we may need to extend the reporting period past June 10, 2026, to allow even more time to prepare a final rule on other aspects of the GHGRP Reconsideration Proposal.

The EPA generally agrees with commenters that supported extending the reporting deadline for RY2025. The EPA further agrees with commenters that it should expedite action on the RY2025 reporting deadline. In response to comments received on this issue, the EPA is finalizing this discrete, limited aspect of the GHGRP Reconsideration Proposal by extending the reporting deadline for RY2025 to provide certainty to the regulated community. We note that extending the reporting deadline will also allow the Agency time to prepare and release the e-GGRT system if needed in advance of the revised RY2025 reporting deadline so that facilities have additional time to work in the e-GGRT system to prepare submissions, as requested by some commenters. Finally, the EPA agrees with the commenter's argument that we should extend the RY2025 reporting deadline beyond June 10, 2026. Although we proposed to extend the reporting deadline to June 10, 2026, and many commenters agreed with this date, we recognize that a longer extension to October 30, 2026, would better achieve the goal of providing greater certainty to the obligated stakeholders and provide appropriate compliance time without prejudicing the outcome of the remainder of the GHGRP Reconsideration Proposal.

The EPA anticipates that this longer extension will satisfy many of the concerns raised by commenters, such as providing sufficient notice of the extended reporting deadline and allowing time to prepare for the amended deadline. As previously stated, we note that extending the reporting deadline will also allow the Agency time if needed to prepare and release the e-GGRT system in advance of the revised RY2025 reporting deadline. Additionally, in a typical reporting year the Agency allows two months for reporters to compile and submit reports, so additional time following the GHGRP final decision(s) would be appropriate. Should we later take final action on the GHGRP Reconsideration Proposal by retaining all or many existing reporting obligations, this revised deadline would allow regulated entities to comply with sufficient time to react to that final decision and ensure that the data remains available for review. Conversely, should we later take final action on the GHGRP Reconsideration Proposal by finalizing all or most of the proposed rescissions and revisions, this revised deadline would allow regulated entities sufficient time to adjust their compliance efforts and avoid wasted time and effort.

IV. Statutory and Executive Order Reviews

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

[3] 90 FR 44591 (September 16, 2025).

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

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

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is considered an Executive Order 14192 deregulatory action. While we have not quantified any reduction in regulatory costs related to these changes, providing more time for compliance does provide entities with greater flexibilities related to how they use their workforce which could result in some savings.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection requirements contained in the existing regulation and has assigned OMB control number 2060–0629, OMB control number 2060–0748, and OMB control number 2060–0751. This action extends the deadline for submitting annual GHG reports for reporting year 2025 data from March 31, 2026, to October 30, 2026.

D. Regulatory Flexibility Act (RFA)

I certify that this final action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on the small entities subject to the rule. In this final rule, we are confirming the EPA's decision to extend a reporting compliance date, after considering and responding to comments received on the 2025 proposed rule. This action does not change any other regulatory requirements. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This 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. 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. The rule does not result in any changes to the requirements of 40 CFR part 98 other than extending the reporting deadline for submitting annual GHG reports for reporting year 2025 data until October 30, 2026. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

This rule does not involve technical standards.

K. Congressional Review Act (CRA)

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

L. Determination Under CAA Section 307(d)

Pursuant to CAA section 307(d)(1)(V), the Administrator has determined that this action is subject to the provisions of CAA section 307(d). Section 307(d)(1)(V) of the CAA provides that the provisions of CAA section 307(d) apply to ''such other actions as the Administrator may determine.''

M. Judicial Review

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by April 28, 2026. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

CAA section 307(d)(7)(B) further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for the EPA to convene a proceeding for reconsideration ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment, (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. Environmental Protection Agency, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Reporting and recordkeeping requirements.

Lee Zeldin,

Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency amends 40 CFR part 98 as follows:

PART 98—MANDATORY GREENHOUSE GAS REPORTING

■ 1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—General Provision

■ 2. Amend § 98.3 by revising paragraph (b) to read as follows:

§ 98.3 What are the general monitoring, reporting, recordkeeping and verification requirements of this part?

* * * * *

(b) *Schedule.* The annual GHG report for reporting year 2010 must be submitted no later than September 30, 2011. The annual report for reporting years 2011 and beyond must be submitted no later than March 31 of each calendar year for GHG emissions in the previous calendar year, except as provided in paragraphs (b)(1), (5), and (6) of this section.

(1) For reporting year 2011, facilities with one or more of the subparts listed in paragraphs (b)(1)(i) through (xi) of this section and suppliers listed in paragraph (b)(1)(xii) of this section are required to submit their annual GHG report no later than September 28, 2012. Facilities and suppliers that are submitting their second annual GHG report in 2012 and that are reporting on one or more subparts listed in paragraphs (b)(1)(i) through (xii) of this section must notify the EPA by March 31, 2012, that they are not required to submit their annual GHG report until September 28, 2012.

(i) Electronics Manufacturing (subpart I).

(ii) Fluorinated Gas Production (subpart L).

(iii) Magnesium Production (subpart T).

(iv) Petroleum and Natural Gas Systems (subpart W).

(v) Use of Electric Transmission and Distribution Equipment (subpart DD).

(vi) Underground Coal Mines (subpart FF).

(vii) Industrial Wastewater Treatment (subpart II).

(viii) Geologic Sequestration of Carbon Dioxide (subpart RR).

(ix) Manufacture of Electric Transmission and Distribution (subpart SS).

(x) Industrial Waste Landfills (subpart TT).

(xi) Injection of Carbon Dioxide (subpart UU).

(xii) Imports and Exports of Equipment Pre-charged with Fluorinated GHGs or Containing Fluorinated GHGs in Closed-cell Foams (subpart QQ).

(2) For a new facility or supplier that begins operation on or after January 1, 2010, and becomes subject to the rule in the year that it becomes operational, report emissions starting the first operating month and ending on December 31 of that year. Each subsequent annual report must cover emissions for the calendar year, beginning on January 1 and ending on December 31.

(3) For any facility or supplier that becomes subject to this rule because of a physical or operational change that is made after January 1, 2010, report emissions for the first calendar year in which the change occurs, beginning with the first month of the change and ending on December 31 of that year. For a facility or supplier that becomes subject to this rule solely because of an increase in hours of operation or level of production, the first month of the change is the month in which the increased hours of operation or level of production, if maintained for the remainder of the year, would cause the facility or supplier to exceed the applicable threshold. Each subsequent annual report must cover emissions for the calendar year, beginning on January 1 and ending on December 31.

(4) Unless otherwise stated, if the final day of any time period falls on a weekend or a Federal holiday, the time period shall be extended to the next business day.

(5) The annual GHG report for reporting year 2024 must be submitted no later than May 30, 2025.

(6) The annual GHG report for reporting year 2025 must be submitted no later than October 30, 2026.

* * * * *

[FR Doc. 2026–03995 Filed 2–26–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2023–0554; FRL–13184–01–OCSPP]

Pyridate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation revises a use of pyridate on mint (with tolerances on mint, fresh leaves and mint, dried leaves); a crop group expansion to field corn subgroup 15–22C; and a crop group conversion to vegetable, *brassica,* head and stem, group 5–16, which includes a tolerance on orphan crop kohlrabi. The Interregional Project Number 4 (IR–4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 27, 2026. Objections and requests for hearings must be received on or before April 28, 2026, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2023–0554, is available at *http://www.regulations.gov* or in-person at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Director, 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. General Information

A. Does this action apply to me?

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

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

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance

regulations at 40 CFR part 180 through the **Federal Register**'s e-CFR site at *https://www.ecfr.gov/current/title-40.*

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. 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 docket ID number EPA–HQ–OPP–2023–0554 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 28, 2026. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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 Service and Filing'', 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/HomePage?ReadForm.*

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. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2023–0554, by one of the following methods:

- *Federal eRulemaking Portal: http://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.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 1, 2024 (89 FR 54398) (FRL–11682–05–OCSPP), 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 (PP3E9077) by Interregional Project Number 4 (IR–4), North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210 Raleigh, NC 27606. The petition requested that 40 CFR 180.462 be amended to establish tolerances for residues of the herbicide pyridate, *O*-(6-chloro-3-phenyl-4-pyridazinyl)-*S*-octyl-carbonothioate, and its metabolites, 6-chloro-3-phenyl-pyridazine-4-ol and conjugates of 6-chloro-3-phenyl-pyridazine-4-ol, calculated as the stoichiometric equivalent of pyridate, in or on the raw agricultural commodities: field corn subgroup 15–22C at 0.03 ppm; kohlrabi at 0.03 ppm; mint, dried leaves at 15 ppm; mint, fresh leaves at 3 ppm; and vegetable, brassica, head and stem, group 5–16 at 0.03 ppm. Upon establishment of the aforementioned tolerances, the petition requested the removal of the established tolerances for the residues of pyridate, including its metabolites and degradates, in or on the following commodities: brassica, head and stem, subgroup 5A at 0.03 parts per million (ppm); cabbage at 0.03 ppm; corn, field, grain at 0.03 ppm; corn, pop, grain at 0.03 ppm; peppermint, tops at 0.20 ppm; and spearmint, tops at 0.20 ppm. That document referenced a summary of the petition prepared by IR–4, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is establishing the tolerances for residues of pyridate on mint, dried and mint, fresh at a different level than petitioned-for. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA 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.'' Section 408(b)(2)(A)(ii) of FFDCA 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. Section 408(b)(2)(C) of FFDCA 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 . . . .''

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 pyridate including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with pyridate 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 of the new rulemaking.

EPA has previously published a number of tolerance rulemakings for pyridate in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to pyridate and established a tolerance for residues of that chemical. EPA is incorporating previously

published sections from those rulemakings as described further in this rulemaking, as they remain unchanged.

A. Toxicological Profile

Since the toxicological doses and endpoints for pyridate have not changed since the most recent risk assessment, see Unit III.A. of the May 25, 2022 rulemaking (87 FR 31738) (FRL–9298–02–OCSPP) for a discussion of the Toxicological Profile.

B. Toxicological Points of Departure/ Levels of Concern

For a summary of the Toxicological Points of Departure/Levels of Concern for pyridate used for human health risk assessment, see Unit III.B. of the May 25, 2022, rulemaking.

C. Exposure Assessment

Much of the exposure assessment remains unchanged from the previous rulemakings, although updates have occurred to accommodate for exposures from the petitioned-for tolerance and additional exposures from the tolerances established since the May 25, 2022, rulemaking. For a description of EPA's approach to and assumptions for the exposure assessment, refer to Unit III.C. of the May 25, 2022 rulemaking.

EPA's dietary exposure assessments have been updated to include the additional exposure from the new use of pyridate in or on mint, dried leaves; mint, fresh leaves; field corn subgroup 15–22C; kohlrabi; and vegetable, brassica, head and stem, group 5–16 and the exposure assessed in rulemakings since 2022. In conducting the acute and chronic dietary exposure assessments, EPA used the Dietary Exposure Evaluation Model software using the Food Commodity Intake Database (DEEM–FCID), Version 4.02, which uses the 2005–2010 food consumption data from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). The acute and chronic dietary exposure assessments are unrefined, assuming tolerance-level residues and 100 percent crop treated (PCT).

D. Drinking Water Exposure

The new use does not result in an increase in the estimated residue levels in drinking water, so EPA used the same estimated drinking water concentrations in the acute and chronic dietary exposure assessments as identified in Unit III.C.2 of the May 25, 2022 rulemaking.

E. Non-Occupational Exposure

Non-occupational short-term exposures resulting from spray drift from agricultural applications onto residential areas may occur. Occupational handler and post-application exposures are expected based on the existing use pattern. Based on the use patterns (*i.e.,* one to two applications per season), resistance management practices, and the duration of exposure for the proposed food use, exposure is expected to be short-term (1 to 30 days) and intermediate-term (1 to 6 months). Long-term exposures (greater than 6 months) are not anticipated. While there are currently registered uses of pyridate that could result in the potential for occupational, residential, and non-occupational bystander spray drift exposures, the proposed tolerance and PHI adjustments are not expected to result in greater exposures than those calculated in the previously assessed non-dietary exposure pathways.

F. 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 pyridate and any other substances and pyridate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that pyridate has a common mechanism of toxicity with other substances.

G. Safety Factor for Infants and Children

Section 408(b)(2)(C) requires the application of an additional tenfold margin of safety to account for potential risks to infants and children, in the case of threshold effects. EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor from 10X to 1X. See Unit III.D. of the May 25, 2022 rulemaking for a discussion of the Agency's rationale for that determination.

H. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing dietary exposure estimates to the acute population adjusted dose (aPAD) and the chronic population adjusted dose (cPAD). Short-, intermediate-, and chronic term aggregate 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.

The unrefined acute dietary risk estimates are below the Agency's level of concern (<100% aPAD) at the 95th exposure percentile for the general U.S. population (15% of the aPAD) and for all infants (<1-year-old) (53% of the aPAD), the most highly exposed population subgroup. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD; they are 31% of the cPAD for children 1 to 2 years old, the population group with the highest estimated exposure. There is no short- or intermediate-term residential exposure expected since there are no proposed or previously registered residential uses of pyridate. Therefore, the chronic aggregate risks consist only of the dietary risks from food and water and as stated above, are below the Agency's level of concern.

Pyridate is classified as ''not likely to be carcinogenic to humans''; therefore, a cancer dietary assessment is not needed.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to pyridate residues, including its metabolites and degradates. More detailed information about the Agency's analysis can be found at *https://www.regulations.gov* in the document titled ''Pyridate. Human Health Risk Assessment for the Interregional Research Project No. 4 (IR–4) Proposed New Tolerances for Residues in/on Mint and Crop Group Expansions for *Brassica* Head and Stem Group 5–16, Field Corn Subgroup 15–22C, and Kohlrabi.'' in docket ID number EPA–HQ–OPP–2023–0554.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available analytical enforcement method, see Unit IV.A. of the May 25, 2022, rulemaking.

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).

There are currently no Codex MRLs established for residues of pyridate. Canadian MRLs are established for residues of pyridate on mint commodities at the same level as the existing U.S. tolerances. As this action is a joint review between PMRA and EPA, the revised mint tolerances will be harmonized between the U.S. and Canada. Therefore, there are no issues with harmonization.

C. Revisions to Petitioned for Tolerances

EPA is establishing tolerances for mint, dried leaves and mint, fresh leaves at different levels than requested to harmonize with the Codex MRL.

For mint, dried leaves, IR–4 requested a tolerance of 15 ppm and for mint, fresh leaves, IR–4 requested a tolerance of 3 ppm. EPA is establishing the tolerance for mint, dried leaves at 30 ppm and for mint, fresh leaves at 6 ppm based on the OECD calculation procedures, after residue values were corrected due to dissipation during frozen storage so the levels recommended by EPA are higher than those proposed by the petitioner.

V. Conclusion

Therefore, tolerances are established for residues of pyridate, including its metabolites and degradates, in or on field corn subgroup 15–22C at 0.03 ppm; kohlrabi at 0.03 ppm; mint, dried leaves at 30 ppm; mint, fresh leaves at 6 ppm; and vegetable, *brassica,* head and stem, group 5–16 at 0.03 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.G.

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 9, 2026.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated 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 § 180.462, amend table 1 to paragraph (a) by:

■ a. Removing the entries for ''Brassica, head and stem, subgroup 5A'',

''Cabbage'', ''Corn, field, grain'', ''Corn, pop, grain'';
■ b. Adding in alphabetical order the entries for ''Field corn subgroup 15–22C'', ''Kohlrabi'', ''Mint, dried leaves'', ''Mint, fresh leaves'';
■ c. Removing the entries for ''Peppermint, tops'' and ''Spearmint, tops''; and
■ d. Adding in alphabetical order the entry for ''Vegetable, *brassica,* head and stem, group 5–16''.

The additions read as follows:

§ 180.462 Pyridate; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Field corn subgroup 15–22C	0.03
* * * * *	
Kohlrabi	0.03
* * * * *	
Mint, dried leaves	30
Mint, fresh leaves	6
* * * * *	
Vegetable, *brassica,* head and stem, group 5–16	0.03
* * * * *	

* * * * *

[FR Doc. 2026–03938 Filed 2–26–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0418; FRL–6704–03–OCSPP]

RIN 2070–ZA16

Pesticide Tolerances; Implementing Registration Review Decisions for Certain Pesticides; Maleic Hydrazide, et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is finalizing several pesticide tolerance actions under the Federal Food, Drug, and Cosmetic Act (FFDCA) that the Agency previously determined were necessary or appropriate during the registration review conducted under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). During registration review, EPA reviews all aspects of a pesticide case, including existing tolerances, to ensure that the pesticide continues to meet the standard for registration under FIFRA. The Agency is also finalizing tolerance actions identified outside of registration review as housekeeping measures, such as removing expired tolerances from the Code of Federal Register (CFR). The pesticide tolerances and active ingredients addressed in this rulemaking are identified and discussed in detail in Unit III. of this document.

DATES: This rule is effective on February 27, 2026. *Objections and requests for hearings must be received on or before* April 28, 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–2017–0418, is available through *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: Robert Little, Pesticide Re-Evaluation Division (E305–05), Office of Pesticide Programs, Environmental Protection Agency, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; telephone number: (919) 541–5667; email address: *little.robert@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 action is the Agency taking?

EPA is finalizing several tolerance actions that the Agency proposed in the **Federal Registers** of February 5, 2019 (84 FR 1691) (FRL–9970–24) (Proposed Rule) and August 8, 2025 (90 FR 38426) (FRL–6704–02) (Supplemental Notice). EPA previously determined these tolerance actions were necessary or appropriate during registration review of the pesticide active ingredients identified in Unit III. of this final rule. The Agency also identified tolerance actions outside of registration review as housekeeping measures. The tolerance actions for each pesticide active ingredient are described in detail in Unit III. of the Proposed Rule, and for the active ingredient maleic hydrazide, also in the Supplemental Notice.

The Agency did not receive any public comments on the Proposed Rule. The Agency received two comments on the Supplemental Notice from two contributors. The public comments did not result in changes to the regulatory text of this final rulemaking. For a detailed summary of the comments received and Agency responses, see Unit II.

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

FFDCA section 408(e), 21 U.S.C. 346a(e), authorizes EPA to establish, modify, or revoke tolerances or exemptions from the requirement of a tolerance on its own initiative. After providing a 60-day public comment period, EPA may finalize the rule. EPA provided a 60-day comment period on the Proposed Rule and 30-day comment period on the Supplemental Notice and is now finalizing the rule.

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 . . .''

D. 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 chemical-specific docket ID number as provided in Unit III. in the subject line on the first page of your submission. In the event a chemical-specific docket ID is not provided, you should use the docket ID EPA–HQ–OPP–2017–0418, followed by the chemical name. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before April 28, 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.*

II. Background

In the Proposed Rule and Supplemental Notice, EPA proposed several tolerance actions that the Agency previously determined were necessary or appropriate during registration review of the pesticide active ingredients identified in Unit III. The Agency also proposed housekeeping measures, such as removing expired tolerances for these pesticides. This final rule serves to implement the previously proposed changes, except for certain actions that have already been finalized through other rulemakings, as described in Unit III.

A. Public Comments Received and EPA's Responses

During the public comment period for the Proposed Rule, which closed on April 8, 2019, EPA received no comments. During the public comment period for the Supplemental Notice, which closed on September 8, 2025, EPA received two comments, which did not result in any changes to the actions being finalized. The following is a summary of the comments received and the Agency's responses to those comments.

Comment: An anonymous public comment recommended prohibiting the production and use of chemicals with potential carcinogenicity.

EPA's Response: The Agency acknowledges the commenter's concern and notes that this final rule serves to implement tolerance actions that have undergone a safety determination as specified in Unit II.B. of this final rule. For the actions and tolerance levels in this final rule, the Agency has found no risk of concern for carcinogenicity, and the actions are supported by the registration review process and human health risk assessments. The Agency's consideration is documented in the pesticide-specific registration review documents, located in each chemical docket at *https://www.regulations.gov.* EPA has determined that the tolerance actions finalized herein are safe, *i.e.,* there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from exposure to the pesticide active ingredients identified and discussed in Unit III. of this final rule, and that adequate enforcement methodology is available. The commenter has not provided information indicating that these safety determinations cannot be supported.

Comment: An anonymous public comment opposed the proposed exemption from the requirement of a tolerance for maleic hydrazide. According to the commenter, removing commodity-specific tolerances would eliminate oversight and weaken enforcement of pesticide residue limits. The commenter also claimed the data used for the risk assessment is outdated and fails to fully consider cumulative or long-term exposure, especially to infants and children. The commenter also expressed concern for exposure to hydrazine as a potential carcinogen. Lastly, the commenter expressed their dissatisfaction with the length of the comment period for the Supplemental Notice.

EPA's Response: FFDCA 408(c), 21 U.S.C. 346a(c), authorizes EPA to establish a tolerance exemption for residues of a pesticide chemical in or on food when it determines that the exemption meets the safety standard imposed by the statute. 40 CFR 180.900 further provides that a tolerance exemption shall be granted when it appears that the total quantity of the pesticide chemical in or on all raw agricultural commodities for which it is useful under conditions of use currently prevailing or proposed will involve no hazard to human health. In support of the registration review of maleic hydrazide, EPA conducted a qualitative human health risk assessment, *Maleic Hydrazide, and its Potassium Salt: Qualitative Risk Assessment for Registration Review and Screen of the Hydrazine Impurity* dated June 18, 2014 (''Maleic Hydrazide Risk Assessment''), which is available in docket ID EPA–HQ–OPP–2009–0387. The Agency found that maleic hydrazide has low toxicity and identified no toxicological endpoints for human health risk assessment. As such, the Agency concluded that it would be appropriate to revoke the existing tolerances for residues of maleic hydrazide on specific commodities and instead establish an exemption from the requirement of a tolerance. The Agency also conducted a quantitative screening-level cancer assessment of hydrazine, an impurity which is present in maleic hydrazide technical products with a limit of 15 parts per million (ppm). As part of registration review, the Agency determined that the 15 ppm limit is adequate to protect against cancer risk from the currently registered uses of maleic hydrazide, and that any significant increases in currently registered uses or new uses of maleic hydrazide may need additional exposure data to reassess hydrazine in maleic hydrazide technical products. There have been no such changes to the registered uses of maleic hydrazide since the Maleic Hydrazide Risk Assessment.

As discussed in Unit III. of the Supplemental Notice and this final rule, based on the supporting registration review documents, EPA has determined that the exemption from the requirement of a tolerance is safe, *i.e.,* there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from exposure to maleic hydrazide residues. The commenter has not provided specific information

indicating that this safety determination cannot be supported.

With respect to the commenter's concern regarding the shorter 30-day public comment period on the Supplemental Notice, the Agency articulated its rationale in Unit I.C. of the Supplemental Notice, including that the Proposed Rule had a 60-day public comment period that did not result in any comments received; the Supplemental Notice requested comment only on a discrete modification to a proposed tolerance action for a single pesticide; and a shorter 30-day public comment period would be in the public interest because it would allow the Agency to move forward sooner with issuing a final rule. Additionally, the Agency did not receive any requests for an extension of the public comment period on the Supplemental Notice.

B. EPA's Safety Determination

EPA has reviewed the available scientific data and other relevant information on toxicity and exposure of the individual chemicals represented in this rulemaking. The Agency has published risk assessments detailing the risks from aggregate exposure, including to infants and children, for each of the pesticides represented herein for which EPA determined tolerance actions were necessary or appropriate as part of registration review. The chemical-specific toxicity and exposure analyses, which support the safety determinations contained in Unit III., can be found in the human health risk assessment documents and related registration review decision documents, which are available in the public docket that has been opened for each pesticide, as noted in Unit III.

C. Analytical Enforcement Methodology

Adequate enforcement methodology as described in the supporting documents is available to enforce the tolerance expressions for the pesticide active ingredients identified in Unit III.

D. Conclusion

After considering all available information, EPA has determined it is appropriate, based on the underlying safety assessments, to finalize the tolerance actions identified in this rulemaking.

III. Final Tolerance Actions

EPA is finalizing the tolerance actions identified in this unit. All tolerance values expressed in the regulatory text of this rule, modified or otherwise, reflect current Organization of Economic Cooperation and Development (OECD) rounding class practice.

A. 40 CFR 180.175; Maleic Hydrazide; Case 0381 (Docket ID No. EPA–HQ–OPP–2009–0387)

EPA is finalizing its proposal to revoke all tolerances for residues of maleic hydrazide and to remove 40 CFR 180.175 in its entirety. The Agency is also finalizing its proposal, as described in the Supplemental Notice, to establish an exemption from the requirement of a tolerance for residues of maleic hydrazide when used as a plant growth regulator or herbicide under the newly designated 40 CFR 180.1349.

EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to maleic hydrazide residues. Therefore, EPA has determined that the exemption from the requirement of a tolerance for residues of maleic hydrazide is safe and an enforcement method is not necessary to enforce the tolerance exemption.

B. 40 CFR 180.182; Endosulfan

EPA is finalizing its proposal to remove the tolerances for endosulfan, which have all expired.

C. 40 CFR 180.298; Methidathion; Case 0034 (Docket ID No. EPA–HQ–OPP–2008–0723)

EPA is finalizing its proposal to remove the tolerances for methidathion, which have all expired.

D. 40 CFR 180.316; Pyrazon

EPA is finalizing its proposal to revoke all tolerances for residues of pyrazon. As outlined in the Proposed Rule, there are no remaining U.S. registrations for use of pyrazon on food commodities, and the pyrazon registrant notified EPA of a need for the pyrazon tolerances for import purposes through December 31, 2017. Since this date has passed, the Agency believes these tolerances are no longer needed and that existing stocks in the United States are exhausted. However, to ensure sufficient time has passed for treated commodities to clear the channels of trade, EPA is establishing an expiration date of August 26, 2026 for these tolerances, for import purposes.

Since all tolerances for residues of pyrazon will remain in the CFR and will be revoked only after passage of the expiration date, the Agency is incorporating OECD rounding class practices by modifying tolerance values to remove trailing zeros.

E. 40 CFR 180.361; Pendimethalin

EPA is finalizing its proposal to remove the tolerances for residues of pendimethalin in or on ''Bermuda grass, forage'' and ''Bermuda grass, hay'', which have expired.

F. 40 CFR 180.430; Fenoxaprop-Ethyl; Case 7209 (Docket ID No. EPA–HQ–OPP–2007–0437)

EPA is finalizing its proposal to revoke the tolerance for residues of fenoxaprop-ethyl in or on ''Peanut, hulls''. The Agency no longer considers peanut hulls to be a significant livestock feed item; therefore, the tolerance is no longer needed. EPA is establishing an expiration date of August 26, 2026 for this tolerance.

EPA is finalizing its proposal to modify the tolerance for soybean by revising the commodity definition from ''Soybean'' to ''Soybean, seed'' to be consistent with the Agency's commodity vocabulary.

EPA is finalizing its proposal to remove the tolerances for ''Grass, forage'' and ''Grass, hay'', which have expired.

EPA is not finalizing its proposal to adjust the rounding of the existing tolerance value for residues in or on ''Barley, straw'' due to the Agency's 2019 adoption of the OECD rounding class practice.

EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to fenoxaprop-ethyl residues. Therefore, EPA has determined that the tolerance changes for residues of fenoxaprop-ethyl are safe and adequate enforcement methodology is available.

G. 40 CFR 180.463; Quinclorac; Case 7222 (Docket ID No. EPA–HQ–OPP–2007–1135)

EPA is finalizing its proposal to revoke the tolerance for residues of quinclorac in or on ''Grain, aspirated fractions''. EPA is establishing an expiration date of August 26, 2026 for this tolerance.

EPA is finalizing its proposal to decrease the tolerances for residues of quinclorac in or on ''Poultry, meat byproducts'' from 0.1 to 0.05 ppm; ''Hog, fat'' from 0.7 to 0.05 ppm; and ''Hog, meat byproducts'' from 1.5 to 0.05 ppm. The decrease in tolerances for these livestock commodities is a result of submitted data and the recalculated dietary burdens for livestock. The data support the current limit of quantitation (LOQ) tolerance of 0.05 ppm for these commodities. EPA is establishing an expiration date of August 26, 2026 for these tolerances.

EPA is finalizing its proposal to add a footnote for ''Barley, grain'' to indicate there are no U.S. registrations for this use.

EPA is finalizing its proposal to remove the tolerance for ''Cranberry'', which has expired.

EPA is not finalizing its proposal to adjust the rounding of the existing tolerance value for residues in or on ''Cattle, fat''; ''Goat, fat''; ''Horse, fat''; and ''Sheep, fat''; for ''Rhubarb''; ''Wheat, grain''; and ''Wheat, hay''; and for ''Wheat, straw''. Tolerance levels in the proposed rule included trailing zeroes. The values being finalized will not include these trailing zeroes due to the Agency's 2019 adoption of the OECD rounding class practice.

EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to quinclorac residues. Therefore, EPA has determined that the tolerance changes for residues of quinclorac are safe and adequate enforcement methodology is available.

H. 40 CFR 180.476; Triflumizole; Case 7003 (Docket ID No. EPA–HQ–OPP–2006–0115)

EPA is finalizing its proposal to modify the commodity definition from ''Cilantro, leaves'' to ''Cilantro, fresh leaves'' to be consistent with the Agency's commodity vocabulary.

EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to triflumizole residues. Therefore, EPA has determined that the tolerance change for residues of triflumizole is safe and adequate enforcement methodology is available.

I. 40 CFR 180.500; Imazapyr; Case 3078 (Docket ID No. EPA–HQ–OPP–2014–0200)

EPA is finalizing its proposal to modify the tolerances for residues of imazapyr in or on ''Cattle, kidney''; ''Goat, kidney''; Horse, kidney''; and ''Sheep, kidney'' from 0.20 to 0.3 ppm. Although the Agency proposed to increase the tolerances to 0.30 ppm, EPA is finalizing the tolerances at 0.3 ppm consistent with the Agency's 2019 adoption of the OECD rounding class practice.

EPA is not finalizing its proposal to adjust the rounding of the existing tolerance value for residues in or on ''Lentil''. The tolerance level in the proposed rule included trailing a zero. The value being finalized will not include this trailing zero due to the Agency's 2019 adoption of the OECD rounding class practice.

EPA concludes there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to imazapyr residues. Therefore, EPA has determined that the tolerance changes for residues of imazapyr are safe and adequate enforcement methodology is available.

J. 40 CFR 180.566; Fenpyroximate

EPA is not finalizing its proposal to remove the expired tolerance for residues of fenpyroximate in or on ''Honey'' in this rule, because this action was separately finalized on June 18, 2020 (85 FR 36755) (FRL–10009–14).

K. 40 CFR 180.582; Pyraclostrobin

EPA is not finalizing its proposal to remove the expired tolerance for residues of pyraclostrobin in or on ''Endive, Belgium'' in this rule, because this action was separately finalized on August 21, 2023 (88 FR 56773) (FRL–10953–01).

L. 40 CFR 180.589; Boscalid

EPA is finalizing its proposal to remove the tolerance for residues of boscalid in or on ''Endive, Belgian'', which has expired.

M. 40 CFR 180.595; Flufenpyr-Ethyl; Case 7262 (Docket ID No. EPA–HQ–OPP–2014–0768)

EPA is finalizing its proposal to revoke all tolerances for residues of flufenpyr-ethyl. These tolerances are no longer needed as there are no U.S. registrations for use of flufenpyr-ethyl on food commodities, and EPA received no comments indicating the need to retain the tolerances for import purposes. EPA is establishing an expiration date of August 26, 2026 for these tolerances.

N. 40 CFR 180.601; Cyazofamid

EPA is not finalizing its proposal to remove the expired tolerance for residues of cyazofamid in or on ''Basil, dried'' in this rule, because this action was separately finalized on March 18, 2020 (85 FR 15387) (FRL–10005–85).

O. 40 CFR 180.607; Spiromesifen

EPA is finalizing its proposal to remove the tolerances for residues of spiromesifen in or on ''Soybean, forage''; ''Soybean, hay''; and ''Soybean, seed'', which have all expired.

P. 40 CFR 180.637; Mandipropamid

The Agency is finalizing its proposal to remove the tolerance for ''Basil, dried'', which has expired.

IV. Effective and Expiration Date(s)

These tolerance actions are 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 has set an expiration date for the existing tolerance of six months after the date of publication of the final rule in the **Federal Register**, to allow a reasonable interval for producers in exporting members of the World Trade Organization's (WTO) Sanitary and Phytosanitary (SPS) Measures Agreement to adapt to the requirements.

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. This exemption also applies to tolerance revocations for which extraordinary circumstances do not exist. As such, this exemption applies to the tolerance revocations in this final rule because the Agency knows of no extraordinary circumstances that warrant reconsideration of this exemption for those tolerance revocations.

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)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, EPA concludes that the impact of concern for this action is any significant adverse economic impact on small entities and that the Agency is certifying that this action will not have a significant economic impact on a substantial

number of small entities because the action has no net burden on small entities subject to this rulemaking. As discussed in the Final Rule, this determination takes into account several EPA analyses of potential small entity impact for tolerance actions. EPA did not receive any comments about the Agency's determination for this rulemaking.

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 each chemical 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 20, 2026.

Edward Messina,

Director, Office of Pesticide Programs.

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

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

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

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

§ 180.175 [Removed]

■ 2. Remove § 180.175.

§ 180.182 [Removed]

■ 3. Remove § 180.182.

§ 180.298 [Removed]

■ 4. Remove § 180.298.

■ 5. Revise § 180.316 to read as follows:

§ 180.316 Pyrazon; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the herbicide pyrazon (5-amino-4-chloro-2-phenyl-3(2*H*)-pyridazinone) and its metabolites (calculated as pyrazon) in or on the commodities in Table 1 to paragraph (a).

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Beet, garden, roots [1]	0.9
Beet, garden, tops [1]	7
Beet, sugar, molasses [1]	1.5
Beet, sugar, roots [1]	0.2
Beet, sugar, tops [1]	3
Cattle, fat [1]	0.1
Cattle, liver [1]	0.15
Cattle, meat [1]	0.1
Cattle, meat byproducts, except liver [1]	0.1
Goat, fat [1]	0.1
Goat, liver [1]	0.15
Goat, meat [1]	0.1
Goat, meat byproducts, except liver [1]	0.1
Horse, fat [1]	0.1
Horse, liver [1]	0.15
Horse, meat [1]	0.1
Horse, meat byproducts, except liver [1]	0.1
Milk [1]	0.02
Sheep, fat [1]	0.1
Sheep, liver [1]	0.15
Sheep, meat [1]	0.1
Sheep, meat byproducts, except liver [1]	0.1

[1] There are no U.S. registrations. This tolerance expires on August 26, 2026.

(b) [Reserved]

(c) [Reserved]

(d) *Indirect or inadvertent residues.* Tolerances are established for combined residues of the herbicide pyrazon, 5-amino-4-chloro-2-phenyl-3(2*H*)-pyridazinone, and its metabolites (calculated as pyrazon), in or on the commodities in Table 2 to paragraph (d).

TABLE 2 TO PARAGRAPH (d)

Commodity	Parts per million
Corn, field, forage [1]	0.5
Corn, field, stover [1]	0.5
Soybean, forage [1]	0.5
Soybean, hay [1]	0.5
Wheat, forage [1]	0.3
Wheat, hay [1]	0.2
Wheat, straw [1]	0.1

[1] There are no U.S. registrations. This tolerance expires on August 26, 2026.

§ 180.361 [Amended]

■ 6. Amend § 180.361 by:

■ a. Designating the table in paragraph (a)(2) as ''Table 2 to paragraph (a)(2)''; and
■ b. Removing and reserving paragraph (b).
■ 7. Amend § 180.430 by:
■ a. Designating the table in paragraph (a) as ''Table 1 to paragraph (a)'';
■ b. In newly designated table 1:
■ i. Revising the entry for ''Peanut, hulls'';
■ ii. Removing the entry ''Soybean'';
■ iii. Adding the entry ''Soybean, seed'';
■ c. Removing and reserving paragraph (b); and
■ d. Designating the table in paragraph (c) as ''Table 2 to paragraph (c)''.

The revisions and additions read as follows:

§ 180.430 Fenoxaprop-ethyl; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Peanut, hulls [1]	0.05
* * * * *	
Soybean, seed	0.05
* * * * *	

[1] This tolerance expires on August 26, 2026.

* * * * *

■ 8. Amend § 180.463 by:
■ a. Revising table 1 to paragraph (a)(1);
■ b. Designating the table in paragraph (a)(2) as ''Table 2 to paragraph (a)(2)''; and
■ c. Removing and reserving paragraph (b).

The revisions and additions read as follows:

§ 180.463 Quinclorac; tolerances for residues.

(a)
(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
Asparagus	0.08
Barley, grain [1]	2
Berry, low growing, except strawberry, subgroup 13–07H	1.5
Bushberry subgroup 13–07B	0.08
Caneberry subgroup 13–07A	0.08
Cattle, fat	0.7
Cattle, meat	0.05
Cattle, meat byproducts	1.5
Egg	0.05
Goat, fat	0.7
Goat, meat	0.05
Goat, meat byproducts	1.5
Grain, aspirated fractions [2]	1200
Grass, forage	150
Grass, hay	130
Hog, fat [2]	0.7
Hog, fat	0.05
Hog, meat	0.05
Hog, meat byproducts [2]	1.5
Hog, meat byproducts	0.05
Horse, fat	0.7
Horse, meat	0.05
Horse, meat byproducts	1.5
Milk	0.05
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, meat byproducts [2]	0.1
Poultry, meat byproducts	0.05
Rhubarb	0.5
Rice, bran	30
Rice, grain	10
Sheep, fat	0.7
Sheep, meat	0.05
Sheep, meat byproducts	1.5
Sorghum, grain, forage	3
Sorghum, grain, grain	6
Sorghum, grain, stover	1
Wheat, forage	1
Wheat, germ	0.75
Wheat, grain	0.5
Wheat, hay	0.5
Wheat, straw	0.1

[1] There are no U.S. registrations.
[2] This tolerance expires on August 26, 2026.

* * * * *

■ 9. Amend § 180.476 by:
■ a. Designating the table in paragraph (a)(1) as ''Table 1 to paragraph (a)(1)'';
■ b. In newly designated table 1:
■ i. Removing the entry ''Cilantro, leaves'';
■ ii. Adding the entry ''Cilantro, fresh leaves''; and
■ b. designating the table in paragraph (a)(2) as ''Table 2 to paragraph (a)(2.

The revisions and additions read as follows:

§ 180.476 Triflumizole; tolerances for residues.

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

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
* * * * *	
Cilantro, fresh leaves	35
* * * * *	

* * * * *

■ 10. In § 180.500 in paragraph (a) amend table 1 by revising the entries for ''Cattle, kidney''; ''Goat, kidney''; Horse, kidney''; and ''Sheep, kidney'' to read as follows:

§ 180.500 Imazapyr; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Cattle, kidney	0.3
* * * * *	
Goat, kidney	0.3
* * * * *	
Horse, kidney	0.3
* * * * *	
Sheep, kidney	0.3
* * * * *	

* * * * *

§ 180.589 [Amended]

■ 11. Amend § 180.589 by:
■ a. Designating the table in paragraph (a)(1) as ''Table 1 to paragraph (a)(1);
■ b. Designating the table in paragraph (a)(2) as ''Table 2 to paragraph (a)(2)'';
■ c. Removing and reserving paragraph (b); and
■ d. Designating the table in paragraph (d) as ''Table 3 to paragraph (d)''.
■ 12. Amend § 180.595 by revising paragraph (a) to read as follows:

§ 180.595 Flufenpyr-ethyl; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the herbicide, flufenpyr-ethyl; acetic acid, [2-chloro-4-fluoro-5-[5-methyl-6-oxo-4-(trifluoromethyl)-1-(6*H*)-pyridazinyl]-phenoxy]-ethyl ester], in or on the commodities in Table 1 to paragraph (a)(1).

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
Corn, field, grain [1]	0.01
Soybean, seed [1]	0.01
Sugarcane, cane [1]	0.01

[1] This tolerance expires on August 26, 2026.

(2) Tolerances are established for residues of the herbicide flufenpyr-ethyl; acetic acid, [2-chloro-4-fluoro-5-[5-methyl-6-oxo-4-(trifluoromethyl)-1-(6*H*)-pyridazinyl]-phenoxy]-ethyl ester], and its metabolite, S-3153 acid-4-OH; [2-chloro-4-hydroxy-5-[5-methyl-6- oxo-

4-(trifluoromethyl)-1-(6*H*)-pyridazinyl]-phenoxy]-acetic acid, free and conjugated, in or on the commodities in Table 2 to paragraph (a)(2).

TABLE 2 TO PARAGRAPH (a)(2)

Commodity	Parts per million
Corn, field, forage [1]	0.05
Corn, field, stover [1]	0.05

[1] This tolerance expires on August 26, 2026.

* * * * *

§ 180.607 [Amended]

■ 13. Amend § 180.607 by:
■ a. Designating the table in paragraph (a)(2) as ''Table 2 to paragraph (a)(2)'';
■ b. Removing and reserving paragraph (b); and
■ c. Designating the table in paragraph (d) as ''Table 3 to paragraph (d)''.

§ 180.637 [Amended].

■ 14. Amend § 180.637 by removing and reserving paragraph (b).

■ 15. Add § 180.1349 to Subpart D. The addition reads as follows:

§ 180.1349 Maleic hydrazide; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the pesticide maleic hydrazide, including its metabolites and degradates, when used as a plant growth regulator or herbicide.

[FR Doc. 2026–03942 Filed 2–26–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–OPPT–2024–0044; FRL 9427.3–02–OCSPP]

RIN 2070–AL34

Implementing Statutory Addition of Certain Per- and Polyfluoroalkyl Substances (PFAS) to the Toxics Release Inventory Beginning With Reporting Year 2026

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is updating the list of chemicals subject to toxic chemical release reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA). Specifically, this action updates the regulations to identify one perfluoroalkyl substance that must be reported pursuant to the National Defense Authorization Act for Fiscal Year 2020 (FY 2020 NDAA) enacted on December 20, 2019. As this action is being taken to conform the regulations to a Congressional legislative mandate, notice and comment rulemaking is unnecessary.

DATES: This final rule is effective March 30, 2026.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2024–0044, is available at *https://www.regulations.gov.* Additional instructions on visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Daniel R. Ruedy, Chemical Information, Prioritization, and Toxics Release Inventory Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–7974; email address: *ruedy.daniel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use the chemical listed in this rule, including but not limited to entities identified with the following North American Industry Classification System (NAICS) codes.

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327*, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 113310, 211130*, 212323*, 212390*, 488390*, 512230*, 512250*, 5131*, 516210*, 519290*, 541713*, 541715* or 811490*. *Exceptions and/or limitations exist for these NAICS codes as specified by regulation (40 CFR 372.23).
- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 211130* (corresponds to SIC code 1321, Natural Gas Liquids, and SIC 2819, Industrial Inorganic Chemicals, Not Elsewhere Classified); or 212114, 212115, 212220, 212230, 212290*; or 2211*, 221210*, 221330 (2211* and 221210 are limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); 425120 (limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211*, 562212*, 562213*, 562219*, 562920 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems). *Exceptions and/or limitations exist for these NAICS codes.

A more detailed description of the types of facilities subject to reporting under EPCRA section 313 can be found at: *https://www.epa.gov/toxics-release-inventory-tri-program/tri-covered-industry-sectors.* To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in 40 CFR part 372, subpart B. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section (see above).

B. What action is the Agency taking?

EPA is codifying the addition of the one chemical that was added to the EPCRA section 313 list of reportable chemicals (more commonly known as the Toxics Release Inventory (TRI)) since the last conforming rule (90 FR 573; January 6, 2025) (FRL–9427.2–01–OCSPP)) pursuant to the FY–2020 NDAA.

C. What is the Agency's authority for taking this action?

This action is issued under the authority of EPCRA section 313 (42 U.S.C. 11001 *et seq.*), section 6607 of the Pollution Prevention Act (PPA) (42 U.S.C. 13106), and section 7321 of the National Defense Authorization Act for Fiscal Year 2020 (FY 2020 NDAA) (Pub. L. 116–92).

II. Background

A. What is NDAA section 7321?

On December 20, 2019, the FY 2020 NDAA was signed into law. Among other provisions, section 7321(c) identifies certain regulatory activities that automatically add per- and polyfluoroalkyl substances (PFAS) or classes of PFAS to the EPCRA section

313 list of reportable chemicals. PFAS or classes of PFAS shall be added to the EPCRA section 313 list of reportable chemicals beginning January 1 of the calendar year after any one of the following dates:

- Final Toxicity Value. The date on which the Administrator finalizes a toxicity value for the PFAS or class of PFAS;
- Significant New Use Rule. The date on which the Administrator makes a covered determination for the PFAS or class of PFAS;
- Addition to Existing Significant New Use Rule. The date on which the PFAS or class of PFAS is added to a list of substances covered by a covered determination;
- Addition as an Active Chemical Substance. The date on which the PFAS or class of PFAS to which a covered determination applies is:

(1) Added to the list published under section 8(b)(1) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) and designated as an active chemical substance under TSCA section 8(b)(5)(A); or

(2) Designated as an active chemical substance under TSCA section 8(b)(5)(B) on the list published under TSCA section 8(b)(1).

The FY 2020 NDAA defines ''covered determination'' as a determination made by rule under TSCA section 5(a)(2) that a use of a PFAS or class of PFAS is a significant new use (except such a determination made in connection with a determination described in TSCA sections 5(a)(3)(B) or 5(a)(3)(C)).

Under FY 2020 NDAA section 7321(e), EPA must review confidential business information (CBI) claims before PFAS are added to the list pursuant to FY 2020 NDAA section 7321, subsections (b)(1), (c)(1), or (d)(3) whose identities are subject to a claim of protection from disclosure under 5 U.S.C. 552(a), pursuant to 5 U.S.C. 552(b)(4). Under the FY 2020 NDAA EPA must:

- Review a claim of protection from disclosure; and
- Require that person to reassert and substantiate or re-substantiate that claim in accordance with TSCA section 14(f) (15 U.S.C. 2613(f)).

In addition, if EPA determines that the chemical identity of a PFAS or class of PFAS qualifies for protection from disclosure, EPA must include the PFAS or class of PFAS on the TRI in a manner that does not disclose the protected information.

B. What PFAS have been added to the TRI list?

EPA has reviewed the above-listed criteria and found one chemical that meets the requirements of Section 7321 of the FY 2020 NDAA and whose identity is not claimed as CBI.

Chemical name/CASRN *	Triggering action	Effective date
Sodium perfluorohexanesulfonate (82382–12–5)	Final Toxicity Value (Ref. 1)	1/1/26

* CASRN means Chemical Abstracts Service Registry Number.

As established by the FY 2020 NDAA, the addition of this PFAS to the EPCRA section 313 list of reportable chemicals is effective January 1 of the calendar year following any of the dates identified in FY 2020 NDAA section 7321(c)(1)(A). Accordingly, this PFAS is reportable beginning with the 2026 reporting year (*i.e.,* reports due July 1, 2027).

Note that pursuant to EPA's final rule, entitled ''Changes to Reporting Requirements for Per- and Polyfluoroalkyl Substances and to Supplier Notifications for Chemicals of Special Concern; Community Right-to-Know Toxic Chemical Release Reporting; Final Rule'' (88 FR 74360, October 31, 2023 (FRL–8741–04–OCSPP)), all PFAS added to TRI pursuant to FY 2020 NDAA sections 7321(b) and (c), are designated as chemicals of special concern (40 CFR 372.28), which also applies to the one PFAS identified in this rulemaking. Chemicals of special concern are excluded from the *de minimis* exemption, may not be reported on a Form A (Alternate Threshold Certification Statement), and have limits related to how and when ranges can be reported. For more information on the addition of PFAS to the list of chemicals of special concern, see 40 CFR 372.28.

III. Good Cause Exception

Section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because such notice and opportunity for comment is unnecessary, as this action is being taken to comply with a mandate in an Act of Congress, in which Congress identified actions that automatically add these chemicals to the TRI. Thus, EPA has no discretion as to the outcome of this rule, which merely aligns the regulations with the self-effectuating changes provided by the FY 2020 NDAA.

IV. References

The following is a listing of the documents specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents referenced within the documents included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. IRIS Toxicological Review of Perfluorohexanesulfonic Acid (PFHxS, CASRN 355–46–4) and Related Salts (Final Report, 2025). U.S. Environmental Protection Agency, Washington, DC, EPA/635/R–25/012Fa, 2025. *https://iris.epa.gov/document/&deid=363894.*

V. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is not an Executive Order 14192 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations and assigned OMB control numbers 2070–0212 and 2050–0078. Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 must use EPA Toxic Chemicals Release Inventory Form R (EPA Form 9350–1) for reporting TRI-listed PFAS. The one newly added PFAS is subject to the same reporting requirements as other chemicals of special concern and is excluded from certain burden-reduction reporting options (*i.e.,* the *de minimis* exemption and the option to use Form A, range reporting). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above one or more activity thresholds and meets certain other criteria. Respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 (42 U.S.C. 11042) and 40 CFR part 350. OMB has approved the reporting and recordkeeping requirements related to Form R, supplier notification, and petitions under OMB Control No. 2070–0212 (EPA Information Collection Request (ICR) No. 2613.07) and those related to trade secret designations under OMB Control No. 2050–0078 (EPA ICR No. 1428.12).

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 APA, 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the Agency has invoked the APA ''good cause'' exemption under 5 U.S.C. 553(b).

E. Unfunded Mandates Reform Act (UMRA)

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

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 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, or on the relationship between the Federal government and Indian tribes. This action does not impose substantial direct compliance costs on federally recognized Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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 does not concern an environmental health or safety risk. Since this action does not concern human health, EPA's 2021 Policy on Children's Health also does not apply.

Although this action does not concern an environmental health or safety risk, this reporting rule will aid in collecting information regarding PFAS. This rule will be of use in identifying releases of PFAS to which children may be exposed. EPA believes that the information obtained as a result of this action could also be used by the public, government agencies, and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential human health or environmental risks related to PFAS, including those that may disproportionately affect children.

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 regulation action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards under the 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 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Lee Zeldin,

Administrator.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR part 372 as follows:

PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

■ 2. Amend § 372.65 by:

■ a. In paragraph (d) in table 4, adding in alphabetical order an entry for ''Sodium perfluorohexanesulfonate''.

■ b. In paragraph (e) in table 5, adding in numerical order entry for ''82382–12–5''.

The additions read as follows:

§ 372.65 Chemicals and chemical categories to which this part applies.

* * * * *

(d) * * *

TABLE 4 TO PARAGRAPH (d)

Chemical name	CASRN [1]	Effective date
Sodium perfluorohexanesulfonate	82382–12–5	1/1/26

[1] CASRN means Chemical Abstracts Service Registry Number.

(e) * * *

TABLE 5 TO PARAGRAPH (e)

CASRN [1]	Chemical name	Effective date
82382–12–5	Sodium perfluorohexanesulfonate	1/1/26

[1] CASRN means Chemical Abstracts Service Registry Number.

[FR Doc. 2026–03944 Filed 2–26–26; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 91, No. 39
Friday, February 27, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1171

[Doc. No. AMS–DA–25–0585]

RIN 0581–AE47

Mandatory Manufacturing Cost Survey Advanced Notice of Proposed Rulemaking

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking (ANPR) seeks input from stakeholders on the development of mandatory surveys of dairy production cost and product yield information, as authorized by the One Big Beautiful Bill Act of 2025 (OBBBA). USDA's Agricultural Marketing Service (AMS) seeks comments on the manufacturing cost and product yield data to be collected, the collection process, cost calculation methodologies, verification processes, and data reporting. Information received from public comments will inform USDA's approach to this legislative mandate.

DATES: Comments must be received by March 30, 2026.

ADDRESSES: Comments may be submitted through the Federal e-rulemaking portal at *https://www.regulations.gov* and should reference the document number, date, and page number of this issue of the **Federal Register**. Written comments may be submitted via mail to USDA/AMS/Dairy Programs, Stop 0225-Room 2530, 1400 Independence Avenue SW, Washington, DC 20250–0225. All comments submitted in response to this ANPR, including the identity of the individuals or entities submitting the comments, will be included in the record and made available to the public, and can be viewed at *https://www.regulations.gov.* Comments are posted without change.

FOR FURTHER INFORMATION CONTACT: Erin Taylor, USDA/AMS/Dairy Program, Order Formulation and Enforcement Division, STOP 0225-Room 2530, 1400 Independence Avenue SW, Washington, DC 20250–0225; telephone: (202) 720–4392; email address: *OFEB@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Agriculture is authorized by section 10314 of the OBBBA (Pub. L. 119–21) to conduct mandatory surveys of dairy product manufacturing cost data and related dairy product yield information for all products produced at a plant or plants required to report price information under the Dairy Products Mandatory Reporting Program (defined in section 273 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1637b)). The AMS Dairy Program will collect, verify, analyze, and aggregate survey results and publish a biennial Manufacturing Cost and Product Yield Report (Biennial Report). In an effort to conduct mandatory manufacturing cost and product yield surveys and issue Biennial Reports that successfully meet the statutory requirement, this ANPR seeks input from impacted dairy stakeholders on data collection information and processes, cost calculation methodologies, verification procedures, and reporting needs.

USDA anticipates establishing a cost reporting program similar to previous voluntary industry manufacturing cost surveys. As such, USDA is planning to collect data on input expenses and utilize defined methodologies to calculate survey results. USDA also will establish a process for collecting and calculating product yield information. USDA will define a verification process for ensuring accuracy and consistency of input expenses and yield information collected from required reporters. After verifying and analyzing the collected data, USDA will issue a Biennial Report every 2 years providing cost and yield statistics for the commodities subject to price information reporting required by the Dairy Products Mandatory Reporting Program (DPMRP). Currently, those products include butter, cheddar cheese (40-pound blocks), dry whey, and nonfat dry milk. All data published will be subject to DPMRP confidentiality metrics. Specifically, only the aggregated data of no fewer than three plants—with no one entity representing more than 60 percent of the volume of commodity surveyed—will be published. This would ensure the data of any one plant or entity cannot be identified.

II. Request for Public Comments

To establish the manufacturing cost and product yield surveys, USDA must determine: what data to collect; the methodologies for collecting, analyzing, and verifying the data; and the information to be included in the legislatively required Biennial Report. As part of the development process, AMS seeks comments on the manufacturing cost and product yield surveys. All interested parties are encouraged to provide input during the comment period. Following this ANPR, AMS will publish a proposed rule for public comment. AMS also seeks comments from the public on the following:

1. Past voluntary industry manufacturing cost surveys collected various cost data after the plant acquired milk and dairy ingredients, but before the finished product left the manufacturer. Examples of some categories include labor (processing), non-labor (processing), utilities, product volume, dairy ingredient inputs, other ingredients, general and administrative, packaging, and return on investment. Are these appropriate categories or should these categories be adjusted? What specific data points should be included in each category?

2. Not all plants maintain detailed data that allows for the easy allocation of input expenses to various product lines and, therefore, must employ allocation rules to calculate costs. For unallocated input expenses, what methodology should be used for allocating such expenses to individual product categories?

3. What timeframe should USDA use to survey cost data (*e.g.,* the January—December calendar year, the most recent 12-month period, the individual plant specific fiscal year)? If the survey requests the submission of 12 months of data, how soon will plants be able to submit data? Do plants have the capability to submit the data on a monthly and annual basis, if requested?

4. OBBBA specifies that USDA should publish a Biennial Report but does not provide specifics on the data collection schedule. What factors should USDA

consider when setting its data collection schedule? Comments are requested on the following data collection schedules: (1) collect two years of data every two years (*i.e.,* collect 2025 and 2026 data in the 2027 survey (results would be published in the 2028 Biennial Report); (2) collect data every year, and publish two years' worth of data in the Biennial Report (*i.e.,* collect 2025 data in a 2026 survey, collect 2026 data in a 2027 survey, and publish both the 2025 and 2026 data in the 2028 Biennial Report); or (3) only collect one year of data every other year (*i.e.,* collect 2026 data in a 2027 survey and publish it in a 2028 Biennial Report).

5. What data should USDA consider when determining product yields?

6. To ensure survey data are accurate and consistent, USDA will define a verification process in the proposed rule. As part of the review process, reporting entities will need to make records available upon request. How long are cost accounting records typically kept and what types of records could be used to provide cost and yield data?

III. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review,'' this action is not a ''significant regulatory action.'' Accordingly, AMS did not submit this ANPR to the Office of Management and Budget (OMB) for review under Executive Order 12866. Additionally, because this ANPR does not propose or impose any requirements—and instead seeks comments and suggestions for AMS to consider in a subsequent proposed rule—the various statutes and Executive Orders that normally apply to rulemaking do not apply to this ANPR. Should AMS subsequently publish a proposed rule, AMS will address the statutes and Executive Orders applicable to that proposed rule. AMS welcomes comments and/or information that would help assess any of the following:

1. The potential impact of a rule on small entities pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*);

2. Potential impacts on Federal, State, or local Governments pursuant to the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538);

3. Federalism implications pursuant to Executive Order 13132, ''Federalism'';

4. Tribal implications pursuant to Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments''; or

5. Paperwork burdens pursuant to the Paperwork Reduction Act (44 U.S.C. 3501).

AMS will consider any comments received in response to this ANPR during the development of any subsequent proposed rulemaking.

Erin Morris,

Administrator, Agricultural Marketing Service.

[FR Doc. 2026–04013 Filed 2–26–26; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2020–0029]

RIN 3150–AK42

Approval of the 2023 Edition of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code and Code Cases, Revision 41

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to incorporate by reference the 2023 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code. This action is in accordance with the NRC's policy to periodically update the regulations to incorporate by reference new editions of the ASME Codes and is intended to maintain the safety of nuclear power plants and to make NRC activities more effective and efficient. The NRC also is proposing to amend its regulations to incorporate by reference proposed revisions of three regulatory guides, which would approve new, revised, and reaffirmed code cases published by the ASME. This proposed action would allow nuclear power plant licensees and applicants to use the code cases listed in these draft regulatory guides as voluntary alternatives to engineering standards for the construction, inservice inspection, and inservice testing of nuclear power plant components. This proposed rule also incorporates minor editorial corrections. The NRC is requesting comments on this proposed rule, on the draft versions of three regulatory guides, and the draft version of an additional regulatory guide which will not be incorporated by reference.

DATES: Submit comments by April 28, 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 before this date.

ADDRESSES: You may submit comments, identified by Docket ID NRC–2020–0029, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

You can read a plain language description of this proposed rule at *https://www.regulations.gov/docket/NRC-2020-0029.* 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: Aaron Kwok, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1371, email: *Aaron.Kwok@nrc.gov;* and Jay Collins, Office of Nuclear Reactor Regulation, telephone: 301–415–4038, email: *Jay.Collins@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: This rulemaking is separate from NRC's comprehensive review and reform of its regulations in accordance with Executive Order (E.O.) 14300, ''Ordering the Reform of the Nuclear Regulatory Commission'' (90 FR 22587; May 29, 2025). The rulemakings associated with that effort will comprehensively reexamine NRC requirements, including those in 10 CFR part 50. While there could be additional revisions to 10 CFR part 50 as a result of these future rulemakings, the NRC is moving forward with publication of this proposed rule at this time because it is a deregulatory action of high interest for stakeholders that was in progress before the issuance of E.O. 14300.

Executive Summary

A. Need for the Regulatory Action

The NRC is proposing to amend its regulations to incorporate by reference the 2023 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code). The ASME periodically revises and updates its Codes for nuclear power plants by issuing new editions; this proposed rule is in accordance with the NRC's practice to incorporate those new editions into the NRC's regulations. This proposed rule maintains the safety of nuclear power plants, makes NRC activities more effective and efficient, and allows nuclear power plant licensees and

applicants to take advantage of the latest ASME BPV Code. The ASME is a voluntary consensus standards organization, and the ASME BPV Code is a voluntary consensus standard. The NRC's use of the ASME BPV Code is consistent with applicable requirements of the National Technology Transfer and Advancement Act (NTTAA). See Section XIV, ''Voluntary Consensus Standards,'' of this document for more information.

In addition, the NRC is proposing to incorporate by reference into its regulations the latest revisions of three regulatory guides (RGs) (currently in draft form for comment). The three draft RGs identify new, revised, and reaffirmed code cases published by the ASME that the NRC has determined are acceptable for use as voluntary alternatives to compliance with certain provisions of the ASME BPV Code and the ASME *Operation and Maintenance* (OM) *of Nuclear Power Plants, Division 1, OM Code: Section IST* (OM Code) currently incorporated by reference into the NRC's regulations. The NRC is also proposing to revise an additional RG listing code cases that the NRC has not approved for use.

B. Major Provisions

Major provisions of this proposed rule include the incorporation by reference with conditions of the 2023 Edition of the ASME BPV Code into NRC regulations and delineation of NRC requirements for the use of this code. In addition, the NRC proposes to incorporate by reference into the NRC's regulations the following regulatory guides: RG 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Revision 41 (Draft Regulatory Guide (DG)–1446); RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 22 (DG–1447); and RG 1.192, ''Operation and Maintenance [OM] Code Case Acceptability, ASME OM Code,'' Revision 6 (DG–1448). This proposed action would allow nuclear power plant licensees and applicants for construction permits, operating licenses, combined licenses, standard design certifications, standard design approvals, and manufacturing licenses to use the code cases newly listed in these revised RGs as voluntary alternatives to ASME engineering standards for the construction, inservice inspections, and inservice testing of nuclear power plant components. The NRC also notes the availability of a proposed version of RG 1.193, ''ASME Code Cases Not Approved for Use,'' Revision 9 (DG–1449). This document lists code cases that the NRC has not approved for generic use and would not be incorporated by reference into the NRC's regulations.

C. Costs and Benefit

The NRC prepared a draft regulatory analysis to determine the expected quantitative costs and benefits of this proposed rule, as well as qualitative factors to be considered in the NRC's rulemaking decision. The analysis concluded that this proposed rule would result in net savings to the industry and the NRC. As shown in Table I, the estimated total net benefit relative to the regulatory baseline and the quantitative benefits would outweigh the costs by a range from approximately $9.52 million (7-percent net present value) to $11.7 million (3-percent net present value).

TABLE I—COST BENEFIT SUMMARY

Attribute	Total averted costs (costs)		
	Undiscounted	7% Net present value	3% Net present value
Industry Implementation	$0	$0	$0
Industry Operation	9,580,000	6,650,000	8,150,000
Total Industry Costs	9,580,000	6,650,000	8,150,000
NRC Implementation	(260,000)	(230,000)	(240,000)
NRC Operation	4,470,000	3,100,000	3,810,000
Total NRC Costs	4,210,000	2,870,000	3,570,000
Net	13,790,000	9,520,000	11,720,000

The draft regulatory analysis also considered the following qualitative considerations: (1) protection of public health and safety and the environment; (2) consistency with the provisions of the National Technology Transfer and Advancement Act of 1995, which encourages Federal regulatory agencies to consider adopting voluntary consensus standards as an alternative to de novo agency development of standards affecting an industry; (3) consistency with the NRC's policy of evaluating the latest versions of consensus standards in terms of their suitability for endorsement by regulations and regulatory guides; and (4) consistency with the NRC's goal to harmonize with international standards to improve regulatory efficiency for both the NRC and international standards groups.

The NRC has had a decades-long practice of approving and/or mandating the use of certain parts of editions and addenda of ASME Codes and certain ASME Code Cases in § 50.55a through the rulemaking process of ''incorporation by reference.'' Continuing this practice in this proposed rule ensures regulatory stability and predictability. This practice also provides consistency across the industry and provides assurance to the industry and the public that the NRC will continue to support the use of the most updated and technically sound techniques developed by the ASME to provide adequate protection to the public. The ASME Codes are voluntary consensus standards developed by technical committees composed of mechanical engineers and others who represent the broad and varied interests of their industries, from manufacturers and installers to insurers, inspectors, distributors, regulatory agencies, and end users. The standards undergo extensive external review before the NRC considers whether to incorporate them by reference. Finally, the NRC's use of the ASME Codes is consistent with the NTTAA, which directs Federal agencies to adopt voluntary consensus standards instead of developing ''government-unique'' (*i.e.,* Federal

agency-developed) standards, unless inconsistent with applicable law or otherwise impractical.

The draft regulatory analysis concludes that this proposed rule should be adopted because it is justified when integrating the cost-beneficial quantitative results and the positive and supporting nonquantitative considerations in the decision. For more information, please see the draft regulatory analysis as indicated in Section XVII, ''Availability of Documents,'' of this document.

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0029 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–2020–0029.
- *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, Monday through Friday, except Federal holidays.
- *Technical Library:* The Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, is open by appointment only. Interested parties may make appointments to examine documents by contacting the NRC Technical Library by email at *Library.Resource@nrc.gov* between 8 a.m. and 4 p.m. eastern time, 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–2020–0029 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. Background

A. Proposed Incorporation by Reference of the 2023 BPV Code Edition

The American Society of Mechanical Engineers (ASME) develops and publishes the ASME Boiler and Pressure Vessel (BPV) Code, which contains requirements for the design, construction, and inservice inspection (ISI) of nuclear power plant components. Until 2012, the ASME issued new editions of the ASME BPV Code every 3 years and addenda to the editions annually, except in years when a new edition was issued. Starting in 2012, the ASME decided to issue editions of its BPV Code (no addenda) every 2 years on the odd years (*e.g.,* 2013, 2015, etc.). The new editions typically revise provisions of the ASME BPV Code to broaden their applicability, add specific elements to current provisions, delete specific provisions, and/or clarify them to narrow the applicability of the provision. The revisions to the editions of the ASME BPV Code do not significantly change code philosophy or approach.

The ASME also develops and publishes the ASME Operation and Maintenance (OM) Code, which contains requirements for inservice testing (IST) of nuclear power plant components. The ASME periodically publishes new editions and addenda of the ASME OM Code. Starting in 2012, the ASME decided to issue editions of its OM Code (no addenda) every 2 years on the even years (*e.g.,* 2012, 2014, etc.). However, the ASME did not publish a 2024 edition of the OM Code.

The NRC's practice is to establish requirements for the design, construction, operation, ISI (examination), and IST of nuclear power plants by approving the use of editions of the ASME BPV and OM Codes (ASME Codes) in § 50.55a of title 10 of the *Code of Federal Regulations* (10 CFR). The NRC approves or mandates the use of certain parts of editions of these ASME Codes in § 50.55a through

the rulemaking process of incorporation by reference. Upon incorporation by reference of the ASME Codes into § 50.55a, the provisions of the ASME Codes are legally-binding NRC requirements as delineated in § 50.55a, and subject to the conditions on certain specific ASME Codes' provisions that are set forth in § 50.55a. The most recent editions of the ASME Codes were last incorporated by reference into the NRC's regulations in a final rule dated August 30, 2024 (89 FR 70449).

The ASME Codes are voluntary consensus standards developed by participants, including the NRC and licensees of nuclear power plants, who have broad and varied interests. The ASME's adoption of new editions of the ASME Codes does not mean that there is unanimity on every provision in the ASME Codes. There may be disagreement among the technical experts, including the NRC's representatives on the ASME Code committees and subcommittees, regarding the acceptability or desirability of a particular code provision included in an ASME-approved Code edition. If the NRC believes that there is a significant technical or regulatory concern with a provision in an ASME-approved Code edition being considered for incorporation by reference, then the NRC conditions the use of that provision when it incorporates by reference that ASME Code edition into its regulations. In some instances, the condition increases the level of safety afforded by the ASME Code provision, or addresses a regulatory issue not considered by the ASME. In other instances, where research data or experience has shown that certain code provisions are unnecessarily conservative, the condition may provide that the code provision need not be complied with in some or all respects. The NRC's conditions are included in § 50.55a, typically in paragraph (b) of that section. In a Staff Requirements Memorandum (SRM) dated September 10, 1999, the Commission indicated that NRC rulemakings adopting (incorporating by reference) a voluntary consensus standard must identify and justify each part of the standard that is not adopted. For this proposed rule, the provisions of the 2023 Edition of Section III, Division 1, and the 2023 Edition of Section XI, Division 1, of the ASME BPV Code that the NRC is not adopting, or is only partially adopting, are identified in the ''Discussion,'' ''Regulatory Analysis,'' and ''Backfitting and Issue Finality'' sections of this document. The provisions of those specific editions and code cases that are the subject of this proposed rule that the NRC finds to be conditionally acceptable, together with the applicable conditions, are also identified in the ''Discussion,'' ''Regulatory Analysis,'' and ''Backfitting and Issue Finality'' sections of this document.

The ASME Codes are voluntary consensus standards, and the NRC's incorporation by reference of these Codes is consistent with applicable requirements of the National Technology Transfer and Advancement Act (NTTAA). Additional discussion on the NRC's compliance with the NTTAA is set forth in Section XIV of this document, ''Voluntary Consensus Standards.''

B. Proposed Incorporation by Reference of Three Regulatory Guides

The ASME develops and publishes the ASME BPV Code, which contains requirements for the design, construction, and inservice inspection of nuclear power plant components, and the ASME OM Code, which contains requirements for preservice and inservice testing of nuclear power plant components. In response to BPV and OM Code user requests, the ASME develops code cases that provide voluntary alternatives to BPV and OM Code requirements.

The NRC approves the ASME Codes in § 50.55a, ''Codes and standards,'' through the process of incorporation by reference. As such, each provision of the ASME Codes incorporated by reference into and mandated by § 50.55a constitutes a legally-binding NRC requirement imposed by rule. As noted previously, the ASME Code cases, for the most part, represent alternative approaches for complying with provisions of the ASME BPV and OM Codes. Accordingly, the NRC periodically amends § 50.55a to incorporate by reference the NRC's regulatory guides (RGs) listing approved ASME Code cases that may be used as voluntary alternatives to the BPV and OM Codes.

This proposed rule is the latest in a series of rules that incorporate by reference new versions of several RGs that identify new, revised, and reaffirmed ASME Code cases that the NRC unconditionally or conditionally approves for use. In developing these RGs, the NRC reviews the ASME BPV and OM Code Cases, determines the acceptability of each code case, and publishes its findings in the RGs. The RGs are revised periodically as new code cases are published by the ASME. The NRC incorporates by reference the RGs listing acceptable and conditionally acceptable ASME Code Cases into § 50.55a. The NRC published a final rule dated July 17, 2024 (89 FR 58039), that incorporated by reference into § 50.55a the most recent versions of the RGs, which are RG 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Revision 40; RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 21; and RG 1.192, ''Operation and Maintenance Code Case Acceptability, ASME OM Code,'' Revision 5.

C. Direct Final Rule for Noncontroversial Code Cases

In a direct final rule (DFR) (90 FR 46319; [published September 26, 2025, effective January 26, 2026]), the NRC incorporated by reference RG1.262, ''ASME Code Cases Approved for Use Without Conditions.'' This new approach to ASME Code Case rulemaking implements Commission direction in SRM–SECY–21–0029 regarding streamlining § 50.55a rulemaking activities. The NRC considers the code cases approved in RG 1.262 to be noncontroversial in nature without the need for regulatory conditions, such that issuing a DFR is an appropriate rulemaking process. This approach allows the NRC to approve such code cases in a more efficient manner than was possible under the former process (see final rule, ''American Society of Mechanical Engineers Code Cases and Update Frequency,'' issued July17,2024 (89 FR 58039)). In developing RG1.262, the NRC reviewed the ASME BPV and OM Code Cases, determined the acceptability of each code case, and published its findings in the RG. This RG will be revised periodically as the NRC determines that new code cases published by the ASME are acceptable without NRC regulatory conditions and are noncontroversial. Using this new approach, the NRC approved these ASME Code Cases for use by incorporating RG 1.262 by reference into § 50.55a. This rule supplements that DFR by addressing code cases that need additional NRC regulatory conditions or are otherwise potentially controversial.

III. Discussion

A. Proposed Incorporation by Reference of the 2023 BPV Code Edition

The NRC regulations incorporate by reference ASME Codes for nuclear power plants. This proposed rule is the latest in a series of rulemakings to amend the NRC's regulations to incorporate by reference revised and updated ASME Codes for nuclear power

plants. This proposed rule is intended to maintain the safety of nuclear power plants and make NRC activities more effective and efficient.

The NRC follows a three-step process to determine acceptability of new provisions in new editions of the ASME Codes and the need for conditions on the uses of these ASME Codes. This process was employed in the review of the ASME BPV Code that is the subject of this proposed rule. First, the NRC actively participates with other ASME committee members with full involvement in discussions and technical debates in the development of new and revised Code provisions. This includes technical justification of each new or revised Code provision. Second, the NRC's committee representatives discuss the Code provisions and technical justifications with other cognizant staff to ensure an adequate technical review. Third, the NRC position on each Code provision is reviewed and approved by NRC management as part of this proposed rule amending § 50.55a to incorporate by reference new editions of the ASME Codes and conditions on their use. This regulatory process, when considered together with the ASME's own process for developing and approving the ASME Codes, assures that the NRC approves for use only those new and revised code editions, with conditions as necessary, that provide reasonable assurance of adequate protection to the public health and safety, and that do not have significant adverse impacts on the environment.

The NRC reviewed changes to the ASME BPV Code identified in this proposed rule. The NRC concluded, in accordance with the process for review of changes to the Codes, that this edition of the Code is technically adequate, consistent with current NRC regulations, and approved for use with the specified conditions upon the conclusion of the rulemaking process.

The NRC is proposing to amend its regulations to incorporate by reference the 2023 Editions of the ASME BPV Code, Section III, Division 1 and Section XI, Division 1, with conditions on their use.

The current regulations in § 50.55a(a)(1)(i) incorporate by reference ASME BPV Code, Section III, 1963 Edition through the 1970 Winter Addenda; and the 1971 Edition (Division 1) through the 2021 Edition (Division 1), subject to the conditions identified in current § 50.55a(b)(1)(i) through (xiv). This proposed rule would revise § 50.55a(a)(1)(i) to incorporate by reference the 2023 Edition (Division 1) of the ASME BPV Code, Section III with Errata 23–2471, ''NB–5332(a)(2) (from R/N 22–1562),'' dated April 4, 2024. It also would clarify the wording and add or revise some of the conditions as explained in this proposed rule.

The current regulations in § 50.55a(a)(1)(ii) incorporate by reference ASME BPV Code, Section XI, 1974 Edition through the 1975 Summer Addenda, the 1995 Edition (Division 1) through the 1997 Addenda (Division 1), and the 2001 Edition (Division 1) through the 2021 Edition (Division 1), subject to the conditions identified in current § 50.55a(b)(2)(i) through (l). This proposed rule would revise § 50.55a(a)(1)(ii) to incorporate by reference the 2023 Edition (Division 1) of the ASME BPV Code, Section XI. It also would clarify the wording and add, remove, or revise some of the conditions as explained in this proposed rule.

In the introductory discussion of its Codes, ASME specifies that errata to those Codes may be posted on the ASME website under the Committee Pages to provide corrections to incorrectly published items, or to correct typographical or grammatical errors in those Codes. Users of the ASME Codes should be aware of errata when implementing the specific provisions of those Codes. Applicants and licensees should monitor errata to determine when they might need to submit a request for an alternative under § 50.55a(z) to implement provisions specified in an errata to their ASME Code of Record. Each of the proposed NRC conditions and the reasons for each are discussed in the following sections of this document. The discussions are organized under the applicable ASME Code and Section.

The NRC prepared an unofficial redline strikeout version of the proposed changes to regulatory text that is intended to help the reader identify the proposed changes. The unofficial redline strikeout version of the proposed rule is publicly available and provided in the ''Availability of Documents'' section.

i. ASME BPV Code, Section III

Section 50.55a(a)(1)(i)(E) Rules for Construction of Nuclear Facility Components—Division 1

The NRC proposes to revise § 50.55a(a)(1)(i)(E) to incorporate by reference the 2023 Edition of the ASME BPV Code, Section III, including Subsection NCA and Division 1 Subsections NB through NG and Appendices, with Errata 23–2471, ''NB–5332(a)(2) (from R/N 22–1562),'' dated April 4, 2024. As stated in § 50.55a(a)(1)(i), the Nonmandatory Appendices are excluded and not incorporated by reference. The Mandatory Appendices are incorporated by reference because they include information necessary for Division 1. However, the Mandatory Appendices also include material that pertains to other Divisions that have not been reviewed and approved by the NRC. Although this information is included in the sections and appendices being incorporated by reference, the NRC notes that the use of Divisions other than Division 1 has not been approved, nor are they required by NRC regulations and, therefore, such information is not relevant to NRC applicants and licensees. The NRC is not taking a position on the non-Division 1 information in the appendices and is including it in the incorporation by reference only for convenience. Therefore, this proposed rule revises the introductory text to § 50.55a(a)(1)(i)(E) to reference the 2023 Edition of the ASME BPV Code, Section III, including Subsection NCA and Division 1 Subsections NB through NG and Appendices, with Errata 23–2471, ''NB–5332(a)(2) (from R/N 22–1562),'' dated April 4, 2024.

Section 50.55a(a)(1)(v)(B) ASME NQA–1, ''Quality Assurance Requirements for Nuclear Facility Applications''

The NRC proposes to revise § 50.55a(a)(1)(v)(B) to include the 2017, 2019, and 2022 editions of NQA–1. The 2017, 2019, and 2022 editions of NQA–1 were endorsed, with conditions, by the NRC in Revision 6 of RG 1.28.

Section 50.55a(b)(1)(xiv) Section III Condition: Repairs to Stamped Components

The NRC proposes to revise § 50.55a(b)(1)(xiv) to extend the applicability of the condition through the latest edition of the ASME BPV Code, Section III incorporated by reference in paragraph (a)(1)(i). The 2023 Edition of Section III was not updated to include the provisions of this condition. Therefore, the NRC is proposing to revise this condition to apply to the latest edition incorporated by reference.

Section 50.55a(b)(1)(xv) Section III Condition: Protection From Deterioration of Radiographic Film and Lifetime Record Retention

The NRC proposes to add condition § 50.55a(b)(1)(xv) to require that reasonable protection from deterioration of radiographic film specified in Note (3) to Table NCA–4134.17–1 and Note (1) to Table NCA–4134.17–2 of the 2023 Edition of the ASME BPV Code, Section

III, must include the provisions in NCA–4134.17(c), and the reproduction must be retained as a record in accordance with Table NCA–4134.17–1 or NCA–4134.17–2, as applicable, of the 2023 Edition of Section III. A similar condition, § 50.55a(b)(2)(liii), is proposed in this rule for IWA–6310(b) of the 2023 ASME BPV Code, Section XI. The condition is in two provisions as follows:

Section 50.55a(b)(1)(xv)(A) Protection From Deterioration of Radiographic Film and Lifetime Record Retention, First Provision

NCA–4134.17(d) requires records listed in Table NCA–4134.17–1 to be classified as lifetime records and shall be retained and maintained for the life of the plant. In the 2023 Edition of the ASME BPV Code, Section III, Note (3) to Table NCA–4134.17–1 specifies that deterioration of radiographic film is expected and radiographic film that has deteriorated to the point where it no longer has value does not need to be maintained as a record by the owner.

However, the NRC notes that there are existing provisions in NCA–4134.17(c) that allow reproduction of radiographic film, including by electronic processes (*e.g.,* digitize) before the original film's deterioration. Therefore, the NRC is proposing to add § 50.55a(b)(1)(xv)(A) to condition Note (3) of Table NCA–4134.17–1 of the 2023 Edition of Section III to require that the reasonable protection from deterioration of radiographic film shall include the provisions specified in NCA–4134.17(c) of the 2023 Edition of Section III, and the reproduction must be retained as a lifetime record in accordance with Table NCA–4134.17–1 of the ASME BPV Code, Section III. This would maintain the current requirements in the 2021 Edition of the ASME BPV Code, Section III.

Section 50.55a(b)(1)(xv)(B) Protection From Deterioration of Radiographic Film and Nonpermanent Record Retention, Second Provision

NCA–4134.17(e) requires records listed in Table NCA–4134.17–2 to be classified as nonpermanent records and shall be retained for the period specified in Table NCA–4134.17–2 (10 years for radiographic film). In the 2023 Edition of the ASME BPV Code, Section III, Note (1) to Table NCA–4134.17–2 specifies that deterioration of radiographic film is expected and radiographic film that has deteriorated to the point where it no longer has value does not need to be maintained as a record by the owner.

However, the NRC notes that there are existing provisions in NCA–4134.17(c) that allow reproduction of radiographic film, including by electronic processes (*e.g.,* digitize) before the original film's deterioration. Therefore, the NRC is proposing to add § 50.55a(b)(1)(xv)(B) to condition Note (1) of Table NCA–4134.17–2 of the 2023 Edition of Section III to require that the reasonable protection from deterioration of radiographic film shall include the provisions specified in NCA–4134.17(c) of the 2023 Edition of Section III, and the reproduction must be retained as a nonpermanent record in accordance with NCA–4134.17–2 of the ASME BPV Code, Section III. This would maintain the current requirements in the 2021 Edition of the ASME BPV Code, Section III.

ii. ASME BPV Code, Section XI

Section 50.55a(a)(1)(ii)(C) ASME Boiler and Pressure Vessel Code, Section XI

The NRC proposes to amend the regulations in § 50.55a(a)(1)(ii)(C) to incorporate by reference the 2023 Edition (Division 1) of the ASME BPV Code, Section XI. The current regulations in § 50.55a(a)(1)(ii)(C) incorporate by reference ASME BPV Code, Section XI, the 1974 Edition through the 1975 Summer Addenda, the 1995 Edition (Division 1) through the 1997 Edition (Division 1), and the 2001 Edition (Division 1) through the 2021 Edition (Division 1), subject to the conditions identified in current § 50.55a(b)(2)(i) through (l).

Section 50.55a(a)(1)(iii)(A) ASME BPV Code Case N–513–3 Mandatory Appendix I

The NRC proposes to remove and reserve § 50.55a(a)(1)(iii)(A) to delete the incorporation by reference of ASME BPV Code Case N–513–3, Mandatory Appendix I. This mandatory appendix was previously incorporated by reference as a reference for § 50.55a(b)(2)(xxxiv), Section XI Condition: Nonmandatory Appendix U. The reference to Mandatory Appendix I was removed from this condition in a previous rulemaking, and Mandatory Appendix I is no longer referenced in this section. Therefore, this proposed rule would remove and reserve § 50.55a(a)(1)(iii)(A).

Section 50.55a(b)(2)(xii) Section XI Condition: Underwater Welding

The NRC proposes to revise § 50.55a(b)(2)(xii) to limit the applicability of the condition to the 2001 Edition through the 2021 Edition of ASME BPV Code, Section XI. The current regulations in § 50.55a(b)(2)(xii) state that the condition applies to the latest edition and addenda incorporated by reference in § 50.55a(a)(1)(ii). In the 2023 Edition of ASME BPV Code, Section XI, ASME modified subparagraph IWA–4661(f) to add provisions that satisfy the conditions in § 50.55a(b)(2)(xii). Therefore, these conditions do not apply to the 2023 Edition.

Section 50.55a(b)(2)(xviii) Section XI Condition: NDE Personnel Certification

The NRC proposes to remove and reserve the first provision of this condition in § 50.55a(b)(2)(xviii)(A). The current regulations in § 50.55a(b)(2)(xviii) provide four provisions related to qualification rules for nondestructive evaluation (NDE) personnel. The condition was added in 2002 (67 FR 60520) when the 1997 Addenda, and 1998 and later Editions of ASME Code, Section XI revised the requirement for recertification of Level I and Level II NDE personnel from 3 years to 5 years. This was before the widespread implementation of ASME BPV Code, Section XI, Appendix VIII rules for the performance demonstration requirements for personnel performing ultrasonic testing (UT). At that time the NRC had lower confidence in the quality of the qualifications for the NDE personnel, equipment, and procedures.

ASME provided the NRC a letter dated August 23, 2024, describing the basis for removing the provision. The basis can be summarized as saying that changes and improvements to the 8-hour, hands-on practice work done by NDE personnel mandated by § 50.55a(b)(2)(xiv) have been shown to maintain the proficiency of NDE personnel. Experience with 5-year recertifications in non-nuclear fields and internationally with ISO 9712, ''Non-destructive testing—Qualification and certification of NDT personnel,'' supports their contention that a 5-year recertification rate does not adversely impact the skill levels of the NDE personnel. The NRC agrees that the improvements in NDE rigor and experience with the 8-hour, hands-on training have shown that a 5-year recertification rate is acceptable and will provide adequate proficiency for NDE personnel.

Additionally, the NRC proposes to revise § 50.55a(b)(2)(xviii)(D) to clarify that the alternatives listed in paragraphs (b)(2)(xviii)(D)(1) and (2) are applicable to ASME BPV Code, Section XI, editions and addenda later than the 2010 Edition. When using these editions and addenda, the current provision to this condition requires licensees and applicants to use the prerequisites for

ultrasonic examination personnel certifications in Appendix VII, Table VII–4110–1 and Appendix VIII, Subarticle VIII–2200 in the 2010 Edition. Although alternatives to these prerequisites currently exist in §§ 50.55a(b)(2)(xviii)(D)(1) and 50.55a(b)(2)(xviii)(D)(2), the current provision paragraph does not make it clear that these alternatives are acceptable because it does not refer to them as options. Therefore, the NRC is proposing to clarify that the alternatives are acceptable to meet the requirement.

Section 50.55a(b)(2)(xxv) Section XV Condition: Mitigation of Defects by Modification

The NRC proposes to revise § 50.55a(b)(2)(xxv) to correct an error in the title. The current title of § 50.55a(b)(2)(xxv) incorrectly states ''Section XV Condition.'' This proposed change would correct the title to state ''Section XI Condition.''

Section 50.55a(b)(2)(xxviii) Section XI Condition: Analysis of Flaws

The NRC proposes to revise § 50.55a(b)(2)(xxviii) to clarify that the condition applies to A–4300(b)(1) for the ASME BPV Code, Section XI, 2021 Edition and earlier. For the 2023 Edition, this proposed change would clarify that the condition applies to Y–3100(c). In the 2023 Edition, ASME moved the fatigue crack growth law for ferritic steels in air from A–4300 to Y–3100. The existing condition in § 50.55a(b)(2)(xxviii) still applies to Y–3100.

Section 50.55a(b)(2)(xxxi) Section XI Condition: Mechanical Clamping Devices

The NRC proposes to revise § 50.55a(b)(2)(xxxi) to add several provisions related to the use of mechanical clamping devices. In the 2023 Edition of the ASME BPV Code, Section XI, Appendix W was revised to remove the prohibition on the use of mechanical clamps for Class 1 piping, portions of piping that form the containment boundary, piping larger than nominal pipe size (NPS) 2 with nominal operating temperature of 200 °F (95 °C) and nominal pressure of 275 pounds per square Inch gauge (psig) (1,900 kilopascal (kPa)), and piping larger than NPS 6 (DN 150). Note that Nonmandatory Appendix W was previously Code Case N–523 in the early 2000s, and was later incorporated into a mandatory appendix, and finally in the 2013 Edition of Section XI, was made into Nonmandatory Appendix W.

The existing § 50.55a(b)(2)(xxxi) condition specifies that when installing a mechanical clamping device on an ASME BPV Code class piping system, Appendix W of Section XI shall be treated as a mandatory appendix and all of the provisions of Appendix W shall be met for the mechanical clamping device being installed. Additionally, the second part of the condition specifies that use of IWA–4131.1(c) of the 2010 Edition of Section XI and IWA–4131.1(d) of the 2011 Addenda of the 2010 Edition and later versions of Section XI is prohibited on small item Class 1 piping and portions of a piping system that form the containment boundary. The change to Appendix W was not modified in a way that would make it possible for the NRC to remove this condition.

Additionally, the NRC proposes four new provisions to be added to the condition as follows:

- The prohibition in Appendix W for use on Class 1 piping was removed by ASME because it is not specified in the title of the Nonmandatory Appendix W. However, the NRC notes that this condition is to ensure that Class 1 is not applicable to this Appendix and will not be an oversight in future revisions. Further discussion of this included interpretations in other sections of ASME Code, that could allow use of mechanical clamps on Class 1 piping which was discussed in a final rule titled ''Incorporation be Reference of American Society of Mechanical Engineers Codes and Code Cases'' (82 FR 32934; July 18, 2017) that incorporated by reference the 2013 Edition of the ASME Code. Therefore, the NRC is proposing to include a condition that prohibits the use of Appendix W on Class 1 piping to provide clarity that the change in the ASME Code does not reflect a change in applicability of Appendix W to Class 1 piping.
- The prohibition in Appendix W for use on piping that forms part of the containment boundary was removed by the ASME based on NRC approval of alternative requests submitted using § 50.55a(z)(2). Although the NRC approved the use of Appendix W on a case-by-case basis on certain systems, the NRC has not allowed Appendix W to be used generically on an unlimited basis on numerous joints and systems that collectively could affect the function of the system. Requesting NRC approval through the § 50.55a(z) processes allows specific applications and limits the frequency on its use within each system as to ensure that the structural margin is maintained, thereby reducing the potential for challenging the structural integrity of the joints and system. Therefore, the NRC is proposing to include a condition that prohibits the use of Appendix W on piping that forms part of the containment boundary.
- The prohibition in Appendix W for use on piping larger than NPS 2 (DN 50) when the nominal operating temperature or pressure exceeds 200 °F (95 °C) or 275 psig (1,900 kPa) was removed. The NRC notes that the potential consequence of failure of a high-energy line piping limits the use of the mechanical clamps. High-energy lines can produce consequences that are severe and challenge the function of components and systems to safely shut down the reactor. Therefore, the NRC is proposing to include a condition that prohibits the use of Appendix W on piping larger than NPS 2 (DN 50) when the nominal operating temperature or pressure exceeds 200 °F (95 °C) or 275 psig (1,900 kPa), which maintains the previous prohibition in earlier editions of Appendix W.
- The prohibition in Appendix W for use on piping greater than NPS 6 (DN 150) was removed by the ASME based on NRC approval of one alternative request submitted using § 50.55a(z)(2). However, this approval was for a discharge line that did not affect the system's ability to perform its safety function of removing heat. Approving the use of Appendix W on a case-by-case basis on certain locations in systems does not allow it to be used generically on an unlimited basis on numerous joints and systems that collectively could affect the function of the system. The limitations on the frequency on its use within each system is to ensure that the structural margin is maintained, thereby reducing the potential for challenging the structural integrity of the joints. Therefore, the NRC is proposing to include a condition that prohibits the use of Appendix W on piping greater than NPS 6 (DN 150), which maintains the prohibition from earlier editions of Appendix W.

Section 50.55a(b)(2)(xxxiv) Section XI Condition: Nonmandatory Appendix U

The NRC proposes to revise § 50.55a(b)(2)(xxxiv)(B) to extend the applicability of the condition to the 2023 Edition of ASME BPV Code, Section XI. This condition prohibits the use of Nonmandatory Appendix U, Supplement U–S1. The provisions of U–S1 are redundant to those in Code Case N–513. The purpose of § 50.55a(b)(2)(xxxiv)(B) is to clarify that the more up-to-date approach of Code Case N–513 is the appropriate method for temporary acceptance of flaws in moderate energy piping. This condition remains applicable to the 2023 Edition of the ASME BPV Code, Section XI.

Section 50.55a(b)(2)(xliv) Section XI Condition: Nonmandatory Appendix Y

The NRC proposes to revise § 50.55a(b)(2)(xliv) to correct errors, extend its applicability to the 2023 Edition of the ASME BPV Code, Section XI, and add one provision.

The current regulations in § 50.55a(b)(2)(xliv) incorrectly reference Subarticle Y–2440, when the correct reference is Subarticle Y–2400. The current regulations in § 50.55a(b)(2)(xliv) also incorrectly reference Articles Y–2200 and Y–3200, when the correct reference is Subarticles Y–2200 and Y–3200. This proposed revision would correct those errors.

The NRC imposed § 50.55a(b)(2)(xliv) on the 2021 Edition of the ASME BPV Code, Section XI, because the crack growth laws in Subarticles Y–2200, Y–2400, and Y–3200 are duplicated in Code Cases N–809, N–889, and N–643, respectively. The purpose of § 50.55a(b)(2)(xliv) is to eliminate duplication and clarify that the code cases should govern. § 50.55a(b)(2)(xliv) remains applicable to the 2023 Edition of the ASME BPV Code, Section XI.

ASME added crack growth laws for nickel alloys to Article Y–4000 in the 2023 Edition of the ASME BPV Code, Section XI. In particular, ASME added factors of improvement for Alloys 690, 52, 152, and variant welds in paragraph Y–4322. The rules added to paragraph Y–4322 are duplicated in Code Case N–909. The NRC's position is that the relevant code case should govern whenever there are overlapping requirements between the ASME BPV Code and a code case. Therefore, the NRC is proposing to add § 50.55a(b)(2)(xliv)(D) to prohibit use of paragraph Y–4322.

Section 50.55a(b)(2)(xlv) Section XI Condition: Pressure Testing of Containment Penetration Piping After Repair/Replacement Activities

The NRC proposes to revise § 50.55a(b)(2)(xlv) to extend the applicability of the condition through the latest edition of the ASME BPV Code, Section XI incorporated by reference in paragraph (a)(1)(ii). The 2023 Edition of Section XI was not updated to include the provisions of this condition. Therefore, the NRC is proposing to revise this condition to apply to the latest edition incorporated by reference.

Section 50.55a(b)(2)(xlvi) Section XI Condition: Contracted Repair/Replacement Organization Fabricating Items Offsite of the Owner's Facility

The NRC proposes to revise § 50.55a(b)(2)(xlvi) to extend the applicability of the condition through the latest edition of the ASME BPV Code, Section XI incorporated by reference in paragraph (a)(1)(ii). The 2023 Edition of Section XI was not updated to include the provisions of this condition. Therefore, the NRC is proposing to revise this condition to apply to the latest edition incorporated by reference.

Section 50.55a(b)(2)(xlviii) Section XI Condition: Analytical Evaluations of Degradation

The NRC proposes to revise § 50.55a(b)(2)(xlviii) to extend the applicability of the condition through the latest edition of the ASME BPV Code, Section XI, incorporated by reference in paragraph (a)(1)(ii), and make an editorial correction. This condition requires that licensees submit to the NRC analytical evaluations performed under ASME BPV Code, Section XI, IWB–3132.3 and IWC–3122.3. The original requirements to submit these evaluations previously resided in ASME BPV Code, Section XI, IWB–3134 and IWC–3125. ASME removed these requirements in the 2019 Edition of ASME BPV Code, Section XI. The current reference for ASME Class 2 analytical evaluation is incorrectly referenced as IWC–3132.3 versus the correct reference of IWC–3122.3. As an editorial change, the reference has been updated. This condition remains applicable to the 2023 Edition of ASME BPV Code, Section XI.

Section 50.55a(b)(2)(li) Section XI Condition: Pressure Testing Following Repair/Replacement Activity

The NRC proposes to add condition § 50.55a(b)(2)(li) to prohibit the use of IWA–4540(d)(7) in the 2023 Edition of the ASME BPV Code, Section XI, for exempting pressure testing of Class 2 and 3 welds that have a surface or volumetric examination performed. Current ASME Code requirements specify a pressure test of most welds regardless of the non-destructive examination performed. The current exemptions for pressure testing are for welds in components or connections NPS 1 (DN 25) or smaller and other miscellaneous welds such as tube-to-tubesheet welds and seal welds. ASME added IWA–4540(d)(7) in the 2023 Edition of ASME BPV Code, Section XI, exempting pressure testing of Class 2 and 3 welds that are examined by a volumetric or surface examination following repair/replacement.

An ASME Code pressure test, with or without NDE, after a repair/replacement activity is needed to ensure the ASME Class 2 and 3 system, including emergency core cooling systems, would be able to perform its intended function to safely shut down and maintain the reactor in a safe condition. In addition, a pressure test is a defense-in-depth measure, supplementing any surface or volumetric NDE conducted, even as required by the Construction Code. The purpose of the pressure test, in this role, is to address the possible uncertainty associated with various NDE techniques. In addition, operational experience has shown pressure tests identify flaws that were not revealed by volumetric and surface examinations. Leakage from a component immediately after being repaired indicates a quality issue that must be addressed. The NRC position is that a pressure test should be conducted in addition to any surface or volumetric NDE required on a repaired or replaced ASME Class 2 or 3 component. Therefore, the NRC is proposing to add § 50.55a(b)(2)(li) to condition provisions IWA–4540(d)(7) of the 2023 Edition of the ASME Code, Section XI, to prohibit the exemption of performing a pressure testing for Class 2 and 3 welds that have had a surface or volumetric examination performed.

Section 50.55a(b)(2)(lii) Section XI Condition: Preservice and Inservice Volumetric Examination of Nozzles Fabricated From Weld Buildups

The NRC proposes to add condition § 50.55a(b)(2)(lii) to require preservice and inservice volumetric examination of nozzles fabricated from weld buildups specified in Figure IWB–2500–7(d) of the 2023 Edition of the ASME BPV Code, Section XI. ASME changed Figure IWB–2500–7(d) in the 2023 Edition to allow nozzles fabricated by weld buildups to be installed without preservice or inservice examinations throughout the life of the component. Nozzles fabricated by weld buildup have multiple weld passes, which each provide an opportunity for flaws to be located within the weld buildup. These flaws could propagate during service and could cause component failure.

Currently, nozzles fabricated from weld buildups, such as in the AP1000 design, are required to have a preservice and inservice volumetric examination performed. This condition would be consistent with current requirement for AP1000 design which consists of a volumetric examination (ultrasonic) of weld buildups and are performed with procedures and personnel to the ASME BPV Code, Section XI, Appendix VIII using acceptance criteria of IWB–3514 for Category B–F welds in the ASME BPV Code, Section XI. Therefore, the NRC is proposing to add

§ 50.55a(b)(2)(lii) to condition provisions in Figure IWB–2500–7(d) of the 2023 Edition of the ASME BPV Code, Section XI, to require preservice and inservice volumetric examination of nozzles fabricated from weld buildups. This maintains the requirements from previous editions of the Code. The volumetric examination (ultrasonic) of weld buildups shall be performed with procedures and personnel to the ASME BPV Code, Section XI, Mandatory Appendix VIII using acceptance criteria of IWB–3514 for Category B–F welds in the ASME BPV Code, Section XI.

Section 50.55a(b)(2)(liii) Section XI Condition: Protection From Deterioration of Radiographic Film and Lifetime Record Retention

The NRC proposes to add condition § 50.55a(b)(2)(liii) to require that reasonable protection from deterioration of radiographic film specified in IWA–6310(b) of the 2023 Edition of the ASME BPV Code, Section XI, shall include the provisions in IWA–6320 and the reproduction must be retained as a lifetime record in accordance with IWA–6330, IWA–6340, and IWA–6350 of the ASME BPV Code, Section XI.

IWA–6300 requires final radiographic film to be maintained as a lifetime record in accordance with IWA–6330, IWA–6340, and IWA–6350 of the ASME BPV Code, Section XI. In the 2023 Edition, ASME added IWA–6310(b), which specifies that film deteriorates and therefore need not be maintained. While IWB–6310(b) specifies that reasonable protection from deterioration for radiographic film shall be provided, it also states that deterioration of radiographic film is to be expected and is not a violation of the requirement to provide suitable protection. The new provision further states that if radiographic film has deteriorated, it need no longer be maintained as a lifetime record, as determined by the owner.

However, the NRC notes that there are existing provisions in IWA–6320 that allow reproduction of radiographic film, including by electronic processes (*e.g.,* digitize) before the original film's deterioration. Therefore, the NRC is proposing to add § 50.55a(b)(2)(liii) to condition provision IWA–6310(b) of the 2023 Edition of the ASME BPV Code, Section XI, to require that the reasonable protection from deterioration of radiographic film shall include the provisions specified in IWA–6320, and the reproduction must be retained as a lifetime record in accordance with IWA–6330, IWA–6340, and IWA–6350. This would maintain the current requirements in the 2021 Edition of the ASME BPV Code, Section XI.

A similar condition, § 50.55a(b)(1)(xv), is proposed in this rule for Table NCA–4134.17 of the ASME BPV Code, Section III.

Section 50.55a(g)(6)(ii)(D)(9) Volumetric Qualifications

The NRC proposes to revise § 50.55a(g)(6)(ii)(D)(9) to allow for qualification of volumetric evaluation in accordance with Section XI, Division 1, Mandatory Appendix VIII, Supplement 15, in the 2021 Edition through the latest edition and addenda incorporated by reference in paragraph (a)(1)(i) of this section. Licensees have the option to use the latest version of Supplement 15 in lieu of the requirements of Code Case N–729–6. The proposed change would allow licensees to utilize the 2023 Edition of Supplement 15 as an option to the volumetric qualification requirements of Code Case N–729–6.

Section 50.55a(g)(6)(ii)(F)(2)(iv) Categorization

The NRC proposes to revise § 50.55a(g)(6)(ii)(F)(2)(iv) to include inspection item B–3 in the list of categorization options for identification of cold leg temperature welds. Inspection item B–3 (auxiliary head adapter butt welds) was previously part of inspection item B–1. This proposed revision maintains the same requirements and only clarifies the expansion of categorization options for licensees for auxiliary head adapter butt welds.

Section 50.55a(g)(6)(ii)(F)(13) Encoded Ultrasonic Examination

The NRC proposes to revise § 50.55a(g)(6)(ii)(F)(13) to include inspection item B–3 in the list of encoded volumetric exams. Inspection item B–3, auxiliary head adapter butt welds, was previously part of inspection item B–1. This proposed revision maintains the same requirements for encoded volumetric exams.

B. Proposed Incorporation by Reference of Three Regulatory Guides

This proposed rule would incorporate by reference the latest revisions of the NRC's RGs that list the ASME BPV and OM Code Cases that the NRC finds to be acceptable, or acceptable with NRC-specified conditions (''conditionally acceptable''). RG 1.84, Revision 41 (DG–1446) would supersede the incorporation by reference of Revision 40; RG 1.147, Revision 22 (DG–1447) would supersede the incorporation by reference of Revision 21; and RG 1.192, Revision 6 (DG–1448) would supersede the incorporation by reference of Revision 5.

The ASME BPV Code Cases that are the subject of this proposed rule are the new and revised Section III and Section XI Code Cases as listed in Supplements 3 through 6 to the 2021 Edition of the ASME BPV Code and Supplements 0 through 3 to the 2023 Edition of the ASME BPV Code. By letter dated October 18, 2024, ASME requested that the NRC consider including, in part, Code Cases N–752–2, N–926 and N–934 in this proposed rulemaking. In response, the NRC included these three code cases within the scope of this proposed rule. The NRC also is proposing to include OMN–32, Revision 1, ''Alternative Requirements for Range and Accuracy of Pressure, Flow, and Differential Pressure Instruments Used in Pump Tests,'' and OMN–34, ''Use of Pump Curve Testing,'' within the scope of this proposed rule.

The ASME publishes code cases that provide alternatives to existing code requirements that the ASME developed and approved. This proposed rule would incorporate by reference the most recent revisions of RGs 1.84, 1.147, and 1.192, which allow nuclear power plant licensees, and applicants for combined licenses, standard design certifications, standard design approvals, and manufacturing licenses under the regulations that govern license certifications, to use the code cases listed in these RGs as suitable alternatives to the ASME BPV and OM Codes for the construction, inservice inspections, and inservice testing of nuclear power plant components. The ASME makes the issued OM Code Cases available on the OM Code website and provides an index listing the issued OM Code Cases and their applicability in each ASME OM Code edition. The ASME publishes BPV Code Cases in a separate document and at a different time than the ASME BPV Code Editions. This proposed rule identifies the ASME BPV Code Cases by the edition of the ASME BPV Code under which they were published by the ASME and the OM Code Cases by the most recent edition of the ASME OM Code to which they apply.

The following general guidance applies to the use of the ASME Code Cases approved in the latest versions of the RGs that are incorporated by reference into § 50.55a as part of this proposed rule. Specifically, the use of the code cases listed in the latest versions of RGs 1.84, 1.147, and 1.192 are acceptable with the specified conditions when implementing the editions and addenda of the ASME BPV

and OM Codes incorporated by reference in § 50.55a.

The approval of a code case in these RGs constitutes acceptance of its technical position for applications that are not precluded by other requirements. The applicant or licensee is responsible for ensuring that use of the code case does not conflict with regulatory requirements or licensee commitments. The code cases listed in the RGs are acceptable for use within the limits specified in the code cases. If the RG states an NRC condition on the use of a code case, then the NRC condition supplements and does not supersede any limitation(s) specified in the code case, unless otherwise stated in the NRC condition.

The ASME Code Cases may be revised for many reasons (*e.g.,* to incorporate operational examination and testing experience or to update material requirements based on research results). On occasion, an inaccuracy in an equation is discovered or an examination, as practiced, is found not to be adequate to detect a newly discovered degradation mechanism. Therefore, when an applicant or a licensee initially implements a code case, § 50.55a requires that the applicant or the licensee implement the most recent version of that code case, as listed in the RGs incorporated by reference. Code cases superseded by revision are no longer acceptable for new applications unless otherwise indicated.

Section III of the ASME BPV Code applies to new construction (*e.g.,* the edition and addenda to be used in the construction of a plant are selected based on the date of the construction permit and are not changed thereafter, except voluntarily by the applicant or the licensee). Section III also may be used for repair and replacement activities under the provisions of Section XI of the ASME BPV Code. Whether used for construction or later repair or replacement, when a code case is first implemented by a licensee, the applicant implements the latest edition incorporated by reference into § 50.55a. Thereafter, the applicant or licensee may continue to apply the previously implemented version of the code case or may apply the later version of the code case, including any NRC-specified conditions placed on its use.

Code cases apply to specific editions and addenda, and code cases may be revised for various reasons. Licensees that were using a code case before the effective date of a final rule incorporating by reference a regulatory guide in § 50.55a(a)(3) may continue to use the previous version until the next update to the code of record for the ISI or IST program, as applicable. This relieves licensees of the burden of having to update their ISI or IST program each time a code case is revised by the ASME and approved for use by the NRC. The rules for applying code cases are described in §§ 50.55a(b)(4), 50.55a(f)(4), and 50.55a(g)(4).

The ASME may annul code cases that are no longer required, are determined to be inaccurate or inadequate, or have been incorporated into the ASME BPV or OM Codes. A code case may be revised, for example, to incorporate user experience. The older or superseded version of the code case cannot be applied by the licensee or applicant if it is the first use of that code case. If an applicant or a licensee applied a code case before it was listed as superseded or annulled, the applicant or the licensee may continue to use the code case until the applicant or the licensee updates its Construction Code of record (or updates its application, in the case of an applicant) or until the licensee's code of record interval for the ISI or IST program expires, after which the continued use of the code case is prohibited unless NRC authorization is given under § 50.55a(z). If a code case is incorporated by reference into § 50.55a and later a revised version is issued by the ASME because experience has shown that the design analysis, construction method, examination method, or testing method is inadequate, the NRC will amend § 50.55a and the relevant RG to remove the approval of the superseded code case. Applicants and licensees should not begin to implement such superseded code cases in advance of the rulemaking.

i. Code Cases Proposed To Be Approved for Unconditional Use

The code cases discussed in Table 2 are new, revised, or reaffirmed code cases in which the NRC is not proposing any conditions. The table identifies the draft regulatory guide listing the applicable code case that the NRC proposes to approve for use.

TABLE II—ACCEPTABLE CODE CASES

Operation and maintenance code (addressed in DG–1448, Table 1)		
Code case No.	Edition	Title
OMN–32 (Revision 1)	2022	Alternative Requirements for Range and Accuracy of Pressure, Flow, and Differential Pressure Instruments Used in Pump Tests.
OMN–34	2022	Use of a Pump Curve for Testing.

ii. Code Cases Proposed To Be Approved for Use With Conditions

The NRC has determined that certain code cases, as issued by the ASME, are generally acceptable for use, but that the alternative requirements specified in those code cases must be supplemented in order to provide an acceptable level of quality and safety. Accordingly, the NRC proposes to impose conditions on the use of these code cases to modify, limit, or clarify their requirements. The conditions would specify, for each applicable code case, the additional activities that must be performed, the limits on the activities specified in the code case, and/or the supplemental information needed to provide clarity. These ASME Code Cases, listed in Table III, are included in Table 2 of DG–1447 (RG 1.147) and DG–1448 (RG 1.192). This section provides the NRC's evaluation of the code cases and the reasons for the NRC's proposed conditions. Notations indicate the conditions duplicated from previous versions of the RG.

The NRC requests public comment on these code cases and the proposed conditions. It also should be noted that this section only addresses those code cases for which the NRC proposes to impose condition(s), which are listed in the RG for the first time.

TABLE III—CONDITIONALLY ACCEPTABLE CODE CASES

Boiler and pressure vessel code, Section XI (addressed in DG–1447, Table 2)		
Code case No.	Published with supplement	Title
N–508–5	6 (2021 Edition)	Rotation of Snubbers and Pressure Retaining Items for the Purpose of Testing or Preventive Maintenance.
N–666–3	0 (2023 Edition)	Weld Overlay of Class 1, 2, and 3 Socket Welded Connections.
N–716–4	1 (2023 Edition)	Alternative Classification and Examination Requirements.
N–752–2	6 (2023 Edition)	Risk-Informed Categorization and Treatment for Repair/Replacement Activities in Class 2 and 3 Systems.
N–778–1	0 (2023 Edition)	Alternative Requirements for Preparation and Submittal of Inservice Inspection Plans, Schedules, and Preservice and Inservice Inspection Summary Reports.
N–806–2	3 (2023 Edition)	Analytical Evaluation of Metal Loss in Class 2 and 3 Metallic Piping Buried in a Back-Filled Trench.
N–830–1	3 (2021 Edition)	Direct Use of Fracture Toughness for Flaw Evaluations of Pressure Boundary Materials in Class 1 Ferritic Steel Components.
N–926	6 (2021 Edition)	Alternative Examination Requirements for Unbonded Post-Tensioning Systems of Class CC Components.
N–930	0 (2023 Edition)	Alternative Experience Requirements for Nondestructive Examination Personnel for Ultrasonic Examination.

ASME BPV Code, Section XI Code Cases (DG–1447/RG 1.147)

Code Case N–508–5 [Supplement 6, 2021 Edition]

Type: Revised.

Title: Rotation of Snubbers and Pressure Retaining Items for the Purpose of Testing or Preventive Maintenance.

Code Case N–508 describes the circumstances under which items may be rotated from stock for routine maintenance and testing without following all the repair/replacement rules of IWA–4000. In Revision 5 of the code case, ASME removed a prescriptive list of items and replaced it with ''pressure retaining items'' This change allows the code case to be applied to a broader range of components, such as valves and heat exchangers, that may be similarly rotated from stock. While the NRC has no objection to the broader application of this code case as allowed in Revision 5, the existing condition on Code Case N–508–4 remains applicable. Therefore, the NRC proposes to approve Code Case N–508–5 and retain the existing condition.

Code Case N–666–3 [Supplement 0, 2023 Edition]

Type: Revised.

Title: Weld Overlay of Class 1, 2, and 3 Socket Welded Connections.

Code Case N–666 provides an alternative to the defect removal provisions of IWA–4420 by installation of weld overlay for restoring structural integrity of a cracked or leaking socket weld if a failure is a result of vibration fatigue. N–666–1 is currently listed in Table 2 of RG 1.147 as conditionally acceptable for use. Revision 2 extended the applicability of the code case to dissimilar metal socket welds, addressed the NRC condition regarding surface examination after installation of the weld overlay on Class 1 and Class 2 piping socket welds, deleted the prohibition on welding on water backed P-No. 1 Group 2 materials with a carbon content greater than 0.30 percent, and removed filler metal requirements. Revision 3 of the code case superseded revision 2 and specified applicability to tubing socket welds and removes NIS–2 Form documentation requirements.

In revision 2 of the code case, ASME added P–43 base materials and dissimilar welds between P-No. 1 and P-No. 8, between P-No. 8 and P-No. 43, and between P-No. 1 and P-No. 43. P-No. 43 base materials are Ni-Cr-Fe materials such as Alloys 600 and 690. The NRC finds the addition of P-No. 43 material and dissimilar metal welds is acceptable because the mechanical fatigue characteristics of nickel-based alloys and their associated filler materials are expected to be similar to that of stainless steel, which was listed as approved in Code Case N–666–1.

In revision 3 of the code case, ASME added the terms ''tube'' and ''tubing'' in relevant sections to explicitly allow for weld overlay repair of tubing socket welds. Moreover, the revision included the deletion of the section requiring documenting the code case on an NIS–2 Form. This section was deemed redundant and unnecessary, as IWA–6211(d) already mandates the documentation of all repair/replacement activities on this form. The NRC finds these revisions to be acceptable.

The current condition on N–666–1 in Regulatory Guide 1.147, Revision 21, states that the licensee must perform a surface examination and disposition the results according to the construction code. ASME modified the provisions of 5(a)(1) of the code case to require such examination and disposition of results. The NRC finds this change to be acceptable and proposes to remove the existing condition for Code Case N–666–3.

ASME modified the provisions of 1(b) of the code case to remove the limitation against water backed welding of P-No. 1 Group 2 materials with a carbon content greater than 0.30 percent. The NRC has approved alternative requests for welding P-No. 1 Group 2 materials with a carbon content up to 0.35 percent (ML20111A337). However, the use of low hydrogen electrodes when applying the shielded metal arc welding (SMAW) process and the use of stringer beads were part of the basis for approval, since this welding approach limits the potential for hydrogen induced cracking. Therefore, the NRC proposes to add a condition to Code Case N–666–3 requiring that only stringer beads (no weaving) be used, and that when using the SMAW process, low hydrogen electrodes are used when welding P-No. 1 Group 2 materials with carbon content greater than 0.30 percent.

ASME deleted the listing of American Welding Society filler metal classifications to be used. The NRC finds this change acceptable because the code case requires that welding procedure specifications must be qualified in accordance with the ASME BPV Code Section XI, IWA–4440, which in turn references ASME BPV Code, Section IX. This ensures that welding filler materials used are compatible with the base materials and weld materials over which the weld overlay is applied. However, as noted above, when the

SMAW process is used, the NRC proposes to require low hydrogen electrodes when welding materials with a carbon content greater than 0.30 percent carbon.

Code Case N–716–4 [Supplement 1, 2023 Edition]

Type: Revised.

Title: Alternative Classification and Examination Requirements.

Code Case N–716 provides requirements for risk-informed classification and examination for Class 1 piping welds, Class 2 components, Class 3 components, or non-class components. Code Case N–716–3 is listed in Regulatory Guide 1.147, Revision 21, as acceptable for use with the condition that it is not approved for use by plants issued an operating license or combined license after January 1, 2012. In revision 4 of the code case, the ASME modifies the successive examination requirements for items with multiple degradation mechanisms in cases where an initial examination has revealed flaws or relevant conditions exceeding the acceptance standards of Section XI Article IWB–3000, Article IWC–3000, or Article IWD–3000, as applicable. In Code Case N–716–3, all welds were assigned different possible degradation mechanisms, such as fatigue cracking, stress corrosion cracking, or no degradation mechanism. If an item was subject to multiple degradation mechanisms, all applicable degradation mechanisms were listed for the item. If a flaw was found during examination activities, the owner determined the damage mechanism. In Code Case N–716–3, the expanded scope for additional examinations included inspection items with the same postulated degradation mechanism and the combination of degradation mechanisms. In revision 4 of the code case, the ASME limited the scope of the additional examinations to include only those items with the same combination of degradation mechanisms.

The NRC proposes to maintain the condition imposed on Code Case N–716–3, as the code case was not modified to address the condition. The NRC position is that there are enough variables possible in the design of new reactors that the NRC should review the proposed degradation mechanisms and risk related information for new plants before application of the code case. Regarding the revision to the scope expansion rules, the NRC objects to the option of limiting the scope expansion to only those locations classified according to the same degradation combination, because an insufficient technical basis was provided to show that this method would be effective in assessing the true extent of condition. The proposed Condition 2 would preserve the wording on Section 6, ''Successive Inspections and Additional Examinations,'' sub-paragraphs (b)(1)(-b) and (b)(1)(-c), from Code Case N–716–3.

Code Case N–752–2 [Supplement 6, 2023 Edition]

Type: Revised, no current NRC position.

Title: Risk-Informed Categorization and Treatment for Repair/Replacement Activities in Class 2 and 3 Systems.

Code Case N–752 provides a process for determining the risk-informed categorization and treatment for repair/replacement activities on Class 2 and 3 items that are categorized as low safety significant. Revision 1 of the code case provided clarification on the scope of the code case. Revision 2 of the code case focused categorization and safety evaluation on items versus systems, clarified requirements for supports, removed requirements for probabilistic risk assessment (PRA) updates, allowed a piping segment to be a single item, provided an additional option to verify technical adequacy of the PRA, removed the requirements to consider external events such as seismic, and added a new footnote to clarify no optionally Class 1 or Class 1 exempt item can be categorized by this case before reclassification as non-Class 1 in accordance with the applicable change control process. The NRC has not previously issued a position on Code Cases N–752 or N–752–1. The NRC has reviewed Code Case N–752–2 and determined it to be acceptable for use, with conditions as specified in RG 1.147.

The NRC proposes to add a condition that the owner shall review changes to the plant, operational practices, applicable plant and industry operational experience, and, as appropriate, update the PRA and categorization and treatment processes, and that the owner shall perform this review in a timely manner but no longer than once every two refueling outages. Consistent with plant-specific Code Case N–752 relief request approvals, a review of the plant PRA must be completed in a timely manner because the periodic update of the plant PRA may affect the results of the categorization process. The validity of the categorization process relies on ensuring that the performance and conditions of structures, systems, and components (SSCs) continue to be maintained consistent with applicable assumptions. Changes in the level of treatment applied to an SSC might result in changes in the reliability of SSCs credited in the categorization process. These changes along with modifications to the plant, operational practices and experiences should be reflected in the PRA on a consistent basis to ensure accuracy and credibility of categorization results.

In approving the use of Code Case N–752–2, the NRC specifies that Subparagraph-1420 from IWA–1400(o) does not relieve licensees of obligations to document quality assurance programs or otherwise affect NRC requirements for quality assurance outside of § 50.55a (*e.g.,* Appendix B to 10 CFR part 50 and § 50.54(a)). Footnote 1 in Code Case N–752–2 states that if compliance with 10 CFR part 50, Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' or ASME Standard NQA–1, ''Quality Assurance Requirements for Nuclear Facility Applications,'' is required at the owner's facility, then IWA–1400(o) in ASME BPV Code, Section XI, Division 1, is not exempt. This language in Code Case N–752–2 and earlier versions caused confusion among nuclear power plant licensees regarding the applicability of 10 CFR part 50, Appendix B, when implementing Code Case N–752. The NRC resolved this confusion in NRC Information Notice 2025–01, ''Lessons Learned When Implementing ASME Code Case N–752,'' by stating that licensees are required to comply with the quality assurance requirements in 10 CFR part 50, Appendix B, for safety-related Class 2 and Class 3 low safety significant items. Information Notice 2025–01 notes that the NRC has approved specific changes to the Quality Assurance Program Descriptions related to the implementation of Code Case N–752. For early uses of Code Case N–752, licensees followed § 50.54(a)(4) to establish risk-informed supplemental processes and procedures that the NRC accepted as satisfying the requirements of 10 CFR part 50, Appendix B, given the low safety significance of the components within the scope of Code Case N–752. For later adoptions of Code Case N–752, licensees followed § 50.54(a)(3) to apply risk-informed quality assurance treatment of components within the scope of Code Case N–752. The NRC regulations in § 50.54(a)(3) allow licensees to adjust their quality assurance activities as accepted by the NRC in response to prior licensee requests under § 50.54(a)(4). Therefore, licensees are encouraged to review prior licensee requests under § 50.54(a)(4) to

determine the extent of the risk-informed quality assurance treatment for components within the scope of Code Case N–752 allowed under § 50.54(a)(3).

In approving the use of Code Case N–752–2, the NRC also specifies that for a supporting requirement to be met, all relevant peer review and other independent findings shall have been addressed and necessary changes made to PRA models, methods, and documentation. In addition, all relevant peer review facts and observations (F&Os) findings for the internal events and internal flooding PRA shall have been dispositioned and closed out using an acceptable process. Examples of NRC-endorsed processes for these activities include NEI 17–07 Revision 2 and Appendix X to NEI 05–04/7–12/12–06. A peer review of the PRA is performed to determine whether the requirements established in national consensus PRA standards, as endorsed by the NRC with exceptions and clarifications, have been met. To remove the need for NRC review of plant-specific PRAs in support of Code Case N–752–2, all relevant peer review findings must be closed using an acceptable close-out process. An acceptable close-out process includes NEI 17–07 Revision 2, as endorsed by the NRC in RG 1.200, ''Acceptability of Probabilistic Risk Assessment Results for Risk-Informed Activities,'' Revision 3, Regulatory Position C.2.2. Another acceptable close-out process includes NEI 05–04/07–12/12–06, Appendix X: ''Close-Out of Facts and Observations (F&Os),'' dated February 21, 2017, as accepted by NRC by letter dated May 3, 2017. The implementation of an acceptable closure process is intended to provide the needed confidence in the resolution of peer review F&Os against the requirements in the national consensus PRA standard such that, when used in support of Code Case N–752–2, it will remove the need for an in-depth review of the licensee's F&O resolutions by NRC reviewers.

The NRC issued a policy statement on the use of PRA methods in NRC activities in the **Federal Register** on August 16, 1995. The NRC's 1995 Policy Statement on the use of PRA states that the use of PRA technology should be increased to the extent supported by the state-of-the-art in PRA methods and data and in a manner that complements the NRC's deterministic approach. Since the NRC issued its PRA policy statement, a number of risk-informed regulatory activities have been implemented and necessary technical documents developed to provide guidance on the use of PRA information. This guidance includes RG 1.200, which describes one acceptable approach for determining the requisite technical adequacy of the PRA is sufficient to provide confidence in the results. The RG revisions reference successive consensus PRA standards developed by the ASME and the American Nuclear Society (ANS). RG 1.200, Revision 1, references ASME RA–S–2002–2002, ASME RA–Sa–2003 and ASME RA–Sb–2005 standards; and RG 1.200, Revisions 2 and 3, references ASME/ANS RA–Sa–2008 and ASME/ANS RA–Sa–2009 standards. Furthermore, in March 2007, the NRC issued Regulatory Issue Summary (RIS) 2007–06, ''Regulatory Guide 1.200 Implementation'' which states ''the NRC would expect licensees to fully address all scope elements consistent with Revision 2 of RG 1.200 by the end of 2009.'' Because of regulatory and industry initiatives, the majority of the U.S. nuclear fleet currently have peer reviewed PRAs that show conformance to RG 1.200, Revision 2. The NRC finds the technical adequacy of the base PRA, as determined by RG 1.200, Revision 1, to be sufficient with regard to use of Code Case N–752–2 to provide the needed confidence in the results. In alignment with the NRC's policy statement on the use of PRA, RIS 2007–06 and the status of PRAs for the U.S. nuclear fleet, the licensee also may elect to use RG 1.200, Revision 2, or RG 1.200, Revision 3, to ensure the technical adequacy of the PRA by meeting supporting requirements that correspond to supporting requirements in RG 1.200, Revision 1. This can include full-scope peer review of internal events and internal flooding PRA against RG 1.200, Revision 2, as well as a gap assessment of earlier peer reviews of the internal events and internal flooding PRA against RG 1.200, Revision 2. The NRC reviewed the requirements of Table I–7 and concluded that the corresponding supporting requirements endorsed in RG 1.200, Revision 2 and Revision 3, are adequate to meet the requirements of Table I–7 for technical adequacy of the PRA. Therefore, the NRC determined that licensee PRA programs that conform to RG 1.200, Revision 2 or Revision 3, would meet the requirements of N–752–2 as incorporated by reference in RG 1.147.

The NRC considered internal flooding supporting requirements for inclusion in Table I–7 of Code Case N–752–2, consistent with requirements for Code Case N–716–1, ''Alternative Classification and Examination Requirements Section XI, Division 1,'' Mandatory Appendix 2, as endorsed in RG 1.147. The NRC evaluated the difference in supporting requirements and concluded the methodology as outlined in Section I–3.3.1, ''Modes and Effects Analysis,'' part (c), ''Indirect Effects,'' adequately addresses spatial effects, as defined in the glossary, to include flooding as part of the consequence evaluation.

The NRC considered whether a qualitative assessment should be performed to adjust the consequence rank to reflect the pressure boundary's failure impact on the mitigation of external events. The NRC determined that the baseline risk from external events would have a minimal influence on the categorization results, which already assume complete loss of the pressure retaining item and which are primarily driven by the availability and reliability of mitigating systems responding to direct and indirect effects of the item's failure. This NRC evaluation is consistent with feedback from industry stakeholders, licensees in public meetings, and audit discussions related to passive categorization.

Code Case N–778–1 [Supplement 0, 2023 Edition]

Type: Revised.

Title: Alternative Requirements for Preparation and Submittal of Plans, Schedules, and Preservice and Inservice Inspection Summary Reports.

Code Case N–778 offers alternatives to the requirements of IWA–1400(c) and IWA–6240 for the preparation and submission of various inspection reports and plans. In revision 1 of the code case, the ASME modified the submission period for the inservice inspection summary report to the NRC from 90 days to 120 days. The NRC does not object to allowing licensees more time to prepare and submit the report.

Code Case N–778–1, paragraph (d), states that ''Plans, schedules, and preservice and inservice inspection summary reports shall be submitted to the enforcement and regulatory authorities having jurisdiction at the plant site, if required by these authorities.'' The existing conditions on Code Case N–778 specify that the preservice inspection and inservice inspection summary reports shall be submitted to the NRC and the timing of such submissions. Since the code case still qualifies the requirement with ''if required by these authorities,'' the NRC proposes to retain the existing condition.

Code Case N–806–2 [Supplement 3, 2023 Edition]

Type: Revised.

Title: Analytical Evaluation of Metal Loss in Class 2 and 3 Metallic Piping Buried in a Back-Filled Trench.

Code Case N–806 provides guidelines for assessing metal loss in ASME Code Class 2 and 3 buried piping items, using data obtained from inspection results. ASME revised this code case from N–806–1 based on the NRC's comments. Revision 2 of the code case enhances methods for flaw evaluation utilizing internal pressures, soil and surcharge loads, and seismic loads. The main revision expands the analytical evaluation framework to include Level 3 evaluations for seismic impacts on buried piping as specified in the code case. Code Case N–806–2 is not applicable to cast iron, leakage through a piping item or joint, cracked piping items, non-metallic piping with or without a metallic liner, and piping items with a minimum wall thickness of less than 0.1 inch (.25 cm).

Equation 16 of Section 6.2.2.2(c) is related to the buckling of the buried pipe under external pressure. The existing Equation 16 requires that $P_{ss}' \leq P_{cr}/2$, where P_{ss}' is the total external pressure plus negative internal pressure, P_{cr} is the critical buckling pressure of the buried pipe, and ''2'' is the structural factor. The NRC notes that Equation 16 for buckling due to external pressure is similar to the buckling equation used in American Lifelines Alliance, ''Guidelines for the Design of Buried Steel Pipe,'' July 2001 with Addenda through February 2005; NUREG/CR–6876, ''Risk-Informed Assessment of Degraded Buried Piping System in Nuclear Power Plants''; and A.P. Moser, Buried Pipe Design, Second Edition, McGraw-Hill. However, the code case uses a structural factor of 2 in Equation 16 while these three references recommend a higher structural factor of 2.5 (when C/D = 2) or 3.0 (when C/D < 2), where C/D is soil depth to pipe diameter ratio. Therefore, the NRC proposes to approve Code Case N–806–2, with one condition to require the higher structural factors.

Code Case N–830–1 [Supplement 3, 2021 Edition]

Type: Revised.

Title: Direct Use of Fracture Toughness for Flaw Evaluations of Pressure Boundary Materials in Class 1 Ferritic Steel Components.

Code Case N–830 defines fracture toughness models based on the Master Curve Method in accordance with ASTM E1921, ''Standard Test Method for Determination of Reference Temperature, T_0, for Ferritic Steels in the Transition Range,'' that may be used in lieu of those specified in the ASME BPV Code, Section XI, Nonmandatory Appendices A, G, and K.

The current condition on N–830 in Regulatory Guide 1.147, Revision 21, states that the use of Paragraph (f) in N–830 is prohibited. In revision 1, ASME significantly revised and restructured this code case, including a different transition temperature toughness curve. Since the condition on the use of Paragraph (f) in N–830 applies to the transition temperature toughness curve defined in N–830, this existing condition is no longer applicable to the transition temperature toughness curve defined in revision 1. Therefore, the NRC proposes to remove the existing condition for Code Case N–830–1.

The NRC extensively reviewed Code Case N–830–1 while it was under development. During the review, the NRC evaluated relevant aspects of the fracture toughness models, including assumptions, datasets, uncertainties and biases, limitations, and applicability. The NRC generated over 40 comments to which the ASME Working Groups provided responses. The NRC reviewed all responses and determined that they adequately addressed the NRC's comments on the fracture toughness models. During its review, the NRC also performed an independent analysis of the fracture toughness models in the code case to confirm the validity of the models for materials with low upper shelf energy. The NRC confirmed that, where appropriate, the code case and technical basis document were updated as a result of the NRC's review.

Code Case N–830–1 specifies that the transition reference temperature be adjusted to account for effects of irradiation and notes that the methods in ASTM Standard E900–15, ''Standard Guide for Predicting Radiation-Induced Transition Temperature Shift in Reactor Vessel Materials,'' may be used for this adjustment. The NRC noted that while the methodology in ASTM E900–15 for calculating the transition reference temperature shift is currently not in the regulations nor endorsed by the NRC through a regulatory guide, it has been used in a recent NRC final report titled ''Impacts of Embrittlement on Reactor Pressure Vessel Integrity from a Risk-Informed Perspective,'' and in SECY–22–0019, ''Rulemaking Plan for the Revision of Embrittlement and Surveillance Requirements for High-Fluence Nuclear Power Plants in Long-Term Operation.'' Accordingly, the NRC proposes to condition Code Case N–830–1 to limit the methodology for determining the transition reference temperature shift due to irradiation effects to a methodology acceptable to the NRC, specifically Regulatory Guide 1.99, Revision 2, ''Radiation Embrittlement of Reactor Vessel Materials,'' including appropriate conversion factors and margins.

Code Case N–926 [Supplement 6, 2021 Edition]

Type: New.

Title: Alternative Examination Requirements for Unbonded Post-Tensioning Systems of Class CC Components, Section XI, Division 1.

Code Case N–926 provides an alternative examination schedule for unbonded post-tensioning systems in Class CC containment structures. The alternative applies to tendon groups that have completed the required examinations at 20 years following the Structural Integrity Test and have met additional criteria demonstrating long-term structural integrity. Use of the alternative must be discontinued if the specified criteria are not satisfied.

The NRC has reviewed Code Case N–926 and determined that it provides an acceptable level of quality and safety for unbonded post-tensioning systems of Class CC components in containment structures, consistent with the provisions of § 50.55a(z)(1). The code case allows for a reduced testing frequency for tendon groups with a demonstrated history of satisfactory performance. Continued use of the alternative requires that test results remain within acceptable limits and that tendon force predictions show adequate margins through the next scheduled examination. In addition, the code case retains the existing requirement for five-year visual inspections of tendon assemblies. If these visual inspections identify degradation that may impact tendon performance, corrective actions, including tendon testing, may be necessary. The NRC's evaluation is further supported by operating experience from several previously approved relief requests that authorized similar reductions in tendon testing frequency. These approvals were based on demonstrated long-term performance and structural integrity of the tendon systems. This consistent operating experience reinforces the conclusion that the alternative examination schedule proposed in Code Case N–926 maintains an acceptable level of quality and safety.

However, Code Case N–926 does not explicitly address tendons that have undergone repair or replacement. To ensure consistent safety standards, the NRC is proposing that the alternative requirements of Code Case N–926 shall be applied to tendons affected by repair/replacement activities only if examinations of those affected tendons

required by IWL–2521.2 at 20 years following tendon repair/replacement activities have been completed and all requirements specified in the ''Scope'' paragraph of Code Case N–926 have been met.

Code Case N–930 [Supplement 0, 2023 Edition]

Type: New.

Title: Alternative Experience Requirements for Nondestructive Examination Personnel for Ultrasonic Examination.

Code Case N–930 provides qualification requirements related to ultrasonic examination personnel as part of the broader set of criteria and standards outlined in the ASME BPV Code, Section XI. The code case introduces alternative experience requirements for the qualification of ultrasonic examination personnel, specifically for Levels II and III. This code case presents an alternative to ASME BPV Code, Section XI, Mandatory Appendix VII, Table VII–4100, accommodating the challenges of reduced refueling outage durations and the application of risk-informed inservice inspection programs.

While Table VII–4100 has minimum experience requirements for personnel to be certified as ASME Levels I and II Ultrasonic (UT) personnel, notes (c) and (d) of the table allow for substitution of laboratory practice for all of the Level I experience hours and reduces the experience hours for Level II from 800 experience hours to 400 total hours, 320 of which can be laboratory practice. Notes (c) and (d) were added in the 2011 Addenda to the 2010 Edition of ASME BPV Code, Section XI. As there was not a sufficient technical basis for the reduction of hours and the substitution of laboratory practice, the NRC held the requirements of the 2010 Edition via the condition in § 50.55a(b)(2)(xviii)(D).

The NRC conducted research into the substitution of laboratory practice hours for experience hours. This work was published in the technical letter report ''Nondestructive Examination (NDE) Training and Qualifications: Implications of Research on Human Learning and Memory, Instruction and Expertise.'' This research showed that it can be beneficial to substitute some experience hours with laboratory practice, as while on-the-job experience helps to acclimate personnel to the field environment, structured laboratory practice may provide more experience with finding and sizing cracks and other flaws, as there are relatively few in the power plants. Based on this research, the NRC added § 50.55a(b)(2)(xviii)(D)(1) and (2), which allow for partial substitution of laboratory practice for experience hours for Level I and II UT personnel.

In parallel with the NRC's research in this area, the Electric Power Research Institute (EPRI) conducted a detailed evaluation of the number of experience hours and the structure of the laboratory practice that would be needed for personnel to obtain the needed skills to be effective examiners. The results of the EPRI work were published in a technical report titled ''Technical Basis for Nondestructive Examination Experience Requirements for ASME Section XI, Appendix VII.'' The NRC finds that the report provides a sufficient technical basis to support the use of reduced hours and partial substitution of laboratory hours for field experience for Personnel to obtain Levels I, II, and III UT examiner certifications. These revised requirements are described in ASME Code Case N–930. The requirements for Level I and II personnel are similar to and consistent with the NRC conditions in § 50.55a(b)(2)(xviii)(D)(1) and (2). The reduced hours for UT Level III certification are supported by the EPRI report, as well.

During a final revision to the code case, the total number of hours was revised from 600 total hours to 630 to be consistent with the ASME BPV Code, Section III UT Level II personnel experience requirements. As an oversight, this change was not reflected in the allowed laboratory practice hours in Note (d) in Table –4110–1 in the code case. The revised ASME Code Case N–930–1 has been approved by ASME Code with NRC support. Therefore, the NRC is proposing a condition to align Code Case N–930 with Code Case N–930–1 and allow the use of the code case without the error until Code Case N–930–1 is accepted into RG 1.147.

Other OM Code Cases in Proposed Revision 6 to RG 1.192

No changes were made to the OM Code Cases listed in proposed Revision 6 to RG 1.192 (with the exception of new Code Cases OMN–32 and OMN–34, discussed previously) from the versions that were listed in OM Code Cases listed in Revision 5 to RG 1.192.

iii. Code Cases Not Approved for Use (DG–1449/RG–1.193)

The ASME Code Cases that are currently issued by the ASME but not approved for generic use by the NRC are listed in RG 1.193, ''ASME Code Cases not Approved for Use.'' In addition to the ASME Code Cases that the NRC has found to be technically or programmatically unacceptable, RG 1.193 includes code cases on reactor designs for high-temperature gas-cooled reactors and liquid metal reactors, reactor designs not currently licensed by the NRC, and certain requirements in Section III, Division 2, for submerged spent fuel waste casks, that are not endorsed by the NRC. RG 1.193 complements RGs 1.84, 1.147, and 1.192. It should be noted that the NRC is not proposing to adopt any of the code cases listed in RG 1.193. The NRC has included Revision 0 to OM Code Case OMN–32 in RG 1.193, because Revision 1 to Code Case OMN–32 has resolved the issues with Revision 0 of the code case.

C. Editorial Corrections

The NRC is proposing editorial corrections to §§ 50.55a(a)(1), 50.55a(b)(2)(xliii), 50.55a(g)(4)(iv), 50.55a(g)(6)(ii)(F)(*2*)(*v*), 50.55a(g)(6)(ii)(F)(*4*), and 50.55a(g)(6)(ii)(F)(10). This proposed rule would correct a broken hyperlink in § 50.55a(a)(1), a typo to replace ''Licenses shall'' to ''Licensees shall,'' and the reference in § 50.55a(g)(4)(iv) from ''(a)(1)(iv) of this section'' to ''(a)(1)(iii) of this section'' and also correct references to the appropriate version of the ASME BPV Code Case in § 50.55a(g)(6)(ii)(F)(*2*)(*v*), (g)(6)(ii)(F)(*4*), and (g)(6)(ii)(F)(*10*).

The references to ASME BPV Code Case N–770–5 would be replaced with ASME BPV Code Case N–770–7 in § 50.55a(g)(6)(ii)(F)(*2*)(*v*), (g)(6)(ii)(F)(*4*), and (g)(6)(ii)(F)(*10*). ASME BPV Code Cases N–770–5 and N–770–7 versions are identical. All references in § 50.55a(g)(6)(ii)(F)(*2*)(*v*), (g)(6)(ii)(F)(*4*), and (g)(6)(ii)(F)(*10*) to ASME BPV Code Case N–770–5 should be replaced with N–770–7, with the exception of § 50.55a(g)(6)(ii)(F)(1), which discusses the replacement to implement the requirements of ASME BPV Code Case N–770–7 instead of ASME BPV Code Case N–770–5.

Note that the content of the paragraphs and notes within the code case specific to these conditions (1100(e), 2500(a), 2500(c), 2500(d), Note 14(b) of Table 1, and Note (b) of Figure 5(a)) that are referenced in the regulations contain no differences between the N–770–5 and N–770–7 versions. Therefore, this correction would not cause any changes in what is being referenced.

IV. Specific Requests for Comments

The NRC is seeking advice and recommendations from the public on the proposed rule. The NRC is particularly interested in comments and

supporting rationale from the public on the following:

The NRC is proposing to remove and reserve § 50.55a(a)(1)(iii)(A). This paragraph currently incorporates by reference Mandatory Appendix I of Code Case N–513–3 and was previously referenced in § 50.55a(b)(2)(xxxiv)(B). However, this paragraph has since been updated so that it no longer references the mandatory appendix. Should the NRC instead retain Mandatory Appendix I of Code Case N–513–3 in the list of documents approved for incorporation by reference? Please provide the basis for your response.

V. Section-by-Section Analysis

The following paragraphs describe the specific changes to § 50.55a proposed by this rulemaking.

Paragraph (a)(1)

This proposed rule would revise paragraph (a)(1) to correct the broken hyperlink to *https://www.asme.org/codes-standards.*

Paragraph (a)(1)(i)(E)

This proposed rule would revise paragraphs (a)(1)(i)(E)(20) and (21) and add new paragraph (a)(1)(i)(E)(22) to include the 2023 Edition.

Paragraph (a)(1)(ii)(C)

This proposed rule would revise paragraphs (a)(1)(ii)(C)(56) and (57) and add new paragraph (a)(1)(ii)(C)(58) to include the 2023 Edition.

Paragraph (a)(1)(iii)(A)

This proposed rule would remove and reserve paragraph (a)(1)(iii)(A). Mandatory Appendix I to ASME BPV Code Case N–513–3 is no longer referenced in this section.

Paragraph (a)(1)(v)(B)

This proposed rule would revise paragraphs (a)(1)(v)(B)(5) and (6) and add new paragraphs (a)(1)(v)(B)(7), (8), and (9) to include the 2017, 2019, and 2022 editions of NQA–1.

Paragraph (a)(3)(i)

This proposed rule would revise the reference to ''NRC Regulatory Guide 1.84, Revision 40,'' by removing ''Revision 40'' and adding in its place ''Revision 41'' and changing the month and year for the document's revision date.

Paragraph (a)(3)(ii)

This proposed rule would revise the reference to ''NRC Regulatory Guide 1.147, Revision 21,'' by removing ''Revision 21'' and adding in its place ''Revision 22'' and changing the month and year for the document's revision date.

Paragraph (a)(3)(iii)

This proposed rule would revise the reference to ''NRC Regulatory Guide 1.192, Revision 5,'' by removing ''Revision 5'' and adding in its place ''Revision 6'' and changing the month and year for the document's revision date.

Paragraph (a)(3)(iv)

This proposed rule would revise the reference to ''NRC Regulatory Guide 1.147, Revision 22,'' by removing ''Revision 21'' and adding in its place ''Revision 22.''

Paragraph (b)(1)(xiv)

This proposed rule would revise paragraph (b)(1)(xiv) to update the applicability of this paragraph through the latest edition incorporated by reference in paragraph (a)(1)(i) of this section.

Paragraph (b)(1)(xv)

This proposed rule would add new paragraph (b)(1)(xv) to require that protection from deterioration of radiographic film shall include the provisions specified in NCA–4134.17(c) of the 2023 Edition of ASME Code, Section III, and the copy must be retained as a record in accordance with Table NCA–4134.17–1 or NCA–4134.17–2, as applicable, of the 2023 Edition of Section III. The two provisions would be added in new paragraphs (b)(1)(xv)(A) and (B).

Paragraph (b)(2)(xii)

This proposed rule would revise paragraph (b)(2)(xii) to update the applicability of this paragraph through the 2021 Edition.

Paragraph (b)(2)(xviii)

This proposed rule would remove and reserve the provision in paragraph (b)(2)(xviii)(A) because this provision is no longer necessary. In addition, this proposed rule would revise paragraph (b)(2)(xviii)(D) to clarify that the alternatives listed in paragraphs (b)(2)(xviii)(D)(1) and (2) are applicable to editions and addenda later than the 2010 Edition.

Paragraph (b)(2)(xxv)

This proposed rule would revise the title of paragraph (b)(2)(xxv) from ''Section XV Condition'' to ''Section XI Condition.'' This is an editorial correction.

Paragraph (b)(2)(xxviii)

This proposed rule would revise paragraph (b)(2)(xxviii) to add paragraphs (A) and (B). Paragraph (A) would be the existing condition applicable to the 2021 Edition and earlier. Paragraph (B) would be the existing condition applicable to the 2023 Edition and replacing reference to A–4300(b)(1) with reference to Y–3100(c).

Paragraph (b)(2)(xxxi)

This proposed rule would revise the current paragraph (b)(2)(xxxi) to reformat the current condition to two separate provisions, designated as new paragraphs (b)(2)(xxxi)(A) and (B). In addition, this proposed rule would add four additional provisions, designated as new paragraphs (b)(2)(xxxi)(C), (D), (E), and (F). The new provisions would maintain current NRC position on the use of Nonmandatory Appendix W concerning prohibiting use of mechanical clamps on piping for Class 1, piping that forms the containment boundary, piping larger than NPS 2 (DN 50) when nominal operating temperature or pressure exceeds 200 °F (95°C) or 275 psig (1,900 kPa), and piping larger than NPS 6 (DN 150).

Paragraph (b)(2)(xxxiv)

This proposed rule would revise paragraph (b)(2)(xxxiv)(B) to update the applicability of this paragraph through the 2023 Edition.

Paragraph (b)(2)(xliv)

This proposed rule would revise paragraph (b)(2)(xliv) to extend its applicability to the 2023 Edition, correct errors, and add paragraph (D). Paragraph (A) would be revised to ''Subarticle Y–2200'' instead of ''Article Y–2200.'' Paragraph (B) would be revised to ''Subarticle Y–2400'' instead of ''Subarticle Y–2440.'' Paragraph (C) would be revised to ''Subarticle Y–3200'' instead of ''Article Y–3200.'' New paragraph (D) would be added to prohibit the use of Nonmandatory Appendix Y, Paragraph Y–4322.

Paragraph (b)(2)(xliii)

This proposed rule would revise paragraph 50.55a((b)(2)(xliii) to correct a typo, revising ''Licenses shall'' to ''Licensees shall.''

Paragraph (b)(2)(xlv)

This proposed rule would revise paragraph (b)(2)(xlv) to extend its applicability to the latest edition incorporated by reference in paragraph (a)(1)(ii) of this section.

Paragraph (b)(2)(xlvi)

This proposed rule would revise paragraph (b)(2)(xlvi) to extend its applicability to the latest edition

incorporated by reference in paragraph (a)(1)(ii) of this section.

Paragraph (b)(2)(xlviii)

This proposed rule would revise paragraph (b)(2)(xlviii) to extend its applicability to the latest edition incorporated by reference in paragraph (a)(1)(ii) of this section.

Paragraph (b)(2)(li)

This proposed rule would add new paragraph (b)(2)(li) to prohibit the use of IWA–4540(d)(7) for the 2023 Edition.

Paragraph (b)(2)(lii)

This proposed rule would add new paragraph (b)(2)(lii) to require preservice and inservice examination of nozzles fabricated from weld buildups, to require use of ultrasonic procedures and personnel compliant with Mandatory Appendix VIII, and to require the flaw acceptance criteria of IWB–3514 for Examination Category B–F welds.

Paragraph (b)(2)(liii)

This proposed rule would add new paragraph (b)(2)(liii) to require that reasonable protection from deterioration of radiographic film specified in IWA–6310(b) shall include the provisions in IWA–6320 and the reproduction must be retained as a lifetime record in accordance with IWA–6330, IWA–6340, and IWA–6350.

Paragraph (g)(4)(iv)

The NRC proposes to revise § 50.55a(g)(4)(iv) correct the reference from ''(a)(1)(iv) of this section'' to ''(a)(1)(iii) of this section''.

Paragraph (g)(6)(ii)(D)(9)

This proposed rule would revise paragraph (g)(6)(ii)(D)(9) to extend the applicability of this paragraph to include the latest edition incorporated by reference in paragraph (a)(1)(ii) of this section of Supplement 15, Section XI, Division 1, Mandatory Appendix VIII.

Paragraph (g)(6)(ii)(F)(2)(iv)

This proposed rule would revise paragraph (g)(6)(ii)(F)(2)(iv) to include Inspection Item B–3.

Paragraph 50.55a(g)(6)(ii)(F)(2)(v)

This proposed rule would revise paragraph (g)(6)(ii)(F)(*2*)(*v*) to correct the reference from ASME BPV Code Case N–770–5 to ASME BPV Code Case N–770–7.

Paragraph 50.55a(g)(6)(ii)(F)(4)

This proposed rule would revise paragraph (g)(6)(ii)(F)(*4*) to correct the reference from ASME BPV Code Case N–770–5 to ASME BPV Code Case N–770–7.

Paragraph 50.55a(g)(6)(ii)(F)(2)(10)

This proposed rule would revise paragraph (g)(6)(ii)(F)(*10*); to correct the reference from ASME BPV Code Case N–770–5 to ASME BPV Code Case N–770–7.

Paragraph (g)(6)(ii)(F)(13)

This proposed rule would revise paragraph (g)(6)(ii)(F)(13) to include Inspection Item B–3.

VI. Generic Aging Lessons Learned Report

In December 2010, the NRC issued NUREG–1801, Revision 2, ''Generic Aging Lessons Learned (GALL) Report'' (ML103490041), for applicants to use in preparing license renewal applications. The GALL Report provides aging management programs (AMPs) that the NRC has concluded are sufficient for aging management in accordance with the license renewal rule, as required in § 54.21(a)(3). In addition, NUREG–1800, Revision 2, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants'' (ML103490036), was issued in December 2010, to ensure the quality and uniformity of NRC reviews of license renewal applications and to present a well-defined basis on which the NRC evaluates the applicant's AMPs and activities. In 2011, the NRC also issued NUREG–1950, ''Disposition of Public Comments and Technical Bases for Changes in the License Renewal Guidance Documents NUREG–1801 and NUREG–1800'' (ML11116A062), which describes the technical bases for the changes in Revision 2 of the GALL Report and Revision 2 of the standard review plan (SRP) for review of license renewal applications.

Revision 2 of the GALL Report, in Sections XI.M1, XI.S1, XI.S2, XI.M3, XI.M5, XI.M6, XI.M11B, and XI.S3, describes the evaluation and technical bases for determining the sufficiency of ASME BPV Code Subsections IWB, IWC, IWD, IWE, IWF, or IWL for managing aging during the period of extended operation (*i.e.,* up to 60 years of operation). In addition, many other AMPs in the GALL Report rely, in part but to a lesser degree, on the requirements specified in the ASME BPV Code, Section XI. Revision 2 of the GALL Report also states that the 1995 Edition through the 2004 Edition of the ASME BPV Code, Section XI, Subsections IWB, IWC, IWD, IWE, IWF, or IWL, as modified and limited by § 50.55a, were found to be acceptable editions and addenda for complying with the requirements of § 54.21(a)(3), unless specifically noted in certain sections of the GALL Report. The GALL Report further states that future **Federal Register** documents that amend § 50.55a will discuss the acceptability of editions and addenda more recent than the 2004 Edition for their applicability to license renewal. In a final rule issued on June 21, 2011 (76 FR 36232), subsequent to Revision 2 of the GALL Report, the NRC also found that the 2004 Edition with the 2005 Addenda through the 2007 Edition with the 2008 Addenda of Section XI of the ASME BPV Code, Subsections IWB, IWC, IWD, IWE, IWF, or IWL, as subject to the conditions in § 50.55a, are acceptable for the AMPs in the GALL Report and the conclusions of the GALL Report remain valid with the augmentations specifically noted in the GALL Report. In a final rule issued on July 18, 2017 (82 FR 32934), the NRC further found that the 2009 Addenda through the 2017 Edition of Section XI of the ASME BPV Code, Subsections IWB, IWC, IWD, IWE, IWF, or IWL, as subject to the conditions in § 50.55a, are acceptable for the AMPs in the GALL Report. In a final rule issued on May 4, 2020 (85 FR 26540), the NRC further found that Subsections IWB, IWC, IWD, IWE, IWF, or IWL of Section XI of the 2015 Edition and the 2017 Edition of the ASME BPV Code, as subject to the conditions in § 50.55a, are acceptable for the AMPs in the GALL Report. In a final rule issued on October 27, 2022 (87 FR 65128), the NRC further found that Subsections IWB, IWC, IWD, IWE, IWF, or IWL of Section XI of the 2019 Edition of the ASME BPV Code, as subject to the conditions in § 50.55a, are acceptable for the AMPs in the GALL Report. In a final rule issued on August 30, 2024 (89 FR 70449), the NRC found that Subsections IWB, IWC, IWD, IWE, IWF, or IWL of Section XI of the 2021 Edition of the ASME BPV Code, as subject to the conditions in § 50.55a, are acceptable for the AMPs in the GALL Report.

In July 2025, the NRC issued NUREG–2191, Revision 1, ''Generic Aging Lessons Learned for Subsequent License Renewal (GALL–SLR) Report'' (ML25113A021 and ML25113A022), for applicants to use in preparing applications for subsequent license renewal. The GALL–SLR Report provides AMPs that are sufficient for aging management for the subsequent period of extended operation (*i.e.,* up to 80 years of operation), as required in § 54.21(a)(3). The NRC also issued NUREG–2192, Revision 1, ''Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants'' (SRP–SLR), in

July 2025 (ML25113A023). In a similar manner as the GALL Report does, the GALL–SLR Report, in Sections XI.M1, XI.S1, XI.S2, XI.M3, XI.11B, and XI.S3, describes the evaluation and technical bases for determining the sufficiency of ASME BPV Code Subsections IWB, IWC, IWD, IWE, IWF, or IWL for managing aging during the subsequent period of extended operation. Many other AMPs in the GALL–SLR Report rely, in part but to a lesser degree, on the requirements specified in the ASME BPV Code, Section XI. The GALL–SLR Report also indicates that the 1995 Edition through the 2023 Edition (if and when published) of the ASME BPV Code, Section XI, Subsections IWB, IWC, IWD, IWE, IWF, or IWL, as subject to the conditions in § 50.55a, are acceptable for complying with the requirements of § 54.21(a)(3), unless specifically noted in certain sections of the GALL–SLR Report.

Evaluation With Respect to Aging Management

The NRC evaluated whether those AMPs in the GALL Report and GALL–SLR Report that rely upon Subsections IWB, IWC, IWD, IWE, IWF, or IWL of Section XI in the editions and addenda of the ASME BPV Code incorporated by reference into § 50.55a, in general continue to be acceptable if the AMP relies upon these Subsections in the 2023 Edition. The NRC finds that the 2023 Edition of Section XI of the ASME BPV Code, Subsections IWB, IWC, IWD, IWE, IWF, or IWL, as subject to the conditions of this proposed rule, are acceptable for the AMPs in the GALL Report and GALL–SLR Report with the exception of augmentation, as specifically noted in those reports, and the NRC finds that the conclusions of the GALL Report and GALL–SLR Report remain valid. Accordingly, an applicant for license renewal (including subsequent license renewal) may use, in its plant-specific license renewal application, Subsections IWB, IWC, IWD, IWE, IWF, or IWL of Section XI of the 2023 Edition of the ASME BPV Code, as subject to the conditions in this proposed rule, without additional justification. Similarly, a licensee approved for license renewal that relied on the AMPs may use Subsections IWB, IWC, IWD, IWE, IWF, or IWL of Section XI of the 2023 Edition of the ASME BPV Code. However, applicants must assess and follow applicable NRC requirements with regard to licensing basis changes and evaluate the possible impact on the elements of existing AMPs.

Some of the AMPs in the GALL Report and GALL–SLR Report recommend augmentation of certain Code requirements in order to ensure adequate aging management for license renewal. The technical and regulatory aspects of the AMPs for which augmentations are recommended also apply if the 2023 Edition of Section XI of the ASME BPV Code is used to meet the requirements of § 54.21(a)(3). The NRC evaluated the changes in the 2023 Edition of Section XI of the ASME BPV Code to determine if the augmentations described in the GALL Report and GALL–SLR Report remain necessary. The NRC's evaluation has concluded that the augmentations described in the GALL and GALL–SLR Reports are necessary to ensure adequate aging management.

For example, GALL–SLR Report AMP XI.S3, ''ASME Section XI, Subsection IWF,'' recommends that volumetric examination consistent with that of the ASME BPV Code, Section XI, Table IWB–2500–1, Examination Category B–G–1 should be performed to detect cracking for high strength structural bolting (actual measured yield strength greater than or equal to 150 kilopound per square inch (ksi)) (1,034 megapascals (MPA)) in sizes greater than 1 inch nominal diameter. The GALL–SLR Report also indicates that this volumetric examination may be waived with adequate plant-specific justification. This guidance for aging management in the GALL–SLR Report is the augmentation of the visual examination specified in Subsection IWF of the 2023 Edition of the ASME BPV Code, Section XI.

A license renewal applicant may either augment its AMPs as described in the GALL Report and GALL–SLR Report (for operation up to 60 and 80 years respectively) or propose alternatives for the NRC to review as part of the applicant's plant-specific justification for its AMPs.

VII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

VIII. Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC requests public comment on the draft regulatory analysis. The draft regulatory analysis is available as indicated in the ''Availability of Documents'' section of this document. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the **ADDRESSES** caption of this document.

IX. Backfitting and Issue Finality

A. Proposed Incorporation by Reference of the 2023 BPV Code Edition Introduction

The NRC's Backfit Rule in § 50.109 states that the NRC shall require the backfitting of a facility only when it finds the action to be justified under specific standards stated in the rule. Section 50.109(a)(1) defines backfitting as the modification of or addition to systems, structures, components, or design of a facility; the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct, or operate a facility. Any of these modifications or additions may result from a new or amended provision in the NRC's rules or the imposition of a regulatory position interpreting the NRC's rules that is either new or different from a previously applicable NRC position after issuance of the construction permit or the operating license or the design approval.

Section 50.55a requires nuclear power plant licensees to:

- Construct ASME BPV Code Class 1, 2, and 3 components in accordance with the rules provided in Section III, Division 1, of the ASME BPV Code (''Section III'').
- Inspect, examine, and repair or replace Class 1, 2, 3, Class MC, and Class CC components in accordance with the rules provided in Section XI, Division 1, of the ASME BPV Code (''Section XI'').
- Test Class 1, 2, and 3 pumps and valves in accordance with the rules provided in the ASME OM Code.
- Inspect, examine, repair or replace, and test Class 1, 2, and 3 dynamic restraints (snubbers) in accordance with the rules provided in either the ASME OM Code or Section XI, depending on the code edition.

This rulemaking proposes to incorporate by reference the 2023 Edition of the ASME BPV Code, Section III, Division 1, and ASME BPV Code, Section XI, Division 1.

The ASME BPV and OM Codes are national consensus standards developed by participants with broad and varied

interests, in which all interested parties (including the NRC and utilities) participate. A consensus process involving a wide range of stakeholders is consistent with the NTTAA, inasmuch as the NRC has determined that there are sound regulatory reasons for establishing regulatory requirements for design, maintenance, ISI, and IST by rulemaking. The process also facilitates early stakeholder consideration of backfitting issues.

Overall Backfitting Considerations: Section III of the ASME BPV Code

Incorporation by reference of more recent editions and addenda of Section III of the ASME BPV Code does not affect a plant that has received a construction permit or an operating license or a design that has been approved. This is because the edition and addenda to be used in constructing a plant are, under § 50.55a, determined based on the date of the construction permit or combined license, and are not changed thereafter, except voluntarily by the licensee. The incorporation by reference of more recent editions and addenda of Section III ordinarily applies only to applicants after the effective date of the final rule incorporating these new editions and addenda. Therefore, incorporation by reference of a more recent edition and addenda of Section III does not constitute ''backfitting'' as defined in § 50.109(a)(1).

Overall Backfitting Considerations: Section XI of the ASME BPV Code

Incorporation by reference of more recent editions and addenda of Section XI of the ASME BPV Code affects the ISI program of operating reactors. However, the Backfit Rule generally does not apply to incorporation by reference of later editions of the ASME BPV Code (Section XI). As previously mentioned, the NRC's longstanding regulatory practice has been to incorporate later versions of the ASME Codes into § 50.55a. Under § 50.55a, licensees must periodically update their ISI and program to the latest edition of Section XI of the ASME BPV Code incorporated by reference into § 50.55a 18 months before the start of a new code of record interval. Therefore, when the NRC approves and requires the use of a later version of the Code for ISI, it is implementing this longstanding regulatory practice and requirement.

Other circumstances where the NRC does not apply the Backfit Rule to the approval and requirement to use later code editions and addenda are as follows:

1. When the NRC takes exception to a later ASME BPV Code or OM Code provision but merely retains the current existing requirement, prohibits the use of the later code provision, limits the use of the later code provision, or supplements the provisions in a later code, the Backfit Rule does not apply because the NRC is not imposing new requirements. However, the NRC explains any such exceptions to the code in the preamble to and regulatory analysis for the rule.

2. When an NRC exception relaxes an existing ASME BPV Code or OM Code provision but does not prohibit a licensee from using the existing code provision, the Backfit Rule does not apply because the NRC is not imposing new requirements.

3. Modifications and limitations imposed during previous routine updates of § 50.55a have established a precedent for determining which modifications or limitations are backfits, or require a backfit analysis (*e.g.,* final rule dated September 10, 2008 (73 FR 52730), and a correction dated October 2, 2008 (73 FR 57235)). The application of the backfit requirements to modifications and limitations in the current rule are consistent with the application of backfit requirements to modifications and limitations in previous rules.

The incorporation by reference and adoption of a requirement mandating the use of a later ASME BPV Code or OM Code may constitute backfitting in some circumstances. In these cases, the NRC would perform a backfit analysis or prepare documented evaluation in accordance with § 50.109. These include the following:

1. When the NRC endorses a later provision of the ASME BPV Code or OM Code that takes a substantially different direction from the existing requirements, the action is treated as a backfit (*e.g.,* 61 FR 41303; August 8, 1996).

2. When the NRC requires implementation of a later ASME BPV Code or OM Code provision on an expedited basis, the action is treated as a backfit. This applies when implementation is required sooner than it would be required if the NRC simply endorsed the Code without any expedited language (*e.g.,* 64 FR 51370; September 22, 1999).

3. When the NRC takes an exception to an ASME BPV Code or OM Code provision and imposes a requirement that is substantially different from the existing requirement as well as substantially different from the later Code (*e.g.,* 67 FR 60520; September 26, 2002).

Detailed Backfitting Discussion: Proposed Changes Beyond Those Necessary To Incorporate by Reference the New ASME BPV Code Provisions

This section discusses the backfitting considerations for all the proposed changes to § 50.55a that go beyond the minimum changes necessary and are required to adopt the new ASME Code edition into § 50.55a.

ASME BPV Code, Section III

1. Revise § 50.55a(b)(1)(xiv) to extend the applicability of the conditions through the latest edition of the ASME BPV Code, Section III incorporated by reference in paragraph (a)(1)(i). The NRC is proposing to revise this condition to apply to the latest edition incorporated by reference, which is not a change to NRC position and, therefore, is not a backfit.

2. Add § 50.55a(b)(1)(xv) to include provisions to require that protection from deterioration of radiographic film specified in Note (3) of Table NCA–4134.17–1 and Note (1) of Table NCA–4134.17–2 of the 2023 Edition of the ASME BPV Code, Section III shall include the provisions specified in NCA–4134.17(c), and the reproduction must be retained as a lifetime or nonpermanent record in accordance with Table NCA–4134.17–1 or NCA–4134.17–2, as applicable, of the 2023 Edition. The proposed conditions on Note (3) of Table NCA–4134.17–1 and Note (1) of Table NCA–4134.17–2 of the 2023 Edition specify that existing provisions in NCA–4134.17(c) allow digitization of radiographic film before the original film's deterioration to protect and preserve the record as required. This is not a new or changed NRC position. Therefore, the addition of this proposed condition to maintain the radiographic film or digitized radiographic film as a permanent record is not a backfit.

ASME BPV Code, Section XI

1. Remove and reserve § 50.55a(a)(1)(iii)(A) to delete the incorporation by reference of ASME BPV Code Case N–513–3, Mandatory Appendix I. The mandatory appendix was previously referenced in § 50.55a(b)(2)(xxxiv), but that reference was removed from this condition in a previous rulemaking. The NRC is proposing to remove this incorporation by reference, which is not a change to NRC position and, therefore, is not a backfit.

2. Revise § 50.55a(b)(2)(xii) to limit the applicability of the condition to the 2001 Edition through the 2021 Edition of ASME BPV Code, Section XI. The

2023 Edition added provisions that satisfied the conditions in this paragraph. The NRC is proposing to not apply this condition to the 2023 Edition incorporated by reference, which is not a change to NRC position and, therefore, is not a backfit.

3. Revise § 50.55a(b)(2)(xviii) to remove and reserve a provision and clarify a provision.

a. The current provision in § 50.55a(b)(2)(xviii)(A) is being removed as the NRC believes that the NDE recertification rate is acceptable. Removing this condition allows licensees to voluntarily apply the less stringent requirements for recertification of Level I and II NDE personnel to 5-year intervals as stated in the ASME BPV Code, Section XI. Therefore, this is not a backfit.

b. The current provision in § 50.55a(b)(2)(xviii)(D) is being revised to clarify that the alternatives listed in paragraphs (b)(2)(xviii)(D)(1) and (2) are applicable to editions and addenda later than the 2010 Edition. This is not a change in NRC position and, therefore, is not a backfit.

4. Revise § 50.55a(b)(2)(xxv) to correct an error in the title. The current title of this section incorrectly states, ''Section XV Condition,'' and the NRC proposes to correct the title to state, ''Section XI Condition.'' This is an editorial correction and, therefore, is not a backfit.

5. Revise § 50.55a(b)(2)(xxviii) to clarify that the condition applies to A–4300(b)(1) for the 2021 Edition of the ASME BPV Code, Section XI, and earlier, and applies to Y–3100(c) in the 2023 Edition. In the 2023 Edition, ASME moved the fatigue crack growth law for ferritic steels in air from A–4300 to Y–3100. This is not a change in NRC position and, therefore, is not a backfit.

6. Revise § 50.55a(b)(2)(xxxi) to reformat the existing condition into two separate provisions and add four new provisions.

a. The current condition continues to apply and is being reformatted into two separate provisions. This is not a change to NRC position and, therefore, is not a backfit.

b. Appendix W of the 2023 Edition of the ASME BPV Code, Section XI, was revised to remove the prohibition on the use of mechanical clamps for several types of piping. The NRC continues to prohibit the use of mechanical clamps in these four specific types of piping. This is not a new or changed position and, therefore, is not a backfit.

7. Revise § 50.55a(b)(2)(xxxiv) to extend the applicability of the condition to the 2023 Edition of the ASME BPV Code, Section XI. The NRC is proposing to revise this condition to apply to the 2023 Edition incorporated by reference, which is not a change to NRC position and, therefore, is not a backfit.

8. Revise § 50.55a(b)(2)(xliv) to correct errors, extend its applicability to the 2023 Edition of the ASME BPV Code, Section XI, and add a provision.

a. Subarticle Y–2400 and Articles Y–2200 and Y–3200 are all incorrect references. The NRC is proposing to fix these errors. This is an editorial correction, not a change in position, and, therefore, not a backfit.

b. The NRC is proposing to revise this condition to extend to the 2023 Edition, which is not a change in position and, therefore, is not a backfit.

c. The NRC is proposing to prohibit the use of paragraph Y–4322. The NRC's position is that the relevant code case should govern whenever there are overlapping requirements between the ASME BPV Code and a code case. The crack growth laws in paragraph Y–4322 are duplicated in Code Case N–909. The prohibiting of the use of this paragraph does not modify the requirements with regards to crack growth laws and, therefore, is not a backfit.

9. Revise § 50.55a(b)(2)(xlv) to extend the applicability of the condition through the latest edition of the ASME BPV Code, Section XI. The NRC is proposing to revise this condition to apply to the latest edition incorporated by reference, which is not a change to NRC position and, therefore, is not a backfit.

10. Revise § 50.55a(b)(2)(xlvi) to extend the applicability of the condition through the latest edition of the ASME BPV Code, Section XI. The NRC is proposing to revise this condition to apply to the latest edition incorporated by reference, which is not a change to NRC position and, therefore, is not a backfit.

11. Revise § 50.55a(b)(2)(xlviii) to extend the applicability of the condition through the latest edition of the ASME BPV Code, Section XI. The NRC is proposing to revise this condition to apply to the latest edition incorporated by reference, which is not a change to NRC position and, therefore, is not a backfit.

12. Add § 50.55a(b)(2)(li) to prohibit the use of IWA–4540(d)(7) in the 2023 Edition of the ASME BPV Code, Section XI, for exempting pressure testing of Class 2 and 3 welds that have a surface or volumetric examination performed. This is a new condition that retains the NRC's current position to perform pressure testing of most welds regardless of the non-destructive examination performed. The proposed condition on IWA–4540(d)(7) does not constitute a new or changed NRC position. Therefore, the addition of this proposed condition is not a backfit.

13. Add § 50.55a(b)(2)(lii) to condition Figure IWB–2500–7(d) of the 2023 Edition of the ASME BPV Code, Section XI, to require preservice and inservice volumetric examination of nozzles fabricated from weld buildups. This new condition retains a requirement from previous code editions; it does not constitute a new or changed NRC position. Therefore, the addition of this proposed condition is not a backfit.

14. Add § 50.55a(b)(2)(liii) to include provisions to require that protection from deterioration of radiographic film specified in IWA–6310(b) of the 2023 Edition of ASME BPV Code, Section XI, shall include the provisions specified in IWA–6320, and the reproduction must be retained as a lifetime record in accordance with IWA–6330, IWA–6340, and IWA–6350 of the ASME BPV Code, Section XI. The proposed condition on IWA–6310(b) of the 2023 Edition specifies that existing provisions in IWA–6320 allow digitization of radiographic film before the original film's deterioration to protect and preserve the lifetime record as required. This is not a new or changed NRC position. Therefore, the addition of this proposed condition to maintain the radiographic film or digitized radiographic film as a permanent record is not a backfit.

15. Revise § 50.55a(g)(6)(ii)(D)(9) to allow for qualification of volumetric evaluation in accordance with Section XI, Division 1, Mandatory Appendix VIII, Supplement 15, in the 2021 Edition through the latest edition of the ASME BPV Code, Section XI. The NRC is proposing to allow licensees the further option to utilize the 2023 Edition of Supplement 15 for the volumetric qualification requirements of Code Case N–729–6, which is a voluntary alternative and, therefore, is not a backfit.

16. Revise § 50.55a(g)(6)(ii)(F)(2)(iv) to include inspection item B–3 in the list of categorization options for identification of cold leg temperature welds. Inspection item B–3 was previously part of inspection item B–1. The NRC is proposing to revise this condition to include inspection item B–3, which maintains the same requirements and only clarifies the expansion of categorization options for licensees and, therefore, is not a backfit.

17. Revise § 50.55a(g)(6)(ii)(F)(13) to include inspection item B–3 in the list of encoded volumetric exams. Inspection item B–3 was previously part of inspection item B–1. The NRC is proposing to revise this condition to

include inspection item B–3, which maintains the same requirements and only clarifies the expansion of categorization options for licensees and, therefore, is not a backfit.

Conclusion

The NRC finds that incorporation by reference into § 50.55a of the 2023 Edition of the ASME BPV Code, subject to the identified conditions, does not constitute backfitting or represent an inconsistency with any issue finality provisions in 10 CFR part 52.

B. Proposed Incorporation by Reference of Three Regulatory Guides

The provisions in this proposed rule would allow licensees and applicants to voluntarily apply NRC-approved code cases, sometimes with NRC-specified conditions. The approved code cases are listed in three RGs that are proposed to be incorporated by reference into § 50.55a. An applicant's or a licensee's voluntary application of an approved code case does not constitute backfitting, because there is no imposition of a new requirement or new position.

Similarly, voluntary application of an approved code case by a 10 CFR part 52 applicant or licensee does not represent NRC imposition of a requirement or action and therefore is not inconsistent with any issue finality provision in 10 CFR part 52. The NRC is not proposing to revise any conditions on previously approved code cases, and approval of new code cases with conditions on their voluntary use does not represent an imposition of a new requirement and is therefore not a backfit. For these reasons, the NRC finds that this proposed rule does not involve any provisions requiring the preparation of a backfit analysis or documentation demonstrating that one or more of the issue finality criteria in 10 CFR part 52 are met.

The NRC finds that the proposed incorporation by reference into § 50.55a of the three RGs containing the latest NRC-approved code cases does not constitute backfitting or represent an inconsistency with any issue finality provisions in 10 CFR part 52.

X. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

XI. Environmental Assessment and Proposed Finding of No Significant Environmental Impact

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The determination of this environmental assessment is that there will be no significant effect on the quality of the human environment from this action. Public stakeholders should note, however, that comments on any aspect of this environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** caption.

A. Proposed Incorporation by Reference of the 2023 BPV Code Edition

This proposed rule is in accordance with the NRC's policy to incorporate by reference in § 50.55a new editions of the ASME BPV and OM Codes to provide updated rules for construction and inspecting components and testing pumps, valves, and dynamic restraints (snubbers) in light-water nuclear power plants. The ASME Codes are national voluntary consensus standards and are required by the NTTAA to be used by Government agencies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. The proposed rule does not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off-site, and there is no significant increase in public radiation exposure. This proposed rule does not involve non-radiological plant effluents and has no other environmental impact. Therefore, no significant environmental impacts are associated with this action.

B. Proposed Incorporation by Reference of Three Regulatory Guides

NRC-approved code cases provide an equivalent level of safety as the ASME codes. Therefore, this proposed action does not result in increases in the probability or consequences of accidents. There also are no significant, non-radiological impacts associated with this action because no changes would be made affecting non-radiological plant effluents and because no changes would be made in activities that would adversely affect the environment. The determination of this environmental assessment is that there would be no significant impact from this action.

XII. Paperwork Reduction Act

This proposed rule amends a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The proposed rule would reduce the burden for the existing information collection. This proposed rule has been submitted to the Office of Management and Budget (OMB) for review and approval of the paperwork requirements.

Type of submission: Revision.

The title of the information collection: Codes and Standards.

The form number if applicable: Not applicable.

How often the collection is required or requested: On occasion.

Who will be required or asked to respond: Operating power reactor licensees and applicants who choose to implement Code Case N–752–2.

An estimate of the number of annual responses: 1.

The estimated number of annual respondents: 3.33.

An estimate of the total number of hours needed annually to comply with the information collection requirement or request: One-time recordkeeping burden of 1,800 hours, recurring annual recordkeeping burden reduction of 5,390 hours.

Abstract: This proposed rule, in part, approves the implementation of Code Case N–752–2, with conditions as specified in RG 1.147. In order to implement the code case, licensees and applicants would be required to evaluate the safety-significant functions of their SSCs, and would need to follow requirements for on-going evaluations to ensure safety standards are maintained and that records of categorization decisions be kept.

The NRC is seeking public comment on the potential impact of the information collection(s) contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility? Please explain your response.

2. Is the estimate of the burden of the proposed information collection accurate? Please explain your response.

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected? Please explain your response.

4. How can the burden of the proposed information collection on

respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package is available in ADAMS under Accession No. ML25225A001 or may be viewed free of charge by contacting the NRC's Public Document Room reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* You may obtain information and comment on submissions related to the OMB clearance package by searching on *https://www.regulations.gov* under Docket ID NRC–2020–0029.

You may submit comments on any aspect of these proposed information collection(s), including suggestions for reducing the burden and on the above issues, by the following methods:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0029.
- *Mail comments to:* FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or to the OMB reviewer at OMB Office of Information and Regulatory Affairs (3150–0264), Attention: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503.

Submit comments by March 30, 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.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

XIII. Executive Orders

The following are E.O.s that are related to this proposed rule:

A. Executive Order 12866: Regulatory Planning and Review (as Amended by Executive Order 14215: Ensuring Accountability for All Agencies)

This action is not a significant regulatory action and therefore was not submitted to OMB for review.

B. Executive Order 14154: Unleashing American Energy

The NRC has examined this proposed rule and has determined that it is consistent with the policies and directives outlined in E.O. 14154.

C. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is a deregulatory action as defined by E.O. 14192. Details on the estimated costs of this proposed rule can be found in Section VIII of this document, ''Regulatory Analysis.''

D. Executive Order 14270: Zero-Based Regulatory Budgeting To Unleash American Energy

E.O. 14270, ''Zero-Based Regulatory Budgeting to Unleash American Energy,'' requires the NRC to insert a conditional sunset date into all new or amended NRC regulations provided the regulations are (1) promulgated under the Atomic Energy Act of 1954, as amended (AEA), the Energy Reorganization Act of 1974, as amended, or the Nuclear Waste Policy Act of 1982, as amended; (2) not statutorily required; and (3) not part of the NRC's permitting regime. The NRC determined that the regulatory changes proposed in this rule are necessary for reasonable assurance of adequate protection of public health and safety and part of the NRC's regulatory permitting scheme authorized by the AEA. Therefore, the NRC views this rulemaking to be outside the scope of E.O. 14270 and did not insert conditional sunset dates for the regulatory changes in this proposed rule.

XIV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is continuing to use the ASME BPV Code by incorporating by reference the 2023 Edition of the BPV Code. In addition, the NRC is continuing to use the ASME BPV and OM Code Cases, which are ASME-approved voluntary alternatives to compliance with various provisions of the ASME BPV and OM Codes. The NRC's approval of the ASME Code Cases is accomplished by amending the NRC's regulations to incorporate by reference the latest revisions of the following, which are the subject of this rulemaking, into § 50.55a: RG 1.84, Revision 41; RG 1.147, Revision 22; and RG 1.192, Revision 6. The RGs list the ASME Code Cases that the NRC has approved for use. The ASME Code Cases are voluntary consensus standards as described in the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119. The ASME Code editions and code cases constitute voluntary consensus standards, in which all interested parties (including the NRC and licensees of nuclear power plants) participate. The NRC invites comment on the applicability and use of other standards.

XV. Incorporation by Reference—Reasonable Availability to Interested Parties

The NRC proposes to incorporate by reference the 2023 Edition of the ASME BPV Code for nuclear power plants. As described in the ''Background'' and ''Discussion'' sections of this document, this material contains standards for the inspection of nuclear power plant components.

The NRC also proposes to incorporate by reference three NRC RGs that list new and revised ASME Code cases that the NRC has approved as voluntary alternatives to certain provisions of NRC-required editions and addenda of the ASME BPV Code and the ASME OM Code. The draft regulatory guides, DG–1446, DG–1447, and DG–1448, will correspond to final RG 1.84, Revision 41; RG 1.147, Revision 22; and RG 1.192, Revision 6, respectively.

- RG 1.84, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Revision 41 (DG–1446), would allow nuclear power plant licensees and applicants for construction permits, operating licenses, combined licenses, standard design certifications, standard design approvals, and manufacturing licenses to use the code cases listed in this revised RG as voluntary alternatives to ASME engineering standards for the construction of nuclear power plant components. DG–1446 updates the discussion language of the document and does not list any new code cases.
- RG 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' Revision 22 (DG–1447), would allow nuclear power plant licensees and applicants for construction permits, operating licenses, combined licenses, standard design certifications, standard design approvals, and manufacturing licenses to use the code cases newly listed in this revised RG as voluntary alternatives to ASME engineering standards for the inservice inspection of nuclear power plant components.
- RG 1.192, ''Operation and Maintenance [OM] Code Case Acceptability, ASME OM Code,'' Revision 6 (DG–1448), would allow nuclear power plant licensees and applicants for construction permits,

operating licenses, combined licenses, standard design certifications, standard design approvals, and manufacturing licenses to use the code cases newly listed in this revised RG as voluntary alternatives to ASME engineering standards for the inservice examination and testing of nuclear power plant components.

The NRC is required by law to obtain approval for incorporation by reference from the Office of the Federal Register (OFR). The OFR's requirements for incorporation by reference are set forth in 1 CFR part 51. On November 7, 2014, the OFR adopted changes to its regulations governing incorporation by reference (79 FR 66267). The OFR regulations require an agency to include in a proposed rule a discussion of the ways that the materials the agency proposes to incorporate by reference are reasonably available to interested parties or how it worked to make those materials reasonably available to interested parties. The discussion in this section complies with the requirement for proposed rules as set forth in 1 CFR 51.5(a)(1).

The NRC considers ''interested parties'' to include all potential NRC stakeholders, not only the individuals and entities regulated or otherwise subject to the NRC's regulatory oversight. These NRC stakeholders are not a homogenous group, so the considerations for determining ''reasonable availability'' vary by class of interested parties. The NRC identified six classes of interested parties with regard to the material to be incorporated by reference in an NRC rule:

- Individuals and small entities regulated or otherwise subject to the NRC's regulatory oversight. This class includes applicants and potential applicants for licenses and other NRC regulatory approvals, and who are subject to the material to be incorporated by reference. In this context, ''small entities'' has the same meaning as set out in § 2.810.
- Large entities otherwise subject to the NRC's regulatory oversight. This class includes applicants and potential applicants for licenses and other NRC regulatory approvals, and who are subject to the material to be incorporated by reference. In this context, a ''large entity'' is one that does not qualify as a ''small entity'' under § 2.810.
- Non-governmental organizations with institutional interests in matters regulated by the NRC.
- Other Federal agencies, States, local governmental bodies (within the meaning of § 2.315(c)).
- Federally recognized and State-recognized Indian tribes.
- Members of the general public (*i.e.,* individual, unaffiliated members of the public who are not regulated or otherwise subject to the NRC's regulatory oversight) who need access to the materials that the NRC proposes to incorporate by reference in order to participate in the rulemaking.

The 2023 Edition of the ASME BPV Code may be viewed, by appointment, at the Technical Library, which is located at Two White Flint, 11545 Rockville Pike, Rockville, Maryland 20852. You may submit your request to the Technical Library via email at *Library.Resource@nrc.gov* between 8:00 a.m. and 4:00 p.m. eastern time, Monday through Friday, except Federal holidays. In addition, as described in the ''Availability of Documents'' section of this document, documents related to this proposed rule are available online in the NRC's ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.*

Interested parties may purchase a copy of the ASME materials from ASME at Three Park Avenue, New York, NY 10016, or at the ASME website *https://www.asme.org/shop/standards.* The materials also are accessible through third-party subscription services such as IHS (15 Inverness Way East, Englewood, CO 80112; *https://global.ihs.com*) and Thomson Reuters Techstreet (3916 Ranchero Dr., Ann Arbor, MI 48108; *https://www.techstreet.com*). The purchase prices for individual documents range from $325 to $720 and the cost to purchase all documents is approximately $9,000.

For the class of interested parties constituting members of the public who wish to gain access to the materials to be incorporated by reference in order to participate in the rulemaking, the NRC recognizes that the $9,000 cost may be so high that the materials could be regarded as not reasonably available for purposes of commenting on this proposed rule, despite the NRC's actions to make the materials available at the NRC's PDR. Accordingly, the NRC requested that ASME consider enhancing public access to these materials during the public comment period. On January 21, 2026, the ASME agreed to make the materials available online in a read-only electronic access format during the public comment period (ML26023A041). Therefore, the 2023 Edition of the ASME BPV Code Edition for nuclear power plants that the NRC proposes to incorporate by reference in this rulemaking is available in read-only format at the ASME website *https://go.asme.org/NRC-ASME.*

The three draft RGs that the NRC proposes to incorporate by reference in this proposed rule are available without cost and can be read online or downloaded online. The draft RGs can be viewed, by appointment, at the NRC Technical Library, which is located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852; telephone: 301–415–7000; email: *Library.Resource@nrc.gov.*

Because the three draft RGs, and eventually, the final RGs, are available in various forms at no cost, the NRC determines that the three draft RGs, DG–1446, DG–1447, and DG–1448, and final RG 1.84, Revision 41; RG 1.147, Revision 22; and RG 1.192, Revision 6, once approved by the OFR for incorporation by reference, are reasonably available to all interested parties.

The materials are available to all interested parties in multiple ways and in a manner consistent with their interest in this proposed rule. Therefore, the NRC concludes that the materials the NRC proposes to incorporate by reference in this proposed rule are reasonably available to all interested parties.

XVI. Availability of Guidance

The NRC will not be issuing guidance for this rulemaking.

XVII. 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 in Table IV.

TABLE IV—AVAILABILITY OF DOCUMENTS

Document	ADAMS Accession No./web link/ **Federal Register** Citation
Proposed Rule Documents	
Rulemaking: Proposed Rule: Regulatory Analysis for Approval of the 2023 Edition of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code and Code Cases, Revision 41, February 27, 2026.	ML25182A128.
Rulemaking: Proposed Rule: Unofficial Redline Strikeout of the NRC's Proposed Rule: Approval of the 2023 Edition of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code and Code Cases, Revision 41, February 27, 2026.	ML25182A125.
Executive Orders	
Executive Order 12866, ''Regulatory Planning and Review,'' October 4, 1993	58 FR 51735.
Executive Order 14125, ''Ensuring Accountability for All Agencies,'' February 18, 2025	90 FR 10447.
Executive Order 14154, ''Unleashing American Energy,'' January 29, 2025	90 FR 8353.
Executive Order 14192, ''Unleashing Prosperity Through Deregulation,'' February 6, 2025	90 FR 9065.
Executive Order 14270, ''Zero-Based Regulatory Budgeting to Unleash American Energy,'' April 15, 2025.	90 FR 15643.
Executive Order 14300, ''Ordering the Reform of the Nuclear Regulatory Commission,'' May 29, 2025.	90 FR 22587.
Related Documents	
ASME Letter to NRC, ''ASME Request for Including Specific Code Cases in Draft Revision 22 of Regulatory Guide 1.147 and Draft Revision 1 of Regulatory Guide 1.246,'' October 18, 2024.	ML24296A006
ASME Letter to NRC, ''ASME NDE Level I and II Personnel Recertification,'' August 23, 2024	ML25099A046.
EPRI Technical Report 3002018615, ''Technical Basis for Nondestructive Examination Experience Requirements for ASME Section XI, Appendix VII,'' September 2021.	*https://restservice.epri.com/publicdownload/000000003002018615/0/Product.*
Direct final rule—Approval of American Society of Mechanical Engineers Unconditioned Code Cases, September 26, 2025.	90 FR 46319.
Final Rule—American Society of Mechanical Engineers 2021–2022 Code Editions, August 30, 2024.	89 FR 70449.
Final Rule—American Society of Mechanical Engineers Code Cases and Update Frequency, July 17, 2024.	89 FR 58039.
Final Rule—American Society of Mechanical Engineers 2015–2017 Code Editions Incorporation by Reference, May 4, 2020.	85 FR 26540.
Final Rule—Incorporation by Reference of American Society of Mechanical Engineers Codes and Code Cases, July 18, 2017.	82 FR 32934.
Final Rule—Incorporation by Reference, November 7, 2014	79 FR 66267.
Final Rule—American Society of Mechanical Engineers (ASME) Codes and New and Revised ASME Code Cases, June 21, 2011.	76 FR 36232.
Final Rule—Industry Codes and Standards; Amended Requirements; Correction, October 2, 2008.	73 FR 57235.
Final Rule—Industry Codes and Standards; Amended Requirements, September 10, 2008	73 FR 52730.
Final Rule—Industry Codes and Standards; Amended Requirements, September 26, 2002	67 FR 60520.
Proposed Rule—Industry Codes and Standards; Amended Requirements, September 22, 1999	64 FR 51370.
Codes and Standard for Nuclear Power Plants; Subsection IWE and Subsection IWL, August 8, 1996.	61 FR 41303.
Final Policy Statement—Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities, August 16, 1995.	60 FR 42622.
''Impacts of Embrittlement on Reactor Pressure Vessel Integrity from a Risk-Informed Perspective, Final Report,'' March 8, 2022.	ML21314A228.
NEI 05–04/07–12/12–06 Appendix X, ''Close-Out of Facts and Observations (F&Os),'' February 2017.	ML17086A451.
NEI 17–07, Revision 2, ''Performance of PRA Reviews using the ASME/ANS PRA Standard,'' August 2019.	ML19231A182.
NRC Information Notice 2025–01, ''Lessons Learned When Implementing ASME Code Case N–752,'' February 10, 2025.	ML24323A057.
NRC Letter to NEI, ''U.S. Nuclear Regulatory Commission Acceptance on Nuclear Energy Institute Appendix X to Guidance 05–04, 07–12, and 12–13 Close-Out of Facts and Observations (F&Os),'' May 3, 2017.	ML17079A427.
NUREG–1800, Revision 2, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants,'' December 2010.	ML103490036.
NUREG–1801, Revision 2, ''Generic Aging Lessons Learned (GALL) Report,'' December 2010	ML103490041.
NUREG–1950, ''Disposition of Public Comments and Technical Bases for Changes in the License Renewal Guidance Documents NUREG–1801 and NUREG–1800,'' April 2011.	ML11116A062.
NUREG–2191, Vols. 1 and 2, Revision 1, ''Generic Aging Lessons Learned for Subsequent License Renewal (GALL–SLR) Report,'' July 2025.	ML25113A021. ML25113A022.
NUREG–2192, Revision 1, ''Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants,'' July 2025.	ML25113A023.
OMB Supporting Statements, February 9, 2026	ML25225A001.

TABLE IV—AVAILABILITY OF DOCUMENTS—Continued

Document	ADAMS Accession No./web link/ **Federal Register** Citation
PNNL–29761, ''Nondestructive Examination (NDE) Training and Qualifications: Implications of Research on Human Learning and Memory, Instruction, and Expertise,'' March 2020.	ML20079E343.
Regulatory Issue Summary 2007–06, ''Regulatory Guide 1.200 Implementation,'' March 22, 2007.	ML070650428.
Presidential Memorandum, ''Plain Language in Government Writing,'' June 10, 1998	63 FR 31885.
RG 1.28, Quality Assurance Program Criteria (Design and Construction), Revision 6, September 2023.	ML23177A002.
RG 1.84, Design, Fabrication, and Materials Code Case Acceptability, ASME Section III, Revision 40, March 2024.	ML23291A008.
RG 1.147, Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1, Revision 21, March 2024.	ML23291A003.
RG 1.192, Operation and Maintenance Code Case Acceptability, ASME OM Code, Revision 5, March 2024.	ML23291A006.
RG 1.193, ASME Code Cases Not Approved for Use, Revision 8, March 2024	ML23291A007.
RG 1.193, ASME Code Cases Not Approved for Use, Revision 9 (DG–1449), December 2025	ML25083A257.
RG 1.200, An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities, Revision 1, January 2007.	ML070240001.
RG 1.200, An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities, Revision 2, March 2009.	ML090410014.
RG 1.200, Acceptability of Probabilistic Risk Assessment Results for Risk-Informed Activities, Revision 3, December 2020.	ML20238B871.
RG 1.262, ASME Code Cases Approved for Use Without Conditions, Revision 0, July 2025	ML25091A013.
Rulemaking: Proposed Rule: Email from Kathryn Hyam (ASME) to Christian Araguas (NRC), Request for Limited Public Access of Code for Public Comment Period, January 21, 2026.	ML26023A041.
SECY–22–0019, ''Rulemaking Plan for the Revision of Embrittlement and Surveillance Requirements for High-Fluence Nuclear Power Plants in Long-Term Operation,'' March 8, 2022.	ML21314A215.
Staff Requirements—Affirmation Session, 11:30 a.m., Friday, September 10, 1999, Commissioners' Conference Room, One White Flint North, Rockville, Maryland (Open to Public Attendance), September 10, 1999.	ML003755050.
''Wolf Creek Generating Station, Unit 1—Request for Relief from Requirements of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code Case N–666–1 (EPID L–2019–LLR–0077),'' April 27, 2020.	ML20111A337.
ASME Codes, Standards, and Code Cases	
ASME BPV Code, Section III, Division 1: 2023 Edition	*https://go.asme.org/NRC-ASME.*
ASME BPV Code, Section XI, Division 1: 2023 Edition	*https://go.asme.org/NRC-ASME.*
ASME Codes and Standards, Operation and Maintenance of Nuclear Power Plants (OM) Code Cases.	*https://cstools.asme.org/csconnect/CommitteePages.cfm?Committee=O10300000&Action=26676.*

Additional Documents Proposed to be Incorporated by Reference

The NRC proposes to incorporate by reference three NRC RGs, as set forth in Table V, that list new and revised ASME Code Cases that the NRC is proposing to approve as voluntary alternatives to certain provisions of NRC-required editions and addenda of the ASME BPV Code and the ASME OM Code.

TABLE V—DRAFT REGULATORY GUIDES PROPOSED TO BE INCORPORATED BY REFERENCE IN 10 CFR 50.55a

Document	ADAMS Accession No.
RG 1.84, Design, Fabrication, and Materials Code Case Acceptability, ASME Section III, Revision 41 (DG–1446), December 2025.	ML25079A307
RG 1.147, Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1, Revision 22 (DG–1447), December 2025.	ML25080A261
RG 1.192, Operation and Maintenance Code Case Acceptability, ASME OM Code, Revision 6 (DG–1448), December 2025	ML25083A254

Code Cases for Approval in This Proposed Rule

The ASME OM Code Cases that the NRC is proposing to approve as alternatives to certain provisions of the ASME OM Code, as set forth in Table VI, are made available for read-only access at the URL listed in Table IV. The ASME BPV Code Cases that the NRC is proposing to approve as alternatives to certain provisions of the ASME BPV Code, as set forth in Table VI, are being made available by the ASME for read-only access during the public comment period on *https://go.asme.org/NRC-ASME.*

The ASME is making the code cases listed in Table VI available for limited, read-only access at the request of the NRC. The NRC believes that stakeholders need to be able to read these code cases in order to provide meaningful comment on the three RGs (listed in Table V) that the NRC is

proposing to incorporate by reference into § 50.55a. It is the NRC's position that the listed code cases, as modified by any conditions contained in the three RGs and thus serving as alternatives to requirements in § 50.55a, would be legally-binding regulatory requirements. An applicant or licensee must comply with a listed code case and any conditions to be within the scope of the NRC's approval of the code case as a voluntary alternative for use. These requirements cannot be fully understood without knowledge of the code case to which the proposed condition applies, and to this end, the NRC has requested that the ASME provide limited, read-only access to the code cases in order to facilitate meaningful public comment.

TABLE VI—ASME CODE CASES PROPOSED FOR NRC APPROVAL

Boiler and pressure vessel code Section XI		
Code case No.	Published with supplement	Title
N–508–5	6 (2021 Edition)	Rotation of Snubbers and Pressure Retaining Items for the Purpose of Testing or Preventive Maintenance.
N–666–3	0 (2023 Edition)	Weld Overlay of Class 1, 2, and 3 Socket Welded Connections.
N–716–4	1 (2023 Edition)	Alternative Classification and Examination Requirements.
N–752–2	6 (2023 Edition)	Risk-Informed Categorization and Treatment for Repair/Replacement Activities in Class 2 and 3 Systems.
N–778–1	0 (2023 Edition)	Alternative Requirements for Preparation and Submittal of Inservice Inspection Plans, Schedules, and Preservice and Inservice Inspection Summary Reports.
N–806–2	3 (2023 Edition)	Analytical Evaluation of Metal Loss in Class 2 and 3 Metallic Piping Buried in a Back-Filled Trench.
N–830–1	3 (2021 Edition)	Direct Use of Fracture Toughness for Flaw Evaluations of Pressure Boundary Materials in Class 1 Ferritic Steel Components.
N–926	6 (2021 Edition)	Alternative Examination Requirements for Unbonded Post-Tensioning Systems of Class CC Components.
N–930	0 (2023 Edition)	Alternative Experience Requirements for Nondestructive Examination Personnel for Ultrasonic Examination.
Operation and maintenance code		
Code case No.	Edition	Title
OMN–32, Revision 1	2022	Alternative Requirements for Range and Accuracy of Pressure, Flow, and Differential Pressure Instruments Used in Pump Test.
OMN–34	2022	Use of a Pump Curve for Testing.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2020–0029. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) navigate to the docket folder (NRC–2020–0029); (2) click the ''Subscribe'' button; and (3) enter an email address and click on the ''Subscribe'' button.

List of Subjects in 10 CFR Part 50

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Emergency planning, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing to amend 10 CFR part 50 as follows:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for part 50 is revised to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

■ 2. In § 50.55a:
■ a. In paragraph (a)(1) introductory text, remove ''Codes/'' and add in its place ''codes-standards''.
■ b. In paragraph (a)(1)(i)(E)(*20*), remove the word ''and'';
■ c. Revise paragraph (a)(1)(i)(E)(*21*);
■ d. Add paragraph (a)(1)(i)(E)(*22*);
■ e. In paragraph (a)(1)(ii)(C)(*56*), remove the word ''and'';
■ f. Revise paragraph (a)(1)(ii)(C)(*57*);
■ g. Add paragraph (a)(1)(ii)(C)(*58*);
■ h. Remove and reserve paragraph (a)(1)(iii)(A);
■ i. In paragraph (a)(1)(v)(B)(*5*), remove the word ''and'';
■ j. Revise paragraph (a)(1)(v)(B)(*6*);
■ k. Add paragraphs (a)(1)(v)(B)(*7*) through (*9*);
■ l. Revise paragraphs (a)(3)(i) through (iv);
■ m. Revise paragraph (b)(1)(xiv);
■ n. Add paragraph (b)(1)(xv);
■ o. Revise paragraph (b)(2)(xii);
■ p. Remove and reserve paragraph (b)(2)(xviii)(A);
■ q. Revise paragraphs (b)(2)(xviii)(D), (b)(2)(xxv), (b)(2)(xxviii), (b)(2)(xxxi), and (b)(2)(xxxiv)(B);
■ r. In paragraph (b)(2)(xliii), remove the phrase ''Licenses shall'' and add in its place the phrase ''Licensees shall'';
■ s. Revise paragraph (b)(2)(xliv);
■ t. Revise paragraphs (b)(2)(xlv), (b)(2)(xlvi), and (b)(2)(xlviii);
■ u. Add paragraphs (b)(2)(li), (b)(2)(lii), and (b)(2)(liii);
■ v. In paragraph (g)(4)(iv), remove the reference ''(a)(1)(iv) of this section'' and add in its place the reference ''(a)(1)(iii) of this section''; and

■ w. Revise paragraphs (g)(6)(ii)(D)(*9*), (g)(6)(ii)(F)(*2*)(*iv*) and (*v*), (g)(6)(ii)(F)(*4*), (g)(6)(ii)(F)(*10*), and (g)(6)(ii)(F)(*13*).

The revisions and additions read as follows:

§ 50.55a Codes and Standards.

(a) * * *

(1) * * *

(i) * * *

(E) * * *

(*21*) 2021 Edition (including Subsection NCA; and Division 1 subsections NB through NG and Appendices); and

(*22*) 2023 Edition (including Subsection NCA; and Division 1 subsections NB through NG and Appendices), with Errata 23–2471, ''NB–5332(a)(2) (from R/N 22–1562),'' dated April 4, 2024.

(ii) * * *

(C) * * *

(*57*) 2021 Edition; and

(*58*) 2023 Edition.

(iii) * * *

(A) [Reserved]

* * * * *

(v) * * *

(B) * * *

(*6*) NQA–1—2015;

(*7*) NQA–1—2017;

(*8*) NQA–1—2019; and

(*9*) NQA–1—2022.

* * * * *

(3) * * *

(i) *NRC Regulatory Guide 1.84, Revision 41.* NRC Regulatory Guide 1.84, Revision 41, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' issued December 2025, with the requirements in paragraph (b)(4) of this section.

(ii) *NRC Regulatory Guide 1.147, Revision 22.* NRC Regulatory Guide 1.147, Revision 22, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' issued December 2025, which lists ASME Code Cases that the NRC has approved in accordance with the requirements in paragraph (b)(5) of this section.

(iii) *NRC Regulatory Guide 1.192, Revision 6.* NRC Regulatory Guide 1.192, Revision 6, ''Operation and Maintenance Code Case Acceptability, ASME OM Code,'' issued December 2025, which lists ASME Code Cases that the NRC has approved in accordance with the requirements in paragraph (b)(6) of this section.

(iv) *NUREG–2228.* NUREG–2228, ''Weld Residual Stress Finite Element Analysis Validation: Part II—Proposed Validation Procedure,'' published July 2020 (including Errata September 22, 2021), which is referenced in RG 1.147, Revision 22.

* * * * *

(b) * * *

(1) * * *

(xiv) *Section III condition: Repairs to Stamped Components.* Applicants or licensees applying the provisions of NCA–8151, NCA–8500 and Nonmandatory Appendix NN in the 2021 Edition of Section III through the latest edition and addenda incorporated by reference in paragraph (a)(1)(i) of this section are required to meet all of the requirements in Nonmandatory Appendix NN.

(xv) *Section III condition: Protection from Deterioration of Radiographic Film and Lifetime Record Retention.*

(A) Protection from deterioration of radiographic film specified in Note (3) of Table NCA–4134.17–1 of the 2023 Edition of Section III shall include the provisions specified in NCA–4134.17(c), and the reproduction must be retained as a lifetime record in accordance with Table NCA–4134.17–1 of Section III.

(B) Protection from deterioration of radiographic film specified in Note (1) of Table NCA–4134.17–2 of the 2023 Edition of Section III shall include the provisions specified in NCA–4134.17(c), and the reproduction must be retained as a nonpermanent record in accordance with Table NCA–4134.17–2 of Section III.

(2) * * *

(xii) *Section XI condition: Underwater welding.* The provisions in IWA–4660, ''Underwater Welding,'' of Section XI, 2001 Edition through the 2021 Edition, are approved for use on irradiated material with the following conditions:

* * * * *

(xviii) *Section XI condition: NDE personnel certification—*

(A) [Reserved]

* * * * *

(D) *NDE personnel certification: Fourth provision.* The use of Appendix VII, Table VII–4110–1 and Appendix VIII, Subarticle VIII–2200 of the 2011 Addenda through the latest edition incorporated by reference in paragraph (a)(1)(ii) of this section is prohibited. When using ASME BPV Code, Section XI editions and addenda later than the 2010 Edition, licensees and applicants must use the prerequisites for ultrasonic examination personnel certifications described in (1) and (2) below or the Appendix VII, Table VII–4110–1 and Appendix VIII, Subarticle VIII–2200 in the 2010 Edition.

* * * * *

(xxv) *Section XI Condition: Mitigation of defects by modification.* Use of the provisions of IWA–4340 must be subject to the following conditions:

* * * * *

(xxviii) *Section XI condition: Analysis of flaws.* Licensees using the 2021 Edition or earlier of the ASME BPV Code, Section XI, Appendix A, must use the following conditions when implementing Equation (2) in A–4300(b)(1). Licensees using the 2023 Edition of the ASME BPV Code, Section XI, Appendix A, must use the following conditions when implementing Equation (2) in Y–3100(c):

* * * * *

(xxxi) *Section XI condition: Mechanical clamping devices.* When installing a mechanical clamping device on an ASME BPV Code class piping system, the following conditions apply.

(A) Appendix W of Section XI shall be treated as a mandatory appendix and all of the provisions of Appendix W shall be met for the mechanical clamping device being installed.

(B) Use of IWA–4131.1(c) of the 2010 Edition of Section XI and IWA–4131.1(d) of the 2011 Addenda of the 2010 Edition and later versions of Section XI is prohibited on small item Class 1 piping and portions of a piping system that form the containment boundary.

(C) The use of Nonmandatory Appendix W for ASME Class 1 piping is prohibited.

(D) The use of Nonmandatory Appendix W for portions of a piping system that forms the containment boundary is prohibited.

(E) The use of Nonmandatory Appendix W for piping larger than NPS 2 (DN 50) when the nominal operating temperature or pressure exceeds 200 °F (95 °C) or 275 pounds per square inch gauge (1,900 kilopascals) is prohibited.

(F) The use of Nonmandatory Appendix W for piping larger than NPS 6 (DN 150) is prohibited.

* * * * *

(xxxiv) * * *

(B) Use of Nonmandatory Appendix U, Supplement U–S1 of the ASME BPV Code, Section XI, 2021 Edition through the 2023 Edition is prohibited.

* * * * *

(xliv) *Section XI condition: Nonmandatory Appendix Y.* When using Nonmandatory Appendix Y of the ASME BPV Code, Section XI, 2021 Edition through the 2023 Edition, the following conditions apply:

(A) Use of Nonmandatory Appendix Y, Subarticle Y–2200 is prohibited.

(B) Use of Nonmandatory Appendix Y, Subarticle Y–2400 is prohibited.

(C) Use of Nonmandatory Appendix Y, Subarticle Y–3200 is prohibited.

(D) Use of Nonmandatory Appendix Y, Paragraph Y–4322 is prohibited.

(xlv) *Section XI condition: Pressure Testing of Containment Penetration*

Piping After Repair/Replacement Activities. Applicants or licensees applying the provision of IWA–4540(a) and (e) of the 2021 Edition through the latest edition and addenda incorporated by reference in paragraph (a)(1)(ii) of the ASME Code, Section XI, are required to perform a VT–2 examination of the area affected by the repair/replacement activity during the Type C test in appendix J to this part.

(xlvi) *Section XI condition: Contracted Repair/Replacement Organization Fabricating Items Offsite of the Owner's Facility.* When applicants or licensees apply the provision of IWA–4143 in the 2021 Edition through the latest edition and addenda incorporated by reference in paragraph (a)(1)(ii) of Section XI of the ASME Code, a contracted Repair/Replacement Organization fabricating ASME Code, Section III parts, appurtenances, piping subassemblies, and supports offsite of the Owner's facility (*e.g.,* vendor facility) without an ASME Certificate of Authorization and without applying an ASME Stamp/Certification Mark is prohibited.

* * * * *

(xlviii) *Section XI condition: Analytical Evaluations of Degradation.* Applicants or licensees using the 2021 Edition through the latest edition and addenda incorporated by reference in paragraph (a)(1)(ii) of Section XI of the ASME Code must submit analytical evaluations performed as required by IWB–3132.3 and IWC–3122.3 to the Nuclear Regulatory Commission.

* * * * *

(li) *Section XI condition: Pressure Testing Following Repair/Replacement Activity.* The use of the provisions in IWA–4540(d)(7) of the 2023 Edition of Section XI for exemption of performing a pressure test for Class 2 and 3 welds that have had a surface or volumetric examination performed is prohibited.

(lii) *Section XI condition: Preservice and Inservice Volumetric Examination of Nozzles Fabricated from Weld Buildups.* When using provisions in Figure IWB–2500–7(d) of the 2023 Edition of Section XI, preservice and inservice volumetric examination of nozzles fabricated from weld buildups is required. The volumetric examination (ultrasonic) of weld buildups shall be performed with procedures and personnel in accordance with Mandatory Appendix VIII using acceptance criteria of IWB–3514 for Category B–F welds.

(liii) *Section XI condition: Protection from Deterioration of Radiographic Film and Lifetime Record Retention.* Protection from deterioration of radiographic film specified in provision IWA–6310(b) of the 2023 Edition of Section XI shall include the provisions specified in IWA–6320, and the reproduction must be retained as a lifetime record in accordance with IWA–6330, IWA–6340, and IWA–6350.

* * * * *

(g) * * *

(6) * * *

(ii) * * *

(D) * * *

(*9*) *Volumetric Qualifications.* Volumetric examinations of Table 1 of ASME Code Case N–729–6 may be qualified in accordance with Section XI, Division 1, Mandatory Appendix VIII, Supplement 15, in the 2021 Edition through the latest edition and addenda incorporated by reference in paragraph (a)(1)(i) of this section, in lieu of subparagraphs (a) through (j) of 2500 of ASME Code Case N–729–6.

* * * * *

(F) * * *

(2) * * *

(iv) All other butt welds that rely on Alloy 82/182 for structural integrity shall be categorized as Inspection Items A–1, A–2, B–1, B–2, or B–3, as appropriate.

(v) Paragraph –1100(e) of ASME BPV Code Case N–770–7 shall not be used to exempt welds that rely on Alloy 82/182 for structural integrity from any requirement of this section.

* * * * *

(*4*) *Examination coverage.* When implementing Paragraph –2500(a) of ASME BPV Code Case N–770–7, essentially 100 percent of the required volumetric examination coverage shall be obtained, including greater than 90 percent of the volumetric examination coverage for circumferential flaws. Licensees are prohibited from using Paragraphs –2500(c) and –2500(d) of ASME BPV Code Case N–770–7 to meet examination requirements.

* * * * *

(*10*) *Examination technique.* Note 14(b) of Table 1 and Note (b) of Figure 5(a) of ASME BPV Code Case N–770–7 may only be implemented if the requirements of Note 14(a) of Table 1 of ASME BPV Code Case N–770–7 cannot be met.

* * * * *

(*13*) *Encoded ultrasonic examination.* Ultrasonic examinations of non-mitigated or cracked mitigated dissimilar metal butt welds in the reactor coolant pressure boundary must be performed in accordance with the requirements of Table 1 for Inspection Item A–1, A–2, B–1, B–2, B–3, E, F–2, J, K, N–1, N–2 and O. Essentially 100 percent of the required inspection volume shall be examined using an encoded method.

* * * * *

Dated: February 10, 2026.

For the Nuclear Regulatory Commission.

Jeremy Groom,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2026–03993 Filed 2–26–26; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 607, 611, 613, 614, 615, 620, 627, 628, and 630

RIN 3052–AD52

Permanent Capital Revisions

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA or we) requests comments on a proposed rule for Farm Credit System (System) banks and associations that would reduce the burden of calculating permanent capital and minimize potential confusion about its use in evaluating the safety and soundness of System institutions. Specifically, the proposed rule would remove references to permanent capital in shareholder and investor reporting regulations as well as in certain other regulations. It would also simplify the calculation of the permanent capital ratio and make other clarifications, corrections, and updates to capital-related regulations.

DATES: You may send us comments on or before April 28, 2026.

ADDRESSES: For accuracy and efficiency, please submit comments by email or through FCA's website. We do not accept comments submitted by fax, because faxes are difficult for us to process. Also, please do not submit comments multiple times; submit your comment only once, using one of the following methods:

- *Email:* Send an email to *reg-comm@fca.gov.*
- Use the public comment form on our website:

1. Go to *https://www.fca.gov.*
2. Click inside the ''I want to . . .'' field near the top of the page.
3. Select ''comment on a pending regulation'' from the dropdown menu.
4. Click ''Go.'' This takes you to the comment form.

- Send the comment by mail to Autumn R. Agans, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

We post all comments on the FCA website. We will show your comments as submitted, including any supporting information; however, for technical reasons, we may omit items such as logos and special characters. Personal information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

To read comments on our website, go to *https://www.fca.gov* and follow these steps:

1. Click inside the ''I want to . . .'' field near the top of the page.

2. Select ''find comments on a pending regulation'' from the dropdown menu.

3. Click ''Go.'' This will take you to a list of regulatory projects.

4. Select the project in which you're interested. If we have received comments on that project, you will see a list of links to the individual comments.

You may also review comments at the FCA office in McLean, Virginia. Please call us at (703) 883–4056 or email us at *reg-comm@fca.gov* to make an appointment.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulation. To schedule an appointment for this type of accommodation or auxiliary aid, please contact (703) 883–4056.

FOR FURTHER INFORMATION CONTACT:

Technical information: Vania Suen, Senior Policy Analyst, Finance and Capital Markets Team, Office of Regulatory Policy, (916) 900–3500, TTY (703) 883–4056; or

Legal information: Jennifer Cohn, Assistant General Counsel, Office of General Counsel, (720) 213–0440, TTY (703) 883–4056.

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I. Objectives of the Proposed Rule

FCA's objectives in proposing this rule are to:

- Reduce the role of permanent capital as a measure of capital adequacy by replacing references to ''permanent capital'' or ''capital'' in certain FCA regulations with references to ''total capital'' as defined in part 628.
- Respond to previous System comments that calculating the permanent capital ratio is burdensome by simplifying the calculation as permitted by statute.
- Respond to previous System comments that disclosure of permanent capital may be confusing to third parties by eliminating the disclosure of permanent capital from shareholder and investor reporting requirements.
- Make other clarifications, corrections, and updates to capital-related regulations.

II. Overview of the Farm Credit System

In 1916, Congress created the System to provide permanent, affordable, and reliable sources of credit and related services to American agricultural and aquatic producers.[1] The System is a Government-sponsored enterprise (GSE). System institutions are Federal instrumentalities that operate on a cooperative basis, and FCA is their regulator. FCA and the System derive their authorities from the Farm Credit Act of 1971, as amended (1971 Act).[2]

As of January 1, 2025, the System consists of three Farm Credit Banks, one agricultural credit bank, 54 agricultural credit associations, one Federal land credit association, several service corporations, and the Federal Farm Credit Banks Funding Corporation (Funding Corporation). System banks (which include both the Farm Credit Banks and the agricultural credit bank) issue System-wide consolidated debt obligations in the capital markets through the Funding Corporation,[3] which enables associations to provide short-, intermediate-, and long-term credit and related services to eligible borrowers. Eligible borrowers include farmers, ranchers, producers and harvesters of aquatic products, their cooperatives, rural utilities, exporters of agricultural commodities products, rural residents for housing, and farm-related service businesses.[4]

III. Statutory and Regulatory Capital Requirements Governing the System

To be able to survive in times of stress, financial institutions, including System institutions, must hold an adequate amount of high-quality capital that is permanent, stable, and immediately available to absorb losses. In 1985, Congress added a requirement in section 4.3(a) of the 1971 Act that FCA ''shall cause System institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such System institutions and by using such other methods as the [FCA] deems appropriate.'' [5]

[1] This rulemaking does not affect the Federal Agricultural Mortgage Corporation (Farmer Mac), which is governed by separate capital regulations at Subpart B of Part 652. The use of the term ''System institution'' in this preamble and proposed rule does not include Farmer Mac.

[2] 12 U.S.C. 2001–2279cc. The 1971 Act, as well as the other FCA/System-related legislation referenced in this preamble, is available at *www.fca.gov* under ''Laws and regulations'' and ''Statutes.''

[3] The Funding Corporation was established pursuant to section 4.9 of the 1971 Act and is owned by the System banks. The Funding Corporation is the fiscal agent and disclosure agent for the System. The Funding Corporation is responsible for issuing and marketing debt securities to finance the System's loans, leases, and operations and for preparing and producing the System's financial results.

[4] The agricultural credit bank lends to, and provides other financial services to, farmer-owned cooperatives, rural utilities (electric and telephone), and rural water and wastewater disposal systems. It also finances U.S. agricultural exports and imports and provides international banking services to cooperatives and other eligible borrowers. The agricultural credit bank operates a Farm Credit Bank subsidiary.

[5] Section 4.3(a) of the 1971 Act, 12 U.S.C. 2154, *amended by* Farm Credit Amendments Act of 1985, Public Law 99–205, 101(1)(3), 99 Stat. 1678 (1985).

In the Agricultural Credit Act of 1987 (1987 Act), which became effective in 1988, Congress added Section 4.3A to the 1971 Act.[6] Section 4.3A(a)(1) of the 1971 Act defines permanent capital to include ''at-risk'' stock; current year retained earnings; allocated and unallocated earnings; surplus; and other types of debt or equity instruments that the FCA determines are appropriate to be considered permanent capital. Section 301(a) of the 1987 Act, which was not codified into the 1971 Act, required FCA to issue regulations that establish minimum capital adequacy standards for System institutions.[7] FCA adopted minimum risk-based permanent capital regulations in 1988 that require each System institution to maintain a ratio of at least 7 percent of permanent capital to its risk-adjusted asset base.[8] From 1988 to 1997, the permanent capital standard was the only regulatory capital requirement for banks and associations.

In 1992, Congress amended the definition of permanent capital in section 4.3A(a)(1)(B) of the 1971 Act to permit each bank to agree with an association or other recipient of the bank's allocated equities on whether the bank or the association or other recipient would include the allocated equities in its permanent capital.[9] In 1994, we adopted regulations to implement this new provision.[10]

In 1997, the FCA added capital requirements—core surplus, total surplus, and a non-risk based net collateral ratio (NCR)—that were similar but not identical to the Basel I standards developed by the Basel Committee on Banking Supervision (BCBS or Basel Committee)[11] and to the requirements imposed by the Federal banking regulatory agencies (FBRAs) on the institutions that they regulate.[12] FCA's core surplus was similar to Basel I's tier 1 capital, and total surplus was similar to Basel I's total capital. FCA regulations did not include a measure similar to Basel I's tier 2.

The BCBS and the FBRAs have continued to update their standards and requirements in an effort to strengthen the capital of financial organizations. Likewise, FCA has continued to revise its requirements to maintain comparability with the changing BCBS standards and FBRA requirements as appropriate and to further enhance the capital strength and quality of the System. Effective January 1, 2017, FCA replaced its 1997 core surplus/total surplus capital requirements with tier 1/tier 2 capital requirements (Capital Rule).[13] To the extent appropriate for the System's cooperative structure and status as a GSE, these requirements are comparable to the standardized approach rules of the FBRAs (U.S. Rule).[14] Consistent with the U.S. Rule, FCA's rule incorporated key aspects of the Basel III tier 1/tier 2 framework. Since adopting the 2017 Capital Rule, FCA has used tier 1/tier 2 capital measures instead of permanent capital to evaluate whether an institution has an adequate amount of total capital, including sufficient high-quality capital, to operate safely and soundly.[15]

Shortly before FCA's tier 1/tier 2 capital final rule became effective in 2017, the FCA Board adopted FCA Bookletter-068 (BL–068) to provide guidance to ensure System institutions had the necessary information to correctly implement the requirements of the rule.[16] BL–068 included clarifications and technical fixes on 18 separate items. Effective January 1, 2022, the FCA adopted a final rule that codified and clarified many of the items from BL–068 to address concerns identified through FCA's monitoring and examination of the rule.[17] Also in January 2022, the FCA Board adopted revisions to BL–068 to remove 11 items that were no longer applicable or were superseded by the 2022 rule. Revised BL–068 retained the remaining seven items.[18]

IV. Description of the Proposed Rule

Since 2017, FCA has relied on the tier 1/tier 2 capital framework to assess the capital adequacy of System institutions. Although institutions are required by statute to satisfy the minimum permanent capital adequacy standard, FCA no longer relies on the permanent capital standard as a measure of the quality and quantity of the System's capital. Accordingly, since the adoption of the tier 1/tier 2 capital framework, FCA has considered how we could reduce the burden of calculating the permanent capital ratio and minimize any public confusion about its use in evaluating the safety and soundness of System institutions.

In the 2020 preamble to the proposed capital rule updates, we sought comment on the System's perspectives on permanent capital by asking the following questions:

- What, if any, changes to the permanent capital regulations should be made to increase their clarity and understanding;
- Whether calculating permanent capital is burdensome for System institutions, and are there any changes FCA could make to the calculation that would reduce the burden; and
- Whether FCA should more closely align the permanent capital calculation with the total capital calculations, considering the 1971 Act's permanent capital requirements.[19]

In a comment letter submitted by the Farm Credit Council on behalf of its member System institutions (''System Comment Letter'' or ''Letter''),[20] the System supported efforts to minimize the use of the term ''permanent capital,'' the associated calculations, and reporting of it. The Letter stated that its use can often be confusing, detracts from Basel-comparability, and is

[6] Section 4.3A of the 1971 Act, 12 U.S.C. 2154a, *amended by* Agricultural Credit Act of 1987, Public Law 100–233, § 301(b), 101 Stat. 1568, 1609 (1988).

[7] Agricultural Credit Act of 1987, Public Law 100–233, § 301(a), 101 Stat. 1568, 1608 (1988).

[8] 53 FR 39229 (October 6, 1988).

[9] Farm Credit Banks and Associations Safety and Soundness Act of 1992, Public Law 102–552, 101, 106 Stat. 4102, 4103 (1992).

[10] 59 FR 37400 (July 22, 1994). These regulations refer to the agreements referenced in the definition of permanent capital as allotment agreements.

[11] The BCBS was established in 1974 and currently has 45 members, consisting of central banks and bank supervisory authorities from 28 jurisdictions across the globe. The BCBS sets global banking standards and recommends them for adoption by member countries and others, although members and jurisdictions may deviate as needed. Although FCA is not represented on the BCBS, each of the Federal banking regulatory agencies is a member. Extensive information about the Basel Committee and its standards can be found on the website of the Bank for International Settlements, at *https://www.bis.org/bcbs/index.htm.*

[12] 62 FR 4429 (January 30, 1997). The FBRAs are the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC).

[13] 81 FR 49720 (July 28, 2016). As stated in the Objectives, this rule would replace regulatory references to permanent capital with references to total capital, one of the tier 1/tier 2 capital measures. Section 628.2 of our existing rules defines total capital as the sum of tier 1 capital and tier 2 capital; those terms are also defined in § 628.2.

[14] 78 FR 62018 (October 11, 2013) (final rule of the OCC and the FRB); 79 FR 20754 (April 14, 2014) (final rule of the FDIC).

[15] *See* 86 FR 54347, 54351 (October 1, 2021).

[16] Bookletter-068 (BL–068)—Tier 1/Tier 2 Capital Framework Guidance, first published on December 28, 2016, and revised on January 13, 2022. BL–068 can be found at *www.fca.gov,* under ''Laws & Regulations'' and ''Bookletters.''

[17] 86 FR 54347 (October 1, 2021).

[18] The first item in Revised BL–068 provides guidance on calculating the permanent capital ratio under the existing regulations. This rule would revise that calculation, so the guidance would no longer be correct. Therefore, if this proposed rule is finalized, the FCA plans to again revise BL–068 to remove the guidance in the first item.

[19] 85 FR 55786, 55795–55796 (September 10, 2020) (see questions 8–10).

[20] Letter dated November 6, 2020, from Charles Dana, General Counsel, Farm Credit Council to David P. Grahn, Director, Office of Regulatory Policy. The Farm Credit Council is a trade association representing the interests of System banks and associations.

burdensome. The Letter supported efforts to align the calculations for permanent capital with those of total capital (under the tier 1/tier 2 capital framework) to the extent possible and eliminate the permanent capital reporting requirements from published financial reports.

FCA now proposes regulatory changes that address the comments raised in the System Comment Letter, FCA's concerns about the calculation burden, and the public perception of FCA's use of permanent capital to evaluate the safety and soundness of System institutions. FCA proposes three types of revisions to address these concerns.

First, we would revise regulations referring to permanent capital, outside of our permanent capital requirements in part 615, subpart H and part 628, to instead refer to tier 1/tier 2 capital measures under part 628. Second, to reduce the burden of calculating the permanent capital ratio, we would revise regulations in part 615, subpart H and part 628 to provide that the permanent capital ratio denominator is the same as the denominator of the total capital ratio in part 628. Third, we would revise the regulations to eliminate the requirement for System institutions to disclose their permanent capital ratio in reports to shareholders and investors.

In addition to addressing the concerns identified above, FCA also proposes to revise other regulations to clarify requirements, correct errors, and remove obsolete definitions and requirements related to capital.

A. Replacing References to Permanent Capital With References to Tier 1/Tier 2 Capital

FCA proposes to remove references to permanent capital in parts 611, 614, 615 (other than subpart H) and 627. Although these regulations are not part of our permanent capital requirements in part 615, subpart H and part 628, they refer to permanent capital. We propose to replace the references to permanent capital with references to tier 1/tier 2 capital measures under part 628 as appropriate. We are not removing references to permanent capital in regulations that implement requirements that are imposed by the 1971 Act or other laws.

1. Preliminary Exit Fee Estimate and Final Exit Fee Calculation—§§ 611.1250 and 611.1255

FCA proposes to amend § 611.1250 and § 611.1255. Section 611.1250 governs the preliminary exit fee estimate for terminating System banks and associations. Section 611.1255 governs the final exit fee calculation for those terminating institutions. Specifically, FCA proposes to remove from § 611.1250(a)(5) and (b)(5)(v), and from § 611.1255(a)(4)(iv) and (b)(5)(v), references to capital requirements under subpart H of part 615, which are references to permanent capital, and to replace them with references to capital under part 628. In addition, FCA proposes to remove from those same provisions references to collateral requirements under subpart K of part 615. Those references are obsolete because subpart K was rescinded when the tier 1/tier 2 rules became effective in 2017.[21]

2. Lending and Leasing Limit Violations—§ 614.4360

FCA proposes to remove the reference to permanent capital in § 614.4360(b)(1), governing lending and leasing limit violations, and to replace it with a reference to total capital. This change to the lending and leasing limit violation regulation would be consistent with 2021 changes to FCA's lending and leasing limit base computation in § 614.4351.[22] Section 614.4360(a) states that each outstanding loan of a System institution must comply, at all times, with applicable lending limits, and loans that do not comply must be excluded from the institution's collateral under § 615.5090. However, under certain conditions set forth in § 614.4360(b), an institution may continue to hold a noncompliant loan in its collateral. One of these conditions, as described in § 614.4360(b)(1), is when a loan exceeds the lending and leasing limit because of a decline in permanent capital after the loan was made. FCA proposes to replace the reference to permanent capital in this regulation with a reference to total capital under part 628.

3. Retirement of Other Equities—§ 615.5270

FCA proposes to remove the reference to permanent capital in § 615.5270(c)(3). Specifically, FCA proposes to remove the language providing that a bank, association, or service corporation board of directors may delegate authority to retire at-risk stock to institution management if, in pertinent part, the institution's permanent capital ratio will exceed 9.0 percent after retirement. We would retain the provision that boards may delegate authority to retire at-risk stock to institution management if, after the retirement, the institution's capital conservation buffer would be above 2.5 percent, its leverage buffer would be above 1.0 percent, and it would continue to comply with all applicable regulatory capital requirements under part 628. FCA also proposes to clarify that references to regulatory capital requirements in § 615.5270(c)(4) and (d)(1) are to the part 628 requirements and not to permanent capital standards.

4. Grounds for Appointing FCSIC as Conservator or Receiver—§ 627.3

FCA proposes to revise § 627.3(b)(3), which establishes that being in an unsafe or unsound condition to transact business is a ground to appoint FCSIC as a conservator or receiver of a System institution. Within this provision, § 627.3(b)(3)(ii) specifies that an unsafe and unsound condition includes an institution with permanent capital of less than one-half the minimum required level for the institution. We propose to replace the permanent capital condition with a condition that the institution has either a total capital ratio less than the minimum requirement specified in § 628.10(b)(3) or a tier 1 leverage ratio less than the minimum specified in § 628.10(b)(4), or both. It is appropriate to define violation of these minimum capital requirements as an unsafe or unsound condition to transact business, because an institution that violates these regulatory minimums has diminished loss absorbing capacity. In addition, an institution violating minimum capital requirements faces consequences including limitations on the ability to make capital distributions and discretionary bonus payments,[23] restrictions on issuing debt securities under the System's Market Access Agreement (MAA),[24] and the possibility of FCA enforcement action.

B. Simplifying the Calculation of the Permanent Capital Ratio

FCA proposes to reduce the burden of calculating the permanent capital ratio by simplifying its calculation in three ways. First, we propose to revise the composition of the permanent capital ratio denominator in part 615, subpart H, and part 628 to match the denominator of the total capital ratio in part 628. This change responds to the System Comment Letter commenting on FCA's proposed capital rule in 2020, which stated the System supports efforts to align the calculations of permanent

[21] *See* 81 FR 49720 (July 28, 2016).

[22] *See* 86 FR 54347, 54351 (October 1, 2021).

[23] *See* FCA regulation § 628.11, which governs capital conservation buffer restrictions.

[24] Restrictions on and the prohibition of market access are respectively addressed in Articles IV and V of the MAA. *See* 82 FR 5565, 5569–70 (January 18, 2017) (Notice of approval of the Draft Third Amended and Restated Market Access Agreement).

capital with those of total capital to the extent possible.

Second, we propose to simplify the regulation governing the capital treatment of equity investments in System banks by associations and other recipients of the equity.

Lastly, we propose to delete requirements governing how a System bank and an association that have entered into a loss sharing agreement must count assets in the permanent capital ratio denominator.

This rule does not propose to revise the permanent capital numerator because section 4.3A(a)(1) of the 1971 Act specifies the numerator's composition. Consequently, FCA is unable to simplify or relieve any burden related to the calculation of the numerator.

We explain our proposed changes in the following sections.

1. Simplified Calculation of the Permanent Capital Ratio Denominator—§§ 615.5201, 615.5205, 615.5206, 615.5207, and 628.10

FCA proposes to relieve burden in calculating the permanent capital ratio by making the denominator of this ratio, which is defined in part 615, the same as the denominator of the total capital ratio in part 628. We propose to accomplish this by updating regulatory references in §§ 615.5201, 615.5205, 615.5206, 615.5207, and 628.10.[25]

Removing the Definition of Risk-Adjusted Asset Base (Current Permanent Capital Ratio Denominator)—[§ 615.5201]

We propose to remove the definition of risk-adjusted asset base in § 615.5201. As discussed below, this term refers to the denominator of the permanent capital ratio. Section 615.5201 defines ''risk-adjusted asset base'' as standardized total risk-weighted assets (a term defined in § 628.2 that is used in the calculation of the total capital ratio denominator), with certain deductions that are different than those that are made to the total capital ratio denominator. For some institutions, these deductions could result in different denominators.[26] Removing this definition would eliminate the different deductions in the permanent capital ratio denominator.

Updating the Permanent Capital Ratio Denominator—[§§ 615.5205, 615.5206(c), and 628.10(c)(5)]

Because we are proposing to delete ''risk-adjusted asset base'' from our definitions, we propose to delete that term where it is used in §§ 615.5205, 615.5206(c), and 628.10(c)(5) to refer to the permanent capital ratio denominator. Instead, we propose to specify in those provisions that an institution's permanent capital ratio denominator is its total capital ratio denominator (assets) as specified in § 628.10(c)(3).[27]

Existing § 615.5205 sets a minimum permanent capital requirement of at least 7 percent of an institution's ''risk-adjusted asset base.'' Section 615.5206(c) identifies the denominator of the permanent capital ratio as an institution's ''risk-adjusted asset base.'' In addition, § 628.10(c)(5) provides that an institution's permanent capital ratio denominator is its total ''risk-adjusted asset base'' calculated in accordance with part 615. Changing these provisions to refer to the total capital ratio denominator (assets) as specified in § 628.10(c)(3),[28] rather than to the risk-adjusted asset base, would make the two denominators the same.

In addition, we propose to replace ''asset base'' in § 615.5206(b) with ''assets,'' to clarify this section would reference the total capital denominator. Section 615.5206(b) governs the requirement for institutions to use the average daily balances for the most recent three months in the calculation of the permanent capital ratio. This change would align with the changes mentioned in this section.

Updating Permanent Capital Ratio Denominator Deductions—[§ 615.5207 Heading, Introductory Paragraph, (a) and (h)]

FCA proposes to eliminate the deductions that are made to the permanent capital ratio denominator in § 615.5207. Specifically, FCA proposes to remove references to assets and risk-weight categories in the heading, introductory paragraph, and paragraph (a) of § 615.5207. In addition, FCA proposes to delete paragraph (h), which requires an institution to make certain deductions from its risk-adjusted asset base. Under our proposal to make the permanent capital ratio denominator the same as the total capital ratio denominator, the denominator of the permanent capital ratio would instead be subject to the deductions specified in § 628.22(g) that are currently made to the denominator of the total capital ratio.

Analysis of Permanent Capital Ratio Denominator Changes on System Institutions

We determined the proposed changes to the permanent capital ratio denominator would not cause any System institution to violate the 7.0 percent permanent capital ratio requirement. To make this determination, we compared the actual permanent capital ratio of each institution, as reported in FCA call reports, with what that ratio would have been if it used the total capital denominator, for the years ending in 2022–2024. Our analysis showed that using the total capital ratio denominator in the permanent capital ratio would not lead to material changes in the permanent capital ratios of most institutions. In most cases, the variance between the total capital ratio and the proposed permanent capital ratio is less than 1.0 percent.[29] In addition, we determined any differences in ratios would be outweighed by the decrease in regulatory burden, as requested by the System letter.

2. Simplified Equity Investment Capital Treatment Requirements—§§ 615.5207 and 615.5208

FCA proposes to simplify and clarify §§ 615.5207 and 615.5208, which set forth the capital treatment of equity investments in System banks by associations and other recipients of the equity.[30] Most of these revisions are to simplify the organization of the regulations for ease of understanding

[25] In addition, as mentioned above, if this rule is finalized, FCA would revise BL–068 to remove the guidance on the existing calculation requirement, because that guidance would not be correct under the regulations as revised.

[26] In general, the differences stem from (1) the deduction of the adjusted allowance for credit losses (AACL) in the definition of risk-adjusted asset base compared to the inclusion of AACL in the total capital ratio denominator and (2) the different denominator deductions in § 615.5207(h) (for the permanent capital ratio) and in § 628.22(g) (for the total capital ratio).

[27] Section 615.5205 would refer to § 615.5206(c), which in turn would refer to § 628.10(c)(3).

[28] As noted above, the reference in § 615.5205 would be to § 615.5206(c), which in turn refers to § 628.10(c)(3).

[29] A small number of institutions may have a variance larger than 1.0 percent. This is mainly due to the different deductions in the two denominators discussed above. Regardless of the size of the variance, our analysis showed all institutions would continue to comply with the 7.0 percent permanent capital ratio requirement.

[30] Section 4.3A(a)(1)(B) of the 1971 Act defines permanent capital to include earnings allocated by a System bank to an association or other recipient and retained by the bank, and it allows the bank to agree with the association or other recipient on whether the bank or the association or other recipient would include the allocated equities in its permanent capital. In regulation §§ 615.5207 and 615.5208, FCA refers to these agreements as allotment agreements. In the preamble to the proposed rule that resulted in the allotment agreement regulations, FCA explained that an ''other recipient'' of bank allocated equities could include an ''other financing institution'' or another System bank. *See* 58 FR 34004, 34007 (June 23, 1993).

and are not intended to change requirements.

Replacing ''Stock'' With ''Equity''—[§ 615.5207(a)]

FCA proposes to clarify § 615.5207(a) by replacing the word ''stock'' with ''equity.'' This provision addresses the treatment of reciprocal holdings of stock investments between System institutions. The term ''equity'' is a broader term that includes both stock and allocated equities, which better reflects the nature of investments between System institutions.

Clarifying Paragraph (b) Purchased and Allocated Equities—[§ 615.5207(b), (c), (d)]

We propose to combine existing paragraphs (b), (c), and (d) of § 615.5207 into a revised paragraph (b). This proposed reorganization is for clarity and ease of use and is not intended to make any substantive changes.

We propose to add new § 615.5207(b)(1)(A) and (b)(1)(B). Like existing § 615.5207(b)(1), (c), and (d), the new provisions would require a System bank to consider all equities purchased by an association or other recipient as its own permanent capital.

Proposed § 615.5207(b)(2)(A), like existing § 615.5207(b)(2), (c), and (d), would permit a System bank and an association or other recipient to enter into an agreement to provide for the allotment of allocated equities.[31] The agreement would specify, for permanent capital purposes only, a dollar amount and/or percentage allotment of the association's or other recipient's allocated investment between the bank and the association or other recipient. The agreement would continue to have to satisfy the conditions in § 615.5208.

Simplifying Capital Treatment in the Absence of Allotment Agreement—[§ 615.5207(c) and (d)]

Proposed § 615.5207(b)(2)(B), like existing § 615.5207(c) and (d), would provide that in the absence of an allotment agreement between a System bank and an association or other recipient, the allocated equities must be allotted 100 percent to the bank and 0 percent to the association or other recipient. Accordingly, we propose to delete § 615.5208(b), which sets forth an allotment formula for equities allocated to associations in the absence of an allotment agreement. This change would simplify the capital treatment between a System bank and an association in the absence of an allotment agreement.

Simplifying Capital Treatment Upon the Expiration of an Allotment Agreement—[§ 615.5208(a)(5)]

In addition, we propose to delete § 615.5208(a)(5), which governs the capital treatment of equities allocated from a System bank to an association upon the expiration of an allotment agreement. Because proposed § 615.5207(b)(2)(B) provides for capital treatment in the absence of an allotment agreement, this provision is unnecessary and deleting it would simplify the capital treatment of these allocated equities.

Finally, because we are proposing to delete several paragraphs of § 615.5207, we would renumber the remaining paragraphs in the regulation.

3. Elimination of Requirements Pertaining to Loss Sharing Agreements—§ 615.5207

FCA proposes to delete § 615.5207(i), which governs how a System bank and an association must count assets in the permanent capital ratio denominator when they have a written agreement to share losses on those assets. Part 628 has no similar requirement for the total capital ratio denominator (which under this proposed rule would be the permanent capital ratio denominator). If needed, FCA would determine the counting of assets under its reservation of authority in § 628.1(d)(6).

C. Changes to Disclosures and Reporting

FCA proposes to remove requirements to report permanent capital in disclosures to shareholders and investors in parts 620 and 630, respectively. While the 1971 Act requires institutions to comply with the permanent capital standard, it does not require the public disclosure of permanent capital to shareholders and investors. We agree with the System Comment Letter that the disclosure of permanent capital to third parties can be confusing. We are concerned that third parties might rely on an institution's disclosure of permanent capital, even though FCA does not use permanent capital to assess the quality and quantity of an institution's capital. Accordingly, we propose to eliminate the requirement to report permanent capital in shareholder and investor disclosures.[32]

1. Definitions Related to Disclosure to Shareholders—§ 620.1

FCA proposes to remove references to permanent capital from shareholder disclosure definitions in § 620.1. Specifically, FCA proposes to remove the 620.1(j) definition of ''permanent capital.'' In addition, FCA proposes to remove the reference to permanent capital standards in the § 620.1(q) definition of ''significant event.'' We also propose to clarify that the § 620.1(q) reference to capital adequacy requirements is referring to part 628.

2. Contents of the Annual Report to Shareholders—§ 620.5

Paragraph (d) and (g)—Description of Capital Structure and Management's Discussion and Analysis of Financial Condition and Results of Operations [§ 620.5(d)(1)(ix), (d)(2), (d)(3), (d)(4), (g)(4)(vi)]

FCA proposes to clarify that the requirements in § 620.5(d) for an institution to describe its capital structure in its annual report to shareholders refer only to capital requirements under part 628 and not to permanent capital standards. FCA proposes these clarifications in paragraphs (d)(1)(ix), (d)(2), (d)(3), (d)(4), and (g)(4)(vi), and proposes other minor changes to paragraphs (d)(1)(ix) and (d)(3) for clarity.

Paragraph (d)—Description of Capital Structure [New Provision § 620.5(d)(5)]

FCA proposes to add § 620.5(d)(5). This new provision would require an institution that chooses to report permanent capital in its shareholder disclosures to include a statement that although FCA has established a minimum permanent capital ratio pursuant to statutory requirements, it currently uses the tier 1/tier 2 capital ratios in part 628 to evaluate the capital adequacy of an institution. As discussed above, we agree with the System Comment Letter that the disclosure of permanent capital in financial statements can be confusing to stockholders and other users, and including this statement would help lessen this confusion. Institutions that choose not to report permanent capital in their shareholder disclosures would not be required to include this statement.

Paragraph (f)—Selected Financial Data [§ 620.5(f)(2)(i) and (f)(3)(i)]

FCA proposes to delete the disclosure requirements in § 620.5(f)(2)(i) (for all banks) and § 620.5(f)(3)(i) (for all associations). With these requirements deleted, banks and associations would

[31] This provision is required by Section 4.3A(a)(1)(B) of the 1971 Act.

[32] The System Comment Letter acknowledged that FCA might continue to require permanent capital reporting in call reports. Since FCA must continue to assess institutions' compliance with the permanent capital standard, we plan to continue to require its reporting in a call report schedule that is not available to the public.

no longer be required to disclose their permanent capital ratios for the last five fiscal years in their annual reports to shareholders. Sections 620.5(b)(2) and (b)(3) would continue to require banks and associations, respectively, to disclose their tier 1/tier 2 capital ratios.

Paragraph (g)(4)—Capital Resources [§ 620.5(g)(4)(ii)]

FCA proposes to delete the requirement in § 620.5(g)(4)(ii) that the management's discussion and analysis section of an institution's annual report must discuss changes in permanent capital. This provision would continue to require institutions to describe trends or changes to tier 1/tier 2 capital in the annual report.

3. Contents of the Annual Report to Investors—§ 630.20

FCA proposes to delete the § 630.20(e)(4) requirement that the System's annual report to investors must describe minimum permanent capital standards for banks and associations. We also propose to clarify that § 630.20(e)(4) and (g)(4)(iii) refer to capital requirements in part 628 and not to permanent capital standards.

D. Other Capital-Related Changes

FCA proposes to revise other regulations to clarify requirements, correct errors, and remove obsolete definitions and requirements related to capital.

1. Assessment and Apportionment of Administrative Expenses—§§ 607.2 and 607.3

FCA proposes to make a technical revision in § 607.2(b) to replace ''average risk-adjusted asset base means'' with ''average assets mean.'' We propose this change for consistency with proposed changes in parts 615 and 628. The existing § 607.2(b) defined term is based on the § 615.5201 defined term ''risk-adjusted asset base.'' As explained above in Section B.1, *Simplified calculation of the permanent capital ratio denominator,* we are proposing to delete this term from § 615.5201 because it would no longer be used in the permanent capital ratio denominator calculation. Instead, under our proposed changes to parts 615 and 628, the calculation of all capital denominators would be based on assets as specified in § 628.10(c)(3). The new term defined in § 607.2(b) would be consistent with these changes.

Consequently, we also propose technical revisions to § 607.3(b) to clarify that the equitable apportionment of FCA's assessment of System institutions would be based on the total capital ratio denominator (assets) instead of on the risk-adjusted asset base. These proposed changes would provide consistency with the proposed permanent capital denominator simplification discussed above in Section B.1, *Simplified calculation of the permanent capital ratio denominator.*

2. International Lending—§ 613.3200

FCA proposes to change the reference in § 613.3200(c) from capital to total capital. Section 613.3200(c) sets forth requirements for export transactions by banks for cooperatives (BCs) and agricultural credit banks (ACBs),[33] including that the total amount of balances outstanding on certain export financing shall not exceed 50 percent of the bank's capital. This change would clarify that the balances must not exceed 50 percent of the bank's total capital.

3. Purchase and Sale of Interests in Loans—§ 614.4325

FCA proposes to replace a typographical error in § 614.4325(b)(3)(ii) referring to ''total its capital'' with a reference to ''its total capital.'' Section 614.4325(b)(3)(ii) governs a System institution's authority to purchase interests in loans from the Federal Deposit Insurance Corporation (FDIC). This correction affirms that an association must obtain approval from its funding bank if it purchases loans or pools of loans from the FDIC that exceed 10 percent of its total capital.

4. Definitions Related to Capital Adequacy—§ 615.5201

Deletion of Preferred Stock and Term Preferred Stock Definitions

FCA proposes to delete the definitions of ''preferred stock'' and ''term preferred stock'' from § 615.5201, which provides definitions for subpart H of part 615 related to permanent capital. Neither of these terms is used in subpart H. However, preferred stock and term preferred stock continue to be included in permanent capital as provided in paragraph (4) of the definition of permanent capital in § 615.5201.[34] These instruments also continue to be included in additional tier 1 capital or tier 2 capital provided they satisfy the criteria specified in § 628.20(c)(1) or § 628.20(d)(1), respectively.

Align Part 615 Capital Element Addition Process With Part 628 Process

FCA proposes to update paragraph (7) of the permanent capital definition in § 615.5201 to align the way additional capital elements may be included in permanent capital with the way they are included in part 628 capital. Paragraph (7) currently provides that permanent capital includes any debt or equity instruments or other accounts FCA has determined are appropriate to be considered permanent capital. Under the proposed revision to paragraph (7), permanent capital would include any capital element FCA has found may be included in CET1 capital, AT1 capital, or tier 2 capital pursuant to FCA's reservation of authority under § 628.1(d)(2)(ii). Under this proposed revision, if FCA found, using its reservation of authority, that an additional capital element may be included in CET1 capital, AT1 capital, or tier 2 capital, that element would also be included in permanent capital. FCA would no longer directly determine whether an instrument is appropriate to be included in permanent capital, without it being included in one of the part 628 capital measures.[35]

Deletion of Nonagreeing Association Definition

FCA proposes to remove the definition of nonagreeing association from § 615.5201. Nonagreeing association is defined as an association that does not have an allotment agreement with its affiliated bank. Due to the changes we propose to make to our allotment agreement regulations discussed above in Section B.2, entitled *Simplified Requirements Governing the Capital Treatment of Equity Investments in System Banks by Associations and Other Recipients,* this term would no longer be used in our regulations.

5. Contents of the Annual Report to Shareholders—§ 620.5

FCA proposes to remove § 620.5(f)(4), which requires banks and associations to disclose in their annual reports through fiscal year end 2021 their historical core surplus, total surplus, and (banks only) net collateral ratios. This requirement is obsolete.[36]

[33] The System currently does not include BCs.

[34] Under paragraph (4), permanent capital includes stock issued by a System institution, subject to four exclusions. Preferred stock and term preferred stock issued by a System institution are included in this definition, unless they fit within one of the exclusions.

[35] This change relates to the inclusion in permanent capital of additional capital elements only. It does not affect the instruments that Section 4.3A(a)(1) requires to be included in permanent capital.

[36] Minimum core surplus, total surplus, and net collateral ratio requirements were in effect prior to the 2017 adoption of the tier 1/tier 2 regulatory capital ratios. *See* 81 FR 49720, 49722 (July 28, 2016). Historical reporting on those ratios through 2021 was for informational purposes.

6. Clarifications to Capital Adequacy Regulations—§ 628.1

FCA proposes to clarify that references to capital requirements in § 628.1(a) and (c)(1) are to the part 628 requirements and not to permanent capital standards.

V. Regulatory Matters

A. Determination Under Executive Order 12866 and Expected Determination Under Executive Order 14192

The Office of Management and Budget's Office of Information and Regulatory Affairs has determined that this proposed rule is not a ''significant regulatory action'' as defined by Section 3(f) of Executive Order 12866, made applicable to FCA by Executive Order 14215. This action, if finalized as proposed, is expected to be an Executive Order 14192 deregulatory action.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

C. Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 [37] requires a notice of proposed rulemaking to include the internet address of a posted summary of the proposed rule, in plain language and less than 100 words.

Public commenters may access the summary for this rulemaking under RIN 3052–AD52 at: *https://www.fca.gov/laws-and-regulations/regulatory-projects-plan.*

Lists of Subjects

12 CFR Part 607

Agriculture, Banks, Banking, Assessment and Apportionment of Administrative Expenses.

12 CFR Part 611

Agriculture, Banks, Banking, Organization.

[37] 5 U.S.C. 553(b)(4).

12 CFR Part 613

Agriculture, Banks, Banking, Rural areas.

12 CFR Part 614

Agriculture, Banks, Banking, Loans and operations, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

[12 CFR Part 620

Accounting, Agriculture, Banks, Banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 627

Accounting, Agriculture, Banks, Banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 628

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

12 CFR Part 630

Accounting, Agriculture, Banks, Banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, the Farm Credit Administration proposes to amend parts 607, 611, 613, 614, 615, 620, 627, 628, and 630 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 607—[AMENDED]

■ 1. The authority citation for part 607 continues to read as follows:

Authority: Secs. 5.15, 5.17 of the Farm Credit Act (12 U.S.C. 2250, 2252) and 12 U.S.C. 3025.

§ 607.2 [Amended]

■ 2. Amend § 607.2 by:
■ a. Removing from paragraph (b) the words ''Average risk-adjusted asset base means'' and adding in their place the words ''Average assets mean.''
■ b. Removing from paragraph (b) the words ''risk-adjusted asset base (as defined in § 615.5201 of this chapter)'' and adding in their place the word ''assets (as specified in § 628.10(c)(3)).''
■ c. Removing from paragraphs (b)(1) through (b)(4) the words ''risk-adjusted'' wherever they appear.

§ 607.3 [Amended]

■ 3. Amend § 607.3 by:
■ a. Removing from paragraphs (b)(1) through (b)(3) the words ''risk-adjusted assets,'' ''risk-adjusted asset base,'' and ''risk-adjusted asset bases'' wherever they appear and adding in their place the word ''assets.''
■ b. Removing from paragraph (b)(2) the words ''risk-adjusted asset'' wherever they appear and adding in their place the word ''asset.''

PART 611—[AMENDED]

■ 4. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.2, 1.3, 1.4, 1.5, 1.12, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.25, 4.26, 4.27, 4.28A, 5.9, 5.17, 5.25, 7.0–7.3, 7.6–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2154a, 2183, 2184, 2203, 2208, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a–2279a–3, 2279b–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638, as amended by secs. 403 and 404 of Pub. L. 100–399, 101 Stat. 989, 999 (12 U.S.C. 2071 note and 2202 note).

§ 611.1250 [Amended]

■ 5. Amend § 611.1250 by:
■ a. Revising paragraph (a)(5) to read as follows:

* * * * *

(5) Subtract from liabilities any liability that we treat as regulatory capital under the capital requirements in part 628 of this chapter.
■ b. Revising paragraph (b)(5)(v) to read as follows:

* * * * *

(v) Subtract from liabilities any liability that we treat as regulatory capital under the capital requirements in part 628 of this chapter.

§ 611.1255 [Amended]

■ 6. Amend § 611.1255 by:
■ a. Revising paragraph (a)(4)(iv) to read as follows:

* * * * *

(iv) Subtract from liabilities any liability that we treat as regulatory capital under the capital requirements in part 628 of this chapter.
■ b. Revising paragraph (b)(5)(v) to read as follows:

* * * * *

(v) Subtract from liabilities any liability that we treat as regulatory capital (or that we do not treat as a liability) under the capital requirements in part 628 of this chapter.

PART 613 [AMENDED]

■ 7. The authority citation for part 613 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27, 5.9, 5.17, 5.25, 7.0–7.3, 7.6–7.13,

8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2154a, 2183, 2184, 2203, 2208, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a–2279a–3, 2279b–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638 (12 U.S.C. 2071 note and § 2202 note).

§ 613.3200 [Amended]

■ 8. Amend § 613.3200 by revising paragraph(c) to add the word ''total'' before ''capital'' in the last sentence.

PART 614 [AMENDED]

■ 9. The authority citation for part 614 is revised to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); 12 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

§ 614.4325 [Amended]

■ 10. Amend § 614.4325 by revising paragraph (b)(3)(ii) to read as follows:

§ 614.4325 Purchase and sale of interest in loans

* * * * *

(b) * * *

(3) * * *

(ii)Obtains funding bank approval if a Farm Credit System association purchases loan or pools of loans that exceed 10 percent of its total capital.

* * * * *

§ 614.436 0 [Amended]

■ 11. Amend § 614.4360 by revising paragraph(b)(1) to remove the words ''permanent capital'' and add in its place the words ''total capital.''

PART 615 [AMENDED]

■ 12. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 8.0, 8.3, 8.4, 8.6, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a), Pub. L. 100–233, 101 Stat. 1568, 1608 (12 U.S.C. 2154 note); sec. 939A, Pub. L. 111–203, 124 Stat. 1326, 1887 (15 U.S.C. 78o–7 note).

§ 615.5201 [Amended]

■ 13. Amend § 615.5201 by:

■ a. Removing the definitions of ''Nonagreeing association,'' ''Preferred stock,'' ''Risk-adjusted asset base,'' and ''Term preferred stock''; and

■ b. Revising in paragraph (7), the definition of ''Permanent capital'' to read as follows:

§ 615.5201 Definitions.

* * * * *

(7) Any other capital element the FCA has found the System institution may include in CET1 capital, AT1 capital, or tier 2 capital pursuant to FCA's reservation of authority under § 628.1(d)(2)(ii).

§ 615.5205 [Amended]

■ 14. Amend § 615.5205 by revising it to read as follows:

§ 615.5205 Minimum permanent capital standards.

Each institution must maintain permanent capital of at least 7 percent of assets, as specified in § 615.5206(c).

§ 615.5206 [Amended]

■ 15. Amend § 615.5206 by revising paragraphs (b) and (c) to read as follows:

§ 615.5206 Permanent capital ratio computation.

* * * * *

(b) The System institution's permanent capital (numerator) and assets, as specified in § 615.5206(c), are computed using average daily balances for the most recent 3 months.

(c) A System institution's permanent capital ratio is the ratio of the System institution's permanent capital, adjusted in accordance with § 615.5207 (the numerator), to its assets (denominator of its total capital ratio in § 628.10(c)(3)).

§ 615.5207 [Amended]

■ 16. Amend § 615.5207 by revising it to read as follows:

§ 615.5207 Adjustments to permanent capital.

A System institution must make the following adjustments to permanent capital (numerator) before it computes its permanent capital ratio:

(a) Where two System institutions have equity investments in each other, such reciprocal holdings must be eliminated to the extent of the offset. If the investments are equal in amount, each System institution must deduct from its permanent capital an amount equal to the investment. If the investments are not equal in amount, each System institution must deduct from its permanent capital an amount equal to the smaller investment. The elimination of reciprocal holdings required by this paragraph must be made prior to making the other adjustments required by this section.

(b) Where an association or other recipient has an equity investment in a System bank, the investment is treated, for permanent capital purposes only, in the following manner:

(1) *Purchased equities.*

(A) *Equities purchased by an association.* The association must deduct the investment from its permanent capital and the bank will consider the investment as its permanent capital.

(B) *Equities purchased by a recipient other than an association.* The bank will consider the investment as its permanent capital.

(2) *Allocated equities.*

(A) *Allotment agreement.* The bank and the association or other recipient of allocated equities may enter into an allotment agreement that specifies, for permanent capital purposes only, a dollar amount and/or percentage allotment of the association's or other recipient's allocated equities in the bank between the bank and the association or other recipient. Allotment agreements are subject to the conditions specified in § 615.5208.

(B) *Absence of allotment agreement.* In the absence of an allotment agreement that satisfies the conditions specified in § 615.5208, the allocated equities must be allotted 100 percent to the allocating bank and 0 percent to the association or other recipient.

(c) Where a System institution has an equity investment in another System institution to capitalize a loan participation interest, the investing System institution must deduct from its permanent capital an amount equal to its investment in the participating System institution.

(d) Each System institution must deduct from permanent capital any equity investment in a service corporation chartered under section 4.25 of the Act or the Funding Corporation chartered under section 4.9 of the Act.

(e) Each System institution must deduct from its permanent capital an amount equal to all goodwill, whenever acquired.

(f) The permanent capital of a System institution must exclude any accumulated other comprehensive income (loss) as reported under GAAP.

(g) For purposes of calculating capital ratios under this part, deferred-tax assets are subject to the conditions, limitations, and restrictions described in § 628.22(a)(3) of this chapter.

§ 615.5208 [Amended]

■ 17. Amend § 615.5208 by:
■ a. Revising the introductory text of paragraph (a);
■ b. Removing paragraph (a)(5); and
■ c. Removing and reserving paragraph (b).

The revisions and removals read as follows:

§ 615.5208 Allotment of allocated investments.

(a) The following conditions apply to agreements that a System bank enters into with an association or other recipient pursuant to § 615.5207(b)(2)(A):

* * * * *

(1) * * *
(2) * * *
(3) * * *
(4) * * *
(5)[Removed]

* * * * *

(b) [Removed and Reserved]

* * * * *

§ 615.5270 [Amended]

■ 18. Amend § 615.5270 by:
■ b. Revising paragraphs (c)(3) and (c)(4); and
■ c. Revising paragraph (d)(1).

The revisions read as follows:

§ 615.5270 Retirement of other equities.

* * * * *

(c) * * *
(1) * * *
(2) * * *

(3) After any retirements, the institution's capital conservation buffer, set forth in § 628.11 of this chapter, will be above 2.5 percent, and its leverage buffer, set forth in § 628.11 of this chapter, will be above 1.0 percent;

(4) The institution will continue to satisfy all applicable regulatory capital requirements under part 628 of this chapter after any retirements; and

* * * * *

(d) * * *

(1) Establish any delegations of authority to retire preferred stock and the conditions of delegation, which must meet the requirements of paragraph (c) of this section and include minimum levels for regulatory capital requirements under part 628 of this chapter as applicable and commensurate with the volatility of the preferred stock.

* * * * *

PART 620 [AMENDED]

■ 19. The authority citation for part 620 continues to read as follows:

Authority: Secs. 4.3, 4.3A, 4.19, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2154, 2154a, 2207, 2243, 2252, 2254); sec. 424, Pub. L. 100–233, 101 Stat. 1568, 1656 (12 U.S.C. 2252 note); sec. 514, Pub. L. 102–552, 106 Stat. 4102, 4134.

§ 620.1 [Amended]

■ 20. Amend § 620.1 by removing and reserving paragraph (j) and revising paragraph (q) to read as follows:

§ 620.1 Definitions.

* * * * *

(j) [Reserved]

* * * * *

(q) *Significant event* means any event that is likely to have a material impact on the reporting institution's financial condition, results of operations, cost of funds, or reliability of sources of funds. The term ''significant event'' includes, but is not limited to, actual or probable noncompliance with the regulatory minimum capital adequacy requirements in part 628 of this chapter, stock impairment, the imposition of or entering into enforcement actions, execution of financial assistance agreements with other institutions, collateral deficiencies that impact a bank's ability to obtain loan funds, or defaults on debt obligations.

§ 620.5 [Amended]

■ 21. Amend § 620.5 by:
■ a. Revising paragraph (d)(1)(ix) to read as follows:

* * * * *

(ix) The regulatory restrictions regarding retirement of capital and distribution of earnings pursuant to part 628 of this chapter, and any requirements to add capital under a plan approved by the Farm Credit Administration pursuant to subparts L or M of part 615 of this chapter.
■ b. Revising paragraph (d)(2) to read as follows:

(2) Describe regulatory minimum capital requirements in part 628 of this chapter, and the institution's compliance with such requirements. For banks, also discuss any related associations that are not currently in compliance with the requirements.
■ c. Revising paragraph (d)(3) to read as follows:

(3) State whether the institution is currently prohibited or limited from retiring stock or distributing earnings by the regulatory restrictions described in paragraph (d)(1)(ix) of this section, or knows of any reason such prohibitions may apply during the fiscal year subsequent to the fiscal year just ended.
■ d. Revising paragraph (d)(4) to read as follows:

(4) Describe the institution's capital adequacy requirements under part 628 of this chapter and the minimum stock purchase requirement in effect.
■ e. Adding paragraph (d)(5) to read as follows:

* * * * *

(5) An institution is not required to disclose its permanent capital ratio. If it does, it must also provide the following disclosure: As required by Farm Credit laws, FCA established a minimum permanent capital ratio for System institutions. However, FCA uses capital ratios in part 628 of this chapter to evaluate whether an institution has an adequate amount of total capital, including sufficient high-quality capital, to operate safely and soundly.
■ f. Removing and reserving paragraph (f)(2)(i);
■ g. Removing and reserving paragraph (f)(3)(i);
■ h. Removing paragraph (f)(4);
■ i. Revising paragraph (g)(2)(iii) to read as follows:

(iii) Discuss the factors underlying the material changes, if any, in the return on average assets, the return on average protected borrower capital and at-risk capital, and the total capital ratio as determined in accordance with part 628 of this chapter. An explanation of the basis of the calculation of ratios relating to total capital shall be included.
■ j. Removing the words ''permanent capital,'' from paragraph (g)(4)(ii).
■ k. Revising paragraph (g)(4)(vi) to read as follows:

(vi) Discuss any trends, commitments, contingencies, or events that are reasonably likely to have a materially adverse effect upon the institution's ability to meet the capital adequacy requirements under part 628 of this chapter.

* * * * *

PART 627 [AMENDED]

■ 22. The authority citation for part 627 continues to read as follows:

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58, 5.61 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7, 2277a–10).

§ 627.3 [Amended]

■ 23. Amend § 627.3 by revising paragraph (b)(3)(ii) to read as follows:

§ 627.3 Grounds for appointing FCSIC as conservator or receiver.

* * * * *

(b) * * *
(3) * * *

(ii) For all institutions, a total capital ratio or a tier 1 leverage ratio that is less than the minimum capital ratios required by § 628.10(b) of this chapter; or

* * * * *

PART 628 [AMENDED]

■ 24. The authority citation for part 628 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 8.0, 8.3, 8.4, 8.6, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a), Pub. L. 100–233, 101 Stat. 1568, 1608, as amended by sec. 301(a), Pub. L. 103–399, 102 Stat 989, 993 (12 U.S.C. 1254 note); sec. 939A, Pub. L. 111–203, 124 Stat. 1326, 1887 (15 U.S.C. 78o–7 note).

§ 628.1 [Amended]

■ 25. Amend § 628.1 by removing from paragraphs (a) and (c)(1) the word ''standards'' and in their place, each time they appear, adding the word ''requirements.''

§ 628.10 [Amended]

■ 26. Amend § 628.10 by revising paragraph (c)(5) to read as follows:

(5) Permanent capital ratio. A System institution's permanent capital ratio is the ratio of the institution's permanent capital to its total capital denominator (assets), as specified in § 628.10(c)(3), and as reported on the institution's Call Report.

PART 630 [AMENDED]

■ 27. The authority citation for part 630 is revised to read as follows:

Authority: Secs. 4.12, 5.9, 5.17, 8.11, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of Pub. L. 92–181, 85 Stat. 583 (12 U.S.C. 2183, 2243, 2252, 2279aa–11, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

§ 630.20 [Amended]

■ 28. Amend § 630.20 by revising paragraph(e)(4) and (g)(4)(iii) to read as follows:

§ 630.20 Contents of the annual report to investors.

* * * * *

(e) * * *

(4) Describe regulatory minimum capital adequacy requirements in part 628 of this chapter for banks and associations. State the number of institutions, if any, categorized by banks and associations, that are not currently in compliance with such requirements and include a brief discussion of the reasons for the noncompliance.

* * * * *

(g) * * *

(4) * * *

(iii) Provide a general discussion of any trends, commitments, contingencies, or events that are reasonably likely to have a material adverse effect on System institutions' ability to comply with regulatory capital requirements under part 628 of this chapter.

* * * * *

Ashley Waldron,

Secretary to the Board, Farm Credit Administration.

[FR Doc. 2026–03923 Filed 2–26–26; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2026–1131; Airspace Docket No. 25–AAL–163]

RIN 2120–AA66

Modification of Class E Airspace; Nenana Municipal Airport, Nenana, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace extending upward from 700 feet above the surface at Nenana Municipal Airport, Nenana, AK, to accommodate revisions to the airport's instrument approach procedures (IAP). This action would support the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before April 13, 2026.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2026–1131 and Airspace Docket No. 25–AAL–163 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 modify Class E airspace to support IFR operations at Nenana Municipal Airport, Nenana, AK.

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 modify the Class E airspace extending upward from 700 feet above the surface at Nenana Municipal Airport, Nenana, AK.

The Area Navigation (RNAV) (Global Positioning System [GPS]) Runway (RWY) 4 Left (L) and Non-directional Beacon (NDB) RWY 4L IAPs were revised, rendering the airport's Class E airspace excessive. To better accommodate the procedures, the airspace footprint should be reduced.

The centralized radius of the airspace should be reduced to 4.2 miles and the northern portion removed, as circling is not authorized northwest of the airport and airspace containment is not necessary beyond 4.2 miles south of the airport. The eastern portion of Nenana's Class E airspace should be reduced to be a rectangular extension that would more appropriately contain arriving IFR aircraft conducting the missed approach portions of the airport's IAPs. The western extension should be shortened to more appropriately contain departing IFR aircraft executing the RWY 22 Right (R) obstacle departure procedure until reaching 1,200 feet above the surface and arriving IFR operations below 1,500 feet above the surface when executing the RNAV (GPS) RWY 4L approach procedure.

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.

* * * * *

AAL AK E5 Nenana, AK [Amended]

Nenana Municipal Airport, AK
(Lat. 64°32′50″ N, long. 149°04′26″ W)

That airspace extending upward from 700 feet above the surface within 2.5 miles north and 2.3 miles south of the airport's 069° bearing extending to 5.8 miles east, within a 4.2-mile radius of the airport between its 100° bearing clockwise to its 240° bearing, and within 2.5 miles north and 2.9 miles south of the airport's 249° bearing extending to 7.2 miles west.

* * * * *

Issued in Washington, DC, on February 18, 2026.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2026–03958 Filed 2–26–26; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2025–0032; FRL–13008–01–R5]

Air Plan Approval; Ohio; Source-Specific Non-CTG RACT and SIP Strengthening for Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve source-specific State Implementation

Plan (SIP) revisions submitted by Ohio. These revisions address major source volatile organic compound (VOC) and nitrogen oxide (NO_X) reasonably available control technology (RACT) requirements for the Cleveland, OH Moderate nonattainment area under the 2015 ozone National Ambient Air Quality Standard (NAAQS or standard). The affected facilities include PPG Industries Ohio, Inc. (PPG), Owens Corning, Akron Paint and Varnish, Charter Steel, U.S. Steel Tubular Lorain, Carmeuse Lime, and Ross Incineration. The EPA is also proposing to approve source-specific SIP revisions for General Electric Aviation Evendale and Tyson Foods for the Cincinnati maintenance area under the 2015 ozone standard. Finally, the EPA is proposing to rescind the source-specific VOC RACT rule for Formica Corporation since it is subject to an equivalent CTG-based rule in the Ohio Administrative Code (OAC).

DATES: Comments must be received on or before March 30, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2025–0032 at *https://www.regulations.gov,* or via email to *arra.sarah@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Katie Caskey, Air and Radiation Division (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3490, *caskey.kathleen@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. RACT Requirements

VOCs and NO_X contribute to the production of ground-level ozone, or smog, which harms human health and the environment. The EPA defines RACT as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.[1]

Sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), when taken together, require States to implement RACT for VOC and NO_X in ozone nonattainment areas classified as Moderate (and higher). Specifically, these areas are required to implement RACT for all sources covered by a Control Techniques Guideline (CTG)[2] document, and for all major sources of VOCs and NO_X in the area. For the purpose of RACT in Moderate ozone nonattainment areas, major sources of VOCs and NO_X are those not covered by the applicability criteria in the CTGs (non-CTG) with the potential to emit (PTE) at least 100 tons per year.

To address non-CTG RACT requirements, Ohio adopted OAC rules 3745–21–11 and 3745–110–03(J), which require major VOC and NO_X sources that are not covered by a CTG to submit detailed source-specific RACT studies analyzing the technological and economic feasibility of each available control measure. The purpose of these RACT studies is to provide technical support for Ohio's RACT determinations. Ohio EPA evaluated the information provided in the required studies, made a RACT determination for each major source, and submitted the RACT determinations to the EPA for incorporation into the Ohio SIP.

II. History of Cleveland and Cincinnati Nonattainment Areas Under the 2015 Ozone NAAQS

On June 4, 2018 (83 FR 25776), the EPA designated the Cleveland, OH nonattainment area and the Ohio portion of the Cincinnati, OH-KY nonattainment area as Marginal nonattainment areas for the 2015 ozone NAAQS. The Cleveland, OH nonattainment area consists of Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit counties while the Ohio portion of the Cincinnati, OH-KY nonattainment area consists of Butler, Clermont, Hamilton, and Warren counties. On April 13, 2022 (87 FR 21849), pursuant to section 181(b)(2) of the CAA, the EPA proposed to determine that the Cleveland, OH nonattainment area failed to attain the 2015 ozone NAAQS by the August 3, 2021, Marginal area attainment deadline and thus proposed to reclassify the area from Marginal to Moderate nonattainment. In that action, the EPA proposed to establish January 1, 2023, as the due date for the State to submit all Moderate area nonattainment plan SIP requirements applicable to newly reclassified areas. The Ohio portion of the Cincinnati OH-KY 2015 ozone nonattainment area attained the 2015 ozone standard based on the 2019–2021 design value, and the area was redesignated to attainment effective June 9, 2022 (87 FR 35104).

III. History of Ohio's VOC and NO_X RACT Regulations

Ohio has adopted regulations to address the NO_X and VOC RACT requirements that apply to Moderate ozone nonattainment areas. Ohio has also voluntarily adopted rules for the Cincinnati Maintenance area as SIP strengthening measures, since planning efforts were underway to address Moderate RACT requirements for the 2015 ozone standard in Cleveland. The NO_X RACT rules, in Chapter 3745–110 of the Ohio Administrative Code (OAC), effective March 25, 2022, apply to

[1] See Memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, U.S. EPA, to Regional Administrators, U.S. EPA, ''Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas'' (Dec. 9, 1976); see also 44 FR 53761, 53762 (September 17, 1979).

[2] CTGs provide recommendations to inform State, local, and Tribal air agencies as to what constitutes RACT for categories of VOC sources.

existing boilers, stationary combustion turbines, stationary internal combustion engines, reheat furnaces, and other sources at facilities that have an uncontrolled potential to emit 100 tpy or more of NO_X. These rules apply to sources located in both the Cleveland nonattainment area (the EPA approved as RACT) and the Cincinnati maintenance area (the EPA approved as SIP strengthening) under the 2015 ozone standard.

Similarly, the VOC RACT rules, in Chapter 3745–21 of the OAC, effective March 27, 2022, apply to various VOC source categories in both the Cleveland nonattainment area and the Cincinnati maintenance area under the 2015 ozone standard. These rules cover both CTG sources and non-CTG major sources with an uncontrolled potential to emit 100 tons per year or more of VOCs.

Ohio EPA also adopted OAC Rules 3745–21–11 and 3745–110–03(J) and submitted them to the EPA for inclusion in the SIP. These rules require major non-CTG VOC and NO_X sources located in ozone nonattainment areas classified as Moderate or higher to submit RACT studies to Ohio within one year of the rule's effective date. These RACT studies contain information on the technical and economic feasibility of VOC and NO_X emission control measures to inform Ohio's RACT determinations for each major source.

On January 20, 2026 (91 FR 2308), the EPA approved portions of OAC Chapters 3745–21 and 3745–110 as satisfying certain Moderate VOC RACT and NO_X RACT requirements for the Cleveland, OH nonattainment area under the 2015 ozone standard. The EPA also approved OAC 3745–21–11 and 3745–110–03(J) as SIP strengthening measures for the Cleveland nonattainment area under the 2015 ozone standard. Finally, the EPA approved OAC Chapter 3745–21 and 3745–110–03(J) as SIP strengthening for the Cincinnati Maintenance area under the 2015 ozone standard.

As a result, Ohio will be implementing NO_X RACT in both Cleveland and Cincinnati, and NO_X RACT will be federally enforceable in Cleveland. These rules will be SIP strengthening and go beyond what is required in the Cincinnati Maintenance Area at the Federal level, achieving additional emission reductions and contributing to maintenance of the ozone standard in this area.

IV. What is the EPA proposing?

The EPA is proposing to approve the RACT determinations submitted by Ohio for major sources in the Cleveland nonattainment area as meeting RACT requirements and to approve the SIP revisions submitted by Ohio for major sources in the Cincinnati maintenance area as SIP strengthening measures.

V. PPG Industries Ohio, Inc.

PPG Industries, Inc. (PPG) operates an automotive coatings manufacturing plant in Cleveland, Ohio. This facility is a major VOC source that is not covered by a CTG and has existing source-specific RACT established in OAC rule 3745–21–09(MM) under a previous ozone standard for VOC emissions from its paint manufacturing and associated paint laboratory operations (59 FR 23789). Ohio submitted this VOC RACT determination to the EPA on March 11, 2024. To control VOC emissions, the plant employs extensive capture systems and a large regenerative thermal oxidizer (RTO) system that treats emissions from entire buildings or groups of buildings. This setup ensures that all operations within these controlled buildings including the paint laboratory operations (K201) and paint manufacturing operations (P201), are subject to emission reduction measures. VOC emissions from the paint production equipment (P202) are not required to be routed to the RTO because the VOC emissions are low and VOC content is low or zero.

Under previously approved RACT requirements in OAC rule 3745–21–09(MM), VOC emissions from the paint laboratory (K201) must be vented to the RTO control system, which must achieve at least 90% control efficiency by weight or a maximum outlet VOC concentration of 20 parts per million by volume, dry (ppmvd). Also, paint manufacturing (P201) emissions must be vented to the RTO with a minimum control efficiency of 98% by weight, a maximum outlet VOC concentration of 20 ppmvd, or a minimum incineration temperature of one 1500 degrees Fahrenheit. The water-based paint production (P202) emissions unit is not required to have control equipment due to its low emissions levels, which are about one ton per year.

PPG conducted a VOC RACT analysis for this facility in accordance with OAC 3745–21–11. PPG evaluated the effectiveness of various alternative control technologies for the paint lab and manufacturing operations, including a carbon adsorber, thermal incinerator, catalytic incinerator, condenser, and scrubber, and found no technically feasible options that would achieve greater emission reductions than the existing RTO system. As a result, no cost-effectiveness estimates are provided.

For the paint lab operations, while it is technically feasible for an RTO to achieve a higher control efficiency than 90%, it is not technically feasible at this facility because the complex layout of approximately 260 pieces of equipment in nine paint laboratory buildings prevent PPG from achieving a higher capture efficiency. The entire building exhaust is routed to the RTO as opposed to controlling individual pollutant-emitting pieces of equipment.

For the water-based paint production unit, implementing a capture system is economically unreasonable given its low emission levels (1 tpy of VOC) and low VOC content (less than or equal to 12% VOC by weight), so RACT is continued compliance with OAC 3745–21–09(MM)(4). PPG's RACT study is available in docket for this action.

The EPA agrees that the existing RTO system is the most effective method for reducing VOC emissions at this facility. Therefore, the EPA concurs with Ohio's RACT determination and is proposing that for this facility, RACT is continued compliance with OAC 3745–21–09(MM).

VI. Formica Corporation

The Formica Corporation facility in Evendale, Ohio, is located within the Cincinnati maintenance area under the 2015 ozone standard. The facility previously operated under a source-specific VOC RACT requirement in OAC 3745–21–09(PP) for its resin paper coaters/treaters (K003, K013, and K016). When the initial source-specific RACT for Formica was established, these units were not subject to the OAC rule 3745–21–09(F), which is based on the EPA's 2007 ''Control Techniques Guidelines for Paper, Film, and Foil Coatings,'' because the coatings were applied by dipping—an application method not then included in Ohio's definition of paper coating.

Since that time, Ohio has revised its definition to include dipping, making these units subject to the presumptive VOC RACT limits in OAC 3745–21–09(F). Although Cincinnati is in a maintenance area and not subject to RACT, OAC 3745–21–09(F) still applies, as its applicability includes Butler, Clermont, Hamilton, and Warren counties. As such, on April 23, 2024, Ohio submitted to the EPA a SIP revision seeking to remove the source-specific VOC RACT requirement for this facility and replace it with application of the presumptive rule as SIP strengthening.

The existing SIP approved source-specific VOC limit in OAC 3745–21–09(PP) is 0.9 lb VOC/gal of coating (excluding water and exempt solvents),

while the VOC limit in OAC 3745–21–09(F) is 0.08 lb VOC/lb of coating.

Formica conducted a demonstration summarizing all resins used on the treaters and determined that all coatings comply with both the VOC limit in OAC 3745–21–09(F)(2) and the existing source-specific limit in OAC 3745–21–09(PP). This demonstration is available in the docket for this action.

Direct comparison of the limits in OAC 3745–21–09(PP) and OAC 3745–21–09(F)(2) is challenging because results depend on the coatings' water or solids content. However, in its demonstration, Formica also evaluated several coating formulations and found that those meeting the limit of 0.08 lb VOC/lb coating are equivalent to or more stringent than the existing source-specific limit of 0.9 lb VOC/gal (minus water).

Based on Formica's analysis, Ohio determined that this revision does not constitute backsliding because both limits achieve equivalent VOC reductions and actual emissions will not increase. The EPA concurs with Ohio's evaluation and is proposing to approve the removal of the site-specific VOC RACT rule for Formica in OAC 3745–21–09(PP), as these units are now regulated under the equivalent OAC 3745–21–09(F). The EPA has determined that this SIP revision will not interfere with attainment or maintenance of the NAAQS in accordance with section 110(l) of the CAA.

VII. Owens Corning

Owens Corning Roofing and Asphalt, LLC is a major non-CTG VOC source and operates a roofing and asphalt plant in the Cleveland nonattainment area under the 2015 ozone standard. Ohio submitted this VOC RACT determination to the EPA on January 22, 2025. Owens Corning's RACT study, which is available in the docket for this action, supports production limits, a vapor pressure limit for asphalt storage, and the continued use of an RTO and incinerators as satisfying RACT.

The plant manufactures asphalt shingles, with VOC emissions primarily generated from asphalt fumes during the roofing line coating processes. The uncontrolled VOC sources are the Laminate (3-wide) Roofing Line, Strip (4-wide) Roofing Line, and Asphalt Plant.

Owens Corning evaluated several add-on VOC control technologies for asphalt fumes, including thermal and catalytic incinerators, carbon adsorption, condensers, and scrubbers. Of these, only thermal incineration was found to be technically feasible.

Catalytic incinerators are not suitable because condensable portions of asphalt fumes foul and poison the catalyst, leading to extremely high replacement costs due to the presence of sulfur compounds. Carbon adsorption, while effective in removing low VOC concentrations, is infeasible because asphalt fumes would foul the carbon beds, reducing capacity, shortening bed life, and posing a fire hazard. Condensers are also technically infeasible because the high particulate content of asphalt fume exhaust would foul or plug the condenser tubes. Moreover, refrigerated condensers are only effective for exhaust streams with VOC concentrations above 5,000 ppm, while asphalt fume exhaust concentrations at this source are approximately 10 ppm.

Scrubbers are ineffective because many organic compounds in asphalt vapors are not water-soluble and would pass through untreated. Additionally, scrubber systems generate hazardous wastewater requiring off-site treatment. For these reasons, scrubbers are not used in practice to control asphalt fumes.

Based on this evaluation, thermal incineration was the only identified technically feasible add-on control technology for asphalt fume emissions. This conclusion is consistent with the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing (40 CFR 63, subpart AAAAAAA), which identifies thermal oxidation as the applicable control device for particulate matter and polycyclic aromatic hydrocarbons (PAHs), which are also VOCs.

Existing VOC-controlled units—such as asphalt converters (Units P003, P004, P011, P012, P006/P013), storage tanks (Units T031, T032, T033), and loading racks (Units J001, J002, J003, J005)—are already controlled by incinerators or an RTO control device. The asphalt loading racks and storage tanks are already regulated by an RTO with a 95% control efficiency, required by Best Achievable Technology (BAT) [3] and NSPS for certain sources routed to the RTO. The asphalt converters are regulated by an incinerator with a 95% control efficiency, which are required by BAT and by the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asphalt Processing and Asphalt Roofing Manufacturing, 40 CFR 63, subpart 7A.

From a preliminary design analysis based on plant layout and process considerations of the Laminate (3-wide) Roofing Line and Strip (4-wide) Roofing Line and Asphalt Storage Tank, a minimum of four separate RTOs would be required to control all roofing lines. Installation of four RTOs is economically infeasible, with cost-effectiveness estimates ranging from $36,632 to $750,881 per ton of VOC removed.

Based on the analysis above, Ohio determined the following RACT Requirements for Owens Corning:

- Laminate (3-wide) Roofing Line (Units P906, P917, P911, P912, P913, P104):
  - Asphalt throughput limit: 96,911.2 tons
  - Shingle production limit: 492,080.4 tons
  - Limits based on a rolling 12-month total
  - Limits support existing synthetic minor and/or BACT permit limits
- Strip (4-wide) Roofing Line (Units P907, P908, P915, P910):
  - Asphalt throughput limit: 165,325.1 tons
  - Shingle production limit: 797,115.0 tons
  - Limits based on a rolling 12-month total
  - Limits support existing synthetic minor and/or BACT permit limits
- Asphalt Storage Tank (Unit T034):
  - Store only asphalt with a maximum true vapor pressure of less than 0.75 psia (OAC 3745–21–21(D)(2)(b) threshold for RACT applicability)
- Asphalt Loading Racks and Storage Tanks (Units J001, J002, J003, J005, T031, T032, T033):
  - Continue use of the existing RTO with 95% VOC destruction efficiency
  - Control required under BAT, RACT, and NSPS for applicable sources routed to the RTO
- Converters (Units P003, P004, P011, P012, P006/P013):
  - Continue use of the existing incinerators with 95% VOC destruction efficiency
  - Control required under BAT and 40 CFR 63, subpart 7A

The EPA evaluated the study provided by Ohio (available in the docket) and concurs with Ohio's RACT determination. The alternative control technologies assessed are not technically feasible, and the existing controls and emission limits are sufficient to meet RACT requirements.

Therefore, the EPA is proposing to incorporate by reference the above RACT requirements from the following sections of permit number P0137247 (effective date: 01/06/2025)—B(11),

[3] BAT is defined in OAC 3745–31–01(B)(6).

B(12), B(13), B(14), C(1)(b)(1)(b), C(1)(c), C(1)(d), C(1)(e)(2), C(2)(b)(1)(b), C(2)(c), C(2)(d)(1), C(2)(e)(2), C(3)(b)(1)(b), C(3)(c), C(3)(d)(1), C(3)(e)(2), C(4)(b)(1)(b), C(4)(c), C(4)(d), C(4)(e)(2), C(5)(b)(1)(b), C(5)(c), C(5)(d)(3), C(5)(e)(2), C(6)(b)(1)(c), C(6)(d)(1), C(6)(e)(2), C(6)(f)(3),C(7)(b)(1)(b), C(7)(d)(1), C(7)(e)(2), C(7)(f)(2), C(8)(b)(1)(b), C(8)(c), C(8)(d)(1), C(8)(e)(2), C(9)(b)(1)(c), C(9)(c), C(9)(d)(1), C(9)(e)(2), C(10)(b)(1)(b), C(10)(d)(1), C(10)(e)(2), and C(10)(f)(2). See permit number P0137247 available in the docket for this action.

VIII. General Electric Aviation, Evendale Plant

The General Electric Company, through its GE Aerospace business unit (GEA), operates a major industrial facility in Evendale, Ohio (Hamilton County). This facility is located in the Cincinnati 2015 ozone maintenance area so is not subject to RACT. Ohio submitted this SIP revision to the EPA on February 13, 2025.

The Evendale facility serves as GEA's headquarters and primary research and development (R&D) center, where it assembles and tests aircraft turbines (including military), aero-derivative turbines, and gas turbines. R&D operations include combustor technology test cells and various turbine and component tests for both commercial and military applications.

GEA has six robotic spray booths (K037–K042) and the EPA is proposing to approve a SIP revision from the State mandating that these six Robotic Coating Units (K037 through K042) comply with the VOC content limits in OAC rule 3745–21–19, which is based on the VOC CTG for Aerospace Manufacturing and Rework Facilities, as a SIP strengthening measure. Specifically, the EPA is proposing to approve a SIP revision requiring that these units comply with paragraphs (B), (D)(1), (D)(3), (D)(4), (D)(5), (E), (H), (J), and (K) of OAC rule 3745–21–19. Also, the EPA is proposing to approve a SIP strengthening revision that consists of good combustion practices for heating units (boilers) and operating under engineering test plans that minimize fuel use for turbine and component testing and ancillary operations.

The EPA is proposing to incorporate by reference the following sections of permit number P0136500 (effective date: 01/30/2025)—B(2), C(1)(b)(1)(c), C(1)(b)(2)(a), C(1)(c)(1), C(1)(d)(1), C(1)(e)(2); the EPA is also proposing to incorporate by reference the following sections of permit number P0136501 (effective date: 01/30/2025)—B(2), C(1)(b)(1)(f), C(1)(c)(2), C(1)(d)(2), C(1)(e)(3), C(2)(b)(1)(f), C(2)(c)(2), C(2)(d)(2), and C(2)(e)(3).

IX. Akron Paint and Varnish

Akron Paint and Varnish (APV) is in the Cleveland, OH nonattainment area for the 2015 ozone standard and is a major non-CTG VOC source subject to RACT. Ohio submitted this VOC RACT determination to the EPA on January 15, 2025. APV manufactures custom-formulated paints and coatings, with most VOC emissions generated from mixing operations.

To control these VOC emissions, APV uses mixer covers that achieve over 99% VOC control efficiency. The mixers remain covered at all times except when loading materials. These covers significantly reduce solvent evaporation and fugitive VOC emissions.

APV evaluated several alternative VOC control technologies, including carbon adsorbers, catalytic incinerators, condensers, scrubbers, and thermal oxidizers. Carbon adsorbers are technically infeasible because they operate effectively only at VOC concentrations between 500 and 2,000 ppm, while APV's VOC concentrations are well below this range. Even under ideal conditions, carbon adsorbers typically achieve between 95 and 99% VOC control efficiency, which is lower than the over 99% control already achieved by the mixer covers in use.

Catalytic incinerators are also technically infeasible due to their sensitivity to variable inlet conditions and their tendency for catalyst fouling and deactivation by contaminants such as heavy metals, sulfur, phosphorus, and halogens. Condensers are not technically feasible because they are best suited for single organic compounds rather than the diverse VOC mixtures at APV. They also generate NO_X emissions and would require additional NO_X controls.

Scrubbers are not technically feasible due to their highly variable collection efficiency range (70–99%), generation of liquid waste, high maintenance requirements, and potential for plugging caused by particulate buildup. Thermal oxidizers are technically feasible and could achieve up to 98% VOC destruction efficiency, but are not economically reasonable, with an estimated cost-effectiveness of $123,385 per ton of VOC removed.

APV operates multiple production buildings equipped with several portable mixers that are relocated as needed to meet changing production demands. Installing a stationary control device, such as a thermal oxidizer, would eliminate the operational flexibility essential for APV's custom-batch manufacturing process, which involves varying product formulations and production volumes.

APV operates with good housekeeping practices, including keeping mixing and blending tanks covered except during necessary operations, cleaning them while enclosed to minimize VOC emissions, and maintaining a preventative maintenance program with regular equipment inspections. These practices also include promptly cleaning spills, storing waste in closed containers, and minimizing manual solvent transfers through hard piping.

Based on these considerations, Ohio has determined that APV's existing mixer covers are RACT. Because of the large number and mobility of mixers, it is not practical to enforce production limits on individual units. Therefore, Ohio has determined that VOC emissions controlled through facility-wide limits established in APV's Final Permit-to-Install and Operate (P0136483, effective December 11, 2024), which sets a total VOC emission limit of 99.9 tons per year, is an appropriate additional RACT limit.

The EPA concurs with Ohio's RACT determination and is proposing that APV's existing mixer covers, facility-wide 99.9 tpy limit of VOC, and good housekeeping practices satisfy RACT. These RACT requirements are contained in the following sections of Permit Number P0136483 (effective date: 12/11/2024), which the EPA is proposing to incorporate by reference into the Ohio SIP: B(8), C(3)(b)(1)(b), C(3)(c), C(3)(d)(4), C(3)(e)(4), C(3)(f)(2), C(4)(b)(1)(c), C(4)(c), C(4)(d)(1), C(4)(e)(6), C(4)(f)(2), C(5)(b)(1)(c), C(5)(c), C(5)(d)(1), C(5)(e)(6), and C(5)(f)(2).

X. Tyson Foods

Tyson Foods, Inc. is located in the Cincinnati, OH 2015 ozone maintenance area so is not currently subject to RACT. Ohio submitted this SIP revision to the EPA on June 24, 2025. Tyson operates a food processing facility that produces various cooked meat products. VOC emissions are generated from several processes, including boilers, heaters, emergency engines, and cooking lines-with the cooking lines being the primary source of VOC emissions.

In order to reduce VOC emissions from the cooking lines at this facility, Tyson's study recommends installing a new VOC emissions control system that includes multiple devices operating in series: First, each process line will be equipped with a mist eliminator; the exhaust from these units will be combined and routed through a

secondary mist eliminator to further remove grease; finally, the combined exhaust will be controlled by an RTO. Ohio has submitted the requirement for this control system to be incorporated into the Ohio SIP.

The EPA agrees with Ohio's determination that the control system recommendation above is appropriate and is proposing to approve a SIP strengthening revision that consists of the installation of this combined mist eliminator and RTO system to control VOC emissions. The combined mist eliminator and RTO system is expected to achieve an overall VOC control efficiency of 98%. The EPA is proposing to incorporate by reference the following provisions of permit number P0137384 (effective date: 6/11/2025): B(3), C(1)(b)(1)(d), C(1)(c)(3), C(1)(d)(4), C(1)(e)(3), C(1)(f)(3), C(2)(b)(1)(d), C(2)(b)(1)(d), C(2)(c)(3), C(2)(d)(4), C(2)(e)(3), C(2)(f)(3), C(3)(b)(1)(d), C(3)(c)(2), C(3)(d)(5), C(3)(e)(3), C(3)(f)(3), C(4)(b)(1)(d), C(4)(c)(3), C(4)(d)(5), C(4)(e)(3), C(4)(f)(3), C(5)(b)(1)(d), C(5)(c)(3), C(5)(d)(5), C(5)(e)(3), C(5)(f)(3), C(6)(b)(1)(d), C(6)(c)(3), C(6)(d)(4), C(6)(e)(3), C(6)(f)(3), C(7)(b)(1)(d), C(7)(c)(3), C(7)(d)(4), C(7)(e)(3), and C(7)(f)(3).

XI. U.S. Steel Tubular Lorain

U.S. Steel Seamless Tubular Operations, LLC—Lorain is a fully integrated tubular products manufacturing facility in Lorain County, located within the Cleveland 2015 ozone nonattainment area. The facility produces high-quality seamless pipe for the oil and gas and construction industries. It is a major source of NO_X emissions and is therefore subject to RACT requirements under OAC 3745–110–03(J). Ohio submitted this NO_X RACT determination to the EPA on March 28, 2024.

The facility operates under source-specific emission limits for NO_X emissions from its tempering, rotary, and reheat furnaces as specified in OAC 3745–110–03(P), which is effective at the State level and the EPA is proposing to approve into the SIP. The applicable NO_X emission limits are as follows: P003—0.068 lb/MMbtu, P035—0.12 lb/MMbtu, P037: 0.15 lb/MMbtu, P039—0.08 lb/MMbtu, P040—0.15 lb/MMbtu. U.S. Steel conducted a RACT analysis for emission units P003, P035, P037, P039, and P040. The No. 3 Seamless Mill rotary furnace (P035), No. 4 Seamless Mill rotary furnace (P039), and No. 4 Seamless Mill reheat furnace (P040) are recuperative furnaces. U.S. Steel evaluated selective catalytic reduction (SCR), selective non-catalytic reduction (SNCR), and low-NO_X burners (LNBs) for these units. U.S. Steel submitted a detailed cost calculation contained in a Confidential Business Information document, which the EPA relied on for its RACT analysis.

The existing control technology for P035, P039, and P040 is LNBs. U.S. Steel assessed the economic feasibility of replacing the existing burners with newer LNBs capable of achieving 0.09 lb/MMBtu or less. The total cost-effectiveness ranged from $14,387 to $18,934 per ton of NO_X removed, which is not economically feasible.

U.S. Steel also evaluated SCR installation on each recuperative furnace. The cost-effectiveness ranged from $20,285 to $38,871 per ton of NO_X removed, which is not economically feasible.

SCR is also technically infeasible for these furnaces because their batch operation causes significant exhaust temperature fluctuations due to frequent door openings and closings. These variations prevent consistent SCR performance.

U.S. Steel also determined SNCR to be technically infeasible. Effective SNCR operation requires stable flue gas temperatures between 1600 °F and 2100 °F, while the recuperative furnaces operate at 600–1100 °F. Increasing temperatures to the required range would require significant natural gas use, resulting in high fuel costs and additional NO_X emissions.

Because no other technically or economically feasible control options exist, Ohio determined that continued operation of the existing LNBs in compliance with OAC 3745–110–03(P) meets NO_X RACT for the recuperative furnaces.

U.S. Steel also evaluated NO_X controls for the No. 3 Seamless Mill Q&T tempering furnace (P003) and the No. 3 Seamless Mill No. 2 reheat furnace (P037), which are natural gas-fired, non-recuperative furnaces subject to NO_X emission limits under OAC 3745–110–03(P). U.S. Steel examined SCR, SNCR, and LNBs for these units. The EPA is proposing to determine that OAC 3745–110–03(P)) meets RACT requirements for U.S. Steel for the 2015 ozone NAAQS.

SCR and SNCR are both technically infeasible for these furnaces because exhaust temperatures are not within the effective operating ranges. The flue gas temperature for P003 (1300 °F) is below the required SNCR range of 1600–2100 °F and would require reheating, which would increase NO_X formation. Although P037 exhaust temperatures are near the lower end of the SNCR range (~1600 °F), achieving optimal NO_X removal would still require additional reheating. Furthermore, the low uncontrolled NO_X concentrations in these exhaust streams (approximately 19 ppm for P003 and 45 ppm for P037) would result in low overall removal efficiency, making SNCR technically infeasible.

LNBs are the existing control technology for both P003 and P037. U.S. Steel evaluated replacing the burners in P037 with newer LNBs capable of achieving 0.09 lb/MMBtu. P003 was not evaluated because it already meets this level. The cost-effectiveness for replacing the burners in P037 was $22,975 per ton of NO_X removed, which is not economically feasible.

Given the absence of feasible alternatives, Ohio determined that continued operation of the existing LNBs meets NO_X RACT for the non-recuperative furnaces. Ohio also determined that maintaining compliance with the limits in OAC 3745–110–03(P) for these units meets RACT for this source.

Therefore, the existing LNBs remain the only technically and economically feasible control option for both the recuperative and non-recuperative furnaces. Ohio determined that U.S. Steel's Lorain facility complies with the limits in OAC 3745–110–03(P), and the EPA concurs that this constitutes RACT under the 2015 ozone standard. The U.S. Steel RACT study is available in the docket for this action.

XII. Charter Steel

Charter Steel, located in Cuyahoga Heights, is located within the Cleveland 2015 ozone nonattainment area. The facility is a major source of NO_X emissions and is therefore subject to RACT. Ohio submitted this NO_X RACT determination to the EPA on December 5, 2023. Charter Steel's bar mill reheat furnace currently has a source-specific NO_X limit of 0.11 lb/MMBtu established in OAC 3745–110–03(Q). This rule is not currently in the SIP and the EPA is proposing to determine that it meets RACT requirements for Charter Steel.

In accordance with OAC 3745–110–03(J), Charter Steel conducted a NO_X RACT study for its bar mill reheat furnace (P029). The furnace uses natural gas burners to heat steel billets so they can be formed into steel rods or bars. Existing NO_X combustion controls include LNBs that utilize staged combustion, exhaust gas recirculation, and low excess air to reduce peak flame temperatures and limit NO_X formation.

As part of the study, Charter Steel evaluated the technical feasibility of various add-on NO_X control technologies including SCR, SNCR, and NSCR. The reaction temperature

required for SNCR is typically between 1,600 °F and 2,000 °F, while the furnace exhaust temperature is approximately 1,100 °F. Reheating the exhaust gases to the required temperature would result in additional NO_X generation, negating the benefit of control and making SNCR technically infeasible. NSCR, which is used in rich-burn engines for the reduction of CO, VOCs, and NO_X, is not applicable to low-excess-air natural gas burners and is therefore also not technically feasible. SCR is effective at temperatures between 650 °F and 800 °F, but the furnace exhaust gases are approximately 1,100 °F. Installing SCR before the heat recuperator would require cooling the gases to 800 °F and then reheating them, while installing it after the recuperator would require reheating the gases to 650 °F. Both options would increase natural gas combustion and NO_X emissions, making SCR technically infeasible as well.

Because these alternative control technologies are highly temperature-dependent, none are technically feasible for the bar mill reheat furnace. The exhaust gas temperature of 1,100 °F is too low for SNCR and NSCR and too high for SCR. Consequently, Ohio determined that the existing low-NO_X burners represent the most effective and practical method for controlling NO_X emissions at this facility.

Based on the results of the NO_X RACT study, the EPA concurs with Ohio's RACT determination and is proposing that operation of low-NO_X burners, in compliance with OAC 3745–110–03(Q), constitutes RACT for the bar mill reheat furnace at Charter Steel. These existing controls represent the most effective means of reducing NO_X emissions at this source. The Charter Steel RACT study is available in the docket for this action.

XIII. Carmeuse Lime, Inc.—Grand River Operations

Carmeuse Lime, Inc. operates a lime manufacturing facility in Grand River, Ohio, within the Cleveland 2015 ozone nonattainment area. The facility is a major source of NO_X and is subject to RACT. Ohio submitted this NO_X RACT determination to the EPA on July 28, 2025. Its primary NO_X emissions come from two rotary lime kilns (P001 and P002), currently limited under OAC 3745–110–03(S) to 6.0 lb NO_X per ton of lime produced, which is effective at the State level. Carmeuse conducted a NO_X RACT study in accordance with OAC 3745–110–03(J), included in the docket for this action.

Carmeuse evaluated several control technologies, including SCR, SNCR, mid-kiln firing, mid-kiln air injection, and low-NO_X burners. SCR is infeasible due to high particulate and calcium in the exhaust, risk of catalyst poisoning, and flue gas temperatures (400–450 °F) below the optimal 700 °F, which would require costly reheating. SNCR is infeasible because the variable kiln temperature prevents maintaining the precise conditions needed for effective NO_X reduction. Mid-kiln firing is unsuitable because the kilns operate at ~2,500 °F, far above the 1,100–1,650 °F required, and staged fuel feeding could increase CO emissions. Mid-kiln air injection could increase sulfur content in the product, and low-NO_X burners would reduce calcining efficiency, increase fuel use, and provide minimal additional NO_X reduction beyond current operations. Carmeuse's RACT study determined that the technically and economically feasible control method is proper kiln operation and good combustion practices, including minimizing excess air, controlling fuel injection, and maintaining optimal kiln temperatures. The facility monitors fuel usage, combustion air, burner zone temperatures, and oxygen to ensure efficient operation.

Based on stack testing, Carmeuse calculated a revised NO_X limit of 4.6 lb per ton of lime for P001 and P002, representing the highest value from five stack tests plus a 20% contingency factor. This limit is more stringent than the existing 6.0 lb/ton limit in OAC 3745–110–03(S). Ohio determined that RACT is achieved through compliance with the 54.5 tons/hr maximum process weight rate and the 4.6 lb/ton NO_X limit. The EPA concurs with Ohio's RACT determination and is proposing that the 4.6 lb/ton NO_X limit, continued operation with good combustion practices, and the 54.5 tons/hr process weight rate constitute NO_X RACT for this source.

The EPA is also proposing to incorporate by reference the following RACT provisions of permit number P0137844 (effective date: 07/10/2025): B(3)–B(7), C(1)(b)(1)(b), C(1)(c)(1), C(1)(d)(1), C(1)(e)(1), C(1)(f)(1)(a), C(2)(b)(1)(b), C(2)(c)(1), C(2)(d)(1), C(2)(e)(1), and C(2)(f)(1)(a).

XIV. Ross Incineration

Ross Incineration Services, Inc. (RIS) operates a hazardous waste incinerator in Grafton, Ohio, located within the Cleveland Moderate nonattainment area for the 2015 ozone NAAQS. The facility is subject to source-specific NO_X limits under OAC 3745–110–03(T), which is effective at the State level. As a major NO_X source, RIS is also subject to RACT under OAC 3745–110–03(J). Ohio submitted this NO_X RACT determination to the EPA on August 25, 2025.

The incineration system includes a co-current rotary kiln (unit N001) and a countercurrent main combustion chamber. Both units are fueled by solid, sludge, or liquid waste, which serves as the heat source to maintain combustion temperatures. Air emissions from these chambers are treated by a quench, cyclone, radial flow wet scrubber, gas/liquid contactor, and two wet electrostatic precipitators (WESPs) before being vented through a stack.

RIS evaluated selective non-catalytic reduction (SNCR) and selective catalytic reduction (SCR) for post-combustion NO_X control. The temperatures in the main combustion exceed the optimal range for SNCR. To achieve appropriate temperatures, the exhaust gas would require cooling via an added quench system with reagent injection and sufficient residence time. This would likely necessitate a major retrofit, such as adding a third combustion chamber. Therefore, SNCR is not technically feasible under the current configuration but is technically feasible with the retrofit previously described.

Downstream of the WESPs, flue gas temperatures are well below the temperatures required for SCR. In addition, trace heavy metals in the flue gas could poison the catalyst, leading to frequent and costly replacements. Given these factors, SCR is only technically feasible with significant new equipment.

Although both SNCR and SCR are theoretically technically feasible, neither is economically reasonable. The estimated SCR and SNCR costs range from approximately $10,000 to 19,000 per ton of NO_X removed. Ross Incineration submitted a detailed cost calculation contained in a Confidential Business Information document, which the EPA relied on for its RACT analysis. In addition, due to the technical complexity of retrofitting a SNCR system on a highly regulated incinerator, and limited space with which to cool down the exhaust stream to a suitable temperature and residence times, SNCR costs are likely understated.

The RIS RACT study concluded that no additional control technology is both technically feasible and economically reasonable under OAC 3745–110–03(J). Instead, Ohio identified good combustion practices and lower NO_X emission limits as RACT for this facility. The EPA concurs with this determination, defining RACT for RIS as operating the unit according to manufacturer specifications and good combustion practices, and a NO_X

emission limit of 105 lb/hr (30-day rolling average). The EPA is also proposing to approve (as a SIP strengthening measure) a SIP revision that includes a RACT reevaluation requirement: if NO_X emissions from unit N001 exceed 110% of the baseline established in the RACT study (185.9 tons per year), RIS must complete a new RACT evaluation within one year.

The EPA is proposing to agree with Ohio EPA's RACT determinations at this facility and incorporate by reference the following RACT provisions of permit number P0137637 (effective date: 07/31/2025): C(1)(b)(1)(k), C(1)(b)(1)(L), (C)(1)(c)(19), (C)(1)(d)(54), (C)(1)(e)(20), (C)(1)(f)(1)(f).

XV. What action is the EPA taking?

The EPA is proposing to approve the following as meeting RACT in the Cleveland moderate nonattainment area under the 2015 ozone standard:

- *PPG Industries Ohio, Inc.:* Existing source-specific RACT in OAC 3745–21–09(MM).
- *Owens Corning:* Production limits, a vapor pressure limit for asphalt storage, and continued use of RTOs and incinerators, as detailed in the permit provisions described above.
- *Akron Paint and Varnish:* Facility-wide VOC limit of 99.9 tons per year and work practice standards, including the use of existing mixer covers, as reflected in the permit provisions described above.
- *U.S. Steel Tubular Lorain:* Operation of existing LNBs with compliance to emission limits in OAC 3745–110–03(P).
  - P003: 0.068 lb/MMbtu
  - P035: 0.12 lb/MMbtu
  - P037: 0.15 lb/MMbtu
  - P039:0.08 lb/MMbtu
  - P040:0.15 lb/MMbtu
- *Charter Steel:* Operation of LNBs with compliance to emission limits in OAC 3745–110–03(Q).
- *Carmeuse Lime:* 4.6 lb/ton NO_X limit for kilns, continued operation with good combustion practices, proper kiln operation, and a 54.5 tons/hr process weight rate limit, as detailed in the permit provisions above.
- *Ross Incineration:* Good operating and combustion practices to control NO_X emissions. The NO_X emission limit for the hazardous waste incinerator (unit N001) is 105 pounds per hour, based on a 30-day rolling average. If NO_X emissions from unit N001 exceed 110% of the baseline established in the RACT study, a RACT reevaluation must be completed within one year. These RACT requirements are detailed in the permit provisions above.

The EPA is also proposing to approve the following actions as SIP strengthening for the Cincinnati maintenance area under the 2015 ozone standard:

- *GE Evendale:* Good operating practices for combustion units and operation under engineering test plans that minimize fuel use for turbine testing and ancillary operations. These measures are detailed permit provisions described above. Presumptive limits under OAC 3745–21–19 for robotic coaters.
- *Tyson Foods:* Installation of a combined mist eliminator and thermal oxidizer system achieving 98% VOC control efficiency from all cook lines, as reflected in the permit provisions above.

Finally, the EPA is proposing to approve the removal of the site-specific VOC RACT rule for Formica in OAC 3745–21–09(PP), as these units are now regulated under the equivalent CTG-based rule in OAC 3745–21–09(F).

XVI. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Ohio rule(s) 3745–21–09(MM), 3745–110–03(Q), and OAC 3745–110–03(P), discussed in section I of this preamble. The EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

XVII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rulemaking does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: February 18, 2026.

Cheryl Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 2026–03931 Filed 2–26–26; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0583; EPA–R05–OAR–2019–0311; EPA–R05–OAR–2024–0261; FRL–13083–01–R5]

Air Plan Approvals; Illinois; Regional Haze Plan for the Second Implementation Period; Interstate Transport of Air Pollution for the 2012 $PM_{2.5}$ and 2015 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the regional haze State Implementation Plan (SIP) revision submitted by the Illinois Environmental Protection Agency (Illinois EPA) on June 3, 2024, as satisfying applicable requirements under the Clean Air Act (CAA) and the EPA's Regional Haze Rule for the program's second implementation period. The EPA proposes to find that Illinois' regional haze SIP submission fulfills the requirement that States must periodically revise their long-term strategies for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility in mandatory Class I Federal areas. The EPA is also proposing to approve portions of Illinois' September 29, 2017, and May 16, 2019, infrastructure SIP submissions for the 2012 fine particulate matter ($PM_{2.5}$) and 2015 ozone National Ambient Air Quality Standards (NAAQS), respectively. The EPA is proposing that Illinois' infrastructure submissions fulfill CAA requirements for a State's SIP to contain adequate provisions prohibiting emissions that will interfere with required visibility protection measures in any other State's SIP.

DATES: Written comments must be received on or before March 30, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2024–0261 (Regional Haze) or EPA–R05–OAR–2019–0311 (infrastructure SIPs) at *https://www.regulations.gov* or via email to *langman.michael@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at *https://www.regulations.gov* any information you consider to be confidential business information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kelsey Foss, Air and Radiation Division (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6008, *foss.kelsey@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

This supplementary information section is arranged as follows:

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B. Reasonable Progress Goals
C. Monitoring Strategy and Other State Implementation Plan Requirements
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G. Monitoring Strategy and Other Implementation Plan Requirements
H. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals
I. Requirements for State and Federal Land Manager Coordination
V. Interstate Transport for the 2012 $PM_{2.5}$ and 2015 Ozone NAAQS Infrastructure SIPs—Visibility Component
A. Background on Infrastructure SIPs
B. The EPA's Evaluation of Illinois' Infrastructure SIP Submissions
VI. Proposed Actions
VII. Statutory and Executive Order Reviews

I. What Actions is the EPA Proposing?

On June 3, 2024, Illinois EPA submitted a revision to its SIP to address regional haze for the second implementation period. Illinois EPA submitted this SIP revision to satisfy the requirements of the CAA's regional haze program pursuant to CAA section 169A and 40 CFR 51.308. The EPA proposes to find that the Illinois regional haze SIP revision for the second implementation period meets the applicable statutory and regulatory requirements and thus proposes to approve the submission into Illinois' SIP.

On September 29, 2017, and May 16, 2019, Illinois EPA submitted SIP revisions addressing infrastructure requirements for the 2012 $PM_{2.5}$ NAAQS and the 2015 ozone NAAQS, respectively. The EPA proposes to approve both submissions as meeting CAA section 110(a)(2)(D)(i)(II), which requires a State's SIP to contain adequate provisions prohibiting emissions that will interfere with required visibility protection measures in any other State's SIP.

II. Background and Requirements for Regional Haze Plans

A detailed history and background of the regional haze program is provided in multiple prior EPA proposal actions.[1] For additional background on the 2017 Regional Haze Rule (RHR) revisions, please refer to Section III. Overview of Visibility Protection Statutory Authority, Regulation, and Implementation of ''Protection of Visibility: Amendments to Requirements for State Plans'' of the

[1] *See* 90 FR 13516 (March 24, 2025).

2017 RHR.[2] The following is an abbreviated history and background of the regional haze program and 2017 RHR as it applies to the current action.

A. Regional Haze Background

In the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation's mandatory Class I Federal areas, which include certain national parks and wilderness areas.[3] CAA 169A. The CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.'' CAA 169A(a)(1). Regional haze is visibility impairment that is produced by a multitude of anthropogenic sources and activities which are located across a broad geographic area and that emit pollutants that impair visibility. Visibility impairing pollutants include fine and coarse particulate matter (PM) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* sulfur dioxide (SO_2), nitrogen oxides (NO_X), and, in some cases, volatile organic compounds (VOC) and ammonia (NH_3)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$, which impairs visibility by scattering and absorbing light. Visibility impairment reduces the perception of clarity and color, as well as visible distance.[4]

To address regional haze visibility impairment, the 1999 RHR established an iterative planning process that requires both States in which Class I areas are located and States ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I area to periodically submit SIP revisions to address such impairment. CAA 169A(b)(2); [5] see also 40 CFR 51.308(b), (f) (establishing submission dates for iterative regional haze SIP revisions); (64 FR 35714 at 35768, July 1, 1999).

On January 10, 2017, the EPA promulgated revisions to the RHR, (82 FR 3078, January 10, 2017), that apply for the second and subsequent implementation periods. The reasonable progress requirements as revised in the 2017 rulemaking (referred to here as the 2017 RHR Revisions) are codified at 40 CFR 51.308(f).

B. Roles of Agencies in Addressing Regional Haze

Because the air pollutants and pollution affecting visibility in Class I areas can be transported over long distances, successful implementation of the regional haze program requires long-term, regional coordination among multiple jurisdictions and agencies that have responsibility for Class I areas and the emissions that impact visibility in those areas. To address regional haze, States need to develop strategies in coordination with one another, considering the effect of emissions from one jurisdiction on the air quality in another. Five regional planning organizations (RPOs), which include representation from State and Tribal governments, the EPA, and Federal Land Managers (FLMs), were developed in the lead-up to the first implementation period to address regional haze. RPOs evaluate technical information to better understand how emissions from State and Tribal land impact Class I areas across the country, pursue the development of regional strategies to reduce emissions of particulate matter and other pollutants leading to regional haze, and help States meet the consultation requirements of the RHR.

The Lake Michigan Air Directors Consortium (LADCO) is an RPO that includes the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. LADCO's work is a collaborative effort of State governments, Tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Midwest. Along with the six LADCO States, participants in LADCO's Regional Haze Technical Workgroup include the EPA, the U.S. National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS), the U.S. Forest Service (USFS), regional Tribal air programs, and local air agencies.

III. Requirements for Regional Haze Plans for the Second Implementation Period

Under the CAA and the EPA's regulations, all 50 States, the District of Columbia, and the U.S. Virgin Islands are required to submit regional haze SIPs satisfying the applicable requirements for the second implementation period of the regional haze program by July 31, 2021. Each State's SIP must contain a long-term strategy for making reasonable progress toward meeting the national goal of remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas. CAA 169A(b)(2)(B). To this end, 40 CFR 51.308(f) lays out the process by which States determine what constitutes their long-term strategies, with the order of the requirements in 40 CFR 51.308(f)(1) through (3) generally mirroring the order of the steps in the reasonable progress analysis [6] and (f)(4) through (6) containing additional, related requirements. Broadly speaking, a State first must identify the Class I areas within the State and determine the Class I areas outside the State in which visibility may be affected by emissions from the State. These are the Class I areas that must be addressed in the State's long-term strategy. *See* 40 CFR 51.308(f), (f)(2). For each Class I area within its borders, a State must then calculate the baseline (five-year average period of 2000–2004), current, and natural visibility conditions (*i.e.,* visibility conditions without anthropogenic visibility impairment) for that area, as well as the visibility improvement made to date and the ''uniform rate of progress'' (URP).

In developing the regulations required by CAA section 169A(b), the EPA established the concept of the URP for each Class I area. The URP is the linear rate of progress needed to attain natural visibility conditions, assuming a starting point of baseline visibility conditions in 2004 and ending with natural conditions in 2064. The URP is determined by drawing a straight line from the measured 2000–2004 baseline conditions (in deciviews) for the 20% most impaired days at each Class I area to the estimated natural conditions (in deciviews) for the 20% most impaired days in 2064. From this calculation, a URP value can be calculated for each

[2] *See* 82 FR 3078 (January 10, 2017, located at *https://www.federalregister.gov/documents/2017/01/10/2017-00268/protection-of-visibility-amendments-to-requirements-for-State-plans#h-16).*

[3] Areas statutorily designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA 162(a). There are 156 mandatory Class I areas. The list of areas to which the requirements of the visibility protection program apply is in 40 CFR part 81, subpart D.

[4] There are several ways to measure the amount of visibility impairment, *i.e.,* haze. One such measurement is the deciview, which is the principal metric used by the RHR. Under many circumstances, a change in one deciview will be perceived by the human eye to be the same on both clear and hazy days. The deciview is unitless. It is proportional to the logarithm of the atmospheric extinction of light, which is the perceived dimming of light due to its being scattered and absorbed as it passes through the atmosphere. Atmospheric light extinction (b^{ext}) is a metric used for expressing visibility and is measured in inverse megameters (Mm^{-1}). The formula for the deciview is 10 ln (b^{ext})/10 Mm^{-1}). 40 CFR 51.301.

[6] The EPA explained in the 2017 RHR Revisions that we were adopting new regulatory language in 40 CFR 51.308(f) that, unlike the structure in 51.308(d), ''tracked the actual planning sequence.'' (82 FR 3091, January 10, 2017).

year between 2004 and 2064. This linear interpolation is used as a tracking metric to help States assess the amount of progress they are making towards the national visibility goal over time in each Class I area. *See* 40 CFR 51.308(f)(1). The EPA developed the URP to address the diverse concerns of Eastern and Western States and account for the varying levels of visibility impairment in Class I areas around the country while ensuring an equitable approach nationwide. For each Class I area, States must calculate the URP for the end of each implementation period (*e.g.,* in 2028 for the second implementation period).[7] 40 CFR 51.308(f)(1)(vi)(A). States may also adjust the URP to account for impacts from anthropogenic sources outside the United States and/or impacts from certain wildland prescribed fires. 40 CFR 51.308(f)(1)(vi).

Each State having a Class I area and/or emissions that may affect visibility in a Class I area must then develop a long-term strategy that includes the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such areas. A reasonable progress determination is based on applying the four factors in CAA section 169A(g)(1) to sources of visibility impairing pollutants that the State has selected to assess for controls for the second implementation period. Additionally, as further explained below, the RHR at 40 CFR 51.308(f)(2)(iv) separately provides five ''additional factors'' [8] that States must consider in developing their long-term strategies. *See* 40 CFR 51.308(f)(2). A State evaluates potential emission reduction measures for those selected sources and determines which are necessary to make reasonable progress. Those measures are then incorporated into the State's long-term strategy. After a State has developed its long-term strategy, it then establishes RPGs for each Class I area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second implementation period, *i.e.,* in 2028, as well as the impacts of other requirements of the CAA. The RPGs include reasonable progress controls not only for sources in the State in which the Class I area is located, but also for sources in other States that contribute to visibility impairment in that area. The RPGs are then compared to the baseline visibility conditions and the URP to ensure that progress is being made towards the statutory goal of preventing any future and remedying any existing anthropogenic visibility impairment in Class I areas. 40 CFR 51.308(f)(2)–(3). For each Class I area, States must compare the RPG for the 20% most impaired days to the URP for the end of the implementation period. If the RPG is above the URP, then an additional ''robust demonstration'' requirement is triggered for each State that contributes to that Class I area. 40 CFR 51.308(f)(3)(ii). There are additional requirements in the rule, including FLM consultation, that apply to all visibility protection SIPs and SIP revisions. *See e.g.,* 40 CFR 51.308(i).

A. Long-Term Strategy for Regional Haze

While States have discretion to choose any source selection methodology that is reasonable, whatever choices they make should be reasonably explained. To this end, 40 CFR 51.308(f)(2)(i) requires that a State's SIP submission include ''a description of the criteria it used to determine which sources or groups of sources it evaluated.'' The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii).

Once a State has selected the set of sources, the next step is to determine the emissions reduction measures for those sources that are necessary to make reasonable progress for the second implementation period.[9] This is accomplished by considering the four factors—''the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.'' CAA 169A(g)(1). The EPA has explained that the four-factor analysis is an assessment of potential emission reduction measures (*i.e.,* control options) for sources; ''use of the terms 'compliance' and 'subject to such requirements' in section 169A(g)(1) strongly indicates that Congress intended the relevant determination to be the requirements with which sources would have to comply to satisfy the CAA's reasonable progress mandate.'' 82 FR 3078 at 3091, January 10, 2017. Thus, for each source it has selected for four-factor analysis,[10] a State must consider a ''meaningful set'' of technically feasible control options for reducing emissions of visibility impairing pollutants. *Id.* at 3088.

EPA has also explained that, in addition to the four statutory factors, States have flexibility under the CAA and RHR to reasonably consider visibility benefits as an additional factor alongside the four statutory factors.[11] Ultimately, while States have discretion to reasonably weigh the factors and to determine what level of control is needed, 40 CFR 51.308(f)(2)(i) provides that a State ''must include in its implementation plan a description of . . . how the four factors were taken into consideration in selecting the measure for inclusion in its long-term strategy.''

As explained above, 40 CFR 51.308(f)(2)(i) requires States to determine the emission reduction measures for sources that are necessary to make reasonable progress by considering the four factors. Pursuant to 40 CFR 51.308(f)(2), measures that are necessary to make reasonable progress towards the national visibility goal must be included in a State's long-term strategy and in its SIP.[12] If the outcome of a four-factor analysis is that an emissions reduction measure is necessary to make reasonable progress towards remedying existing or preventing future anthropogenic

[7] We note that RPGs are a regulatory construct that we developed to address the statutory mandate in CAA section 169B(e)(1), which required our regulations to include ''criteria for measuring 'reasonable progress' toward the national goal.'' Under 40 CFR 51.308(f)(3)(ii), RPGs measure the progress that is projected to be achieved by the control measures a State has determined are necessary to make reasonable progress. Consistent with the 1999 RHR, the RPGs are unenforceable, though they create a benchmark that allows for analytical comparisons to the URP and mid-implementation-period course corrections if necessary. 82 FR 3091–3092 (January 10, 2017).

[8] The five ''additional factors'' for consideration in 40 CFR 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

[9] The CAA provides that, ''[i]n determining reasonable progress there shall be taken into consideration'' the four statutory factors. CAA 169A(g)(1). However, in addition to four-factor analyses for selected sources, groups of sources, or source categories, a State may also consider additional emission reduction measures for inclusion in its long-term strategy, *e.g.,* from other newly adopted, on-the-books, or on-the-way rules and measures for sources not selected for four-factor analysis for the second implementation period.

[10] ''Each source'' or ''particular source'' is used here as shorthand. While a source-specific analysis is one way of applying the four factors, neither the statute nor the RHR requires States to evaluate individual sources. Rather, States have ''the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state.'' 82 FR 3078 at 3088, January 10, 2017.

[11] See, *e.g.,* Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016) (December 2016), Docket Number EPA–HQ–OAR–2015–0531, U.S. Environmental Protection Agency at 186.

visibility impairment, that measure must be included in the SIP.

The characterization of information on each of the factors is also subject to the documentation requirement in 40 CFR 51.308(f)(2)(iii). The reasonable progress analysis is a technically complex exercise, and also a flexible one that provides States with bounded discretion to design and implement approaches appropriate to their circumstances. Given this flexibility, 40 CFR 51.308(f)(2)(iii) plays an important function in requiring a State to document the technical basis for its decision making so that the public and the EPA can comprehend and evaluate the information and analysis the State relied upon to determine what emission reduction measures must be in place to make reasonable progress. The technical documentation must include the modeling, monitoring, cost, engineering, and emissions information on which the State relied to determine the measures necessary to make reasonable progress. Additionally, the RHR at 40 CFR 51.308(f)(2)(iv) separately provides five ''additional factors'' [13] that States must consider in developing their long-term strategies: (1) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to reduce the impacts of construction activities; (3) source retirement and replacement schedules; (4) basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and (5) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy.

Because the air pollution that causes regional haze crosses State boundaries, 40 CFR 51.308(f)(2)(ii) requires a State to consult with other States that also have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area. If a State, pursuant to consultation, agrees that certain measures (*e.g.,* a certain emission limitation) are necessary to make reasonable progress at a Class I area, it must include those measures in its SIP. 40 CFR 51.308(f)(2)(ii)(A). Additionally, the RHR requires that States that contribute to visibility impairment at the same Class I area consider the emission reduction measures the other contributing States have identified as being necessary to make reasonable progress for their own sources. 40 CFR 51.308(f)(2)(ii)(B). If a State has been asked to consider or adopt certain emission reduction measures, but ultimately determines those measures are not necessary to make reasonable progress, that State must document in its SIP the actions taken to resolve the disagreement. 40 CFR 51.308(f)(2)(ii)(C). Under all circumstances, a State must document in its SIP submission all substantive consultations with other contributing States. 40 CFR 51.308(f)(2)(ii)(C).

B. Reasonable Progress Goals

Reasonable progress goals ''measure the progress that is projected to be achieved by the control measures States have determined are necessary to make reasonable progress based on a four-factor analysis.'' 82 FR 3078 at 3091, January 10, 2017.

For the second implementation period, the RPGs are set for 2028. Reasonable progress goals are not enforceable targets. 40 CFR 51.308(f)(3)(iii). While States are not legally obligated to achieve the visibility conditions described in their RPGs, 40 CFR 51.308(f)(3)(i) requires that ''[t]he long-term strategy and the reasonable progress goals must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period.''

RPGs may also serve as a metric for assessing the amount of progress a State is making towards the national visibility goal. To support this approach, the RHR requires States with Class I areas to compare the 2028 RPG for the most impaired days to the corresponding point on the URP line (representing visibility conditions in 2028 if visibility were to improve at a linear rate from conditions in the baseline period of 2000–2004 to natural visibility conditions in 2064). If the most impaired days RPG in 2028 is above the URP (*i.e.,* if visibility conditions are improving more slowly than the rate described by the URP), each State that contributes to visibility impairment in the Class I area must demonstrate, based on the four-factor analysis required under 40 CFR 51.308(f)(2)(i), that no additional emission reduction measures would be reasonable to include in its long-term strategy. 40 CFR 51.308(f)(3)(ii). To this end, 40 CFR 51.308(f)(3)(ii) requires that each State contributing to visibility impairment in a Class I area that is projected to improve more slowly than the URP provide ''a robust demonstration, including documenting the criteria used to determine which sources or groups [of] sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy.''

C. Monitoring Strategy and Other State Implementation Plan Requirements

Section 51.308(f)(6) requires States to have certain strategies and elements in place for assessing and reporting on visibility. Individual requirements under this section apply either to States with Class I areas within their borders, States with no Class I areas but that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area, or both. Compliance with the monitoring strategy requirement may be met through a State's participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network, which is used to measure visibility impairment caused by air pollution at the 156 Class I areas covered by the visibility program. 40 CFR 51.308(f)(6), (f)(6)(i), (f)(6)(iv). All States' SIPs must provide for procedures by which monitoring data and other information are used to determine the contribution of emissions from within the State to regional haze visibility impairment in affected Class I areas, as well as a statewide inventory documenting such emissions. 40 CFR 51.308(f)(6)(ii), (iii), (v). All States' SIPs must also provide for any other elements, including reporting, recordkeeping, and other measures, that are necessary for States to assess and report on visibility. 40 CFR 51.308(f)(6)(vi).

D. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires a State's regional haze SIP revision to address the requirements of paragraphs 40 CFR 51.308(g)(1) through (5) so that the plan revision due in 2021 will serve also as a progress report addressing the period since submission of the progress report for the first implementation period. The regional haze progress report requirement is designed to inform the public and the EPA about a State's implementation of its existing long-term strategy and whether such implementation is in fact resulting in the expected visibility improvement. *See* 81 FR 26942, 26950 (May 4, 2016), (82 FR 3078 at 3119, January 10, 2017). To this end, every State's SIP revision for the second implementation period is required to assess changes in visibility

[13] The five ''additional factors'' for consideration in 40 CFR 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that States must consider and apply to sources in determining reasonable progress.

conditions and describe the status of implementation of all measures included in the State's long-term strategy, including best available retrofit technology (BART) and reasonable progress emission reduction measures from the first implementation period, and the resulting emissions reductions. 40 CFR 51.308(g)(1) and (2).

E. Requirements for State and Federal Land Manager Coordination

CAA section 169A(d) requires that before a State holds a public hearing on a proposed regional haze SIP revision, it must consult with the appropriate FLM or FLMs; pursuant to that consultation, the State must include a summary of the FLMs' conclusions and recommendations in the notice to the public. Consistent with this statutory requirement, the RHR also requires that States ''provide the [FLM] with an opportunity for consultation, in person and at a point early enough in the State's policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the [FLM] can meaningfully inform the State's decisions on the long-term strategy.'' 40 CFR 51.308(i)(2). For the EPA to evaluate whether FLM consultation meeting the requirements of the RHR has occurred, the SIP submission should include documentation of the timing and content of such consultation. The SIP revision submitted to the EPA must also describe how the State addressed any comments provided by the FLMs. 40 CFR 51.308(i)(3). Finally, a SIP revision must provide procedures for continuing consultation between the State and FLMs regarding the State's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas. 40 CFR 51.308(i)(4).

IV. The EPA's Evaluation of Illinois' Regional Haze Submission for the Second Implementation Period

A. Background on Illinois' First Implementation Period SIP Submission

For the first implementation period covering the years 2007 through 2018, Illinois EPA submitted its regional haze SIP to the EPA on June 24, 2011, and the EPA approved it on May 29, 2012. *See* 77 FR 39943, July 6, 2012. The requirements for regional haze SIPs for the first implementation period are contained in 40 CFR 51.308(d) and (e).

Pursuant to 40 CFR 51.308(g), Illinois was also responsible for submitting a five-year progress report as a SIP revision for the first implementation period. On February 2, 2017, Illinois EPA submitted the progress report. The EPA approved this five-year progress report as a revision to the Illinois SIP at 40 CFR 52.720(e) on April 3, 2018. *See* 83 FR 15744, April 12, 2018.

B. Illinois' Second Implementation Period SIP Submission and the EPA's Evaluation

In accordance with section 169A of the CAA and the RHR at 40 CFR 51.308(f), Illinois EPA submitted a revision to the Illinois SIP on June 3, 2024, to address its regional haze obligations for the second implementation period, which runs through 2028.[14] In developing its 2024 SIP revision, Illinois EPA initiated an FLM consultation process and provided a public comment period for the second implementation period. The public comment period on the 2024 SIP revision ran from January 19, 2024, through March 21, 2024, and a public hearing was held on February 27, 2024. Illinois EPA received and responded to comments from FLMs and the public. Illinois EPA summarized and responded to the FLMs' comments in appendix H to the 2024 SIP submission. Illinois EPA included the public comments and its responses in attachments 3 and 4 to the 2024 SIP submission.

Prior to submitting its 2024 regional haze SIP revision and during the second implementation period, Illinois adopted amendments to its Multi-Pollutant Standards (MPS) Rule on August 22, 2019,[15] and submitted the amended MPS Rule to the EPA as a revision to its regional haze SIP on January 23, 2020. The EPA approved the revision on June 14, 2021, and revised Illinois' SIP at 40 CFR 52.720(c). 86 FR 13260, March 8, 2021, and 86 FR 33527, June 25, 2021. The MPS Rule established fleet-wide SO_2 and NO_X emission limits for electric generating units (EGUs) and fulfilled the BART requirements of the first implementation period. The provisions of the MPS Rule are further described in section IV of Illinois' 2024 SIP submission and in section 2.1 of the EPA's November 12, 2025, Technical Support Document (TSD) for this proposed rulemaking, which is included in the docket.

The following sections describe Illinois' 2024 SIP submission, including Illinois EPA's assessment of progress made since the first implementation period in reducing emissions of visibility impairing pollutants and of the visibility improvement progress at nearby Class I areas. This notice of proposed rulemaking also contains the EPA's evaluation of Illinois' 2024 SIP submission against the requirements of the CAA and the RHR for the second implementation period of the regional haze program.

C. Identification of Class I Areas

Section 169A(b)(2) of the CAA requires each State in which any Class I area is located or ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I area to have a plan for making reasonable progress toward the national visibility goal. The RHR implements this statutory requirement at 40 CFR 51.308(f), which provides that each State's plan ''must address regional haze in each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State,'' and (f)(2), which requires each State's plan to include a long-term strategy that addresses regional haze in such Class I areas.

The EPA concluded in the 1999 RHR that ''all [s]tates contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area,'' 64 FR 35714 at 35721, July 1, 1999, and this determination was not changed in the 2017 RHR. Critically, the statute and regulation both require that the cause-or-contribute assessment consider all emissions of visibility impairing pollutants from a State, as opposed to emissions of a particular pollutant or emissions from a certain set of sources.

Illinois has no Class I areas within its borders that are among the 156 mandatory Class I Federal areas where the EPA deemed visibility to be an important value. *See* 40 CFR part 81, subpart D. Thus, Illinois EPA only evaluated the State's impact on out-of-State mandatory Class I Federal areas covered under the RHR.

Illinois EPA is a member of LADCO and participated in the development of LADCO's strategy for making reasonable progress towards the national visibility goal in the Class I areas. To identify Class I areas where progress toward natural visibility conditions may be impacted by emissions from sources in

[14] Since Illinois did not submit a complete SIP revision by the July 31, 2021, due date in the RHR, the EPA issued a finding of failure to submit on August 29, 2022. *See* 87 FR 52856, August 30, 2022.

[15] *See* Illinois Pollution Control Board, *In the Matter of: Amendments to 35 Ill. Adm. Code 225.233, Multi-Pollutant Standard (MPS),* R18–20, Adopted Rule, Final Order, August 22, 2019. *https://pcb.illinois.gov/documents/dsweb/Get/Document-100916.*

Illinois, Illinois EPA reviewed technical analyses conducted by LADCO. This included the technical analyses from the first implementation period compiled in 2007 by LADCO, known as the Midwest RPO at the time, to determine which Class I areas outside the State were affected by emission sources in Illinois.[16] These analyses included LADCO's back trajectory analysis and Comprehensive Air Quality Model with extensions and its Particulate Matter Source Apportionment Tool (CAMx-PSAT) as well as MANE–VU's contribution assessment,[17] Missouri-Arkansas' Contribution Assessment, VISTAS' Areas of Influence Analysis,[18] and WRAP's back trajectories and modeling.[19] Using LADCO's back trajectory analysis, LADCO initially assumed a State affected visibility impairment in a Class I area if it was projected to contribute two percent or more to the total light extinction. This threshold accounted for about 90–95 percent of the total light extinction at the Class I areas. Based on analyses conducted by other RPOs, LADCO gave deference to the criteria established by each RPO to identify additional Class I areas affected by LADCO States.

For the second regional haze implementation period, Illinois EPA reviewed later analyses by LADCO that also used CAMx-PSAT.[20] In its 2017 analyses, LADCO tagged States and regions as well as individual point sources and inventory source groups to apportion emissions to States and regions. LADCO assessed relative visibility impacts in 2028 by projecting representative emissions inventories and known emission controls from 2016. In 2017, a group of RPOs, States, and the EPA established 2016 as the base year for a national air quality modeling platform for future ozone, $PM_{2.5}$, and regional haze SIP development because that year had typical ozone and wildfire conditions.[21] LADCO relied upon the EPA's inventory estimates for 2016 and 2028 for most emission sectors as described in the EPA's September 19, 2019, ''Availability of Modeling Data and Associated Technical Support Document for the EPA's Updated 2028 Visibility Air Quality Modeling,'' (EPA's Updated 2028 Visibility Air Quality Modeling TSD).[22] For EGU emissions, LADCO used forecasts from the Eastern Regional Technical Advisory Committee (ERTAC) based on continuous emissions monitoring data from 2016 instead of the Integrated Planning Model used in the EPA's 2016 modeling platform. LADCO also incorporated State-reported changes to EGUs received through September 2020 to estimate 2028 EGU emissions.

Based on LADCO's 2007 and 2017 analyses,[23] Illinois EPA used the list of sources from the first implementation period to identify 16 Class I areas affected by emission sources in Illinois in the second implementation period. These Class I areas are: Boundary Waters Canoe Area Wilderness, Brigantine Wilderness Area, Caney Creek Wilderness Area, Great Gulf Wilderness Area, Great Smoky Mountains National Park, Hercules-Glades Wilderness Area, Isle Royale National Park, Lye Brook Wilderness, Acadia National Park, Mammoth Cave National Park, Mingo Wilderness Area, Moosehorn Wilderness Area, Seney Wilderness Area, Sipsey Wilderness Area, Upper Buffalo Wilderness Area, and Voyageurs National Park.[24] Illinois EPA characterized the list as conservative because emissions of visibility-impairing pollutants from sources in Illinois have declined since the first implementation period. 2028 visibility conditions at these Class I areas are projected by both LADCO and the EPA to be below the adjusted and unadjusted URP glidepaths provided in the EPA's Updated 2028 Visibility Air Quality Modeling TSD. These projections are depicted in Table 3.1 of Illinois' SIP submission and Table 8 of the EPA's November 12, 2025, TSD. Illinois EPA notes that the 2028 projections do not account for the 2019 revisions to the MPS, many emission reductions that have already taken place during the second implementation period, or all elements of Illinois' long-term strategy. As such, Illinois EPA anticipates greater improvements in visibility than those modeled in the projections by the EPA and LADCO.

D. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

Section 51.308(f)(1) requires States to determine the following for ''each mandatory Class I Federal area located within the State'': baseline visibility conditions for the most impaired and clearest days, natural visibility conditions for the most impaired and clearest days, progress to date for the most impaired and clearest days, the differences between current visibility conditions and natural visibility conditions, and the URP. This section also provides the option for States to propose adjustments to the URP line for a Class I area to account for visibility impacts from anthropogenic sources outside the United States and/or the impacts from wildland prescribed fires that were conducted for certain, specified objectives. 40 CFR 51.308(f)(1)(vi)(B).

Illinois has no mandatory Class I areas within its borders to which the requirements of the visibility protection program apply in 40 CFR part 81, subpart D. Therefore, 40 CFR 51.308(f)(1) and its requirements do not apply.

E. Long-Term Strategy for Regional Haze

Each State having a Class I area within its borders or emissions that may affect visibility in a Class I area must

[16] The Midwest RPO's ''Draft List of Class I Areas Located Within (or Impacted by) Midwest RPO States,'' June 26, 2007 was included as attachment 1, appendix A of the Illinois' regional haze SIP for the first implementation period submitted to the EPA on June 24, 2011, and is contained in the docket for the rulemaking where the EPA approved the SIP on May 29, 2012: EPA–R05–OAR–2011–0598.

[17] The Mid-Atlantic/Northeast Visibility Union (MANE–VU) is the RPO for the Northeastern and Mid-Atlantic States and Tribal governments, which include Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, St. Regis Mohawk Tribe, and Vermont.

[18] Metro 4/SESARM/VISTAS refers to the Southeastern States Air Resources Managers, Inc. (SESARM) and the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) as the RPO for Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennesse, Virginia, West Virginia, the Eastern Band of Cherokee Indians, and Knox County, Tennessee (representing the 17 Southeastern local air agencies).

[19] The Western Regional Air Partnership (WRAP) is the RPO for Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming.

[20] *See* appendix B of Illinois 2024 SIP submission. Details of the analysis and source-apportioned visibility contributions at Class I areas for regional haze second implementation period are documented in LADCO's ''Modeling and Analysis for Demonstrating Reasonable Progress for the Regional Haze Rule 2018–2028 Planning Period: Technical Support Document,'' June 17, 2021.

[21] *See* ''Base Year Selection Workgroup Final Report,'' produced by the Inventory Collaborative Base Year Selection Workgroup, April 5, 2017, available at *https://drive.google.com/file/d/1o0e75dIliyjDZOmBDOPxIdMUhUTeph4Y/view* and included in the Docket EPA–R05–OAR–2024–0261 associated with this proposed rulemaking.

[22] EPA, Office of Air Quality Planning and Standards, ''Availability of Modeling Data and Associate Technical Support Document for EPA's Updated 2028 Visibility Air Quality Modeling,'' September 19, 2019, available at *https://www.epa.gov/sites/default/files/2019-10/documents/updated_2028_regional_haze_modeling-tsd-2019_0.pdf* and included in the docket for this proposed rulemaking.

[23] *See* appendix B of Illinois 2024 regional haze SIP submission for LADCO's technical support document and supporting materials.

[24] A list of Class I areas impacted by Illinois and an accompanying map are found in section I of Illinois' 2024 SIP submission. Tables 3.1 and 4.1 of Illinois' 2024 SIP submission provide 2028 visibility projections for these areas based on modeling by LADCO and the EPA.

develop a long-term strategy for making reasonable progress towards the national visibility goal. CAA 169A(b)(2)(B). After considering the four statutory factors, all measures that are determined to be necessary to make reasonable progress must be in the long-term strategy. In developing its long-term strategies, a State must also consider the five additional factors in 40 CFR 51.308(f)(2)(iv). As part of its reasonable progress determinations, the State must describe the criteria used to determine which sources or group of sources were evaluated (*i.e.,* subjected to four-factor analysis) for the second implementation period and how the four factors were taken into consideration in selecting the emission reduction measures for inclusion in the long-term strategy. 40 CFR 51.308(f)(2)(iii).

1. Selection of Sources for Analysis

The provisions of 40 CFR 51.308(f)(2)(i) require States to describe the criteria used to determine which sources or groups of sources that State evaluated for potential emission reduction measures. States may rely on technical information developed by the RPOs of which they are members to select sources for four-factor analysis and to conduct that analysis, as well as to satisfy the documentation requirements under 40 CFR 51.308(f).

Illinois EPA described its source selection process in section IV of the 2024 SIP submission. In selecting sources to evaluate for potential control measure additions during the second implementation period, Illinois EPA considered SO_2, NO_X, VOC, NH_3, and direct PM emissions but focused on NO_X and SO_2 emissions following an analysis of IMPROVE data performed by LADCO. This analysis, described in LADCO's Technical Support Document ''Modeling and Analysis for Demonstrating Reasonable Progress for the Regional Haze Rule 2018–2028 Planning Period,'' (LADCO's 2021 TSD),[25] dated June 17, 2021, demonstrated that ammonium sulfate and ammonium nitrate are the largest components of haze during the most impaired days at the LADCO Class I areas. The LADCO Class I areas consist of Boundary Waters Canoe Area Wilderness and Voyageurs National Park in Minnesota and Isle Royale National Park and Seney Wilderness Area in Michigan. As precursors to ammonium sulfate and ammonium nitrate particulates, SO_2, and NO_X, and NH_3 emissions contribute more to visibility impairment in the LADCO Class I Areas than direct $PM_{2.5}$ and VOC emissions. Illinois EPA determined that focusing on potential reductions in NO_X and SO_2 emissions would be the most effective approach for the second implementation period. The EPA finds this approach to be reasonable, as noted in the ''Guidance on Regional Haze State Implementation Plans for the Second Implementation Period,'' EPA Office of Air Quality Planning and Standards, Research Triangle Park, August 20, 2019 (''2019 Regional Haze Guidance'') at page 12.[26] Illinois decided to focus specifically on NO_X and SO_2 emissions from point sources based on information in the EPA's Updated 2028 Visibility Air Quality Modeling TSD, which provided a percentage breakdown of contributions to Class I areas by source sectors, such as point EGU point, non-EGU, nonpoint point, onroad, oil and gas, residential wood combustion, and anthropogenic dust. Table 4.1 of Illinois' 2024 SIP submission includes the percentage contributions to Class I areas affected by Illinois. The EGU and non-EGU point source sector emissions contribute the largest percentage, an average of 56 percent, of the visibility impairment in the Class I areas affected by Illinois. The EPA finds that Illinois EPA's decision to focus on NO_X and SO_2 emissions from point sources is further supported by Tables 4–2 and 4–7 of LADCO's 2021 TSD, which show that emissions from point sources account for a large portion of both NO_X and SO_2 emissions in Illinois, whereas NH_3, the third precursor to ammonium nitrate and ammonium sulfate, is mostly emitted from nonpoint sources.

Illinois EPA selected point sources for potential four-factor analyses based on LADCO's analyses of National Emissions Inventory (NEI) data. LADCO generated source lists based on total process-level emissions of NO_X, SO_2, $PM_{2.5}$, and NH_3 (Q) divided by distance (d) to the center of the nearest Class I area, where Q/d was used as a surrogate quantitative metric of visibility impact in lieu of air quality modeling. The National Emissions Inventory Collaborative 2016 alpha inventory was selected in 2018 by the LADCO Regional Haze Technical Workgroup for the Q/d analysis as the best available inventory at that time. In support of using the 2016 data, Illinois EPA confirmed that there have been no emissions increases large enough to make use of the 2016 data inappropriate, especially since 2014–2020 NEI data demonstrates decreasing trends in NO_X, $PM_{2.5}$, and SO_2 emissions.[27] For details on the data and methods used in the Q/d analysis, see LADCO's October 14, 2020, technical memorandum ''Description of the Sources and Methods Used to Support Q/d Analysis for the 2nd Regional Haze Planning Period'' [28] and section 5 of LADCO's 2021 TSD.

Illinois EPA designed its source selection methodology to capture a meaningful portion of Illinois' total contribution to visibility impairment in the Class I areas, including the largest sources in the State. Illinois EPA initially set a unit-level Q/d threshold of four to begin identifying point source emission units for potentially cost-effective control additions, where Q reflected LADCO's 2028 projections from the 2016 base year sum of NO_X, SO_2, $PM_{2.5}$, and NH_3 emissions. To focus on sources with the greatest visibility impact, Illinois EPA then grouped those units by source and identified units with Q/d greater than four at facilities with Q/d greater than 10 for potential four-factor analyses. This resulted in a list of 30 units, accounting for 71.4 percent of all emissions of SO_2, NO_X, NH_3, and $PM_{2.5}$ from units with Q/d greater than one in Illinois, including all the largest sources. Of these 30 units, 14 are no longer operating:

- Electric Energy Inc.—Joppa, Units 1, 2, 3, 4, 5, and 6
- Dynegy Midwest Generation LLC—Baldwin, Unit 13
- Southern Illinois Power Cooperative—Marion, Unit 4
- Illinois Power Resources Generating LLC—Edwards, Units 3 and 4
- Illinois Power Generating Co.—Newton, Unit 13
- Dynegy Midwest Generation LLC—Wood River, Unit 1
- Will County Generating Station—Romeoville, Unit 16
- Pacific Ethanol Pekin Inc., Unit 19 [29]

Illinois EPA then determined that the existing controls on the following seven units are effective to the extent that a full four-factor analysis would likely

[25] LADCO's 2021 TSD is contained in appendix B of Illinois' 2024 regional haze SIP submission.

[26] The EPA's 2019 Regional Haze Guidance is available at *https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period* and is included in the docket for this proposed rulemaking.

[27] See Tables 11.5 to 11.7 of Illinois' 2024 SIP submission.

[28] LADCO's October 14, 2020, technical memorandum ''Description of the Sources and Methods Used to Support Q/d Analysis for the 2nd Regional Haze Planning Period'' contains a weblink to the spreadsheets and emissions data files used for the Q/d analysis and is publicly available in the docket for this proposed rulemaking and on LADCO's website at *https://www.ladco.org/wp-content/uploads/Projects/Regional-Haze/Round2/LADCO_QoverD_Memo_16Oct2020.pdf.*

[29] Pacific Ethanol Pekin Inc. is now Alto Pekin, LLC.

result in a conclusion that no further controls are necessary.

- Dynegy Midwest Generation LLC—Baldwin, Units 1 and 2
- Illinois Power Generating Co.—Newton, Unit 3
- Midwest Generation LLC—Powerton, Units 29 and 31
- Kincaid Generation LLC, Units 8 and 9

Illinois EPA then selected the remaining nine units for four-factor analyses:

- Prairie State Generating Station—Marissa, Units 4 and 5
- Southern Illinois Power Cooperative—Marion, Unit 123
- Rain CII Carbon LLC—Robinson, Units 1 and 2
- Lafarge Midwest Inc.—Grand Chain, Units 47 and 66 [30]
- Archer Daniels Midland Co.—Decatur, Units 222 and 230

The demonstrations of existing effective controls and four-factor analyses are addressed under sections IV.E.2 and IV.E.4 of this preamble. Further details on Illinois EPA's source selection process, past retirements, demonstrations of existing effective controls, and four factor analyses are addressed in sections III, IV, V, and VI and appendix A of Illinois' 2024 SIP submission and sections 2 and 3 of the EPA's November 12, 2025, TSD.

2. Emission Measures Necessary To Make Reasonable Progress

The provisions of 40 CFR 51.308(f)(2)(i) require States to evaluate and determine the emission reduction measures that are necessary to make reasonable progress by applying the four statutory factors to sources in a control analysis. The emission reduction measures that are necessary to make reasonable progress must be included in the long-term strategy. 40 CFR 51.308(f)(2).

As mentioned above, Illinois EPA demonstrated that the seven units at Baldwin, Newton, Powerton, and Kincaid have existing effective control measures. Illinois EPA cited requirements contained in the MPS, the Combined Pollutant Standards (CPS),[31] and permits as well as 2016–2022 annual NO_X and SO_2 emissions data to show that each unit has consistently implemented its existing measures and has achieved reasonably consistent annual emission rates that are not projected to increase in the future. For Baldwin, Newton, and Powerton, Illinois found that the existing measures under the MPS and CPS are necessary for reasonable progress for the second implementation period and documented that they form a part of the long-term strategy, are already federally enforceable and permanent, and are already included in the regulatory portion of Illinois' SIP at 40 CFR 52.720. For Kincaid, Illinois EPA referred to the existing BART measures that were previously included in the long-term strategy developed in the first implementation period. See 77 FR 3966, January 26, 2012. As such, Illinois EPA determined that additional control measures for the seven units at Baldwin, Newton, Powerton, and Kincaid are not necessary to make reasonable progress in the second implementation period. Illinois EPA's demonstrations of existing effective controls for these units are further described in section 3.3 of the EPA's November 12, 2025, TSD.

For the nine units at Prairie State, Marion, Rain CII Carbon, Lafarge Midwest, and Archer Daniels Midland, Illinois EPA provided a four-factor analysis as summarized in section V of Illinois' 2024 SIP submission and section 4 of the EPA's November 12, 2025, TSD. Appendix A to Illinois' submission describes the four-factor analyses in detail. Each analysis considered all four statutory factors and appropriately followed the methods in the EPA Air Pollution Control Cost Manual.[32] As presented in Table 1, Illinois EPA documented the range of cost effectiveness of potential new controls that were determined to be technically feasible.

TABLE 1—ESTIMATED COST EFFECTIVENESS OF FEASIBLE CONTROL OPTIONS EVALUATED

Facility	Unit	Control option	Cost effectiveness (2020 dollars)
Prairie State Generating Station.	Boilers 1 and 2	Integrated Gasification Combined Cycle (IGCC).	$17,219 per ton of both SO_2 and NO_X to remove 298.3 tons of NO_X and 11,669 tons of SO_2 per year
Southern Illinois Power Cooperative.	Boiler 123	Fuel switch	$3,802 per ton of both SO_2 and NO_X to remove 143.9 tons of NO_X and 1,712 tons of SO_2 per year.
		IGCC	$8,395.90 per ton of both SO_2 and NO_X to remove 108.89 tons of NO_X and 2017.69 tons of SO_2 per year.
Rain CII Carbon LLC	Kilns 1 and 2	Selective Non-Catalytic Reduction (SNCR).	$3,395 per ton of NO_X.
		Selective Catalytic Reduction (SCR).	$7,701 per ton of NO_X.
		Semi-dry Flue Gas Desulfurization (FGD).	$9,570 per ton of SO_2.
		Wet FGD	$29,106 per ton of SO_2.
Holcim US Inc	Kiln 1	SNCR	$1,762 per ton of NO_X for minimal or no NO_X reductions.
		Regenerative SCR	$6,042 per ton of NO_X for minimal or no NO_X reductions.
		SCR upgrade	$659–$19,445 per ton of NO_X to remove a maximum of 147 tons of NO_X per year.
		Dry FGD	$2,527–$97,556 per ton of SO_2.
		Semi-dry FGD	$2,637–$51,744 per ton of SO_2.
		Wet FGD	$1,648–$86,570 per ton of SO_2.
Archer Daniels Midland Co	Boilers 1–9	SCR	$4,962–$7,252 per ton of NO_X.
		IGCC	$70,878 per ton of both NO_X and SO_2.
		Spray Dryer Absorber-FGD	$5,844–$8,010 per ton of SO_2; SO_2 reductions unlikely.
		Wet FGD	$6,353–$8,930 per ton of SO_2; SO_2 reductions unlikely.

For each unit, Illinois EPA determined that additional control measures are not necessary to make reasonable progress in the second implementation period and that pursuing additional emission reductions

[30] Lafarge Midwest Inc.—Grand Chain is now Holcim US, Inc.—Joppa Plant, Grand Chain.

[31] The CPS are described in section IV of Illinois' 2024 regional haze SIP submission and in section 2.2 of the EPA's November 12, 2025, TSD.

[32] *See* the EPA's Air Pollution Control Cost Manual, available at *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution* and included in the docket for this proposed rulemaking.

through new emission control equipment or emissions limitations is not cost-effective. Illinois EPA determined this based on the units' existing controls, the cost of the alternative control measures, and the remaining useful life of the units. Illinois EPA also concluded that the existing emission control measures for each of these units are not necessary for reasonable progress for the second implementation period and do not need to be included in the regulatory portion of the SIP beyond where they are already included. Illinois EPA determined this based on the limits in the sources' air permits, historical data showing relatively consistent or declining NO_X and SO_2 annual emissions, recent unit emission rates, and the 2028 projections of overall emissions showing that emissions are not expected to increase in the future.

3. Illinois' Long-Term Strategy

Each State's long-term strategy must include the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress. 40 CFR 51.308(f)(2). After considering information regarding existing effective controls, the four statutory factors in 40 CFR 51.308(f)(2)(i), and the five additional factors in 40 CFR 51.308(f)(2)(iv) in addition to other requirements in 40 CFR 51.308(f)(2)(ii) described below, Illinois EPA developed its long-term strategy for the second implementation period. Illinois EPA's long-term strategy is provided in section VI of Illinois' 2024 SIP submission and lists, at the State's discretion, measures beyond what the State deemed necessary for reasonable progress. Illinois EPA's long-term strategy lists State regulations such as the NO_X Reasonably Available Control Technology (RACT) standards [33] as well as State regulations that are included in the regulatory part of Illinois' SIP at 40 CFR 52.720 for the MPS,[34] CPS,[35] and emission standards and limitations for Stationary Reciprocating Internal Combustion Engines (RICE) and Turbines.[36] Additionally, Illinois EPA's long-term strategy lists Federal measures for point sources including the Revised Cross-State Air Pollution Rule Update,[37] New Source Performance Standards (NSPS),[38] and National Emission Standards for Hazardous Air Pollutants (NESHAP),[39] as well as several Federal measures for area sources and on-road and non-road mobile sources. Of all the measures in the list, Illinois EPA only specified the State regulations for the MPS, CPS, and Stationary RICE and Turbines as necessary for reasonable progress in the second implementation period and reiterated that those measures are part of Illinois' SIP under 40 CFR 52.720, thus already federally enforceable and permanent. Illinois EPA did not identify any additional control requirements necessary for reasonable progress or any additional measures to be incorporated by reference into the regulatory portion of Illinois' SIP.

4. The EPA's Evaluation of Illinois' Compliance With 40 CFR 51.308(f)(2)(i)

The EPA proposes to find that Illinois has satisfied the requirements of 40 CFR 51.308(f)(2)(i) related to evaluating sources and determining the emission reduction measures that are necessary to make reasonable progress by considering the four statutory factors. The EPA is basing this proposed finding on the State's examination of its largest sources as described above. The State considered the four statutory factors, the historical emissions data, the emission reductions that have already taken place during the second implementation period, and the current control measures. As summarized above and further described in the EPA's November 12, 2025, TSD, Illinois' selection of sources and evaluation of control measures was reasonable and consistent with the requirements of 40 CFR 51.308(f)(2)(i).

In addition, as recently announced and applied in the approval of the West Virginia regional haze SIP submittal,[40] it is the EPA's policy that, where visibility conditions for a Class I area impacted by a State are below the URP and the State has considered the four statutory factors, the State will have presumptively demonstrated reasonable progress for the second implementation period for that Class I area. The EPA has the discretion and authority to change policy. In *FCC* v. *Fox Television Stations, Inc.,* the U.S. Supreme Court plainly stated that an agency is free to change a prior policy and ''need not demonstrate . . . that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better.'' 566 U.S. 502, 515 (2009) (referencing *Motor Vehicle Mfrs. Ass'n of United States, Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983)). *See also Perez* v. *Mortgage Bankers Assn.,* 135 S. Ct. 1199 (2015). The EPA believes that its recently adopted policy aligns with the purpose of the statute and RHR, which is achieving ''reasonable'' progress, not maximal progress, toward Congress' natural visibility goal.

In the 2017 RHR Revisions, the EPA addressed the role of the URP as it relates to a State's development of its second implementation period SIP. 82 FR 3078 (January 10, 2017). Specifically, in response to comments suggesting that the URP should be considered a ''safe harbor'' that relieve States of any obligation to consider the four statutory factors, the EPA explained that the URP was not intended to be such a safe harbor. *Id.* at 3099. ''Some commenters stated a desire for corresponding rule text dealing with situations where RPGs are equal to (''on'') or better than (''below'') the URP or glidepath. Several commenters stated that the URP or glidepath should be a 'safe harbor,' opining that States should be permitted to analyze whether projected visibility conditions for the end of the implementation period will be on or below the glidepath based on on-the-books or on-the-way control measures, and that in such cases a four-factor analysis should not be required.'' *Id.*

Other 2017 RHR comments indicated a similar approach, such as ''a somewhat narrower entrance to a 'safe harbor,' '' by suggesting that if current visibility conditions are already below the end-of-planning-period point on the URP line, a four-factor analysis should not be required.'' *Id.* The EPA stated in its response that we did not agree with either of these recommendations. ''The CAA requires that each SIP revision contain long-term strategies for making reasonable progress, and that in determining reasonable progress states must consider the four statutory factors. Treating the URP as a safe harbor would be inconsistent with the statutory requirement that states assess the potential to make further reasonable progress towards natural visibility goal in every implementation period.'' *Id.*

However, so long as a State considers the four factors, the presumption that a Class I area below the URP is achieving reasonable progress is consistent with the CAA and RHR. Indeed, we believe this policy also recognizes the considerable improvements in visibility impairment that have been made by a wide variety of State and Federal programs in recent decades. In sum, Illinois EPA selected a number of

[33] *See* 35 Illinois Administrative Code 217.

[34] *See* 86 FR 33527, June 25, 2021.

[35] *See* 83 FR 8612, February 28, 2018.

[36] *See* 74 FR 30466, June 26, 2009.

[37] *See* 40 CFR 97, subpart GGGGG.

[38] 40 CFR 60.

[39] 40 CFR 63.

[40] 90 FR 16478, 16483, April 18, 2025, and 90 FR 29737, 29738–29740, July 7, 2025.

sources, evaluated emissions control measures, and considered the four statutory factors. In addition, as discussed in section 6 of the EPA's November 12, 2025, TSD, visibility conditions at all Class I areas to which Illinois contributes are below the URP. In light of these facts, this policy also supports the EPA's proposed finding that Illinois reasonably concluded that no additional measures are necessary to achieve reasonable progress during the second implementation period.

5. Consultation With Federal Land Managers and States

The consultation requirements of 40 CFR 51.308(f)(2)(ii) provide that States must consult with other States that are reasonably anticipated to contribute to visibility impairment in a Class I area to develop coordinated emission management strategies containing the emission reductions measures that are necessary to make reasonable progress. Section 51.308(f)(2)(ii)(A) and (B) require States to consider the emission reduction measures identified by other States as necessary for reasonable progress and to include agreed upon measures in their SIPs, respectively. Section 51.308(f)(2)(ii)(C) speaks to what happens if States cannot agree on what measures are necessary to make reasonable progress. States may also satisfy the requirement of 40 CFR 51.308(f)(2)(ii) to engage in interstate consultation with other States that have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area under the auspices of intra- and inter-RPO engagement.

Although Illinois has no mandatory Class I Federal areas within its borders, emissions from sources within Illinois influence visibility at mandatory Class I Federal areas. Through intra- and inter-RPO engagement, Illinois EPA consulted with other States to develop a coordinated emission management approach to its regional haze SIP and to address Illinois' impact on nearby Class I areas. Consultation within LADCO and between LADCO and neighboring RPOs, including CenSARA [41] and VISTAS,[42] developed the technical information needed for such coordinated strategies. Inter-RPO cooperation is evident in LADCO's 2021 TSD and accompanying electronic docket,[43] which include area of influence modeling contributed by CenSARA and analyses for all Class I areas performed by LADCO.

Illinois EPA also received and responded to requests from MANE–VU,[44] Arkansas,[45] and Missouri [46] regarding regional haze. MANE–VU requested that Illinois ensure emission controls be operated year-round on certain EGUs and that Illinois pursue an ultra-low sulfur fuel oil standard. Illinois EPA replied that it already requires consistent NO_X and SO_2 controls as well as an ultra-low sulfur fuel oil standard. In response to MANE–VU's request regarding the pursuit of energy initiatives, Illinois EPA noted Illinois' priorities on energy efficiency and other clean energy technologies. Arkansas requested that Illinois perform a four-factor analysis of Prairie State Generating Station because of its anticipated impact on visibility in the Upper Buffalo Wilderness Area. Illinois EPA replied that it would perform a four-factor analysis on this source. Missouri requested that Illinois consider performing four-factor analyses on Electric Energy Inc.—Joppa, Prairie State Generating Station, Southern Illinois Power Cooperative—Marion, and Dynegy Midwest Generation LLC—Baldwin. Illinois EPA addressed these sources in its 2024 SIP submission and cooperated with Missouri through LADCO and CenSARA. Illinois EPA did not receive any replies disagreeing with its responses. Section XIII of Illinois' SIP submission and section 5 of the EPA's November 12, 2025, TSD provide detailed summaries of Illinois' consultation with States, Tribes, and RPOs.

The EPA proposes to find that Illinois has satisfied the consultation requirements of 40 CFR 51.308(f)(2)(ii). Illinois has met the 40 CFR 51.308(f)(2)(ii)(A) and (B) requirements with its participation in the LADCO consultation process plus its individual communication with contributing States and RPOs. There were no disagreements with any other State, therefore 40 CFR 51.308(f)(2)(ii)(C) does not apply to Illinois.

The requirements of 40 CFR 51.308(f)(2)(iii) provide that a State must document the technical basis for its decision making to determine the emission reduction measures that are necessary to make reasonable progress. The documentation requirement of 40 CFR 51.308(f)(2)(iii) provides that States may meet their obligations to document the technical bases on which they are relying to determine the emission reductions measures that are necessary to make reasonable progress through an RPO, as long as the process has been ''approved by all State participants.''

Illinois EPA adequately documented the technical basis that it relied on in determining the emission reduction measures that are necessary to make reasonable progress. By referencing and including LADCO's 2021 TSD as appendix B to its 2024 SIP submission, Illinois EPA also documented the Memorandum of Agreements between the Region 5 States and LADCO as well as the agreement from the States to use the analysis process provided by LADCO for regional haze efforts.

In addition to including LADCO's 2021 TSD as appendix B to its 2024 SIP submission, Illinois EPA described the technical analyses performed by LADCO and the EPA that the State relied upon for modeling visibility impacts of Illinois sources on Class I areas and projecting 2028 visibility conditions.

The cost and engineering analyses performed by Illinois EPA to address the four statutory factors were summarized in section V of the State's SIP submission and described in detail in appendix A to the submission.

Throughout its 2024 SIP submission, Illinois provided 2016 emissions data and other information used by LADCO to calculate Q/d values and project 2028 visibility conditions. Illinois EPA explained that because LADCO's Q/d analysis was performed in 2017, the 2016 emissions data used for the analysis was the best and most recent data available at the time. Also, as mentioned above, Illinois EPA reasoned that there have been no emissions increases large enough to make use of

[41] Central States Air Resource Agencies (CenSARA) is the RPO for the State and local governments of Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska, Oklahoma, and Texas.

[42] Visibility Improvement State and Tribal Association of the Southeast (VISTAS) is the RPO for the Southeastern State, Tribal, and local governments, which include Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, the Eastern Band of Cherokee Indians, and Knox County, Tennessee.

[43] LADCO's electronic docket for its 2021 TSD is posted beneath the TSD documents at *https://www.ladco.org/reports/technical-support/ladco-regional-haze-tsd-second-implementation-period/*. The ''2016-based 2028 glidepaths and PSAT tracer contributions'' spreadsheet includes summaries of LADCO's 2016-based modeling for all Class I areas. A pdf version of this spreadsheet is included in the docket.

[43] See Figure 2–7 of LADCO's 2021 TSD.

[44] The Mid-Atlantic/Northeast Visibility Union (MANE–VU) is the RPO for the Northeastern and Mid-Atlantic State and Tribal governments, which include Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, St. Regis Mohawk Tribe, and Vermont. MANE–VU's request and Illinois' response is addressed in section XIII and appendix D of Illinois' 2024 SIP submission.

[45] Arkansas' request and Illinois' response is addressed in section XIII and appendix C of Illinois' 2024 SIP submission.

[46] Missouri's request and Illinois' response are described in attachment 4 to Illinois' 2024 SIP submission.

the 2016 data inappropriate. Illinois EPA also provided Clean Air Markets Program Data (CAMPD)[47] from 2018 to 2022 that it had considered as well as the 2014, 2017, and 2020 NEI that it had submitted to the EPA to comply with the triennial reporting requirements of 40 CFR 51 subpart A.

As documented in Illinois' 2024 SIP submission, LADCO's analyses included the collection and analysis of ambient monitoring data, including the IMPROVE monitoring data. In section XII of its 2024 SIP submission, Illinois EPA described its monitoring network, which it uses to measure the ambient concentrations of pollutants including those that contribute to visibility degradation. Illinois also included its annual 2023 Ambient Air Monitoring Network Plan as appendix E to its 2024 SIP submission and committed to maintaining its monitoring network in section I of its 2024 SIP submission.

The EPA proposes to find that Illinois' documentation of the technical basis of the long-term strategy, including the modeling, monitoring, engineering, cost, and emissions information discussed above, satisfies the requirements of 40 CFR 51.308(f)(2)(iii).

The provisions of 51.308(f)(2)(iii) require that the emissions information considered to determine the measures that are necessary to make reasonable progress include information on emissions for the most recent year for which the State has submitted triennial emissions data to the EPA (or a more recent year), with a 12-month exemption period for newly submitted data. The most recent triennial NEI at the time of Illinois' SIP submission was 2020. Illinois EPA's regional haze SIP revision for the second implementation period included NEI data for 2014, 2017, and 2020. For its four-factor analyses and demonstrations of existing effective controls, Illinois EPA used 2015 to 2022 emissions data where applicable, including 2018—2022 data from CAMPD and 2028 projections from LADCO and ERTAC. Based on Illinois EPA's consideration and analysis of the emissions information to determine measures necessary for reasonable progress, including the most recent NEI available at the time and emissions data from other sources and years, the EPA proposes to find that Illinois has satisfied the emissions information requirement in 40 CFR 51.308(f)(2)(iii).

6. Five Additional Factors

In addition to the four statutory factors, section 169A(b)(2)(B) of the CAA requires the EPA to ensure that each SIP contains a long-term (ten to fifteen year) strategy for making reasonable progress toward meeting the national goal of addressing impairment of visibility in mandatory Class I Federal areas from manmade air pollution. Accordingly, the EPA established five additional factors listed in 40 CFR 51.308(f)(2)(iv) that States must consider in developing their long-term strategies. In section VIII of Illinois' 2024 SIP submission, Illinois EPA explained how it had addressed this requirement. For the reasons discussed below, the EPA proposes to find that Illinois adequately considered the five additional factors in developing its 2024 SIP submission.

As required by 40 CFR 51.308(f)(2)(iv)(A), Illinois considered emission reductions due to ongoing air pollution control programs. These include State and Federal regulations reducing emissions from point sources, on-road and non-road mobile sources, and area sources. Illinois EPA listed over 30 standards and programs that have been—and are expected to continue—limiting haze-forming emissions in Illinois.

Pursuant to 40 CFR 51.308(f)(2)(iv)(B), Illinois EPA considered measures to mitigate the impacts of construction activities on visibility in Class I areas. Illinois EPA noted that construction activities in Illinois are unlikely to contribute significantly to visibility impairment at Class I areas due to their distance from the State. Illinois EPA also explained that in addition to Federal non-road standards for construction vehicles and equipment, construction projects in Illinois are often subject to contract restrictions, including idling restrictions for construction vehicles and equipment; the EPA-approved controls for non-road diesel equipment; use of newer, cleaner, and more fuel-efficient engines for equipment; and optimizing earthwork and excavation to minimize haul trips. Illinois EPA noted that the State also requires the use of ultra-low sulfur diesel fuel,[48] which also mitigates the environmental impacts of construction because construction equipment generally uses diesel fuel. Finally, Illinois EPA committed to continue working with other State and Federal agencies to ensure that environmental impacts are given due consideration in construction project contracting.

As required by 40 CFR 51.308(f)(2)(iv)(C), Illinois EPA considered source retirement and replacement schedules in developing its long-term strategy.

In accordance with 40 CFR 51.308(f)(2)(iv)(D), Illinois EPA considered basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and chose to prepare a statewide voluntary smoke management plan in cooperation with State land managers. The Illinois Smoke Management Plan is included as appendix F to Illinois' 2024 SIP submission and provides strategies for minimizing smoke during prescribed burns, best management practices for burns, and guidance on when to burn based on the Air Quality Index.

As required by 40 CFR 51.308(f)(2)(iv)(E), Illinois EPA considered the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by its long-term strategy. This consideration led Illinois to choose to focus on point sources for the second implementation period but to also include measures controlling mobile and area source emissions in its long-term strategy. Illinois included tables in its submission showing 2016 emissions of NO_X, $PM_{2.5}$, SO_2, and VOC from point, area, and mobile sources compared to projected 2028 emissions of the same pollutants by the same source categories.

After considering information regarding existing effective controls, the four statutory factors in 40 CFR 51.308(f)(2)(i), the five additional factors in 40 CFR 51.308(f)(2)(iv), and other requirements described above, the EPA proposes to find that Illinois has submitted a regional haze plan that meets the requirements of 40 CFR 51.308(f)(2) related to development of a long-term strategy. Thus, the EPA proposes to find that Illinois has satisfied the applicable requirements for making progress towards natural visibility conditions in Class I areas that may be affected by emissions from the State.

F. Reasonable Progress Goals

Section 51.308(f)(3) contains the requirements pertaining to RPGs for each Class I area. Section 51.308(f)(3)(i) requires a State in which a Class I area is located to establish RPGs—one each for the most impaired and clearest days—reflecting the visibility conditions that will be achieved at the

[47] The EPA's CAMPD information is publicly available at *https://campd.epa.gov/*.

[48] 35 Illinois Administrative Code sections 214.122 and 214.305 limit the sulfur content of distillate fuel oil and residual fuel oil used by stationary sources. 35 Illinois Administrative Code 214 is available at *https://pcb.illinois.gov/documents/dsweb/Get/Document-11922/*.

end of the implementation period as a result of the emission limitations, compliance schedules and other measures required under paragraph (f)(2) to be in States' long-term strategies, as well as implementation of other CAA requirements. The long-term strategies as reflected by the RPGs must provide for an improvement in visibility on the most impaired days relative to the baseline period and ensure no degradation on the clearest days relative to the baseline period. Section 51.308(f)(3)(ii) applies in circumstances in which a Class I area's RPG for the most impaired days represents a slower rate of visibility improvement than the uniform rate of progress calculated under 40 CFR 51.308(f)(1)(vi). Under 40 CFR 51.308(f)(3)(ii)(A), if the State in which a mandatory Class I area is located establishes an RPG for the most impaired days that provides for a slower rate of visibility improvement than the URP, the State must demonstrate that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the State that would be reasonable to include in its long-term strategy. Section 51.308(f)(3)(ii)(B) requires that if a State contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in *another* State, and the RPG for the most impaired days in that Class I area is above the URP, the upwind State must provide the same demonstration.

Because Illinois has no Class I areas within its borders to which the requirements of the visibility protection program apply in 40 CFR part 81, subpart D, Illinois is subject to 40 CFR 51.308(f)(3)(ii)(B), but not 40 CFR 51.308(f)(3)(i) or (f)(3)(ii)(A).

Under 40 CFR 51.308(f)(3)(ii)(B), a State that contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in another State for which a demonstration by the other State is required under 40 CFR 51.308(f)(3)(ii)(B) must demonstrate that there are no additional emission reduction measures that would be reasonable to include in its long-term strategy. Table 3.1 of Illinois' 2024 SIP submission shows that at each of the Class I areas impacted by emissions from Illinois, the 2028 projected visibility impairment is not above the adjusted URP glidepaths for the 20 percent most impaired days. Because no Class I areas impacted by emissions from Illinois have RPGs above the 2028 URP, Illinois is not required to demonstrate that there are no additional emission reduction measures for anthropogenic sources or groups of sources that would be reasonable to include in their long-term strategies. Therefore, the EPA proposes that the demonstration requirement under 40 CFR 51.308(f)(3)(ii)(B) does not apply to Illinois.

The EPA proposes to determine that Illinois has satisfied the applicable requirements of 40 CFR 51.308(f)(3) relating to RPGs.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(f)(6) specifies that each comprehensive revision of a State's regional haze SIP must contain or provide for certain elements, including monitoring strategies, emissions inventories, and any reporting, recordkeeping and other measures needed to assess and report on visibility. A main requirement of this section is for States with Class I areas to submit monitoring strategies for measuring, characterizing, and reporting on visibility impairment. Compliance with this requirement may be met through participation in the IMPROVE network.

Section 51.308(f)(6)(i) requires SIPs to provide for the establishment of any additional monitoring sites or equipment needed to assess whether reasonable progress goals to address regional haze for all mandatory Class I Federal areas within the State are being achieved. Section 51.308(f)(6)(ii) requires SIPs to provide for procedures by which monitoring data and other information are used in determining the contribution of emissions from within the State to regional haze visibility impairment at mandatory Class I Federal areas both within and outside the State. All provisions under 40 CFR 51.308(f)(6) apply only to States containing mandatory Class I Federal areas listed in 40 CFR part 81, subpart D. As noted above, Illinois does not have any mandatory Class I Federal areas located within its borders to which the requirements of the visibility protection program apply in 40 CFR part 81, subpart D. Therefore, 40 CFR 51.308(f)(6)(i) and (ii) do not apply.

The provisions of 40 CFR 51.308(f)(6)(iii) require States with no Class I areas to include procedures by which monitoring data and other information are used in determining the contribution of emissions from within the State to regional haze visibility impairment at Class I areas in other States. States with Class I areas must establish a monitoring program and report data to the EPA that is representative of visibility at the Class I Federal areas. The IMPROVE network meets this requirement. Illinois EPA does not have any Class I areas or operate any monitoring sites under the Federal IMPROVE program. Therefore, the RHR does not require the approval of Illinois' monitoring network. However, Illinois EPA did include a description and a map of its monitoring network in its 2024 SIP revision and attached the Illinois Ambient Air Monitoring 2023 Network Plan as appendix E to the submission. Illinois EPA explained that the procedures by which monitoring data and other information are used to determine the contribution of Illinois emissions to visibility impairment at all affected Class I areas were established in conjunction with LADCO. Sections 7.0 and 8.0 of LADCO's TSD—included as appendix B to Illinois' 2024 SIP revision—describe the procedures.

Section 51.308(f)(6)(iv) requires the SIP to provide for the reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the State. As noted above, Illinois does not have any mandatory Class I Federal areas located within its borders to which the requirements of the visibility protection program apply in 40 CFR part 81, subpart D. Therefore, 40 CFR 51.308(f)(6)(iv) does not apply.

Section 51.308(f)(6)(v) requires SIPs to provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment, including emissions for the most recent year for which data are available and estimates of future projected emissions. It also requires a commitment to update the inventory periodically. Illinois' 2024 SIP submission provided statewide inventories of such emissions and future 2028 projected emissions in Tables 3.2, 3.3, 11.5, 11.6, and 11.7, including emissions information from the 2014, 2017, and 2020 NEI. Additionally, Illinois EPA provided CAMPD information for 2018 to 2022 and historical EGU emissions information from 1999 to 2020 in Figures 3.5 and 3.6. For future projected emissions, Illinois EPA relied on LADCO's analysis, which estimated 2028 projected emissions of SO_2 and NO_X for specific facilities in the LADCO States based on 2016 emissions as well as ERTAC and State forecasts. These projected emissions were included in Illinois' 2024 SIP submission as well as in LADCO's TSD, which Illinois EPA included as appendix B to its 2024 SIP submission. In its 2024 SIP submission, Illinois EPA committed to continue updating its emissions inventory [49] and

[49] The Air Emissions Reporting Requirements for State emissions inventories are codified in 40 CFR part 51, subpart A.

to continue working with LADCO to project future emissions of relevant pollutants. The EPA proposes to find that Illinois has met the requirements of 40 CFR 51.308(f)(6).

H. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires that periodic comprehensive revisions of States' regional haze plans also address the progress report requirements of 40 CFR 51.308(g)(1) through (5). The purpose of these requirements is to evaluate progress towards the applicable RPGs for each Class I area within the State and each Class I area outside the State that may be affected by emissions from within that State. Sections 51.308(g)(1) and (2) apply to all States and require a description of the status of implementation of all measures included in a State's first implementation period regional haze plan and a summary of the emission reductions achieved through implementation of those measures. Section 51.308(g)(3) applies only to States with Class I areas within their borders and requires such States to assess current visibility conditions, changes in visibility relative to baseline (2000–2004) visibility conditions, and changes in visibility conditions relative to the period addressed in the first implementation period progress report. Section 51.308(g)(4) applies to all States and requires an analysis tracking changes in emissions of pollutants contributing to visibility impairment from all sources and sectors since the period addressed by the first implementation period progress report. This provision further specifies the year or years through which the analysis must extend depending on the type of source and the platform through which its emission information is reported. Finally, 40 CFR 51.308(g)(5), which also applies to all States, requires an assessment of any significant changes in anthropogenic emissions within or outside the State have occurred since the period addressed by the first implementation period progress report, including whether such changes were anticipated and whether they have limited or impeded expected progress towards reducing emissions and improving visibility.

Prior to its 2024 SIP submission, Illinois submitted its first 5-year progress report to the EPA on February 2, 2017, and the EPA approved it on April 3, 2018. 83 FR 15744, April 12, 2018. Thus, the progress report elements included in section XI of Illinois' SIP revision for the second implementation period addressed 2017 through 2021. This is consistent with 40 CFR 51.308(f)(5), which requires States to address the elements in 40 CFR 51.308(g)(1) through (5) for the period since the most recent progress report.

As required by 40 CFR 51.308(g)(1), Illinois EPA described the implementation status of the measures relied on for reasonable progress in the first implementation period in section XI of its submission. These included NO_X and SO_2 emission limits in source-specific permits for two EGUs—the City of Springfield's City Water, Light & Power facility in Dallman and Kincaid Generation, LLC; consent decrees mandating BART for two petroleum refineries—CITGO Petroleum Corporation and ExxonMobil Oil Corporation; and emission reductions at all EGUs subject to the MPS and CPS.

Pursuant to 40 CFR 51.308(g)(2), Illinois EPA summarized the emission reductions achieved through the implementation of these measures in Tables 4.4 through 4.7 and 11.1 through 11.4 of its submission. Illinois EPA also reproduced the list of on-the-books control strategies that had been included in its 2017 progress report and provided the status of these measures.

The provisions of 40 CFR 51.308(g)(3) require States to assess Reasonable Progress Goals, including current visibility conditions and changes, for any Class I areas within the State. Because Illinois has no Class I areas, the requirements of 40 CFR 51.308(g)(3) do not apply to Illinois.

Pursuant to 40 CFR 51.308(g)(4), Tables 11.5 to 11.7 of Illinois EPA's 2024 SIP submission tracked changes in emissions of CO, NH_3, NO_X, PM_{10}, $PM_{2.5}$, SO_2, and VOCs from 2014 through 2020. Changes in NO_X and SO_2 emissions from all Illinois EGUs from 1999 through 2020 were also provided in Figures 3.5 and 3.6 of the 2024 SIP submission and changes in NO_X and SO_2 emissions from specific sources from 2018 through 2022 were provided in section VI of the 2024 SIP submission.

Addressing 40 CFR 51.308(g)(5), Illinois EPA did not identify any significant changes in anthropogenic emissions within the State that have occurred since its 2011 regional haze SIP submission that could limit or impede visibility progress. Illinois EPA reported that all projected emission reductions anticipated in the 2011 regional haze SIP submission and in the 2017 progress report have been realized.

The EPA proposes to find that Illinois EPA has met the requirements of 40 CFR 51.308(g)(1) through (5).

I. Requirements for State and Federal Land Manager Coordination

CAA section 169A(d) requires States to consult with FLMs before holding the public hearing on a proposed regional haze SIP, and to include a summary of the FLMs' conclusions and recommendations in the notice to the public. In addition, 40 CFR 51.308(i)(2)'s FLM consultation provision requires a State to provide FLMs with an opportunity for consultation that is early enough in the State's policy analyses of its emission reduction obligation so that information and recommendations provided by the FLMs' can meaningfully inform the State's decisions on its long-term strategy. If the consultation has taken place at least 120 days before a public hearing or public comment period, the opportunity for consultation will be deemed early enough. Regardless, the opportunity for consultation must be provided at least sixty days before a public hearing or public comment period at the State level. Section 51.308(i)(2) also provides two substantive topics on which FLMs must be provided an opportunity to discuss with States: assessment of visibility impairment in any Class I area and recommendations on the development and implementation of strategies to address visibility impairment. Section 51.308(i)(3) requires States, in developing their implementation plans, to include a description of how they addressed FLMs' comments.

Illinois engaged with FLMs at multiple points in the development process of its SIP revision, including NPS, USFS, FWS, and the U.S. Department of Interior—Bureau of Land Management. On March 9, 2020, NPS emailed Illinois a list of sources recommended for four-factor analysis. Illinois EPA shared a draft SIP revision with NPS and USFS on August 14, 2023, thus beginning the formal FLM consultation process over 120 days before posting the proposed SIP submission for public comment. On October 4, 2023, Illinois EPA attended a consultation call with NPS and USFS during which the FLMs summarized their conclusions and recommendations for the draft SIP revision. On October 13, 2023, Illinois received letters from NPS and USFS describing their recommendations in technical detail. As required by 40 CFR 51.308(i)(3) and noted in the EPA's November 12, 2025, TSD, Illinois summarized the FLMs' initial recommendations in section XIII of its SIP submission and included summaries of the FLMs' comments with a response to each, as well as the full

letters received from the FLMs, in appendix H of its submission.

Illinois published a public notice of its proposed SIP revision on Illinois EPA's website [50] on January 19, 2024, beginning a 30-day public comment period and stating that a public hearing would be held if requested. In accordance with 40 CFR 51.308(i)(2), Illinois began the public comment period at least 60 days after initiating the FLM consultation process and, as required by CAA section 169A(d), included summaries of the FLMs' recommendations in the public notice. On January 23, 2024, Illinois received requests for a hearing and an extension of the public comment period. On January 26, 2024, Illinois published a public notice of a virtual hearing to be held on February 27, 2024, and of a 30-day extension of the comment period. The hearing was held as planned on February 27, 2024. In total, Illinois received four written comments and one oral comment during the 60-day public comment period and concurrent hearing. Illinois included the public comments and Illinois' responses in attachments 3 and 4 to its submission, including a letter from NPS addressing Illinois' responses to NPS' initial recommendations for the SIP revision.

The provisions of 40 CFR 51.308(i)(4) require States to provide procedures for continuing consultation with FLMs on the implementation of visibility protection program requirements. As an active member of LADCO, Illinois continues to coordinate regularly with FLMs on the implementation of visibility protection plans and the planning of future work. In its 2024 SIP submission, Illinois committed to continue its fulfillment of all requirements of 40 CFR 51.308, including maintenance of adequate monitoring networks and production of emissions inventories, progress reports, and future SIP revisions. Given Illinois' actions recounted above, the EPA proposes to find that Illinois has satisfied the requirements of both 40 CFR 51.308(i) and 169A(d) to consult with the FLMs on its regional haze SIP for the second implementation period.

[50] Illinois' proposed regional haze SIP revision submittal and all documents related to the public comment period and hearing were made publicly available at *https://epa.illinois.gov/public-notices/general-notices.html.*

V. Interstate Transport for the 2012 $PM_{2.5}$ and 2015 Ozone NAAQS Infrastructure SIPs—Visibility Component

A. Background on Infrastructure SIPs

Whenever the EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires States to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an ''infrastructure SIP.'' These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions (EPA's 2013 Guidance) and through regional actions on infrastructure submissions.[51] Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the submitting State's SIP for facial compliance with statutory and regulatory requirements, not for the State's implementation of its SIP.[52] The EPA has other authority to address any issues concerning a State's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

CAA section 110(a)(2)(D)(i)(II) prohibits emissions in one State from interfering with visibility protection measures in another State. On September 29, 2017, and May 16, 2019, Illinois submitted SIP revisions addressing infrastructure requirements for the 2012 $PM_{2.5}$ and 2015 ozone NAAQS, respectively.

This proposed rulemaking evaluates the element of Illinois EPA's SIP submissions for the 2012 $PM_{2.5}$ and 2015 ozone NAAQS addressing the fourth component (''Prong 4'') of CAA section 110(a)(2)(D)(i)—the requirement that a State's SIP contain adequate provisions prohibiting any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will interfere with measures required to be included in the applicable SIP for any other State to protect visibility.

Under the applicable requirements for visibility protection of CAA section 110(a)(2)(D)(i)(II), States are subject to visibility and regional haze program requirements under part C of the CAA, which includes sections 169A and 169B. The EPA's 2013 Guidance states that these Prong 4 requirements can be satisfied by approved SIP provisions that the EPA has found to adequately address any contribution of that State's sources that impact the visibility program requirements in other States.[53] The EPA's 2013 Guidance lays out how a State's infrastructure SIP may satisfy Prong 4. In the second implementation period, confirmation that the State has a fully approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 will satisfy the requirements of Prong 4.[54]

In the second implementation period, the EPA's Regional Haze regulations under 40 CFR 51.308(f) require that a State consider the emission reduction measures identified by other States as being necessary to make reasonable progress towards meeting the national visibility goal in Class I Federal areas. Specifically, the regulations also require a State to include in its Regional Haze SIP all measures agreed to during that process or measures that will provide equivalent visibility improvement. 40 CFR 51.308(f)(2)(ii). Thus, in meeting the requirements of 40 CFR 51.308(f), an approved regional haze SIP meeting the statutory and regulatory requirements, including 40 CFR 51.308(f)(2)(ii), will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures required to be included in other air agencies' plans to protect visibility and will, therefore, satisfy Prong 4.

[51] The EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2)'' (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf* and included in the docket for this proposed rulemaking), as well as in numerous agency actions, including the EPA's prior action on Michigan's, Illinois', Minnesota's, and Wisconsin's infrastructure SIPs to address the 2008 lead NAAQS (79 FR 27241 (May 13, 2014)).

[52] See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center* v. *EPA,* No. 16–71933 (Aug. 30, 2018).

[53] The EPA's 2013 Guidance at 32–33.

[54] In the EPA's 2013 Guidance, we indicated that it may be appropriate to supplement the guidance regarding the relationship between regional haze SIPs and Prong 4 after second implementation period SIPs become due, which occurred on July 31, 2021. After a review of the EPA's 2013 Guidance and the second implementation period regional haze requirements, the EPA maintains the interpretation that a fully approved regional haze SIP satisfies Prong 4 requirements in the second implementation period.

B. The EPA's Evaluation of Illinois' Infrastructure SIP Submissions

To address the requirements of CAA section 110(a)(2)(D)(i)(II), both Illinois EPA's September 29, 2017, infrastructure SIP submission for the 2012 $PM_{2.5}$ NAAQS and Illinois EPA's May 16, 2019, submission for the 2015 ozone NAAQS discuss the State's Prevention of Significant Deterioration program, nonattainment New Source Review program, and regional haze program. As discussed in the ''Background on Illinois' First Implementation Period SIP Submission'' section of this proposed rulemaking and noted in Illinois EPA's submissions, Illinois' regional haze SIP for the first implementation period was approved on July 6, 2012 (77 FR 39943), effective August 6, 2012.

In this proposed rulemaking, the EPA is proposing to approve Illinois' regional haze plan for the second implementation period. For the reasons stated above, by meeting the statutory and regulatory requirements of the regional haze program, including the interstate consultation requirements in 40 CFR 51.308(f)(2)(ii), Illinois' SIP adequately prohibits emissions from within the State that would interfere with visibility protection measures in any other State's SIP. Therefore, the EPA proposes that Illinois has met the applicable section 110(a)(2)(D)(i)(II) Prong 4 requirement relating to visibility protection for the 2012 $PM_{2.5}$ and 2015 ozone NAAQS.

VI. Proposed Actions

The EPA proposes to approve Illinois' SIP submission, dated June 3, 2024, as satisfying the regional haze requirements for the second implementation period contained in 40 CFR 51.308(f). The EPA also proposes to approve Illinois' SIP submissions, dated September 29, 2017, and May 16, 2019, as satisfying the interstate transport infrastructure requirements related to visibility protection contained in CAA section 110(a)(2)(D)(i)(II) for the 2012 $PM_{2.5}$ and 2015 ozone NAAQS.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Ozone, Particulate matter, Sulfur oxides.

Dated: February 19, 2026.

Anne Vogel,

Regional Administrator, Region 5.

[FR Doc. 2026–03936 Filed 2–26–26; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2024–0137; EPA–R05–OAR–2025–0235; FRL–13185–01–R5]

Air Plan Approval; Michigan; 2015 Ozone Moderate Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions and additions to Michigan Air Pollution Control Rules (MAPCR) Parts 6 and 8 for inclusion in the Michigan State Implementation Plan (SIP). Michigan submitted these SIP revisions to meet the Moderate Volatile Organic Compound (VOC) and Nitrogen Oxide (NO_X) Reasonably Available Control Technology (RACT) requirements for the Western Michigan nonattainment areas (Berrien, Western portion of Allegan, and Western portion of Muskegon counties) under the 2015 ozone National Ambient Air Quality Standard (NAAQS or standard). The EPA is also proposing to approve MAPCR Rules that limit VOC emissions from consumer products and architectural and industrial maintenance coatings, as SIP strengthening measures for the Western Michigan nonattainment areas under the 2015 ozone standard. The Michigan Department of Environment, Great Lakes, and Energy (Michigan or EGLE) submitted the VOC SIP revisions on March 7, 2024, supplementing the submittal on May 2, 2024, and submitted the NO_X SIP revisions on May 5, 2025, supplementing the submittal on August 6, 2025.

DATES: Comments must be received on or before March 30, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2024–0137 (for VOC RACT) or EPA–R05–OAR–2025–0235 (for NOx RACT) at *https://www.regulations.gov,* or via email to *arra.sarah@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Katie Caskey, Air and Radiation Division (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3490, *caskey.kathleen@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. What is the EPA proposing?

Michigan's Part 6 rules regulate existing sources of VOC emissions, while Michigan's Part 8 rules regulate existing sources of NO_X emissions. The EPA is proposing to approve various revisions and additions to MAPCR Parts 6 and 8, except for MAPCR Rule 336.1601(a), which Michigan requested that the EPA not incorporate into the SIP. The EPA is also proposing to remove the current SIP approved version of R 336.1632, except for subrule (15), and is proposing to approve Michigan's updated version of R 336.1632 (effective April 18, 2023), except for subrule (9), which Michigan requested the EPA not incorporate into the SIP. Michigan submitted these SIP revisions to meet the Moderate VOC and NO_X RACT requirements for the Western Michigan nonattainment areas under the 2015 ozone standard.

The EPA is proposing to approve MAPCR Rules 336.1660 and 336.1662, which limit VOC emissions from consumer products and architectural and industrial maintenance coatings, as SIP strengthening measures for the areas. Although Michigan requested SIP revisions to Rules 336.1841(8), 336.1842(10), and 336.1844(9), the EPA is not proposing action on these revisions in this action.

Finally, Michigan did not request EPA action on R. 336.1801, 336.1802, 336.1803, 336.1810, and 336.1818, which are responsive to different CAA requirements and will be considered in a separate rulemaking.

EGLE submitted the VOC SIP revisions on March 7, 2024, supplementing them on May 2, 2024, and submitted the NO_X SIP revisions on May 5, 2025, supplementing them on August 6, 2025.

II. What is the background for this action?

Under Clean Air Act (CAA) section 109, the EPA has established primary and secondary NAAQS for certain air pollutants (referred to as ''criteria pollutants'') and conducts periodic reviews of the NAAQS to determine whether they should be revised or whether new NAAQS should be established. The primary NAAQS represent ambient air quality standards which the EPA has determined are necessary to protect the public health with an adequate margin of safety. The secondary NAAQS represent ambient air quality standards which the EPA has determined are necessary to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. One such criteria pollutant is ground-level ozone.

Ozone forms from complex chemical reactions in ambient air between NO_X and VOCs. Cars, trucks, buses, engines, industries, power plants, and products such as solvents and paints are among the major manmade sources of ozone-forming emissions. Exposure to ozone can harm the respiratory system, aggravate asthma and other lung diseases, and is linked to premature death from respiratory causes.

On October 26, 2015, the EPA promulgated a new 8-hour primary ozone NAAQS of 70 parts per billion (ppb) at 40 CFR 50.19, which is met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.070 ppm, as determined in accordance with appendix U of 40 CFR part 50.[1] Upon promulgation of a new or revised NAAQS, the EPA is required to designate all areas of the country as either ''attainment'' (meets the standard), ''nonattainment'' (does not meet the standard), or ''unclassifiable'' (any area that cannot be classified on the basis of available information).[2]

Under the cooperative federalism framework of CAA section 110, States and the EPA each play a unique role in ensuring attainment and maintenance of the NAAQS. States are primarily responsible for developing plans for attaining and maintaining the NAAQS in areas within their jurisdiction, based on CAA requirements, planning rules, and guidance promulgated by the EPA. These planning requirements include (but are not limited to) provisions for implementing emissions controls, tracking progress toward attainment and monitoring and reporting air quality data, with the overarching goal of attaining and maintaining the NAAQS as expeditiously as practical, but no later than the CAA's maximum attainment date.

Effective on August 3, 2018, the EPA initially designated 51 areas throughout the country as nonattainment for the 2015 ozone NAAQS, including the Western Michigan nonattainment areas.[3] In a separate action, the EPA assigned classification thresholds based on the severity of an area's ozone levels, determined by the area's monitored design value (DV).[4] As a result of that action, the Western Michigan nonattainment areas were initially classified as Marginal. Also in that action, the EPA established the attainment dates for Marginal, Moderate, Serious, Severe, and Extreme nonattainment areas as 3 years, 6 years, 9 years, 15 years, and 20 years, respectively, from the effective date of the final designations.[5] Therefore, the attainment dates for each nonattainment area classification for the 2015 ozone NAAQS were/are as follows: August 3, 2021, for Marginal areas, August 3, 2024, for Moderate areas, August 3, 2027, for Serious areas, August 3, 2033, for Severe areas, and August 3, 2038, for Extreme areas.

The EPA also promulgated a rulemaking clarifying the CAA's ozone nonattainment area implementation requirements for the 2015 ozone NAAQS (herein referred to as the ''2015 Ozone SIP Requirements Rule'').[6] That implementation rulemaking articulated the CAA's substantive requirements for ozone nonattainment areas for each classification level and established deadlines for submission of plan

[1] 80 FR 65292 (October 26, 2015).

[2] CAA section 107(d)(1)(A).

[3] 83 FR 25776 (June 4, 2018).

[4] 83 FR 10376 (March 9, 2018).

[5] *Id.* 10380.

[6] 83 FR 62998 (December 6, 2018).

revisions to address those requirements.[7]

Effective November 7, 2022, the EPA determined that the Western Michigan nonattainment areas failed to attain by the Marginal area attainment date and the areas were reclassified by operation of law to Moderate.[8] Effective January 16, 2025, the EPA determined that the Western Michigan nonattainment areas failed to attain by the Moderate area attainment date and the areas were reclassified to Serious by operation of law.[9] Michigan's Serious RACT SIP was due on January 1, 2026, but this action addresses RACT for Moderate nonattainment only.[10]

II. RACT Requirements for Ozone

RACT is an important strategy for reducing NO_X and VOC emissions from major stationary sources and sources covered by a control techniques guideline (CTG) document. Since the 1970s, the EPA has defined RACT as the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility.[11]

Areas designated nonattainment for an ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172. Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM), including emissions reductions from existing sources through the adoption of RACT. Further, section 182(b)(2) of the CAA sets forth three specific RACT requirements for ozone nonattainment areas classified as Moderate or higher.

First, section 182(b)(2)(A) requires that States submit a revision to their SIP requiring implementation of RACT for each category of VOC sources in the nonattainment area covered by a CTG document issued by the EPA between November 15, 1990, and the date of attainment. Second, section 182(b)(2)(B) requires a SIP revision to implement RACT for all VOC sources in the nonattainment area covered by any CTG issued before November 15, 1990. Third, section 182(b)(2)(C) requires a SIP revision implementing RACT for any other major stationary source of VOCs located in the nonattainment area. This RACT requirement is extended to major stationary sources of NO_X in section 182(f) of the CAA, which subjects major stationary sources of NO_X to the same requirements that are applicable to major stationary sources of VOCs. These ozone RACT requirements are sometimes referred to collectively as VOC CTG RACT, non-CTG major source VOC RACT, and major source NO_X RACT.

A ''major source'' is defined based on the source's potential to emit (PTE) of NO_X, VOC, or both pollutants, and the applicable thresholds differ based on the classification of the nonattainment area in which the source is located.[12]

The EPA has affirmed RACT requirements through implementation rules for each ozone NAAQS as well as through guidance. The EPA's 2015 Ozone SIP Requirements Rule outlined the requirements that States with ozone nonattainment areas need to address for the 2015 ozone NAAQS, which include RACT requirements.[13]

The preamble to the 2015 ozone implementation rule, consistent with the EPA's prior guidance, says that when determining what is RACT for a particular source or category of sources, air agencies should consider all relevant information (including recent technical information and information received during the State's public comment period) that is available at the time they develop their RACT SIPs.[14] The EPA informally refers to this assessment process as a ''due diligence review'' and considers it a necessary component of approvable RACT determinations.[15]

Further, an air agency that has previously implemented RACT via the EPA-approved SIP revisions for a prior ozone NAAQS may conclude that new or revised RACT regulations are not necessary to meet RACT requirements for a revised ozone NAAQS. In such situations, an air agency may submit SIP revisions certifying that existing RACT regulations are adequate to meet applicable nonattainment area or Ozone Transport Region RACT requirements for a revised ozone NAAQS (these are referred to as ''certification SIPs''). States should include an accompanying due diligence analysis in their SIP submittal showing why no new or revised RACT regulations are necessary. Put another way, the SIP submission should include analyses to explain why the previously approved RACT regulations continue to represent RACT for the revised NAAQS. Additionally, if there are no sources covered by a certain CTG within a nonattainment area, a State may submit a negative declaration stating so, in place of regulatory requirements to apply RACT for that category of sources.

This action addresses Michigan's Moderate VOC and NO_X RACT SIP submittal for the 2015 ozone standard for the Western Michigan nonattainment areas. This action also addresses rules that reduce VOC emissions from the consumer products and architectural coatings categories.

III. What is the EPA's evaluation of Michigan's submittal?

A. Revisions to Existing VOC RACT CTG Regulations in MAPCR Part 6

The EPA previously determined that Michigan's Administrative Code, ''Part 6. Emission Limitations and Prohibitions—Existing Sources of Volatile Organic Compound Emissions'' met CTG and non-CTG VOC RACT requirements associated with past ozone NAAQS and approved them into the Michigan SIP. These Part 6 VOC regulations were originally developed and incorporated into Michigan's SIP under the previous 1-hour (1979) ozone standard.[16] The Muskegon and Berrien nonattainment areas were redesignated to attainment under the 1997 ozone standard before RACT became due.[17] Michigan was designated attainment/unclassifiable under the 2008 ozone standard, so the State was not required to implement RACT under this standard.[18]

To meet the VOC RACT requirements for the 2015 ozone NAAQS, Michigan revised several existing VOC RACT rules in Part 6. These amendments address cases where certain CTGs have been revised or reissued since the State rules were last SIP-approved, and revise certain rules' applicability to include the current ozone nonattainment areas. The amended rules include:

- R 336.1606–R 336.1611
- R 336.1618
- R 336.1620–R 336.1625
- R 336.1627–R 336.1632

Michigan also adopted new VOC RACT rules in Part 6 for the Western Michigan nonattainment areas under the 2015 ozone standard. These new rules address CTGs the EPA issued since the Part 6 rules were last approved:

- R 336.1610a
- R 336.1620a
- R 336.1624a

[7] *Id.;* 40 CFR 51.1300–1319.

[8] 87 FR 60897 (October 7, 2022).

[9] 89 FR 101901 (December 17, 2024).

[10] 90 FR 5651 (January 17, 2025).

[11] *Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas* (December 9, 1976) and 44 FR 53762 (September 17, 1979).

[12] *See* CAA sections 182(c)–(f) and 302(j).

[13] 40 CFR 51.1312.

[14] 83 FR at 63007.

[15] *See* Ozone NAAQS Resource Document: Due Diligence Review Framework for Air Agencies Developing RACT SIP Revisions (Dec. 19, 2024).

[16] 59 FR 46182 (September 7, 1994)

[17] 72 FR 27425 (May 16, 2007)

[18] 77 FR 30088 (May 21, 2012)

- R 336.1633–R 336.1644

In addition, Michigan amended R 336.1601 and R 336.1602 to align with its new and revised CTG-based RACT rules. R 336.1601 establishes definitions for various words and phrases used throughout Part 6 as well as the definition for ''existing source.'' The EPA is proposing to approve R 336.1601, with the exception of subrule (a), which Michigan requested that the EPA not incorporate into the SIP. R 336.1602, discussed further below, establishes alternative procedures requiring State and EPA SIP approval, as well as requirements for non-CTG RACT analyses.

As noted above, R 336.1632 was revised to address CTGs the EPA issued since the rule was last approved. The EPA is proposing to remove the current SIP-approved version of R 336.1632 from the SIP, with the exception of subrule (15), and is proposing to approve Michigan's current version of R 336.1632, effective April 18, 2023, with the exception of subrule (9), which Michigan requested that the EPA not incorporate into the SIP.

Michigan and the EPA performed RACT due diligence analyses comparing the State's VOC RACT rules to relevant CTGs and RACT rules in other States. The EPA found Michigan's rules to be mostly consistent with similar VOC RACT rules adopted by other States and with the relevant CTGs. The EPA has not identified any new reasonably available control technologies, considering technological and economic feasibility for these sources. As a result of the EPA's due diligence analysis, the EPA is proposing to determine that these VOC RACT regulations are representative of RACT for the Western Michigan nonattainment areas for purposes of the 2015 ozone standard. See more about the due diligence process in the EPA's technical support document (TSD) [19] and in part G of section III of this preamble.

B. Michigan's Demonstration for Coating Usage Exemptions in R 336.1610, R 336.1620, R 336.1621, and R 336.1624

Michigan adopted Rules R 336.1610a, R 336.1620a, R 336.1621a, and R 336.1624a as VOC rules covering CTG categories in nonattainment areas under the 2015 ozone standard.

- R 336.1610a: Surface coating of cans, coils, paper, fabrics, automobiles, and light-duty trucks
- R 336.1620a: Flat wood paneling coatings
- R 336.1621a: Miscellaneous metal and plastic parts coatings
- R 336.1624a: Flexible package printing

These rules meet RACT requirements and use the more stringent VOC coating-usage exemption level of 15 pounds per day (lbs/day).

Michigan previously adopted Rules R 336.1610, R 336.1620, R 336.1621, and R 336.1624, which also regulate VOC content in coatings and printing inks. These rules apply to areas not required to comply with rules R 336.1610a, R 336.1620a, R 336.1621a, and R 336.1624a. Michigan finalized Rule 610 in 1980 and Rules 620, 621, and 624 in 1981.

- R 336.1610: Automobile and light-duty truck assembly coatings; coatings for paper, vinyl, fabric, and certain metallic products
- R 336.1620: Flat wood paneling coatings
- R 336.1621: Miscellaneous metal coatings not covered by Rule 610
- R 336.1624: Certain printing operations

In 1993, Michigan revised these rules to meet the EPA's RACT ''fix-up requirement'' under CAA section 182(a)(2)(A), which standardized VOC control levels nationwide. The revisions reduced the exemption levels from 2,000 pounds per month (lbs/month) to 15 lbs/day (2.7 tons per year (tpy)). These lower exemptions created significant financial burdens for small coating operations that emitted minimal VOCs. In 1997, Michigan responded by restoring the pre-1993 exemption levels at the State level, which was typically 2,000 lbs/month (12 tpy). The State later made additional revisions to update adoption-by-reference materials and clarify rule language.

Michigan conducted a demonstration for Rules R 336.1610, R 336.1620, R 336.1621, and R 336.1624 to determine whether revising the SIP-approved 15 lbs/day exemption back to 2,000 lbs/month would increase VOC emissions. The analysis evaluated potential changes in emissions by comparing current reported emissions (under the 12 tpy exemption) with projected emissions under the 2.7 tpy exemption. It focused on units with combined emissions between 2.7 and 12 tpy, which are assumed not to be subject to the current SIP-approved rules.

Michigan's analysis shows that the higher exemption limits will not increase emissions. In fact, actual emissions under the higher exemption limit (12 tpy or 2,000 lbs/month) were lower than the potential emissions allowed under the stricter 15 lbs/day exemption limit.

Therefore, the EPA is proposing to approve Rules R 336.1610, R 336.1620, R 336.1621, and R 336.1624 into the Michigan SIP as satisfying CAA section 110(l) requirements, because the revisions will not interfere with attainment or reasonable further progress.

C. Negative Declarations

For the Western Michigan nonattainment areas, Michigan provided Negative Declarations for the following CTGs: ''Manufacture of Pneumatic Rubber Tires,'' ''Large Petroleum Dry Cleaners,'' ''Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins,'' ''Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry,'' ''Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry,'' ''Shipbuilding and Ship Repair Operations,'' ''Large Appliance Coatings,'' and ''Oil and Natural Gas Industry.'' Michigan reviewed facilities in the Western Michigan nonattainment areas for the 2015 ozone standard and determined that no sources are subject to any of these CTGs. To reach this conclusion, Michigan used its Michigan Air Emissions Reporting System (MAERS), Michigan Air Compliance Emissions System (MACES), district office outreach, and external stakeholder workgroup feedback. The EPA concurs with Michigan that there are no applicable sources for the RACT categories covered by these negative declarations.

D. Non-CTG Major Source VOC Categorical RACT

In Moderate ozone nonattainment areas, non-CTG VOC major sources, which are subject to RACT, are stationary sources with a PTE of 100 tpy or more of VOCs. Many major VOC sources located in the Western Michigan ozone nonattainment areas are subject to categorical RACT rules. Michigan's VOC RACT rules currently establish non-CTG RACT for two source categories. Michigan revised these rules, extending their geographic applicability to include the Western Michigan 2015 ozone nonattainment areas:

- R 336.1630: Emission of volatile organic compounds from existing paint manufacturing processes
- R 336.1631: Emission of volatile organic compounds from existing process equipment utilized in manufacture of polystyrene or other organic resins

Michigan's due diligence analysis, available in the docket, compares its

[19] Available in the docket for this action.

non-CTG categorical RACT rules to similar rules adopted by other States. The EPA found Michigan's rules to be consistent with those comparisons and did not identify any new control technologies that are reasonably available considering technological and economic feasibility for these sources. As a result of Michigan's due diligence analysis, the EPA is proposing to determine that these non-CTG VOC RACT regulations are still representative of RACT for the Western Michigan nonattainment areas under the 2015 ozone standard. See more about the due diligence process in part G of section III of this preamble.

E. Non-CTG VOC and NO_X Major Source-Specific RACT Determinations

MAPCR Rule 336.1602(4) requires non-CTG VOC major sources that are not regulated under other Michigan VOC RACT rules to submit RACT studies within 6 months of final promulgation of Michigan's rule or an alternative timeframe approved by Michigan. Similarly, MAPCR Rule 336.1846 requires NO_X major sources that are not covered by other Michigan NO_X RACT rules to submit RACT studies within one year of the effective date of Michigan's rule. Michigan will then submit the source-specific RACT plans with enforceable measures to the EPA for review and approval into the Michigan SIP. Since these procedural rules do not establish any control standards, they do not themselves establish RACT-level controls. However, all of the non-CTG VOC and NO_X major sources in the Western Michigan nonattainment areas are covered by non-CTG categorical rules and none currently exist that would be subject to Rules 336.1602(4) or 336.1846. The EPA is proposing to approve Rules 336.1602(4) and 336.1846 into Michigan's SIP.

F. VOC SIP Strengthening: Consumer Products and AIM Rules, R 336.1660 (Amended), R 336.1662 (Added), R 336.1661 (Rescinded)

The EPA is proposing to approve Michigan's amended Rule 336.1660 and newly added Rule 336.1662 as SIP strengthening for the Western Michigan nonattainment areas under the 2015 ozone standard. Rule 336.1660 reduces VOC emissions from consumer products, while Rule 336.1662 limits VOC emissions from architectural and industrial maintenance coatings. Neither rule is based on CTGs. Rule 336.1661 is being rescinded, as its content has been incorporated into the updated R 336.1660.

G. RACT Due Diligence

Michigan developed a comparison table evaluating its VOC RACT rules against applicable CTGs and RACT regulations in other States. The EPA performed a due diligence analysis to evaluate Michigan's VOC and NO_X RACT submittal and to supplement Michigan's comparison table for the Western Michigan nonattainment areas under the 2015 ozone standard. In the EPA's TSD (available in the docket), the EPA details the basis for concluding that Michigan's regulations fulfill RACT through comparison with RACT rules developed by other States, CTG guidance documents, and applicable Alternative Control Technology (ACT) documents. The EPA evaluated the relevant RACT rules in various States including Region 5 States (Illinois, Ohio, Indiana, and Wisconsin) and States in EPA Regions 1, 2, 6, 8, and 9 (Maine, Vermont, California, Colorado, Texas, Arizona, New Jersey, Connecticut, and New York). The EPA found Michigan's rules to be generally consistent with or more stringent than control measures in other States' regulations, CTGs, and ACT documents. The EPA has not identified any new control technologies that are reasonably available considering technological and economic feasibility for these sources. Based upon our findings, the EPA proposes to determine that Michigan's VOC and NO_X rules represent RACT.

H. NO_X RACT Rules

''Part 8. Emission Limitations and Prohibitions—Oxides of Nitrogen'' has not been previously submitted or approved into Michigan's SIP. Michigan promulgated NO_X RACT emission standards for various sizes of engines, boilers, combustion turbines, miscellaneous process-specific combustion sources, and Alternative NO_X RACT, which are contained in MAPCR R 336.1840–R336.1845.

Michigan evaluated other States' recent RACT regulations and analyzed emissions and operational profiles of combustion units at major source facilities in Michigan to determine RACT requirements for these categories. These regulations establish NO_X RACT requirements for combustion engines, boilers, combustion turbines, hot mix asphalt plants, process heaters, engine test cells, lime kilns, and glass manufacturing. They also outline the process and timeline for proposing alternative RACT for emission units that would otherwise be subject to the Part 8 NO_X RACT requirements. The EPA is proposing to approve the following sections of MAPCR Part 8 as meeting the NO_X RACT requirement for the Western Michigan nonattainment areas under the 2015 ozone standard into the Michigan SIP: R 336.1840, 336.1841(1)–(7), 336.1842(1)–336.1842(9), 336.1843, 336.1844(1)–336.1844(8), and R336.1845. In the EPA's due diligence analysis, the EPA compares Michigan's NO_X RACT rules to other relevant State rules and ACTs. The EPA found Michigan's rules to be in some cases more stringent than other states' NO_X RACT rules and consistent with the ACTs. The EPA has not identified any new control technologies that are reasonably available considering technological and economic feasibility for these sources. See the EPA's TSD and this preamble for more information on the EPA's due diligence analysis.

I. Consumer Products and AIM Rules, R 336.1660 (Amended), R 336.1662 (Added), R 336.1661 (Rescinded)

The Consumer Products and AIM Coatings Rules are not RACT rules. However, Michigan submitted these VOC SIP revisions as part of its attainment strategy for the Western Michigan nonattainment areas under the 2015 ozone standard. The EPA is proposing to approve Michigan's Rules R 336.1660 and R 336.1662, which establish VOC limits for consumer products and architectural and industrial maintenance coatings, as SIP-strengthening measures for the Western Michigan nonattainment areas under the 2015 ozone standard. Michigan is relying in part on the VOC emission reductions from these rules to meet the reasonable further progress requirements under CAA section 182(b)(1). Rule 336.1660 regulates VOC emissions reductions from consumer products, while Rule 336.1662 regulates VOC emissions reductions from architectural and industrial maintenance coatings. Neither rule is based on CTGs. Michigan is rescinding Rule 336.1661 because its content is now incorporated into the updated R 336.1660.

IV. What action is the EPA taking?

The EPA is proposing to approve various revisions and additions to MAPCR Parts 6 and 8 into the Michigan SIP as described in the Preamble above. The EPA is proposing to approve these revisions as meeting the Moderate VOC and NO_X RACT requirements of CAA sections 182(b)(2) and NO_X RACT requirements of 182(f) of the CAA, respectively, for the Western Michigan nonattainment areas under the 2015 ozone standard. EPA is also proposing to approve MAPCR Rules 336.1660 and 336.1662, which limit VOC emissions

from consumer products and architectural and industrial maintenance coatings, as SIP strengthening measures for the areas. The EPA is not acting on R 336.1841(8), R 336.1842(10), and R 336.1844(9), and will address these rules in a separate action.

V. Incorporation by Reference

In this rulemaking, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Michigan rules R 336.1601; except for R 336.1601(a);R 336.1602; R 336.1606; R 336.1607; R 336.1608; R 336.1609; R 336.1610; R 336.1610a; R 336.1611; R 336.1618; R 336.1620; R 336.1620a; R 336.1621; R 336.1621a; R 336.1622; R 336.1623; R 336.1624; R 336.1624a; R 336.1625; R 336.1627; R 336.1628; R 336.1629; R 336.1630; R 336.1631; R 336.1632, except for R 336.1632(9); R 336.1633; R 336.1634; R 336.1635; R 336.1636; R 336.1637; R 336.1638; R 336.1639; R 336.1640; R 336.1641; R 336.1642; R 336.1643; R 336.1644; R 336.1660; R 336.1661 (Rescinded); and R 336.1662; effective April 18, 2023, and R 336.1840; R 336.1841,except for R 336.1841(8); R 336.1842, except for R 336.1842(10); R 336.1843; R 336.1844, except for R 336.1844(9); R 336.1845; and R 336.1846; effective April 28, 2025, discussed in section III of this preamble. The EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rulemaking does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

Dated: February 19, 2026.

Anne Vogel,

Regional Administrator, Region 5.

[FR Doc. 2026–03937 Filed 2–26–26; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2025–0092; FRL–13195–01–R5]

Air Plan Approval; Indiana; Keystone VOC RACT Alternative Control

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the volatile organic compound (VOC) requirements for Keystone Automotive Industries dba Saturn Wheel (Keystone) of Huntington County, Indiana. Keystone owns and operates an aluminum alloy wheel refurbishing and distribution facility at which it performs cold cleaner degreasing operations and is subject to the VOC rules under article 8 of the Indiana Administrative Code (IAC). On February 26, 2025, the Indiana Department of Environmental Management (IDEM) submitted a Commissioner's Order containing the revised requirements and requested that the EPA approve it as an amendment to the Indiana State Implementation Plan (SIP). IDEM is seeking the EPA approval of an equivalent control device and site specific Reasonably Available Control Technology (RACT) for Keystone's degreasing operations, as provided in IAC article 8.

DATES: Comments must be received on or before March 30, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2025–0092 at *https://www.regulations.gov* or via email to *langman.michael@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or

other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Melissa Sheffer, Air and Radiation Division (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–1027, *sheffer.melissa@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. What is EPA proposing to approve?

The EPA is proposing to approve a revision to Indiana's VOC SIP for Keystone. The company has requested that it be permitted to use an oil cover as an equivalent control device for its cold cleaner degreaser, as provided in 326 IAC 8–1–5 and 326 IAC 8–3–2. The oil cover, Aquastrip Fume Seal, is a layer of mineral oil at least one-inch thick floating over the cleaning solvent in a dip tank. The solvent is a mixture of two water miscible compounds, n-Methyl Pyrrolidone (NMP) and monoethanolamine (MEA). The oil cover controls VOC emissions from the dip tank by reducing solvent evaporation.

II. What are the changes from the current rule?

Indiana's cold cleaner degreaser control requirements are contained in 326 IAC 8–3–2. Under 326 IAC 8–3–2(b)(1), degreasers with solvent that is heated to a temperature of greater than forty-eight and nine-tenths (48.9) degrees Celsius, or 120 degrees Fahrenheit, are required to control VOC emissions using one of the following control devices: a freeboard ratio of 0.75 or greater; a water cover over the solvent when the solvent used is insoluble in, and heavier than, water; a refrigerated chiller; carbon adsorption; or VOC emission control equipment operated in accordance with 326 IAC 8–3–8(b)(3). Per 326 IAC 8–1–5(a), ''[a]n owner or operator of a source may submit a petition . . . requesting a site-specific Reasonably Available Control Technology (RACT) plan as an alternative to the requirements in 326 IAC 8.'' In accordance with 326 IAC 8–1–5(a)(6), the petition must include, among other things, a demonstration that the alternative control program constitutes RACT for the petitioned facility, and address the factors listed in 326 IAC 8–1–5(a)(6). Such alternative systems, however, must be submitted to and approved by the EPA as a SIP revision as required by 326 IAC 8–1–5(c).

III. What is the EPA's analysis of the supporting materials?

IDEM supplied the EPA with technical information on the solvents used by Keystone and the requested oil cover. IDEM also provided information on why a water cover would not work with the solvents used and why the freeboard ratio of the tank cannot practically be increased to the level required by 326 IAC 8–3–2.

The solvents Keystone uses, NMP and MEA, are miscible in water, and attempts to use a water cover would fail to reduce VOC emissions. The water would blend with the cleaning solvents and not provide any barrier against solvent evaporation. To meet the freeboard ratio requirement of 0.75, Keystone would need to raise the freeboard height on its dip tank to 108 inches (9 feet). This would require that the building be altered to accommodate the dip tank's increased height. The cost of raising the roof or lowering the floor makes this option cost prohibitive. IDEM also addressed why the use of a refrigerated condenser and carbon adsorption system, listed as options in 326 IAC 8–3–2(b), would not be feasible for Keystone due to the capital expenditures required for the installation, operation, and modification to the building, as well as increased worker hazards and environmental impacts from either control system.

In its ''Guide to Cleaner Technologies: Cleaning and Degreasing Process Changes'' (EPA/625/R–93/017), the EPA suggests the use of an oil cover for operations using heated NMP. Keystone will use a heated NMP and MEA solvent blend in its operation. The supplied technical information shows that NMP and MEA have similar vapor densities. The oil cover, a layer of mineral oil at least one inch thick, provides a physical barrier between the cleaning solvents and the atmosphere. Thus, it is reasonable to expect an oil cover will provide an equivalent control technique for VOC emissions from an NMP and MEA solvent blend.

This request constitutes a petition for a site-specific RACT plan under 326 IAC 8–1–5. Consequently, Keystone was required to demonstrate to IDEM that the oil cover constitutes RACT for the subject facility, as well as address the other factors specified in 326 IAC 8–1–5(a).

IDEM provided a demonstration of compliance with Clean Air Act (CAA) section 110(l), 42 U.S.C. 7410(l), which prohibits SIP revisions from interfering with attaining air quality standards and reasonable further progress requirements. IDEM's 110(l) demonstration describes how the oil cover layer will remain on top of the degreasing solvent and control emissions of VOCs by reducing solvent evaporation, which also reduces the heat required for operations as it acts similar to an insulator. The oil cover is expected to provide equivalent control of VOC emissions compared to the use of controls required by 326 IAC 8–3–2 and therefore has no adverse impact on air quality. The EPA concurs with the 110(l) demonstration that this action will not interfere with air quality standards and reasonable further progress requirements.

IV. What action is the EPA taking?

The EPA is proposing to approve revisions to VOC emissions regulations for the Keystone aluminum alloy wheel refurbishing and distribution facility in Huntington County, Indiana. More specifically, the EPA proposes to approve Commissioner's Order 2025–Air–01 into the Indiana SIP. The revision provides for the use of an oil cover as an equivalent VOC emission control system under 326 IAC 8–1–5 and 326 IAC 8–3–2 for its cold cleaner degreaser.

V. Incorporation by Reference

In this rulemaking, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Indiana Commissioner's Order 2025–Air–01, signed February 19, 2025, discussed in section IV of this preamble. The EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rulemaking does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: February 17, 2026.

Anne Vogel,

Regional Administrator, Region 5.

[FR Doc. 2026–03933 Filed 2–26–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2026–0562; FRL–13213–01–R5]

Air Plan Approval; Ohio; Clean Data Determination for the Cleveland, Ohio Area for the 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine under the Clean Air Act (CAA) that the Cleveland, Ohio nonattainment area (hereafter also referred to as ''Cleveland area'' or ''area'') has attained the 2015 ozone National Ambient Air Quality Standard (NAAQS or standard). This determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2023–2025 design period showing that the Cleveland area achieved attainment of the 2015 ozone NAAQS. This determination relies on an exceptional events request submitted by the Ohio Environmental Protection Agency (Ohio EPA) on December 8, 2025, which the EPA concurred with on January 12, 2026. The EPA is proposing to take final agency action on Ohio's exceptional events request and the EPA's concurrence. As a result of this determination, the EPA is proposing to suspend the requirements for the state to submit an attainment demonstration and associated Reasonable Available Control Measures (RACM), Reasonable Further Progress (RFP) plans, contingency measures for failure to attain or make reasonable progress, and other planning State Implementation Plans (SIPs) related to attainment of the 2015 NAAQS, for as long as the Cleveland area continues to attain the 2015 ozone NAAQS.

DATES: Comments must be received on or before March 30, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2026–0562 at *https://www.regulations.gov,* or via email to *arra.sarah@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Cecilia Magos, Air and Radiation Division (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7336, *magos.cecilia@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

The EPA has determined that ground-level ozone is detrimental to human health. On October 1, 2015, the EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). See 80 FR 65292 (October 26, 2015). Under the EPA's regulations at 40 CFR part 50, the 2015 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.070 ppm, when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. See 40 CFR 50.19 and appendix U to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires the EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality-assured

ozone monitoring data. The Cleveland area was designated as a Marginal nonattainment area for the 2015 ozone NAAQS on June 4, 2018 (83 FR 25776) (effective August 3, 2018). On October 7, 2022 (87 FR 60897), the EPA determined that the Cleveland area did not attain the standard by the Marginal attainment date, and the area was reclassified as Moderate by operation of law. More recently on December 17, 2024 (89 FR 101901), the EPA determined the area did not attain the standard by the Moderate attainment date, and the area was reclassified as Serious by operation of law.

II. Exceptional Events Demonstration

Congress has recognized that it may not be appropriate for the EPA to use certain monitoring data collected by the ambient air quality monitoring network and maintained in the EPA's Air Quality System (AQS) database in certain regulatory determinations. Thus, in 2005, Congress provided the statutory authority for the exclusion of data influenced by ''exceptional events'' meeting specific criteria by adding section 319(b) to the CAA.[1]

The EPA promulgated the Exceptional Events Rule on March 22, 2007 (72 FR 13560) to implement this 2005 CAA amendment. The 2007 Exceptional Events Rule created a regulatory process codified at 40 CFR parts 50 and 51 (sections 50.1, 50.14, and 51.930). These regulatory sections supersede the EPA's previous guidance on handling data influenced by events, and contain definitions, procedural requirements, requirements for air agency demonstrations, criteria for the EPA's approval of the exclusion of event-affected air quality data from the data set used for regulatory decisions, and requirements for air agencies to take appropriate and reasonable actions to protect public health from exceedances or violations of the NAAQS. On October 3, 2016 (81 FR 68216), the EPA promulgated a comprehensive revision to the 2007 Exceptional Events Rule. The 2016 Exceptional Events Rule revision included the requirement that, if a State demonstrates that emissions from a wildfire smoke event caused a specific air pollution concentration in excess of the NAAQS at a particular air quality monitoring location and otherwise satisfies the requirements of 40 CFR 50.14, the EPA must exclude that data from the use in determinations of exceedances and violations.[2]

The CAA provides for the exclusion of air quality monitoring data from design value calculations when there are NAAQS exceedances caused by events, such as wildfires, that meet the criteria for an exceptional event identified in the EPA's Exceptional Events Rule at 40 CFR 50.1, 50.14, and 51.930. For the purposes of this proposed action, on December 8, 2025, Ohio EPA submitted an exceptional events demonstration showing that ozone concentrations recorded at the Cuyahoga County monitors at District 6 with Site ID 39–035–0034 on June 1, 2, and 29, 2023, and at GT Craig Ncore PAMS with Site ID 39–035–0060 on June 1, 2, and 29, 2023, and ozone concentrations recorded at the Lake County monitors at Eastlake with Site ID 39–085–0003 on June 1 and 2, 2023, and at Painesville with Site ID 39–085–0007 on June 1 and 2, 2023, were influenced by wildfires. The EPA concurred on this request on January 12, 2026.

The EPA found that Ohio's demonstration met the Exceptional Events Rule criteria by demonstrating a clear, causal relationship between these wildfire events and the recorded high ozone values in the area. These values have regulatory significance for purposes of calculating the area's most recent air quality design value needed to demonstrate that the area is attaining the ozone air quality standard. Therefore, the EPA is proposing to take final agency action to approve the CDD for the Cleveland nonattainment area. Consistent with CAA section 319(b) and the implementing regulations, the EPA will remove the monitoring data influenced by exceptional events from the dataset used for regulatory purposes. For this proposed action, the EPA will rely on the calculated values that exclude the event-influenced data for the purpose of demonstrating attainment of the 2015 ozone NAAQS. Further details on Ohio's analyses and the EPA's concurrence can be found in the docket for this regulatory action.

While the EPA has concurred with Ohio's request to exclude event-influenced air quality monitoring data from regulatory decisions, the EPA must provide an opportunity for public comment on the claimed exceptional events and all supporting data prior to the EPA taking final regulatory action which relies on the revised data set. This proposed action provides the public with an opportunity to comment on the claimed exceptional events, all supporting documents and the EPA's concurrence with Ohio's request.

III. Clean Data Determination

Following enactment of the CAA Amendments of 1990, the EPA discussed its interpretation of the requirements for implementing the NAAQS in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (General Preamble), 57 FR 13498, 13564 (April 16, 1992). On November 29, 2005 (70 FR 71612), the EPA set forth what has become known as its ''Clean Data Policy'' for the 1-hour ozone NAAQS. Under the Clean Data Policy, for a nonattainment area that can demonstrate attainment of the standard before implementing CAA nonattainment measures, the EPA interprets the requirements of the CAA that are specifically designed to help an area achieve attainment, such as the requirements for such area to submit attainment demonstrations and associated RACM, RFP plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to attainment of the ozone NAAQS, to be suspended for as long as air quality continues to meet the standard. Such a determination of attainment under the Clean Data Policy is known informally as a CDD. On December 6, 2018 (83 FR 62998), in the final rule updating implementing regulations for the 2015 ozone NAAQS, the EPA codified this policy at 40 CFR 51.1318.

An area is attaining the 2015 ozone NAAQS if it meets the 2015 ozone NAAQS, as determined in accordance with 40 CFR 50.19 and appendix U of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the 2015 ozone NAAQS, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.070 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA's AQS. Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90% of the days

[1] Under CAA section 319(b), an exceptional event means an event that: (i) affects air quality; (ii) is not reasonably controllable or preventable; (iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and (iv) is determined by the EPA pursuant to its regulations to be an exceptional event. For the purposes of section 319(b), an exceptional event does not include: (i) stagnation of air masses or meteorological inversions; (ii) a meteorological event involving high temperatures or lack of precipitation; or (iii) air pollution relating to source noncompliance.

[2] 40 CFR 50.14(b)(4).

within the ozone monitoring seasons,[3] on average, for the 3-year period, with a minimum data completeness of 75% during the ozone monitoring season of any year during the 3-year period. See section 4 of appendix U to 40 CFR part 50.

The EPA has reviewed the available ozone monitoring data from Ohio EPA's monitoring sites in the Cleveland area for the 2023–2025 period. These data were quality assured, recorded in the AQS, and certified in advance of the EPA's publication of this proposal. Ambient air quality monitoring data for the three-year period must meet a data completeness requirement. The EPA did not include data from the Cuyahoga County monitor at Mayfield (site ID: 39–035–5002), which was shut down in 2025 after meeting regulatory requirements and receiving approval from the EPA. The annual fourth-highest 8-hour ozone concentrations and the 3-year average of these concentrations (monitoring site ozone design values) for all valid monitoring sites are summarized in Table 1. These data demonstrate that the Cleveland area is attaining the 2015 ozone NAAQS.

TABLE 1—ANNUAL FOURTH-HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGE OF THE FOURTH-HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE CLEVELAND AREA

County	Monitor	2023 4th high (ppm)	2024 4th high (ppm)	2025 4th high (ppm)	2023–2025 average (ppm)
Cuyahoga	39–035–0034	0.068	0.072	0.070	0.070
	39–035–0060	0.062	0.065	0.068	0.065
	39–035–0064	0.075	0.065	0.068	0.069
	[a] 39–035–5002	0.073	0.070	Invalid	Invalid
Geauga	39–055–0004	0.066	0.066	0.069	0.067
Lake	39–085–0003	0.069	0.071	0.071	0.070
	39–085–0007	0.070	0.069	0.070	0.069
Lorain	39–093–0018	0.064	0.061	0.066	0.063
Medina	39–103–0004	0.072	0.065	0.068	0.068
Portage	39–133–1001	0.070	0.067	0.070	0.069
Summit	39–153–0026	0.071	0.069	0.066	0.068

[a] The Mayfield monitor (Site ID: 39–035–5002) in Cuyahoga County was shut down in April 2025. Data from this monitor was not included in the Cleveland area 2023–2025 DV calculation due to incomplete data at the monitor.

The Cleveland area's 3-year ozone design value for 2023–2025 is 0.070 ppm,[4] which meets the 2015 ozone NAAQS. Therefore, in this action, the EPA proposes to find that the Cleveland area is attaining the 2015 ozone NAAQS.

Should this action be finalized, the requirements for Ohio EPA to submit attainment demonstrations and associated RACM, RFP plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to attainment of the 2015 ozone NAAQS for the Cleveland area, would be suspended for as long as the area continues to attain the 2015 ozone NAAQS. 40 CFR 51.1318.

This action does not constitute a determination of attainment by the attainment date under CAA section 181(b)(2). In this action the EPA is considering the area's design value for the 2023–2025 period, which is not the area's design value as of the applicable attainment date.

The EPA will not take final action to determine that the Cleveland area is attaining the NAAQS if the design value of a monitoring site in the area violates the NAAQS prior to final approval of the CDD.

This action does not constitute a redesignation of any portion of the area to attainment of the 2015 ozone NAAQS under section 107(d)(3)(E) of the CAA, nor does it constitute approval of a maintenance plan for any portion of the area as required under section 175A of the CAA, nor does it find that any portion of the area has met all other requirements for redesignation. On December 8, 2025, Ohio submitted a request to redesignate the area to attainment for the 2015 ozone NAAQS under CAA section 107(d)(3)(E), and the EPA will take action on Ohio's request in a separate rulemaking. The Cleveland area will remain designated nonattainment for the 2015 ozone NAAQS until such time as the EPA determines that the Cleveland area meets CAA requirements for redesignation to attainment and takes a separate action to redesignate the Cleveland area.

IV. What action is the EPA taking?

The EPA is proposing to approve a determination under the CAA that the Cleveland area has attained the 2015 ozone NAAQS. This determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2023–2025 design period showing that the area achieved attainment of the 2015 ozone NAAQS. The EPA is also proposing to take final agency action on an exceptional events request submitted by Ohio EPA on December 8, 2025, and concurred upon by the EPA on January 12, 2026. As a result of this determination and pursuant to 40 CFR 51.1318, the EPA is proposing to suspend the requirements for the area to submit attainment demonstrations and associated RACM, RFP plans, contingency measures for failure to attain or make reasonable progress, and other planning SIPs related to attainment of the 2015 ozone NAAQS, for as long as the area continues to attain the 2015 ozone NAAQS.

V. Statutory and Executive Order Reviews

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

[3] The ozone season is defined by State in 40 CFR 58, appendix D. The ozone season for Ohio is March–October. *See* 80 FR 65292, 65466–67 (October 26, 2015).

[4] The monitor ozone design value for the monitor with the highest 3-year averaged concentration.

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review. This action proposes to issue a CDD for the Cleveland area for the 2015 ozone NAAQS.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

Executive Order 14192 does not apply because it is not a significant regulatory action and is therefore exempted from review under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law. The proposed CDD does not create any new requirements and does not directly regulate any entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action 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. 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. This action proposes a CDD for the Cleveland nonattainment area under the CAA.

G. Executive Order 13175: Coordination With Indian Tribal Governments

This rule does not have Tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

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

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

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

List of Subjects in 40 CFR Part 52

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

Dated: February 17, 2026.

Anne Vogel,

Regional Administrator, Region 5.

[FR Doc. 2026–03934 Filed 2–26–26; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 424

[CMS–6098–NC]

RIN 0938–AV97

Request for Information (RFI) Related to Comprehensive Regulations To Uncover Suspicious Healthcare (CRUSH)

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

ACTION: Request for information.

SUMMARY: This request for information (RFI) solicits stakeholder feedback on potential regulatory changes that might be included in a potential upcoming CRUSH proposed rule, as well as other programmatic changes that could be implemented to make CMS more effective in crushing fraud to protect taxpayer dollars and the Americans we serve.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by March 30, 2026.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Malley, (410) 786–8987.

ADDRESSES: In commenting, refer to file code CMS–6098–NC.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6098–NC, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6098–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

[*Note:* This ZIP code is for express mail or courier delivery only. This ZIP code specifies the agency's physical location.]

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. CMS encourages commenters to include supporting facts,

research, and evidence in their comments. When doing so, commenters are encouraged to provide citations to the materials referenced, including active hyperlinks. Likewise, commenters who reference materials that have not been published are encouraged to upload relevant data collection instruments, data sets, and detailed findings as a part of their comment. Providing such citations and documentation will assist CMS in analyzing the comments.

I. Background

On June 6, 2025, President Trump issued a Presidential Memorandum on Eliminating Waste, Fraud, and Abuse in Medicaid expressing this Administration's commitment to preserve and protect the integrity of government programs. Similarly, President Trump, U.S. Department of Health and Human Services (HHS) Secretary Kennedy, and Centers for Medicare & Medicaid Services (CMS) Administrator Oz have strongly demonstrated this administration's dedication to crushing fraud in Medicare, Medicaid, the Children's Health Insurance Program (CHIP), and the Marketplace. In alignment with this strategic objective, CMS is issuing this RFI to solicit stakeholder feedback on potential regulatory changes that might be included in a potential future proposed rule, as well as other programmatic changes that could be implemented to make CMS more effective in crushing fraud to protect taxpayer dollars and the Americans we serve.

II. Solicitation of Public Comments

While CMS invites all relevant input, we are specifically inviting responses on the following topics listed in this section of this RFI. This RFI does not necessarily solicit comments on the full scope of topics that could be included in a potential, future CRUSH Rule.

A. Modifications to Program Integrity Requirements

CMS takes a variety of actions to crush fraud, waste and abuse, including provider enrollment screening, suspending payments when there is a credible allegation of fraud or reliable indication of overpayment, data analytics of claims, imposing automatic pre-payment claims edits, conducting investigations and audits, post-payment review of medical records, revocations, re-enrollment bans, coordinating with law enforcement partners on enforcement actions, and providing education to reduce improper payments. CMS is looking for ways to strengthen its fraud-fighting toolbox and invites public comments on how to achieve this. Specifically, we seek comments on the following questions and related topics around CMS' existing program integrity authorities and processes:

- Are there ways in which CMS could better use existing statutory authorities to expeditiously prevent bad actors from engaging in fraud, waste, and abuse?
- Are there ways to modify provider enrollment (including revocation), medical review, investigation, audit, payment suspension, and other program integrity oversight policies to provide CMS with increased authority and flexibility to expeditiously prevent bad actors from engaging in fraud, waste, and abuse? (See, for example, Title 42 Code of Federal Regulations (CFR) 405.371 *et seq.* (payment suspension), part 424, Subpart P, especially 424.510 (general requirements), 424.516 (additional requirements), 424.530 (enrollment denial), 424.535 (revocation), and 424.540 (deactivation of billing privileges).)
- Are there existing requirements or policies, including those issued through regulations, memoranda, administrative orders, subregulatory guidance documents, or policy statements that could be altered to increase CMS' ability to promote payment accuracy and efficiency to protect the integrity of Medicare, Medicaid, CHIP, and the Health Insurance Marketplace®? [1]
- What changes could CMS or its contractors make to existing processes to promote their ability to effectively deter fraud, waste, and abuse and promote payment accuracy and efficiency, including by more expeditiously gathering actionable information?
- What types of analytics, methodologies, or data-driven approaches would be most effective in identifying indicators of potential fraud, waste, or abuse? We welcome feedback on specific analytical techniques, models, technologies, mechanisms, or data sources that could strengthen our ability to proactively detect and prevent fraudulent activity.
- A core component of crushing fraud to protect taxpayer dollars is transparency to the Americans we serve about CMS' program integrity undertakings. How can CMS improve its transparency about its oversight and enforcement activities?
- CMS currently does not have an affirmative, regulatory authority to direct Medicare Advantage (MA) organizations and Part D plan sponsors to suspend payments to providers and suppliers that operate exclusively in Part C or Part D or both. Should CMS establish regulatory requirements that allow MA organizations and Part D sponsors to implement payment suspensions under circumstances similar to the payment suspension authority that exists for Traditional Medicare under 42 CFR 405.371, and require suspensions when directed by CMS?

B. Enhanced Identity Proofing and Ownership Requirements

CMS has identified significant concerns that Medicare fraud is increasingly perpetrated through international fraud schemes characterized by opacity of ownership structures. These schemes often involve owners who reside outside of the United States, owners who are not permanent residents or U.S. citizens, and individuals who operate beyond the reach of U.S. law enforcement authorities. The lack of robust identity verification and the ability of non-U.S. residents to maintain ownership in Medicare-enrolled entities creates substantial program integrity vulnerabilities and impedes fraud investigation and prosecution efforts. CMS is seeking stakeholder feedback on potential provisions that would require enhanced identity proofing of individuals associated with Medicare-enrolled entities and impose citizenship or legal residency requirements for ownership.

- What would be the impact on Medicare-enrolled entities if CMS established a requirement for U.S. citizenship or legal permanent residency for all individuals with an ownership or control interest of 5 percent or greater in a Medicare-enrolled provider or supplier?
- CMS currently requires fingerprinting and criminal background checks for all individuals with a 5 percent or greater ownership interest in a provider/supplier organization that is part of the ''high'' risk category as described in 42 CFR 424.518. Should this be expanded to include, for instance, the provider's managing employees, less than 5 percent owners, or other individuals who are affiliated with or working for the organization?
- What alternative identity proofing measures could effectively verify the identity and location of owners while balancing program integrity objectives

[1] Health Insurance Marketplace® is a registered service mark of the U.S. Department of Health & Human Services. The Health Insurance Marketplace® is also known as the Federally facilitated Exchange, which we use synonymously later in this document.

with the operational needs of legitimate Medicare providers and suppliers?

- Are there specific provider or supplier types for which enhanced identity proofing and citizenship or residency requirements would be most critical to preventing fraud?
- Are there additional individuals on the enrollment record for whom enhanced identity proofing and citizenship or residency requirements would help prevent fraud?
- What challenges would these requirements create for entities with foreign parent companies, international investors, or legitimate cross-border business structures?

C. Preclusion List and Medicare Advantage Enrollment Requirements

CMS has identified significant deficits in the effectiveness of the preclusion list in preventing fraudulent billing in MA. Under current policy, providers and suppliers that are revoked from Traditional Medicare for reasons not considered ''detrimental to the best interests of the Medicare program'' are not included on the preclusion list. CMS has observed that providers and suppliers revoked from Traditional Medicare for these reasons often shift their billing operations to MA plans, where they can continue to submit claims and receive payment. This gap in the preclusion list undermines program integrity efforts and allows bad actors to circumvent CMS oversight. CMS is seeking feedback from MA organizations and other stakeholders on potential improvements to the preclusion list and whether requiring enrollment in Traditional Medicare could enhance program integrity.

- What changes could CMS make to better effectuate the preclusion list to prevent Traditional Medicare-revoked providers and suppliers from continuing to bill MA plans?
- Does the current preclusion list adequately serve the needs of MA organizations in identifying and preventing payments to providers and suppliers that pose fraud, waste, or abuse risks?
- Would MA plans support a requirement for all providers and suppliers to enroll in the Traditional Medicare (Fee-for-Service) program as a condition of billing MA plans?
- Should such a requirement apply only to high-risk provider and supplier types?
- What operational, administrative, and financial impacts would a requirement to enroll in the Traditional Medicare program have on providers and suppliers that currently only bill MA plans?
- Are there alternative mechanisms that could achieve similar program integrity objectives without requiring enrollment in Traditional Medicare?

D. Reducing Medicare Fraud Related to Laboratory Tests Including Genetic Tests and Molecular Diagnostic Tests

In 2024, Medicare Part B or Traditional Medicare spending on clinical diagnostic laboratory tests (lab tests) totaled $8.4 billion—a five percent increase over the previous year per a January 2026 U.S. Department of Health and Human Services' Office of the Inspector General (OIG) Report.[2] Part B spending on lab tests has been shifting increasingly toward genetic tests, including tests related to cancer, infections, and epilepsy.[3] Although genetic tests represented only 5 percent of lab tests paid under Part B in 2024, they accounted for 43 percent ($3.6 billion) of Part B lab spending. The OIG and the Department of Justice have issued multiple reports[4] and fraud alerts,[5] and have engaged in multiple enforcement actions[6] related to fraud in lab tests, particularly genetic tests, including molecular diagnostic tests. CMS is concerned about fraud, waste, and abuse related to lab tests and has targeted this as a focus area through its Fraud Defense Operations Center (FDOC), which is a high-tech unit formed in 2025 that utilizes cross-functional teams to target fraud in real time and has expedited the issuance of payment suspensions, resulting in $1.8 billion in taxpayer savings in 2025, over $100 million of which was related to suspect laboratories.

- What new statutory or regulatory authorities would empower CMS to more effectively prevent, identify, and address fraud in lab tests, including genetic tests and molecular diagnostic tests?
- What types of tools, data analytics, and methods would assist CMS to increase program integrity related to lab tests, including genetic tests and molecular diagnostic tests?

In 2011, the Molecular Diagnostic Services Program (MolDX Program), administered by Palmetto GBA on behalf of CMS, was established to determine and streamline coverage and reimbursement for molecular diagnostic tests on behalf of the Medicare program. It aims to provide uniform policies across multiple Medicare Administrative Contractors (MACs) and currently spans 28 states.

CMS is interested in understanding if a requirement to register in the MolDX program, that other payors may have, has had an impact on the risk of fraud, waste and abuse related to laboratory testing. CMS also wants to understand the rationale as to why other payors and MA organizations require laboratories to be registered in MolDX even when they are not located in a MolDX state.

- What prompted other payors and MA organizations to require registration in the MolDX program?
- What safeguards or challenges has the MolDX program provided to your organization regarding laboratory testing?

E. Reducing Risks From Non-Participating Durable Medicare Equipment, Prosthetics, Orthotics and Supplies (DMEPOS)[7] Suppliers in Medicare Advantage

There is a significant risk of fraud, waste, and abuse with certain high-risk services, including the provision of DMEPOS. The OIG and MA organizations have identified that non-participating DMEPOS suppliers[8] are fraudulently billing MA plans for millions of dollars of services not rendered and not needed.[9] We would

[2] Total Medicare Part B Spending on Lab Tests Rose in 2024, Driven by Increased Spending on Genetic Tests. OIG Report Number OEI–09–25–00330. January 23, 2026. Available at: *https://oig.hhs.gov/reports/all/2026/total-medicare-part-b-spending-on-lab-tests-rose-in-2024-driven-by-increased-spending-on-genetic-tests/.*

[3] Id.

[4] Id. See also: OIG Semiannual Report to Congress. October 1, 2024 to March 31, 2025.

[5] Fraud Alert: Genetic Testing Scam. Last updated September 27, 2019. Available at: *https://oig.hhs.gov/fraud/consumer-alerts/fraud-alert-genetic-testing-scam/.*

[6] Lab Operator Convicted of $4M Medicare Fraud Scheme. February 25, 2025. Available at: *https://oig.hhs.gov/fraud/enforcement/lab-operator-convicted-of-4m-medicare-fraud-scheme/.* See also: Federal Law Enforcement Action Involving Fraudulent Genetic Testing Results in Charges Against 35 Individuals Responsible for Over $2.1 Billion in Losses in One of the Largest Health Care Fraud Schemes Ever Charged. September 27, 2019. Available at: *https://www.justice.gov/archives/opa/pr/federal-law-enforcement-action-involving-fraudulent-genetic-testing-results-charges-against.*

[7] Examples of DMEPOS include: mobility aids (wheelchairs, walkers, canes, scooters), respiratory aids (oxygen, CPAP machines, ventilators), hospital beds, prosthetic limbs/eyes, orthopedic braces, diabetes supplies (meters, strips, lancets), ostomy supplies (bags, pouches), and infusion pumps, that serve recurring medical needs at home.

[8] Medicare ''participation'' means that the supplier agrees to accept assignment on all claims for all Medicare-covered services furnished to the supplier's patients. By accepting assignment, the supplier agrees to accept Medicare-allowed amounts as payment in full. The supplier cannot collect more from the patient than the applicable Medicare deductible and coinsurance or copayment. See *https://www.cms.gov/medicare-participation* for more information.

[9] HHS OIG Work Plan for ''Durable Medical Equipment Fraud and Safeguards in Medicare,'' Project Number: OEI–02–24–00310. (''Each year, Medicare payments for durable medical equipment,

Continued

like the public's feedback on solutions related to non-participating DMEPOS suppliers in MA.

- What changes would MA organizations need to make to existing processes to promote the ability to effectively deter fraud, waste, and abuse and promote payment accuracy for non-participating DMEPOS suppliers?
- Are there existing requirements (including those issued through regulations, memoranda, administrative orders, guidance documents, contracts, or policy statements) that could be altered to increase MA organizations' ability to promote payment accuracy and efficiency to protect the integrity of the program for non-participating DMEPOS suppliers?
- What types of analytics, methodologies, or data-driven approaches are most effective in identifying indicators of potential fraud, waste, or abuse for non-participating DMEPOS suppliers? We welcome feedback on specific analytical techniques, models, or data sources that could strengthen MA organizations' ability to proactively detect and prevent fraudulent activity.
- Would MA organizations prefer DMEPOS suppliers to be accredited and enrolled similar to Traditional Medicare, ensuring suppliers meet minimum supplier standards?

F. Reducing Fraudulent Medicare Parts A and B (Traditional Medicare) Claim Submissions

Due to the significant risk of fraud, waste, and abuse with certain high-risk items and services (for example, DMEPOS), CMS is seeking feedback about the impact of reducing the Medicare Parts A and B (Traditional Medicare) 1-calendar year claim filing deadline for high-risk items and services, including but not limited to DMEPOS. Ensuring claims are filed more promptly will assist CMS in evaluating data and reduce the ability of providers to back-bill for fraudulent claims.

- How would a claim filing deadline of 90 to 180 calendar days, which is consistent with private industry norms, impact your practice?
- Are there certain claim or provider types for which these deadlines would not be feasible?
- What would be the best way to implement a shorter claim filing deadline for certain high-risk items and services? What are the benefits or drawbacks of imposing a shorter claim filing deadline for all of the following:

++ All claims filed by specific high-risk provider or supplier types (for example DMEPOS suppliers).

++ All claims filed for specific high-risk items or services.

++ All claims filed by specific providers who are high-risk.

++ Some other method(s).

- Would it be beneficial to apply this standard to all items and services rather than only to high-risk items and services to reduce unnecessary administrative complexity?
- Would the current flexibilities in 42 CFR 424.44 or additional flexibilities for a shorter claim filing deadline be appropriate to support such a change, and if so, what would those flexibilities be?

G. Artificial Intelligence in Medicare Advantage Coding Oversight and Hospital Billing

CMS is seeking input from stakeholders about the availability, use, efficacy, and cost of using artificial intelligence (AI), based on machine learning and other methods, to assist with accurately and efficiently abstracting diagnoses from medical record documentation as part of a medical records review. More specifically, CMS is seeking input on the following topics:

- What types of AI solutions (including commercial off-the-shelf (COTS) products) are most effective and efficient for assisting human coders with large volumes of records?
- What key features and learning capabilities should an AI solution include to improve accuracy, incorporate coder feedback, and prevent errors or ''hallucinations''?
- How should AI-generated coding recommendations be displayed to human reviewers, and what compliance risks should be considered and mitigated?
- What lessons have been learned from implementing AI solutions, including pricing structures and use within cloud-based IT environments?
- Are there AI solutions that address coding issues related to overpayments and underpayments, and can those AI solutions be used for compliance oversight?
- How could AI be used to increase the efficiency and accuracy of hospital billing?

H. Beneficiary Solicitation

Medicare beneficiaries are often subject to unsolicited outreach by unscrupulous individuals seeking to obtain their personally identifiable information to submit fraudulent Medicare claims. Beneficiaries are sometimes offered free money, items, or services in exchange for their information. There is currently a prohibition against unsolicited contact via telephone by DMEPOS suppliers (*see* section 1834(a)(17) of the Social Security Act (the Act) and 42 CFR 424.57(c)(11)). We are seeking feedback from stakeholders about the impact of expanding this prohibition to other types of providers and suppliers through legislation and expanding the existing DMEPOS regulation to other forms of communication, such as email, text message, or social media.

- What means of communication do Medicare beneficiaries find are being used to solicit them for their Medicare information? How do beneficiaries respond when they have been contacted by an inappropriate direct solicitation?
- If the prohibition on unsolicited contact via telephone by DMEPOS suppliers was expanded to other forms of communication, what obstacles would that create for DMEPOS suppliers that could hinder your ability to effectively serve Medicare beneficiaries? In what ways could CMS mitigate those concerns while still expanding protections for beneficiaries?
- If CMS were to pursue a legislative proposal to expand the prohibition against unsolicited contact by DMEPOS suppliers to other provider and supplier types, are there other provider or supplier types that should be included?
- In what other ways should CMS expand the prohibition on unsolicited contact via telephone by DMEPOS suppliers? For example, should CMS explicitly prohibit DMEPOS suppliers from collaborating with marketing agencies or other third parties acting on their behalf to perform solicitation?

I. Beneficiary Contact

CMS encourages Medicare beneficiaries or their authorized legal representatives to review their Medicare Summary Notices (MSNs) and other CMS-issued materials, such as the Medicare & You handbook (see page 105 available at *www.medicare.gov/publications/10050-medicare-and-you.pdf*) and the CMS website to

prosthetics, orthotics, and supplies (DMEPOS) top more than $7 billion in traditional Medicare alone. Although CMS has a number of safeguards in place to prevent bad actors from billing DMEPOS in Medicare, fraudulent billing for DMEPOS continues to be a major concern. Recent cases demonstrate that DMEPOS continues to be a target of fraudulent billing and that new schemes have developed. OIG's review will provide information about current fraud schemes and the safeguards and monitoring that CMS has to prevent fraud, waste, and abuse. These findings will result in multiple products. The first product will look at billing for DMEPOS in Medicare Advantage, specifically by suppliers that are not enrolled in Medicare fee-for-service.'') Available at: *https://oig.hhs.gov/reports/work-plan/browse-work-plan-projects/durable-medical-equipment-fraud-and-safeguards-in-medicare/*.

identify services or items that may be incorrect, unfamiliar, or potentially fraudulent. These communications include instructions on how beneficiaries can report suspected fraud, waste, or abuse, including contacting CMS, the MACs, or the OIG. While these existing efforts provide important information and reporting pathways, we are interested in understanding whether additional or alternative communication methods could further improve beneficiary awareness, trust, and ease of reporting. Accordingly, we are exploring whether and how other approaches or tools could be utilized to better support beneficiaries in identifying and reporting potentially suspicious Traditional Medicare claims.

- How would beneficiaries prefer to be contacted by CMS or its contractors about potentially suspicious claims? Would they prefer that this contact occur before or after processing the claim?
- What concerns, if any, would beneficiaries have regarding privacy, burden, or confusion related to prepayment verification outreach? In what ways could CMS distinguish these communications to make them easy to identify and to make it clear that they are legitimate and trustworthy communications and that beneficiaries need to take action? What form(s) of communication (for example, telephone, mail, secure electronic communication) would beneficiaries find acceptable for such verification?
- What could CMS be doing that it is not already doing to make it easier for beneficiaries to report a potentially suspicious claim?

J. Surety Bonds

In accordance with section 1834(a)(16) of the Act (and as codified in 42 CFR 424.57(d)), DMEPOS suppliers are required to maintain a surety bond of at least $50,000 in order to enroll and maintain enrollment in Medicare. We request public feedback on means of strengthening our existing surety bond requirement. We are especially interested in suggestions on how CMS should use its surety bond authorities to be more effective in the fight against fraud, such as increasing the required bond amount, expanding the types of Medicare providers and suppliers that must maintain a surety bond, or taking tougher actions against bond companies that are not meeting their obligations when fraud is found. In addition, how can CMS strengthen surety bond requirements in Medicaid and CHIP, for example, with respect to Medicaid and CHIP home health providers?

K. Medicaid and CHIP

Recently, CMS has taken bold steps to address significant, systemic Medicaid fraud that has been discovered in multiple states. CMS is continuously refining its oversight actions and capabilities to ensure that states are proactive in crushing fraudulent activities in these programs. We are seeking stakeholder feedback on how to expand CMS' regulatory authority to act expeditiously to prevent, identify, and address instances of fraud, waste, and abuse in Medicaid and CHIP. We are also soliciting suggestions about cutting-edge technological tools that could be harnessed to advance this work.

- Is there any way that CMS should better leverage or expand its statutory or regulatory program integrity oversight authority?
- In order to strengthen program integrity oversight of provider enrollment, should CMS require that states require their high-risk providers to revalidate more frequently than every 5 years, and if so, how frequently?
- What tools or technologies can CMS or states use to enhance program integrity in Medicaid, CHIP managed care, and fee-for-service programs?
- What tools or guidance can CMS give to states to enhance program integrity in the Medicaid and CHIP managed care and fee-for-service programs?
- What ways can CMS improve the prevention, identification, and resolution of fraud, waste, and abuse related to non-federal share financing sources, including intergovernmental transfers (IGT)?
- How can CMS better prevent, identify, and address Medicaid and CHIP fraud, waste, and abuse in the context of individuals who do not have satisfactory immigration status for full Medicaid or CHIP benefits who are accessing services inappropriately?
- How can CMS better prevent fraud, waste, and abuse associated with the differential payment of public and private providers?
- What data and information should states report to CMS to ensure that fraud, waste, and abuse is being identified, investigated, and resolved?
- What best practices and standardized processes should states implement when responding to recovery audit contractor (RAC) findings?
- What data or information should be made publicly available that would allow for transparency in Medicaid by states, health plans, and providers?
- How can CMS help states to better prevent, identify, and address Medicaid and CHIP fraud, waste, and abuse related to service areas that have been identified as high risk for fraud in certain states, such as the following:

++ Housing stabilization services.

++ Behavioral health services.

++ Personal care assistant (PCA) services.

++ Nonemergency medical transportation.

- How can CMS further enhance the Healthcare Fraud Prevention Partnership (HFPP) to strengthen fraud detection within state agencies and law enforcement?
- What are the best practices for integrating artificial intelligence with existing technologies to maximize effectiveness?

L. State-Specific Medicaid and CHIP Questions

- What statutory or regulatory changes are needed to strengthen states' ability to effectively reduce fraud, waste, and abuse in Medicaid and CHIP?
- What regulatory or administrative changes could CMS make to empower states to—(a) pursue bad actors; and (b) better coordinate program integrity efforts with the federal government, law enforcement, and other states?
- What data or tools would facilitate state program integrity activities?
- Would further use of federal databases, such as Do Not Pay (DNP), or non-federal databases provide states with more complete information to move further away from a pay-and-chase model and towards pre-pay review?
- What successful strategies have certain states implemented that others can replicate as best practices?
- What is the best way for states to learn about the most up to date technology or data analytic tools available to effectively reduce fraud, waste, and abuse in Medicaid and CHIP?
- How can CMS help states better prevent, identify, and address fraud, waste, and abuse related to supplemental payments (for example, disproportionate share hospital (DSH) payments) or state directed payments?
- How can CMS help states better prevent, identify, and address fraud, waste, and abuse in section 1915 waiver programs or section 1115 demonstration programs?
- What incentives could be put in place for states to proactively engage in program integrity efforts, and what new penalties might be necessary to address non-compliance by states?

M. Federally Facilitated Exchange (FFE) and State-Based Exchanges (SBEs)

- How could CMS strengthen program integrity, including fraud prevention and consumer protection, in both the FFE and SBEs by—(1) better leveraging existing regulatory oversight authority; and (2) identifying areas where additional regulatory authority may be needed?
- How could CMS improve regulations to strengthen oversight of agents, brokers, web-brokers, and direct enrollment entities including compliance standards, training, and fraud prevention in both the FFE and SBEs?
- How could CMS expand its regulatory authority to incentivize insurance agencies to thoroughly vet assigned agents, brokers, and web-brokers assisting consumers with enrollment in FFE plans and hold agencies accountable for activities relating to these individuals?
- What specific measures could CMS implement to better curtail the ability of fraudulent agents, brokers, and web-brokers to enroll or change the enrollment of consumers without their knowledge or consent?
- How can CMS strengthen its enforcement activities to better address fraud, waste, and abuse in the FFE and SBEs?
- How could CMS strengthen its standards for corrective action and for suspension or termination of agents', brokers', and web brokers' Exchange Agreements [10] and what circumstances should trigger each type of action? Should CMS consider additional use of civil money penalties? If so, under what circumstances?
- How could CMS improve the accuracy, timeliness, fraud prevention, and any other aspects related to program integrity in income verification for FFE enrollees?
- What successful anti-fraud measures already implemented in SBEs should be adopted in the FFE and vice versa?
- How could CMS enhance *HealthCare.gov* to prevent fraud at the point of enrollment and reduce reliance on post-payment recovery (commonly referred to as ''pay-and-chase''), and how could CMS most effectively encourage SBEs to adopt best practices for such fraud prevention within their legal and other authority?
- How could CMS expand its regulatory authority to enhance oversight of enhanced direct enrollment (EDE) partners?
- How could CMS expand its authority to monitor the activity of agents/brokers on EDE platforms?
- How could CMS better detect and mitigate improper dual enrollment in Medicaid/CHIP and subsidized Exchange plans?
- How could CMS leverage advanced technologies, such as AI, to prevent, detect, and address fraud, waste, and abuse in both the FFE and SBEs?

[10] Exchange Agreements are also called Marketplace Agreements.

III. Collection of Information Requirements

This is an RFI only. In accordance with the implementing regulations of the Paperwork Reduction Act of 1995 (PRA), specifically 5 CFR 1320.3(h)(4), this general solicitation is exempt from the PRA. Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration, are not generally considered information collections and therefore not subject to the PRA.

This RFI is issued solely for information and planning purposes; it does not constitute a Request for Proposal (RFP), applications, proposal abstracts, or quotations. This RFI does not commit the U.S. Government to contract for any supplies or services or make a grant award. Further, we are not seeking proposals through this RFI and will not accept unsolicited proposals. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in response to this RFI; all costs associated with responding to this RFI will be solely at the interested party's expense. We note that not responding to this RFI does not preclude participation in any future procurement, if conducted. It is the responsibility of the potential responders to monitor this RFI announcement for additional information pertaining to this request. In addition, we note that CMS will not respond to questions about the policy issues raised in this RFI.

We will actively consider all input as we develop future regulatory proposals or future subregulatory policy guidance. We may or may not choose to contact individual responders. Such communications would be for the sole purpose of clarifying statements in the responders' written responses. Contractor support personnel may be used to review responses to this RFI. Responses to this notice are not offers and cannot be accepted by the Government to form a binding contract or issue a grant. Information obtained as a result of this RFI may be used by the Government for program planning on a non-attribution basis. Respondents should not include any information that might be considered proprietary or confidential. This RFI should not be construed as a commitment or authorization to incur cost for which reimbursement would be required or sought. All submissions become U.S. Government property and will not be returned. In addition, we may publicly post the public comments received, or a summary of those public comments.

Mehmet Oz, Administrator of the Centers for Medicare & Medicaid Services, approved this document on February 20, 2026.

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

[FR Doc. 2026–03968 Filed 2–25–26; 4:15 pm]

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Notices

Federal Register
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Friday, February 27, 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 AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 30, 2026 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Federal Plant Pest and Noxious Weed Regulations.

OMB Control Number: 0579–0054.

Summary of Collection: In accordance with Section 412 of the Plant Protection Act (Title IV, Pub L. 106–224, 114 Stat. 438, 7 U.S.C. 7712), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, exportation, or interstate movement of plants, plant products, biological control organisms, noxious weeds, soil, regulated garbage, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of plant pests or disease within the United States. The associated regulations that were issued by the Animal and Plant Health Inspection Service (APHIS) are located in 7 CFR parts 330 and 360. The introduction and establishment of new plant pests or noxious weeds in the United States could result in severe physical and economic losses to American agriculture. To prevent this from happening, APHIS will use information collection activities in these regulations.

Need and Use of the Information: APHIS will use information collection activities in these regulations to evaluate and mitigate the risks associated with the import or interstate movement of plant pests, noxious weeds, soil, prohibited articles, and regulated garbage. These activities include applications for permits and compliance agreements, amendments and appeals, consultations, site assessments, inspections, certifications, labeling of containers, petitions and recordkeeping.

Description of Respondents: State, Local or Tribal Government; Business or Other For-Profit; Individuals or Households.

Number of Respondents: 5,806.

Frequency of Responses: Reporting; Recordkeeping; Third-Party Disclosure.

Total Burden Hours: 12,168.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2026–03979 Filed 2–26–26; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2026–0199]

Revision to and Extension of Approval of an Information Collection; Endangered Species Regulations and Forfeiture Procedures

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the protection of endangered species of terrestrial plants and for procedures related to the forfeiture of plants or other property.

DATES: We will consider all comments that we receive on or before April 28, 2026.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Enter APHIS–2026–0199 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2026–0199, Regulatory Analysis and Development, PPD, APHIS, 5601 Sunnyside Ave., #AP760, Beltsville, MD 20705.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov* or in our reading room, which is in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations to protect endangered species of terrestrial plants and forfeiture procedures, contact Dr. John Veremis, National CITES Director,

PHP, PPQ, APHIS, 1400 Independence Ave. SW, Washington, DC 20250; *john.veremis@usda.gov;* (301) 851–2347. For information on the information collection, contact Ms. Sheniqua Harris, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2528 or email: *APHIS.PRA@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Endangered Species Regulations and Forfeiture Procedures.

OMB Control Number: 0579–0076.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the U.S. Department of Agriculture (USDA) is responsible for enforcing provisions of the Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) that pertain to the importation, exportation, or reexportation of plants.

As part of this mission, USDA's Animal and Plant Health Inspection Service (APHIS) administers the regulations in 7 CFR part 355, ''Endangered Species Regulations Concerning Terrestrial Plants.'' In accordance with these regulations, any entity wishing to engage in the business of importing, exporting, or reexporting terrestrial plants listed in the CITES regulations at 50 CFR 17.12 or 23.23 must obtain a protected plant permit from APHIS. Such entities include importers, exporters, or reexporters who sell, barter, collect, or otherwise exchange or acquire terrestrial plants as a livelihood or enterprise engaged in for gain or profit. The requirement does not apply to persons engaged in business merely as carriers or customhouse brokers.

To obtain a protected plant permit, entities must complete an application and submit it to APHIS for approval. When a permit has been issued, the plants covered by the permit may be imported into the United States, exported, or reexported, provided they are accompanied by documentation required by the regulations and all other conditions of the regulations are met.

Effectively regulating entities who are engaged in the business of importing, exporting, or reexporting endangered species of terrestrial plants requires the use of this application process, as well as the use of other information collection activities including, but not limited to, appealing the denial of a permit; marking containers used for the importation, exportation, or reexportation of the plants; notifying APHIS of the impending importation, exportation, or reexportation of the plants; validating documents; creating and maintaining records of importation, exportation, and reexportation; and submitting related reports from records required to be maintained.

APHIS also administers regulations at 7 CFR part 356, ''Forfeiture Procedures,'' which sets out procedures for the forfeiture of plants or other property by entities found to be in violation of the Endangered Species Act or the Lacey Act (16 U.S.C. 3371 *et seq.*). Entities whose property is subject to forfeiture may file with APHIS a waiver of forfeiture procedures, a claim, a request for return of property, or petition for remission or mitigation of forfeiture.

The information provided by these information collection activities is critical to APHIS' ability to carry out its responsibilities under the Endangered Species Act and the Lacey Act. These responsibilities include monitoring importation, exportation, and reexportation activities involving endangered species of plants, as well as the investigation of possible violations and the forfeiture of plants or other property.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years. APHIS has amended this information collection by decreasing the number of Responses. In addition, Total Burden Hours reported decreased due to APHIS moving the PPQ Form 368 activity to the new Common Form Information Collection.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.096 hours per response.

Respondents: U.S. importers and exporters of endangered species of terrestrial plants.

Estimated annual number of respondents: 1,097.

Estimated annual number of responses per respondent: 137.

Estimated annual number of responses: 149,876.

Estimated total annual burden on respondents: 14,436 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 24th day of February 2026.

Kelly Moore,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2026–03969 Filed 2–26–26; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Local Update of Census Addresses (LUCA) Operation; Correction

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: On February 17, 2026, the Department of Commerce published a 60-day public comment period notice in the **Federal Register** with FR Document Number 2026–03073, Volume 91, (Page 7244), seeking public comments for an information collection entitled, ''Local Update of Census Addresses (LUCA) operation.'' This document referenced incorrect information in the LUCA Review section, and Commerce hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Michael S. Snow, Supervisory Program Analyst, Decennial Census Management Division, U.S. Department of Commerce; via email at *dcmd.pra@census.gov.*

SUPPLEMENTARY INFORMATION:

Correction

The notice erroneously said, ''LUCA Review will occur from October 2028 through March 2029.'' The correct dates are October 2027 through March 2028.

Request for Comments

Interested persons are invited to submit written comments by email to *dcmd.pra@census.gov.* Please reference ''2030 LUCA 60 Day FRN'' in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2026–0001, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–03980 Filed 2–26–26; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Entity List and Unverified List Requests

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 28, 2026.

ADDRESSES: Interested persons are invited to submit comments by email to Nancy Kook, IC Liaison, Bureau of Industry and Security, at *PRA@bis.doc.gov* or to *PRAcomments@doc.gov.* Please reference OMB Control Number 0694–0134 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Nancy Kook, Information Collection Liaison, Bureau of Industry and Security, phone 202–482–2440 or by email at *PRA@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information is collected in order to respond to requests by Congress and industry to make foreign availability determinations in accordance with Section 768 of the Export Administration Regulations. Continued restrictions on exports when comparable items are available from uncontrollable sources decreases U.S. competitiveness in high technology industries and undermines U.S. national security interests. Exporters are urged to voluntarily submit data to support the contention that items controlled for export for national security reasons are available-in-fact, from a non-U.S. source, in sufficient quantity and of comparable quality so as to render the control ineffective.

II. Method of Collection

Electronic

III. Data

OMB Control Number: 0694–0134.

Form Number(s): None.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time per Response: 15.

Estimated Total Annual Burden Hours: 300.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Voluntary.

Legal Authority: Sections 744.15, and 744.16 of the EAR.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–03965 Filed 2–26–26; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–943, C–570–944]

Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that imports of seamless oil country tubular goods (OCTG) completed in Thailand using steel billets produced in the People's Republic of China (China) are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on OCTG from China.

DATES: Applicable February 27, 2026.

FOR FURTHER INFORMATION CONTACT: Walter Schaub, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0907.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2025, Commerce published in the **Federal Register** its *Preliminary Determination* [1] that imports of seamless OCTG completed in Thailand using steel billets produced in China are circumventing the *Orders.*[2] Pursuant to section 781(e) of the Tariff Act of 1930, as amended (the Act), on September 3, 2025, Commerce notified the U.S. International Trade Commission (ITC) of its preliminary affirmative determination of circumvention.[3] The ITC did not request consultations with Commerce.

On September 9, 2025, the domestic interested parties,[4] as well as two mandatory respondents, Boly Pipe Co., Ltd. (Boly Pipe) and Nanobest Limited (Nanobest), submitted case briefs.[5] On September 18, 2025, the domestic interested parties and Petroleum Equipment (Thailand) Co., Ltd. (PET), the third mandatory respondent in this proceeding, each filed a request for a public hearing regarding the *Preliminary Determination.*[6] On September 22, 2025, the domestic interested parties and PET each submitted rebuttal case briefs.[7]

On September 24, 2025, Commerce extended the deadline for issuing the final determination in this circumvention inquiry until December 18, 2025.[8] Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.[9] 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, to February 24, 2026.[10] On December 2, 2025, Commerce held a public hearing regarding the *Preliminary Determination.*[11]

For a summary of events that occurred since the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for consideration in the final determination, *see* the Issues and Decision Memorandum.[12] The Issues and Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Orders

The products covered by the *Orders* include certain OCTG, whether seamless or welded, regardless of end finish whether or not conforming to API or non-API specifications, whether finished or unfinished, whether or not thread protectors are attached. The scope of the *Orders* also covers OCTG coupling stock. For a full description of the scope of the *Orders, see* Appendix I.

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers seamless OCTG completed in Thailand using Chinese-origin steel billets that is subsequently exported from Thailand to the United States (inquiry merchandise).

Analysis of Comments Received

All issues raised in this inquiry are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix II.

Methodology and Final Circumvention Determination

Commerce conducted this circumvention inquiry in accordance with section 781(b) of the Act and 19 CFR 351.226. As detailed in the Issues and Decision Memorandum, Commerce determines, pursuant to section 781(b) of the Act, that imports of steel billets from China that are further processed in Thailand into inquiry merchandise are circumventing the *Orders.* We are applying our decision on a country-wide basis. *See* the ''Suspension of Liquidation and Cash Deposit Requirements'' section, below, for details regarding suspension of liquidation and cash deposit requirements.

Certifications

To administer the final affirmative country-wide determination of circumvention for Thailand, Commerce established importer and exporter certifications, which allow companies to certify that specific entries of seamless OCTG from Thailand are not subject to suspension of liquidation or the collection of cash deposits pursuant to this affirmative country-wide determination of circumvention if the merchandise is not made with Chinese-origin steel billets or is made with an input other than steel billets (*see* Appendix III).

Importers and exporters that claim that the entry of seamless OCTG is not subject to suspension of liquidation or the collection of cash deposits because the merchandise is not made with Chinese-origin steel billets or is made with an input other than steel billets must complete the applicable certification and meet the certification and documentation requirements described below, as well as the

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[1] *See Oil Country Tubular Goods from the People's Republic of China: Preliminary Affirmative Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders,* 90 FR 40336 (August 19, 2025).

[2] *See Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 75 FR 28551 (May 21, 2010) (*AD Order*); *see also Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 75 FR 3203 (January 20, 2010) (*CVD Order*) (collectively, *Orders*). (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[3] *See* Commerce's Letter, ''Preliminary Affirmative Determinations of Circumvention,'' dated September 3, 2025.

[4] The domestic interested parties the Committee on Pipe and Tube Imports Subcommittee for OCTG and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (collectively, the domestic interested parties).

[5] *See* Domestic Interested Parties' Letter, ''Domestic Interested Parties' Case Brief,'' dated September 9, 2025 (DIP Case Brief); *see also* Boly Pipe and Nanobest's Letter, ''Case Brief,'' dated September 9, 2025 (Boly Pipe and Nanobest Case Brief).

[6] *See* Domestic Interested Parties' Letter, ''Domestic Interested Parties' Request for Hearing,'' dated September 18, 2025; *see also* PET's Letter, ''PET's Hearing Request,'' dated September 18, 2025.

[7] *See* Domestic Interested Parties' Letter, ''Domestic Interested Parties' Rebuttal Brief to Boly Pipe and Nanobest's Case Brief,'' dated September 22, 2025; *see also* PET's Letter, ''PET's Rebuttal Brief'', dated September 22, 2025 (PET Rebuttal Brief).

[8] *See* Memorandum, ''Extension of Deadline for the Final Determination in the Circumvention Inquiry Pertaining to Thailand,'' dated September 24, 2025.

[9] *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated November 14, 2025.

[10] *See* Memorandum, ''Tolling of All Case Deadlines,'' dated November 24, 2025.

[11] *See* Hearing Transcript, ''Circumvention Inquiry: Pertaining to Thailand,'' dated December 2, 2025.

[12] *See* Memorandum, ''Issues and Decision Memorandum for the Final Determination of the Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders on Oil Country Tubular Goods from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

requirements identified in the applicable certification.

Certification Requirements

Exporters are required to complete and maintain the applicable exporter certification and provide the importer with a copy of that certification and all supporting documentation (*e.g.,* invoice, purchase order, production records, *etc.*). With the exception of the entries described below, the exporter certification must be completed, signed, and dated by the time of shipment of the relevant entries. The exporter certification should be completed by the party selling the seamless OCTG that was manufactured in Thailand to the United States.

Importers are required to complete and maintain the applicable importer certification, and maintain a copy of the applicable exporter certification, and retain all supporting documentation for both certifications. With the exception of the entries described below, the importer certification must be completed, signed, and dated by the time the entry summary is filed for the relevant entry.

The importer, or the importer's agent, must submit the importer's certification, the exporter's certification, the commercial invoice, and the bill of lading to U.S. Customs and Border Protection (CBP) at the time of entry summary by uploading these documents into the document imaging system (DIS) in the Automated Commercial Environment (ACE). Where the importer uses a broker to facilitate the entry process, the importer should obtain the entry summary number from the broker. Agents of the importer, such as brokers, however, are not permitted to certify on behalf of the importer. Consistent with CBP's procedures, importers shall identify certified entries by using importers' additional declaration (record 54) AD/CVD Certification Designation (type code 06) when filing an entry summary.[13]

If it is determined that an importer has not met the certification and/or related documentation requirements for certain entries, Commerce intends to instruct CBP to suspend, pursuant to this country-wide affirmative determination of circumvention and the *Order,* all unliquidated entries for which these requirements were not met and require the importer to post applicable cash deposits. Commerce may instruct CBP to assess antidumping or countervailing duties at the applicable rate.

The claims made in the certifications and any supporting documentation are subject to verification by Commerce or CBP. Importers and exporters are required to maintain the certifications and supporting documentation until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

For all seamless OCTG from Thailand that was entered, or withdrawn from warehouse, for consumption during the period December 18, 2024 (the date of initiation of this circumvention inquiry), through September 3, 2025, where the entry has not been liquidated (and entries for which liquidation has not become final), the importer and exporter certifications should have been completed, signed, and uploaded to the DIS in ACE by October 3, 2025.

For unliquidated entries (and entries for which liquidation has not become final) of seamless OCTG that were declared as non-AD or non-CVD type entries (*e.g.,* type 01) and entered, or withdrawn from warehouse, for consumption in the United States during the period December 18, 2024 (the date of initiation of these circumvention inquiries), through September 3, 2025, for which the above certification and document requirements were not met, importers must have filed a post-summary correction with CBP, in accordance with CBP's regulations, regarding conversion of such entries from non-AD or non-CVD type entries to AD or CVD type entries (*e.g.,* type 01 to type 03). The importer must pay cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties.

Suspension of Liquidation and Cash Deposit Requirements

Based on the affirmative country-wide determination of circumvention with respect to Thailand, in accordance with 19 CFR 351.226(l)(3) and (m)(1)(ii), Commerce will direct CBP to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of inquiry merchandise that were entered, or withdrawn from warehouse, for consumption, on or after December 18, 2024, the date of publication of the initiation of this circumvention inquiry in the **Federal Register**.

Seamless OCTG completed in Thailand from steel billets that are not of Chinese origin is not subject to this inquiry. However, Commerce finds that seamless OCTG completed in Thailand using China-origin steel billets is circumventing the AD and CVD *Orders* on OCTG from China. Imports of such merchandise are subject to certification requirements, and cash deposits may be required.

Entries for which the importer and exporter have met the certification and documentation requirements described above and in Appendix III to this notice will not be subject to suspension of liquidation or the cash deposit requirements.

Where the certification and documentation requirements are not met for an entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the rates applicable to the AD and CVD *Orders* on OCTG from China. For companies with their own company-specific rates under the AD and CVD *Orders,* the cash deposit rates will be the company-specific rates. Otherwise, Commerce will instruct CBP to require AD cash deposits equal to the China-wide rate of 99.14 percent and CVD cash deposits equal to the all-others rate of 13.41 percent.[14]

Commerce established the following third-country case numbers in ACE for entries of seamless OCTG completed in Thailand using China-origin steel billets: A–549–991 and C–549–992.

These suspension of liquidation requirements will remain in effect until further notice.

Administrative Protective Order

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

Notification to Interested Parties

Commerce is issuing and publishing this notice in accordance with sections 781(b) and 777(i) of the Act, and 19 CFR 351.226(g)(2).

[13] *See* Cargo System Messaging Service #59384253, dated February 12, 2024; *see also Announcing an Importer's Additional Declaration in the Automated Commercial Environment Specific to Antidumping/Countervailing Duty Certifications,* 89 FR 7372 (February 2, 2024).

[14] *See AD Order,* 75 FR 28551; *see also CVD Order,* 75 FR 3203.

Dated: February 23, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Scope of the Orders

The scope of the *Orders* consists of OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to API or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the *Orders* also covers OCTG coupling stock. Excluded from the scope of the *Orders* are casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The OCTG coupling stock covered by the *Orders* may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00,, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, and 7304.59.80.80.

The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the *Orders* is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Orders*
IV. Merchandise Subject to the Circumvention Inquiry
V. Period of the Circumvention Inquiry
VI. Discussion of the Issues
Comment 1: Consideration of Hollow Steel Billets
Comment 2: Comparison of Production in Thailand to Integrated Steel Mills
Comment 3: Whether Operations in Thailand are Minor or Insignificant
VII. Recommendation

Appendix III

Importer Certification

I hereby certify that:

A. My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {IMPORTING COMPANY}, located at {ADDRESS OF IMPORTING COMPANY};

B. I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of seamless oil country tubular goods (OCTG) produced in Thailand that entered under entry summary number(s), identified below, and are covered by this certification. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the importation of seamless OCTG, including the exporter's and/or foreign seller's identity and location;

C. If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The seamless OCTG covered by this certification was imported by {IMPORTING COMPANY} on behalf of {U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER};

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

D. The seamless OCTG covered by this certification was shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

E. I have personal knowledge of the facts regarding the production of the imported products covered by this certification. ''Personal knowledge'' includes facts obtained from another party, (*e.g.,* correspondence received by the importer (or exporter) from the producer regarding the source of steel billets or other inputs used to produce the imported seamless OCTG);

F. This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:
Entry Summary Line Item #:
Foreign Seller:
Foreign Seller's Address:
Foreign Seller's Invoice #:
Foreign Seller's Invoice Line Item #:
Country of Origin of steel billets: [15]
Producer:
Producer's Address:

G. The seamless OCTG covered by this certification does not contain steel billets produced in the People's Republic of China (China);

H. I understand that {IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, certificates of origin, product data sheets, mill test reports, productions records, invoices, *etc.*) until the later of: (1) the date that is five years after the date of the latest entry covered by the certification or; (2) the date that is three years after the conclusion of any litigation in the United States courts regarding such entries;

I. I understand that {IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to the production and/or exportation of the imported merchandise identified above), and any supporting documentation provided to the importer by the exporter, until the later of: (1) the date that is five years after the date of the latest entry covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries;

J. I understand that {IMPORTING COMPANY}is required to submit a copy of the importer and exporter certifications, the commercial invoice, and the bill of lading at the time of entry summary by uploading these documents into the Document Imaging System in the Automated Commercial Environment, and to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with the importer certification, a copy of the exporter's certification, the commercial invoice, the bill of lading, and any supporting documentation provided to the importer by the exporter, upon request of either agency. Consistent with CBP's procedures, importers shall identify certified entries by using importers' additional declaration (record 54) AD/CVD Certification Designation (type code 06) when filing entry summary.

K. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

L. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are within the scope of the antidumping duty (AD) and countervailing duty (CVD) orders on OCTG from China. I understand that such finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

[15] Put ''N/A'' if the Country of Origin involves an input other than steel billets.

M. I understand that agents of the importer, such as brokers, are not permitted to make this certification;

N. This certification was completed and signed on, or prior to, the date of the entry summary if the entry date is after September 3, 2025. If the entry date is on or before September 3, 2025, this certification was completed and signed by no later than October 3, 2025, and the importer and exporter certifications, the commercial invoice, and the bill of lading were uploaded to DIS in ACE by no later than October 3, 2025.

O. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature
{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}
{DATE}

Exporter Certification

The party that made the sale to the United States should fill out the exporter certification.

I hereby certify that:

A. My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES); located at {ADDRESS OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES);

B. I have direct personal knowledge of the facts regarding the production and exportation of the seamless oil country tubular goods (OCTG) from Thailand for which sales are identified below. ''Direct personal knowledge'' refers to facts the certifying party is expected to have in its own records. For example, an exporter should have direct personal knowledge of the producer's identity and location;

C. The seamless OCTG covered by this certification was shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED};

D. The seamless OCTG covered by this certification does not contain steel billets produced in the People's Republic of China (China);

E. This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

Foreign Seller's Invoice # to U.S. Customer:
Foreign Seller's Invoice to U.S. Customer Line item #:
Producer Name:
Producer's Address:
Producer's Invoice # to Foreign Seller: (*If the foreign seller and the producer are the same party, put NA here.*)
Name of Producer of steel billets: [16]
Location (Country) of Producer of steel billets: [17]

F. The seamless OCTG covered by this certification was shipped to {NAME OF U.S. PARTY TO WHOM MERCHANDISE WAS SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED};

G. I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.,* documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product data sheets, mill test reports, productions records, invoices, *etc.*) until the later of: (1) the date that is five years after the latest date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in the United States courts regarding such entries;

H. I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES} is required to provide the U.S. importer with a copy of this certification and is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with this certification, and any supporting documents, upon request of either agency;

I. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

J. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are within the scope of the antidumping duty and countervailing duty orders on OCTG from China. I understand that such a finding will result in:

(i) suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the antidumping duty and countervailing duty cash deposits determined by Commerce; and

(iii) the seller/exporter no longer being allowed to participate in the certification process.

K. I understand that agents of the seller/exporter, such as freight forwarding companies or brokers, are not permitted to make this certification.

L. This certification was completed and signed, and a copy of the certification was provided to the importer, on, or prior to, the date of shipment if the shipment date is after September 3, 2025. If the shipment date is on or before September 3, 2025, this certification was completed and signed, and a copy of the certification was provided to the importer, by no later than October 3, 2025; and

M. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature
{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}
{DATE}

[16] Put ''N/A'' if the producer did not use steel billets in the production of seamless OCTG.

[17] Put ''N/A'' if the producer did not use steel billets in the production of seamless OCTG.

[FR Doc. 2026–03972 Filed 2–26–26; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF531]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Hampton Roads Bridge-Tunnel Expansion Project, Norfolk, Virginia

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Hampton Roads Connector Partners (HRCP) for authorization to take marine mammals incidental to Hampton Roads Bridge-Tunnel Expansion Project (HRBT) in Norfolk, Virginia. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than March 30, 2026.

ADDRESSES: Comments should be addressed to Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.pauline@noaa.gov.* Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking; other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as ''mitigation''); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms used above are included in the relevant sections below (*see also* 16 U.S.C. 1362; 50 CFR 216.3 and 216.103).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

Summary of Request

On August 8, 2025, NMFS received a request from HRCP for an IHA to take marine mammals incidental to construction of the HRBT in Norfolk, Virginia. The application was deemed adequate and complete on February 13, 2026. HRCP's request is for take of five species of marine mammals by Level B harassment and, for a subset of these species, Level A harassment. Neither HRCP nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS initially issued an IHA to HRCP on August 10, 2020 (85 FR 48153) then promulgated regulations and issued a five-year Letter of Authorization to HRCP for similar work (86 FR 17458, April 2, 2021). HRCP complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous Letter of Authorization (LOA), and information regarding their monitoring results may be found in the Estimated Take of Marine Mammals section.

This proposed IHA would cover 1 year of a larger project for which HRCP was issued the LOA. Barring any delays, the sixth year project should result in the complete construction of the bridge-tunnel project.

Description of Proposed Activity

Overview

HRCP is proposing to continue ongoing construction activities associated with the HRBT project. This is a major road transport infrastructure project along the existing I–64 highway in Virginia, consisting of roadway improvements, trestle bridges, and bored tunnels crossing Hampton Roads between Norfolk and Hampton. The Project will address severe traffic congestion at the existing HRBT crossing by increasing capacity. Due to unforeseen schedule delays, all in-water pile installation which began in December 2020 under an IHA (85 FR 48153) will not be completed by the existing LOA's (86 FR 17458) expiration (March 31, 2026) and therefore, HRCP has requested a 1-year (IHA) to complete the outstanding construction components.

Given the proposed use of vibratory and impact pile driving and vibratory pile removal, there is potential of the take of marine mammals by Level B harassment and, for a subset of the species, Level A harassment. No serious injury and/or mortality is expected or proposed for this project.

Dates and Duration

The proposed IHA would be valid for the statutory maximum of 1 year from the date of effectiveness. The IHA effective period would begin on April 1, 2026 and end on March 31, 2027. The overall number of anticipated days of pile installation and removal is 312 per year, based on a 6-day work week for 1 year.

Specific Geographic Region

The Project is located in the waterway of Hampton Roads adjacent to the existing bridge and island structures of the HRBT in Virginia (figure 1). Hampton Roads is located at the confluence of the James River, the Elizabeth River, the Nansemond River, Willoughby Bay, and the Chesapeake Bay. Hampton Roads, one of the world's largest natural harbors, is a wide marine channel that provides access to the Port of Virginia and several other deep-water anchorages upstream of the Project area. The Port of Virginia, located along the Elizabeth River, is a naturally deep harbor. Navigational channels are maintained by the U.S. Army Corps of Engineers (USACE) within Hampton Roads to provide transit to the many ports in the region.

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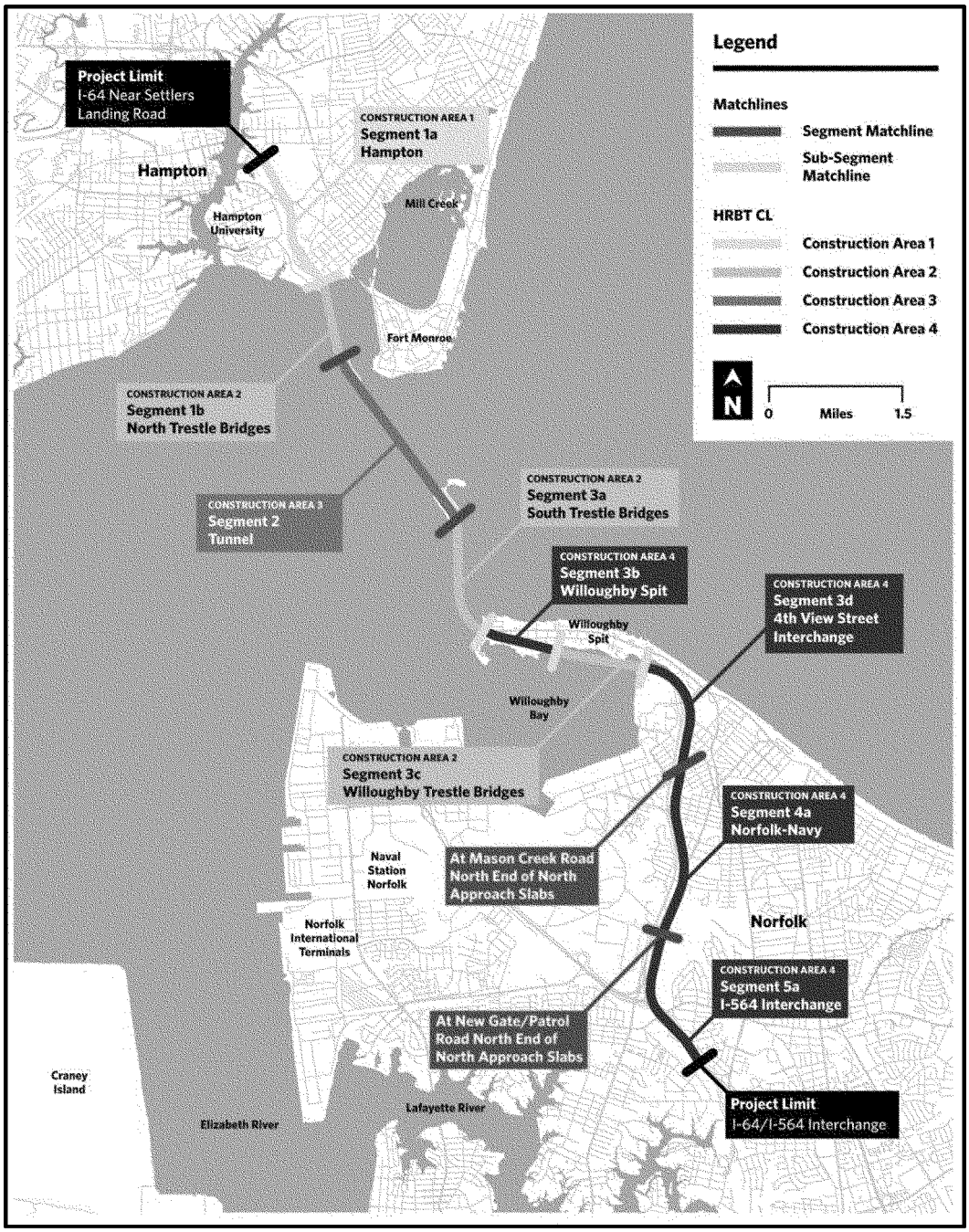

Figure 1 – Project Location

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Detailed Description of the Specified Activity

The HRBT project will widen I–64 for approximately 9.9 miles along I–64 from Settlers Landing Road in Hampton, Virginia, to the I–64/I–564 interchange in Norfolk, Virginia and will create an eight-lane facility with six consistent use lanes. The Project will include full replacement of the North and South Trestle-Bridges, two new parallel tunnels constructed using a Tunnel Boring Machine (TBM), expansion of the existing portal islands, and widening of the Willoughby Bay Trestle-Bridges, Bay Avenue Bridges, and Oastes Creek Bridges. Also, upland portions of I–64 will be widened to accommodate the additional lanes, the Mallory Street Bridge will be replaced, and the I–64 overpass bridges will be improved.

Two methods of pile installation are anticipated: vibratory hammer and impact hammer. More than one installation method could be used within a day and at each location. Most steel pipe piles will be installed using a combination of vibratory (ICE 416L or similar) and impact hammers (S35 or similar). Steel pipe piles will be installed using the vibratory hammer approximately 80 percent of the time and impact hammer approximately 20 percent of the time. Depending on the location, the pile will be advanced using vibratory methods and then impact driven to final tip elevation. Where

bearing layer sediments are deep, driving will be conducted using an impact hammer so that the structural capacity of the pile embedment can be verified.

Permanent piles will be set using temporary steel templates. Templates will be positioned and held in place using 36-inch steel pipe piles, generally one at each corner of the template. As templates are temporary and largely do not bear significant vertical loads, installation (*i.e.,* driving) and removal of template requires minimal driving time, approximately 5 minutes per pile. Permanent concrete piles will be installed using an impact hammer. Temporary steel sheet piles and steel pipe piles will be removed using a vibratory hammer or cut to approximately 2–3 feet (60.9–91.4 cm) below the mudline.

The HRBT project design is divided into five segments as shown in table 1 and figure 1. Only the segments that have the potential to affect marine mammals will be discussed further and are identified in table 1. Table 2 shows the piles proposed for installation under the proposed IHA.

TABLE 1—HRBT EXPANSION PROJECT DESIGN SEGMENTS

Project design segment No. and name	Construction area	In-water activities that could result in take
Segment 1a (Hampton)	Area 1.	
Segment 1b (North Trestle-Bridges)	Area 2	X.
Segment 2a (Tunnel)	Area 3	X.
Segment 3a (South Trestle-Bridge)	Area 2	X.
Segment 3b (Willoughby Spit)	Area 4	X.
Segment 3c (Willoughby Bay Trestle-Bridges)	Area 2	X.
Segment 3d (4th View Street Interchange)	Area 4.	
Segment 4a (Norfolk-Navy)	Area 4.	

TABLE 2—PILES TO BE INSTALLED/REMOVED UNDER PROPOSED IHA

Pile size/type and material	Total number of piles to be installed	Total number of piles to be removed
AZ–19 Steel Sheet	95	95
36-inch Steel Pipe	642	1,074
36-inch Steel Pipe (Template Piles)	112	112
54-inch, Concrete Cylinder Pipe	130	0
12-inch Composite Pile	42	42

Segment 1b (North Trestle-Bridges)

Several temporary work trestles will support construction of the permanent eastbound and westbound North Trestle-Bridges. The temporary North Shore Work Trestle will support construction of the permanent eastbound North Trestle-Bridge in the shallow water (<4 to 6 feet (1.2 to 1.8 m) Mean Low Water (MLW)) closer to the North Shore, avoiding the need to dredge or deepen this area and minimizing potential impacts to the adjacent submerged aquatic vegetation. The temporary North Shore Work Trestle was installed under a separate IHA (85 FR 48153, August 10, 2020).

Additional temporary work trestles will support construction of the permanent westbound North Trestle-Bridge in the shallow water near the North Island. These work trestles will be the same or like the North Shore Work Trestle, steel structures founded on 36-inch diameter steel pipe piles with 30 to 40 feet (9.1 to 12.2 m) spans sized to accommodate a 300-ton crane. One hundred and eighty-three 36-inch steel piles will be installed to support these trestles using a combination of vibratory and impact hammers.

Once that portion of the permanent eastbound and westbound North Trestle-Bridge is complete, the temporary pile foundations will be removed using a vibratory hammer and the work trestle reused for similar purposes at a different location on the Project.

Jump Trestles at the North Trestle temporary heavy-duty platforms used to support cranes and other equipment, will be used for constructing trestle bridges (new permanent maintenance of traffic (MOT) bridges). Jump trestles are built with a maximum of three spans which are progressively removed and reinstalled one span at a time, moving forward with the construction of the adjacent structure. Each span is supported by six temporary 36-inch steel pipe piles. The steel pipe piles will be installed, removed, and reinstalled as the spans move forward using a combination of vibratory and impact hammers for installation and vibratory hammers for removal. Approximately 140 individual pile installations and 140 removals will be needed to support the Jump Trestle movement for construction of the permanent westbound North Trestle-Bridge.

Temporary template piles will be used to guide installation of the permanent concrete piles used to support the new North Trestle-Bridge. The templates will be supported by four temporary steel piles up to 36-inch in diameter, generally one at each corner of the template. A two-tier template will be used to account for the batter of the permanent piles. Each template will allow installation of multiple permanent concrete piles. A vibratory hammer will be used to install and remove the 30 temporary 36-inch steel piles supporting the template. Of the 562 permanent 54-inch concrete cylinder piles on the project, 30 remain for installation on the North Trestle under this IHA request. These piles are installed using an impact hammer and will remain in place at the end of construction.

Steel sheet piles will be installed at the North Shore shoreline to support excavation and construction of the North Shore Abutment. Approximately 30 panels of AZ–700–19 sheet piles remain to be temporarily installed using a vibratory hammer to form a continuous. Sheet piles will be removed using a vibratory hammer.

A temporary dock consisting of 24 36-inch steel piles was constructed on the

West side of the North Island to allow the circulation of equipment and material around the Cell 1 and Cell 2 Shafts located in North Island. The piles will be removed using a vibratory hammer or cut to approximately 3 feet (91.4 cm) below the mudline.

Segment 2a

HRCP constructed the temporary TBM Platform or ''quay'' at the South Island to allow for the delivery, unloading, and assembly of the TBM components from barges to the Island. The installation of the TBM platform was performed under a separate IHA (85 FR 48153, August 10, 2020).

The TBM Platform is a steel structure founded on 136 36-inch diameter steel piles. At the conclusion of the Project, the TBM Platform piles will be removed using a vibratory hammer or cut to approximately 2–3 feet (60.9–91.4 cm) below the mudline.

Tunnel boring spoils and other related materials were moved between the South Island and barges via a conveyor belt and other equipment inside the tunnel boring machine. The Conveyor Trestle was also be used for maintenance and mooring of barges and vessels carrying TBM materials and other Project-related materials. The Conveyor Trestle is a steel structure founded on 10 36-inch diameter steel piles. The installation of the Conveyor Trestle was performed under the previous LOA. At the conclusion of the Project, the Conveyor Trestle piles will be removed using a vibratory hammer or cut to approximately 3 feet (91.4 cm) below the mudline.

Temporary moorings have been installed along the perimeter of the South Island Expansion to support the construction of the island expansion. Thirty-four 36-inch steel pipe piles remain to be removed once the barges and vessels are no longer needed. They will be removed using a vibratory hammer at the conclusion of the Project.

Segment 3a

Temporary template piles will be used to guide installation of the permanent concrete piles used to support the new South Trestle-Bridge. The templates will use four temporary steel piles 36-inch in diameter as supports, generally one at each corner of the template. A two-tier template will be used to account for the possible batter of the piles. Each template will allow installation of multiple permanent concrete piles. A vibratory hammer will be used to install and remove the remaining 100 temporary 36-inch steel piles supporting the template.

Of the 810 permanent 54-inch concrete cylinder piles needed on the South Trestle, only 100 piles will remain to be installed under the requested IHA. These piles will be installed using an impact hammer and will remain in place at the end of construction.

Temporary heavy duty moving platforms (Jump Trestles) will be used for constructing trestle bridges (both new permanent and temporary MOT bridges) at the South Trestle. A combination of jump trestles and working from the existing trestles will be used to build the new trestle bridges. Jump trestles are built with a maximum of three spans which are progressively uninstalled and reinstalled one span at a time, moving forward with the construction of the adjacent structure.

The 36-inch steel pipe piles will be installed, removed, and reinstalled as the spans move forward using a combination of vibratory and impact hammers for installation and vibratory hammers for removal. To minimize hydroacoustic impacts caused by the impact hammer, a bubble curtain will be used for installation of steel pipe piles in water depths greater than 20 feet (6.1 m). Portions of the South Trestle Jump Trestle in water depths less than 20 feet 6.1 m) will be installed without a bubble curtain. Approximately 189 individual pile installations and 189 removals will still be needed to support the jump trestle movement for construction of the permanent westbound South Trestle-Bridge.

Segment 3c

There are 40 remaining temporary moorings to be removed in Willoughby Bay to support the construction of temporary work trestles and permanent trestle bridges, and to provide a safe haven (harbor of safe refuge) for vessels in the event of severe weather. The piles will be removed using a vibratory hammer.

The existing fender was previously removed under the previous 5-year LOA. The proposed fender will require 42 12-inch composite piles that will be installed over a 4-month period. These will be permanent piles that will not require removal.

There is currently an existing 36-inch stormwater outfall in this location that will be replaced with a 42-inch pipe to increase the capacity. This will require the installation of 65 PZ–19 sheet piles to create coffer damns in order to protect the excavation, removal, installation and backfill operations associated with replacing the bulkhead. These piles will be installed and removed with a vibratory hammer.

Segment 3b

HRCP was granted use of property on Willoughby Spit next to the South Trestle-Bridge to be used for laydown areas and as a base for marine operations. Two temporary piers were constructed to allow barge access. At the conclusion of the project, under this IHA, there will be the remaining six 36-inch steel piles that will need to be removed. The temporary steel piles will be removed using a vibratory hammer.

Table 3 shows summary of all piles planned to be installed or removed and their specific attributes.

TABLE 3—NUMBERS AND TYPES OF PILES TO BE INSTALLED AND REMOVED UNDER IHA

[April 2026 through April 2027]

Pile location	Pile function	Pile type	Installation/removal method	Bubble curtain yes/no	Number of piles below MHW	Number of days per activity (total) **	Number of days per activity (per hammer type)	Anticipated installation date
North Trestle	Jump Trestle	36-inch Diameter Hollow Steel Pipe Pile.	Impact (Install) ..... Vibratory (Removal)	Yes ..... No	140	140	70 Days (2 piles/ Day). 70 Days (2 piles/ Day).	4/10–12/31/2026.
North Trestle	Template Piles	36-inch Diameter Hollow Steel Pipe Pile.	Vibratory (Install & Removal).	No	30	20	10Days (3Piles/ Day). 10 Days (3 Piles/ Day).	4/16–8/1/2026.
North Trestle	Permanent Piles	54-inch, Concrete Cylinder Pipe.	Impact (Install Only).	No	30	30	30 Days (1 Pile/ Day).	4/16–8/1/2026.

TABLE 3—NUMBERS AND TYPES OF PILES TO BE INSTALLED AND REMOVED UNDER IHA—Continued
[April 2026 through April 2027]

Pile location	Pile function	Pile type	Installation/removal method	Bubble curtain yes/no	Number of piles below MHW	Number of days per activity (total) **	Number of days per activity (per hammer type)	Anticipated installation date
North Trestle	Sheet Pile Installation for Shore Stabilization.	PZ 19-Sheet	Vibratory Install & Removal).	No	30	10	5 Days 6 Piles/Day) 5 Days (6 Piles/Day).	4/1/2026–3/30/2027.
North Trestle	Temporary Trestle	36-inch Diameter Hollow Steel Pipe Piles.	Impact (Install) ..... Vibratory (Removal)	Yes ..... No	183	184	92 Days (2Piles/Day). 92 Days (2 Piles/Day).	4/1–8/30/2026.
North Island	Circulation Dock	36-inch Diameter Hollow Steel Pipe Piles.	Vibratory (Removal Only).	No	24	12	12 Days (2 Piles/Day).	3/01–3/30/2027.
South Trestle	Temp MOT Trestle	36-inch Diameter Hollow Steel Pipe Piles.	Vibratory (Removal Only).	No	182	61	61 Days (3 Piles/Day).	4/1/2026–1/8/2027.
South Trestle	Permanent Piles	54-inch, Concrete Cylinder Pipe.	Impact (Install Only).	No	100	100	100 Days (1 Pile/Day).	4/16–8/1/2026.
South Island	Template Piles	36-inch Diameter Hollow Steel Pipe Piles.	Vibratory (Install & Removal).	No	100	56	28Days (3Piles/Day). 28 Days (3 Piles/Day).	4/1/–3/30/2027.
South Island	Temp/Jump Trestle	36-inch Diameter Hollow Steel Pipe Piles.	Impact (Install) ..... Vibratory (Removal)	No ..... Yes	189	126	63Days (3Piles/Day). 63Days (3Piles/Day).	4/1/–3/30/2027.
South Island	TBM Mooring Piles	36-inch Diameter Hollow Steel Pipe Piles.	Vibratory (Removal Only).	No	34	17	17 Days (2 Piles/Day).	11/1–12/31/2026.
South Island	TBM Platform (Quay).	36-inch Diameter Hollow Steel Pipe Piles.	Vibratory (Removal Only).	No	136	68	68 Days (2 Piles/Day).	1/1–3/30/2027.
South Island	TBM Conveyor	36-inch Diameter Hollow Steel Pipe Piles.	Vibratory (Removal Only).	No	10	5	5 Days (2 Piles/Day).	4/15–5/15/2026.
Willoughby Spit	Temp Dock/Finger Piers.	36-inch Diameter Hollow Steel Pipe Piles.	Vibratory (Removal Only).	No	6	2	2Days (3 Piles/Day)	11/1–12/31/2026.
Willoughby Bay	Moorings (Safe Haven).	36-inch Diameter Hollow Steel Pipe Piles.	Vibratory (Install & Removal).	No	40	10	10 Days (4Piles/Day). 10 Days (4 Piles/Day).	11/1–12/31/2026.
Willoughby Bay	Fender	12-inch Diameter Composite Piles.	Vibratory (Install) ...	No	42	42	42 Days (1Pile/Day).	4/1–12/31/2027.
Willoughby Bay	Sheet Pile Installation for Bulkhead Replacement.	PZ 19-Sheet	Vibratory (Install & Removal).	No	65	22	11 Days (6Piles/Day). 11 Days (6Piles/Day).	4/1–5/1/2026.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species).*

Table 4 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual mortality and serious injury (M/SI) from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2023 (Hayes *et al.* 2024). All values presented in table 3 are the most recent available at the time of

publication (including from the draft 2024 SARs) and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 4—SPECIES [a] WITH ESTIMATED TAKE FROM THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [b]	Stock abundance (CV, Nmin, most recent abundance survey) [c]	PBR	Annual M/SI [d]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Humpback Whale	*Megaptera novaeangliae.*	Gulf of Maine	-,-; N	1,396 (0, 1,380; 2019)	22	12.15
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:.						
Bottlenose dolphin	*Tursiops truncatus*	WNA Coastal, Northern Migratory	-,-; Y	6,639 (0.41; 4,759; 2020)	48	12.2–21.5
		WNA Coastal, Southern Migratory	-,-; Y	3,751 (0.6; 2,353; 2020)	24	0–18.3
		Northern North Carolina Estuarine System.	-,-; Y	823 (0.06; 782; 2020)	7.8	7.2–30
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-, -; N	85,765 (0.53; 56,420; 2021)	649	145
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	WNA	-; N	61,336 (0.08; 57,637 2021) [e].	1,729	339
Gray seal	*Halichoerus grypus*	WNA	-; N	27,911 (0.20, 23,624, 2021)	1,512	4,570

[a] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*).

[b] Endangered Species Act (ESA) status: Endangered (E), Threatened (T); MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[c] NMFS marine mammal stock assessment reports online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, a CV is not applicable. N/A indicates data are unknown. UND (undetermined) PBR indicates data are available to calculate a PBR level, but a determination has been made that calculating a PBR level using those data is inappropriate (see the SAR for details).

[d] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strikes). Annual M/SI often cannot be determined precisely and is sometimes presented as a minimum value or range.

[e] NMFS' stock abundance estimate (and associated Potential Biological Removal value) applies to the U.S. population only. Total stock abundance (including animals in Canada) is approximately 394,311. The annual M/SI value given is for the total stock.

As indicated above, all five species (with eight managed stocks) in table 4 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur.

Humpback Whale

In the winter months, humpback whales from waters off New England, Canada, Greenland, Iceland, and Norway, migrate to mate and calve primarily in the West Indies, where spatial and genetic mixing among these groups occurs. NMFS defines a humpback whale stock on the basis of feeding location (*i.e.,* Gulf of Maine). However, our reference to humpback whales in this document refers to any individual of the species that are found in the species geographic region. These individuals may be from the same breeding population (*e.g.,* West Indies breeding population of humpback whales) but visit different feeding areas.

Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.,* 2015), NMFS established 14 Distinct Population Segments (DPSs) with different listing statuses (81 FR 62259, September 8, 2016) pursuant to the ESA. Humpback whales in the Project Area are expected to be from the West Indies DPS, which consists of the whales whose breeding range includes the Atlantic margin of the Antilles from Cuba to northern Venezuela, and whose feeding range primarily includes the Gulf of Maine, eastern Canada, and western Greenland. This DPS is not ESA listed. Bettridge *et al.,* (2003) estimated the size of the West Indies DPS at 12,312 (95 percent confidence interval 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.,* 2003; Smith *et al.,* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.,* 2015).

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida. This event was declared an unusual mortality event (UME) in 2017. A portion of the whales have shown evidence of pre-mortem vessel strike; however, this finding is not consistent across all whales examined, and additional research is needed. Since early 2026, over 240 mortalities have been subject to the active UME. Additional information is available at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2026-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Humpback whales are most likely to occur near the mouth of the Chesapeake Bay and coastal waters of Virginia Beach between January and March; however, they could be found in the area year-round, based on shipboard sighting and stranding data (Barco and Swingle, 2014; Aschettino *et al.,* 2015; 2016; 2017; 2018). Photo-identification data support the repeated use of the mid-Atlantic region by individual humpback whales. Results of the vessel surveys show site fidelity in the survey area for some individuals and a high level of occurrence within shipping channels—an important high-use area by both the Navy and commercial traffic (Aschettino *et al.,* 2015; 2016; 2017; 2018).

Nearshore surveys conducted in early 2015 reported 61 individual humpback whale sightings, and 135 individual humpback whale sightings in late 2015 through May 2016 (Aschettino *et al.,* 2016). Subsequent surveys confirmed the occurrence of humpback whales in the nearshore survey area: 248 individuals were detected in 2016–2017 surveys (Aschettino *et al.,* 2017), 32 individuals were detected in 2017–2018 surveys (Aschettino *et al.,* 2018), and 80 individuals were detected in 2019 surveys (Aschettino *et al.,* 2019). Sightings in the Hampton Roads area in the vicinity of NAVSTA Norfolk were reported in nearshore surveys and through tracking of satellite-tagged whales in 2016, 2017 and 2019. The numbers of whales detected, most of which were juveniles, reflect the varying level of survey effort and changes in survey objectives from year to year, and do not indicate abundance trends over time. Recent monitoring reports from the Hampton Roads Bridge-Tunnel Expansion Project and the Pier 3 Navy Construction Project did not observe any humpback whales near the project sites. Monitoring for the Hampton Roads Bridge-Tunnel Expansion Project spanned from September 2020 through July 2021 (over a 197-day period) and monitoring for the Pier 3 Navy Construction Project spanned from August 2022 to December 2022 (*i.e.,* over a 45-day period) (WF Magann 2023)

Bottlenose Dolphin

Along the U.S. East Coast and northern Gulf of Mexico, the bottlenose dolphin stock structure is well studied. There are currently 54 management stocks identified by NMFS in the western North Atlantic and Gulf of Mexico, including oceanic, coastal, and estuarine stocks (Hayes *et al.,* 2017; Waring *et al.,* 2015, 2016).

Bottlenose dolphins inhabiting nearshore coastal and estuarine waters between New York and Florida may be a separate species from their offshore counterparts (Costa *et al.,* 2022). The offshore form is larger in total length and skull length and has wider nasal bones than the coastal form. Both inhabit waters in the western North Atlantic Ocean and Gulf of Mexico (Hersh and Duffield, 1990; Mead and Potter, 1995) along the U.S. Atlantic coast. The coastal species of bottlenose dolphin is continuously distributed along the Atlantic coast south of Long Island, New York, around the Florida peninsula, and along the Gulf of Mexico coast. This type typically occurs in waters less than 25 meters deep (Waring *et al.,* 2015). The range of the offshore bottlenose dolphin includes waters beyond the continental slope (Kenney, 1990), and offshore bottlenose dolphins may move between the Gulf of Mexico and the Atlantic (Wells *et al.,* 1999).

Two coastal stocks are likely to be present in the Project Area: (1) the Western North Atlantic Northern Migratory Coastal stock; and (2) the Western North Atlantic Southern Migratory Coastal stock. Additionally, the Northern North Carolina Estuarine System (NNCES) stock may occur in the Project Area.

Bottlenose dolphins are the most abundant marine mammal along the Virginia coast and within the Chesapeake Bay, typically traveling in groups of 2–15 individuals, but occasionally in groups of over 100 individuals (Engelhaupt *et al.,* 2014; 2015; 2016). Bottlenose dolphins of the Western North Atlantic Northern Migratory Coastal stock winter along the coast of North Carolina and migrate as far north as Long Island, New York, in the summer. The Western North Atlantic Southern Migratory Coastal stock occurs in waters of southern North Carolina from October to December, moving south during winter months and north to North Carolina during spring months. During July and August, the Western North Atlantic Southern Migratory Coastal stock is presumed to occupy coastal waters north of Cape Lookout, North Carolina, to the eastern shore of Virginia (NMFS, 2018). It is possible that these animals also occur inside the Chesapeake Bay and in nearshore coastal waters. The North Carolina Estuarine System stock dolphins may also occur in the Chesapeake Bay during July and August (NMFS, 2018).

Vessel surveys conducted along coastal and offshore transects from NAVSTA Norfolk to Virginia Beach in most months from August 2012 to August 2015 reported bottlenose dolphins throughout the survey area, including the vicinity of NAVSTA Norfolk (Engelhaupt *et al.,* 2014; 2015; 2016). The final results from this project confirmed earlier findings that bottlenose dolphins are common in the study area, with highest densities in the coastal waters in summer and fall months. However, bottlenose dolphins do not completely leave this area during colder months, with approximately 200–300 individuals still present in winter and spring months, which is commonly referred to as the Chesapeake Bay resident dolphin population (Engelhaupt *et al.,* 2016). During monitoring of Pier 3 Navy Construction Project, 18 bottlenose dolphins were observed over 45 days of construction (W.F. Magann Corporation 2023). Over the 197 days of construction a total of 94 bottlenose dolphins were observed during the Hampton Roads Bridge-Tunnel Expansion Project (Hampton Roads Connector Partners 2023). For both projects bottlenose dolphins were the only marine mammal observed while conducting monitoring activities.

Harbor Porpoise

Harbor porpoises inhabit cool temperate-to-subpolar waters, often where prey aggregations are concentrated (Watts and Gaskin, 1985). Thus, they are frequently found in shallow waters, most often near shore, but they sometimes move into deeper offshore waters. Harbor porpoises are rarely found in waters warmer than 63 degrees Fahrenheit (17 degrees Celsius) and closely follow the movements of their primary prey, Atlantic herring (Gaskin 1992).

In the western North Atlantic, harbor porpoise range from Cumberland Sound on the east coast of Baffin Island, southeast along the eastern coast of Labrador to Newfoundland and the Gulf of St. Lawrence, then southwest to about 34 degrees North on the coast of North Carolina (Waring *et al.,* 2016). During winter (January to March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina, and lower densities are found in waters off New York to New Brunswick, Canada (Waring *et al.,* 2016). Harbor porpoises sighted off the mid-Atlantic during winter include porpoises from other western North Atlantic populations (Rosel *et al.,* 1999). There does not appear to be a temporally coordinated migration or a specific migratory route to and from the Bay of Fundy region (Waring *et al.,* 2016). During the fall (October to December) and the spring (April to June), harbor porpoises are widely dispersed from New Jersey to Maine, with lower densities farther north and south (LaBrecque *et al.,* 2015).

Based on stranding reports, passive acoustic recorders, and shipboard surveys, harbor porpoise occur in coastal waters primarily in winter and spring months, but there is little information on their presence in the Chesapeake Bay. They do not appear to be abundant in the NAVSTA Norfolk area in most years, but this is confounded by wide variations in stranding occurrences over the past decade. There were no harbor porpoise observed during construction activities for the Pier 3 Navy Construction Project or the Hampton Roads Bridge-Tunnel Expansion Project (Hampton Roads

Connector Partners 2023; W.F. Magann Corporation 2023).

Harbor Seal

The Western North Atlantic stock of harbor seals occurs in the Project Area. Harbor seal distribution along the U.S. Atlantic coast has shifted in recent years, with an increased number of seals reported from southern New England to the mid-Atlantic region (DiGiovanni *et al.,* 2011; Hayes *et al.,* 2021). Regular sightings of seals in Virginia have become a common occurrence in winter and early spring (Costidis *et al.,* 2019). Winter haulout sites for harbor seals have been documented in the Chesapeake Bay at the Chesapeake Bay Bridge Tunnel (CBBT), on the Virginia Eastern Shore, and near Oregon Inlet, North Carolina (Waring *et al.,* 2016; Rees *et al.,* 2016; Jones *et al.,* 2018).

Harbor seals regularly haul out on rocks around the portal islands of the CBBT and on mud flats on the nearby southern tip of the Eastern Shore from December through April (Rees *et al.,* 2016; Jones *et al.,* 2018). Seals captured in 2018 on the Eastern Shore and tagged with satellite-tracked tags that lasted from 2 to 5 months spent at least 60 days in Virginia waters before departing the area. All tagged seals returned regularly to the capture site while in Virginia waters, but individuals utilized offshore and Chesapeake Bay waters to different extents (Ampela *et al.,* 2019). The area that was utilized most heavily was near the Eastern Shore capture site, but some seals ranged into the Chesapeake Bay. To supplement this information, there were no harbor seals observed during construction activities for the Pier 3 Navy Construction Project or the Hampton Roads Bridge-Tunnel Expansion Project (Hampton Roads Connector Partners 2023; W.F. Magann Corporation 2023).

Gray Seal

The Western North Atlantic stock of gray seal occurs in the project area. The western North Atlantic stock is centered in Canadian waters, including the Gulf of St. Lawrence and the Atlantic coasts of Nova Scotia, Newfoundland, and Labrador, Canada, and the northeast U.S. continental shelf (Hayes *et al.,* 2021). Gray seals range south into the northeastern United States, with strandings and sightings as far south as North Carolina (Waring *et al.,* 2004). Gray seal distribution along the U.S. Atlantic coast has shifted in recent years, with an increased number of seals reported in southern New England (Kenney R.D., 2019; Waring *et al.,* 2016). Recent sightings included a gray seal in the lower Chesapeake Bay during the winter of 2014 to 2015 (Rees *et al.,* 2016). Along the coast of the United States, gray seals are known to pup at three or more colonies in Massachusetts and Maine.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007; 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from composite audiograms, previous analyses in NMFS (2018), and/or data from Southall *et al.* (2007) and Southall *et al.* (2019). We note that the names of two hearing groups and the generalized hearing ranges of all marine mammal hearing groups have been recently updated (NMFS, 2024) as reflected below in table 5.

TABLE 5—MARINE MAMMAL HEARING GROUPS

[NMFS, 2024]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 36 kHz.
High-frequency (HF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
Very High-frequency (VHF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	200 Hz to 165 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	40 Hz to 90 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 68 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges may not be as broad. Generalized hearing range chosen based on approximately 65 dB threshold from composite audiogram, previous analysis in NMFS (2018), and/or data from Southall *et al.* (2007) and Southall *et al.* (2019). Additionally, animals are able to detect very loud sounds above and below that "generalized" hearing range.

For more details concerning these groups and associated frequency ranges, please see NMFS (2024) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activity are expected to potentially occur from impact and vibratory pile installation and removal. The effects of underwater noise from HRCP's proposed activities have the potential to result in Level B harassment of marine mammals in the action area and, for some species as a result of certain activities, Level A harassment.

Below we provide a brief description of the types of sound sources that would be generated by the project, the general impacts from these types of activities, and an analysis of the anticipated impacts on marine mammals from the

project, with consideration of the proposed mitigation measures.

Description of Sound Sources for the Specified Activities

Activities associated with the project that have the potential to incidentally take marine mammals though exposure to sound would include impact pile driving for installation, and vibratory pile driving for installation and removal. Impact hammers typically operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is impulsive, characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the substrate. Vibratory hammers typically produce less sound (*i.e.,* lower levels) than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009; California Department of Transportation (CALTRANS), 2015, 2020). Sounds produced by vibratory hammers are non-impulsive; compared to sounds produced by impact hammers, the rise time is slower, reducing the probability and severity of injury, and the sound energy is distributed over more time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

The likely or possible impacts of HRCP's proposed activities on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel. However, given there are no known pinniped haulout sites in the vicinity of the project site, visual and other non-acoustic stressors would be limited, and any impacts to marine mammals are expected to primarily be acoustic in nature.

Potential Effects of Underwater Sound on Marine Mammals

The introduction of anthropogenic noise into the aquatic environment from impact and vibratory pile driving is the primary means by which marine mammals may be harassed from HRCP's specified activity. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life from none or minor to potentially severe responses depending on received levels, duration of exposure, behavioral context, and various other factors. Broadly, underwater sound from active acoustic sources, such as those in the project, can potentially result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2003; Nowacek *et al.,* 2007; Southall *et al.,* 2007).

We describe the more severe effects of certain non-auditory physical or physiological effects only briefly as we do not expect that use of impact and vibratory hammers are reasonably likely to result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007). The proposed project activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007, 2019). Exposure to anthropogenic noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). It can also lead to non-observable physiological responses, such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions, such as communication and predator and prey detection.

The degree of effect of an acoustic exposure on marine mammals is dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), signal characteristics, the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the noise source and the animal, received levels, behavioral state at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). In general, sudden, high-intensity sounds can cause hearing loss, as can longer exposures to lower-intensity sounds. Moreover, any temporary or permanent loss of hearing, if it occurs at all, would occur almost exclusively for noise within an animal's hearing range. We describe below the specific manifestations of acoustic effects that may occur based on the activities proposed by HRCP.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur in relation to distance from a source and assuming that the signal is within an animal's hearing range. First (at the greatest distance) is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone (closer to the receiving animal) corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. The third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

Below, we provide additional detail regarding potential impacts on marine mammals and their habitat from noise in general, starting with hearing impairment, as well as from the specific activities HRCP plans to conduct, to the degree it is available.

Hearing Threshold Shifts—NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018, 2024). The amount of threshold shift is customarily expressed in dB. TS can be permanent or temporary. As described in NMFS (2018, 2024) there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to

induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Auditory Injury (AUD INJ)—NMFS (2024) defines AUD INJ as damage to the inner ear that can result in destruction of tissue, such as the loss of cochlear neuron synapses or auditory neuropathy (Houser, 2021; Finneran, 2024). AUD INJ may or may not result in a permanent threshold shift (PTS). PTS is subsequently defined as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2024). PTS does not generally affect more than a limited frequency range, and an animal that has incurred PTS has some level of hearing loss at the relevant frequencies; typically, animals with PTS or other AUD INJ are not functionally deaf (Au and Hastings, 2008; Finneran, 2016). Available data from humans and other terrestrial mammals indicate that a 40-dB threshold shift approximates AUD INJ onset (see Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). AUD INJ levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring AUD INJ in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing AUD INJ are not typically pursued or authorized (NMFS, 2024).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2024), and is not considered an AUD INJ. Based on data from marine mammal TTS measurements (see Southall *et al.,* 2007, 2019), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Finneran *et al.,* 2000, 2002; Schlundt *et al.,* 2000). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with the 24-hour cumulative sound exposure level (SEL_{24}) in an accelerating fashion: at low exposures with lower SEL_{24}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{24}, the growth curves become steeper and approach linear relationships with the sound exposure level (SEL).

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to more impactful (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more severe impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 2013). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. For cetaceans, published data on the onset of TTS are limited to captive bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*) (Southall *et al.,* 2019). For pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), bearded seals (*Erignathus barbatus*) and California sea lions (*Zalophus californianus*) (Kastak *et al.,* 1999, 2007; Kastelein *et al.,* 2019b, 2019c, 2022a, 2022b; Reichmuth *et al.,* 2019; Sills *et al.,* 2020). TTS was not observed in spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to single airgun impulse sounds at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). These studies examine hearing thresholds measured in marine mammals before and after exposure to intense or long-duration sound exposures. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times.

The amount and onset of TTS depends on the exposure frequency. Sounds below the region of best sensitivity for a species or hearing group are less hazardous than those near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.,* 2019a, 2019c). Note that in general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). In addition, TTS can accumulate across multiple exposures, but the resulting TTS would be less than the TTS from a single, continuous exposure with the same SEL (Mooney *et al.,* 2009; Finneran *et al.,* 2010; Kastelein *et al.* 2015). This means that TTS predictions based on the total, SEL_{24} would overestimate the amount of TTS from intermittent exposures, such as sonars and impulsive sources. Nachtigall *et al.* (2018) describe measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*)) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.,* 2021). Data available on

noise-induced hearing loss for mysticetes are currently lacking (NMFS, 2024). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species.

Relationships between TTS and AUD INJ thresholds have not been studied in marine mammals, and there are no measured PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. AUD INJ typically occurs at exposure levels at least several dB above that inducing mild TTS (*e.g.,* a 40-dB threshold shift approximates AUD INJ onset (Kryter *et al.,* 1966; Miller, 1974), while a 6-dB threshold shift approximates TTS onset (Southall *et al.,* 2007, 2019). Based on data from terrestrial mammals, a precautionary assumption is that the AUD INJ thresholds for impulsive sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and AUD INJ cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007, 2019). Given the higher level of sound or longer exposure duration necessary to cause AUD INJ as compared with TTS, it is considerably less likely that AUD INJ could occur. Given the stationary nature of the construction activities, the fact that HRBT is relatively sheltered (*i.e.,* not located in the open ocean), and the fact that many marine mammals are likely moving through the project areas and not remaining in ensonified areas for extended periods of time, the potential for threshold shift is low for most species.

Behavioral Effects—Exposure to noise also has the potential to behaviorally disturb marine mammal response—in other words, not every response qualifies as behavioral disturbance, and for responses that do, those of a higher level, or accrued across a longer duration, have the potential to affect foraging, reproduction, or survival. Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses may include changing durations of surfacing and dives, changing direction and/or speed; reducing/increasing vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); eliciting a visible startle response or aggressive behavior (such as tail/fin slapping or jaw clapping); and avoidance of areas where sound sources are located. In addition, pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006).

Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007, 2019; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see appendices B and C of Southall *et al.* (2007) and Gomez *et al.* (2016) for reviews of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2004). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure.

As noted above, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; National Research Council (NRC), 2005). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud-pulsed sound sources (*e.g.,* seismic airguns) have been varied but often consist of avoidance behavior or other behavioral changes (Richardson *et al.,* 1995; Morton and Symonds, 2002; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal (*e.g.,* Erbe *et al.,* 2019). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. If a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Avoidance and displacement—Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a, 2013b, Blair *et al.,* 2016). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. Acoustic and movement biologging tools also have been used in some cases to infer responses to anthropogenic noise. For example, Blair *et al.* (2015) reported significant effects on humpback whale foraging behavior in Stellwagen Bank in response to ship

noise including slower descent rates, and fewer side-rolling events per dive with increasing ship nose. In addition, Wisniewska *et al.* (2018) reported that tagged harbor porpoises demonstrated fewer prey capture attempts when encountering occasional high-noise levels resulting from vessel noise as well as more vigorous fluking, interrupted foraging, and cessation of echolocation signals observed in response to some high-noise vessel passes. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Respiration rates vary naturally with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001; 2005; 2006; Gailey *et al.,* 2007). For example, harbor porpoise respiration rates increased in response to pile driving sounds at and above a received broadband SPL of 136 dB (zero-peak SPL: 151 dB re 1 µPa; SEL of a single strike (SEL_{ss}): 127 dB re 1 μPa^2-s) (Kastelein *et al.,* 2013).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Harbor porpoises, Atlantic white-sided dolphins (*Lagenorhynchus actusus*), and minke whales (*Balaenoptera acutorostrata*) have demonstrated avoidance in response to vessels during line transect surveys (Palka and Hammond, 2001). In addition, beluga whales in the St. Lawrence Estuary in Canada have been reported to increase levels of avoidance with increased boat presence by way of increased dive durations and swim speeds, decreased surfacing intervals, and by bunching together into groups (Blane and Jaakson, 1994). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Bejder *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996; Bowers *et al.,* 2018). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (England *et al.,* 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fishes and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive (*i.e.,* meaningful) behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Physiological stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Selye, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of

glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''*distress*'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress would last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Ayres *et al.,* 2012; Yang *et al.,* 2022). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. In addition, Lemos *et al.* (2022) observed a correlation between higher levels of fecal glucocorticoid metabolite concentrations (indicative of a stress response) and vessel traffic in gray whales. Yang *et al.* (2022) studied behavioral and physiological responses in captive bottlenose dolphins exposed to playbacks of ''pile-driving-like'' impulsive sounds, finding significant changes in cortisol and other physiological indicators but only minor behavioral changes. These and other studies lead to a reasonable expectation that some marine mammals would experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2005), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar construction projects.

Vocalizations and Auditory Masking—Since many marine mammals rely on sound to find prey, moderate social interactions, and facilitate mating (Tyack, 2008), noise from anthropogenic sound sources can interfere with these functions, but only if the noise spectrum overlaps with the hearing sensitivity of the receiving marine mammal (Southall *et al.,* 2007; Clark *et al.,* 2009; Hatch *et al.,* 2012). Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises such as from human sources interfere with an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Therefore, under certain circumstances, for marine mammals whose acoustic sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions (Hotchkin and Parks, 2013).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003) or vocalizations (Foote *et al.,* 2004), respectively, while North Atlantic right whales (*Eubalaena glacialis*) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). Fin whales (*Balaenoptera physalus*) have also been documented lowering the bandwidth, peak frequency, and center frequency of their vocalizations under increased levels of background noise from large vessels (Castellote *et al.* 2012). Other alterations to communication signals have also been observed. For example, gray whales, in response to playback experiments exposing them to vessel noise, have been observed increasing their vocalization rate and producing louder signals at times of increased outboard engine noise (Dahlheim and Castellote, 2016). Alternatively, in some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994, Wisniewska *et al.,* 2018).

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is human-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect (though not necessarily one that would be associated with harassment).

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2010; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors, including modifications of the acoustic properties of the signal or the signaling behavior (Hotchkin and Parks, 2013). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in

wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking occurs in the frequency band that the animals utilize and is more likely to occur in the presence of broadband, relatively continuous noise sources such as vibratory pile driving. Energy distribution of vibratory pile driving sound covers a broad frequency spectrum and is anticipated to be within the audible range of marine mammals present in the proposed action area. Since noises generated from the proposed construction activities are mostly concentrated at low frequencies (<2 kHz (kilohertz)), these activities likely have less effect on mid-frequency echolocation sounds produced by odontocetes (toothed whales). However, lower frequency noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. Low-frequency noise may also affect communication signals when they occur near the frequency band for noise and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Holt *et al.,* 2009). Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, in addition to individual levels. Masking affects both senders and receivers of the signals, and at higher levels for longer durations, could have long-term chronic effects on marine mammal species and populations. However, the noise generated by HRCP's proposed activities would only occur intermittently, across an estimated 231 (not necessarily consecutive) days during the proposed authorization period in a relatively small area focused around the proposed construction site. Thus, while the HRCP's proposed activities may mask some acoustic signals that are relevant to the daily behavior of marine mammals, the short-term duration and limited areas affected make it very unlikely that the fitness of individual marine mammals would be impacted.

While in some cases marine mammals have exhibited little to no obviously detectable response to certain common or routine industrialized activities (Cornick *et al.,* 2011; Horsley and Larson, 2023), it is possible some animals may at times be exposed to received levels of sound above the AUD INJ and Level B harassment thresholds during the proposed project. This potential exposure in combination with the nature of planned activity (*e.g.,* vibratory pile driving, impact pile driving) means it is possible that take by Level A and Level B harassment could occur over the total estimated period of activities; therefore, NMFS, in response to HRCP's IHA application, proposes to authorize take by Level A and Level B harassment from HRCP's proposed construction activities.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with construction activities that have the potential to cause behavioral harassment, depending on their distance from these activities. Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above airborne acoustic harassment criteria. As described above in *Description of Sound Sources for the Specified Activities,* although pinnipeds are known to haul-out regularly on man-made objects, we believe that incidents of take resulting solely from airborne sound are unlikely due to the distance between the proposed project area and the known haulout sites. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to flush from haulouts, temporarily abandon the area, and or move further from the source. However, these animals would previously have been ''*taken*'' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Potential Effects on Marine Mammal Habitat

HRCP's proposed activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water SPLs. Increased noise levels may affect acoustic habitat and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). Elevated levels of underwater noise would ensonify the project areas where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during the proposed construction activities; however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

The total area likely impacted by HRCP's activities is relatively small compared to the available habitat in and around the Chesapeake Bay and Atlantic Ocean. Avoidance by potential prey (*i.e.,* fish) of the immediate area due to increased noise is possible. The duration of fish and marine mammal avoidance of this area after tugging stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by fish or marine mammals of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

The proposed project would occur within the same general footprint as the existing marine infrastructure. The nearshore and intertidal habitat where the proposed project would occur is an area of relatively high marine vessel traffic. Most marine mammals do not generally use the area within the footprint of the project area. Temporary, intermittent, and short-term habitat alteration may result from increased noise levels during the proposed construction activities. Effects on marine mammals would be limited to temporary displacement from pile installation and removal noise, and effects on prey species would be similarly limited in time and space.

Water quality—Temporary and localized reduction in water quality would occur as a result of in-water construction activities. Most of this effect would occur during the installation and removal of piles when bottom sediments are disturbed. The installation and removal of piles would disturb bottom sediments and may cause a temporary increase in suspended sediment in the project area. During pile extraction, sediment attached to the pile moves vertically through the water column until gravitational forces cause it to slough off under its own weight. The small resulting sediment plume is expected to settle out of the water column within a

few hours. Studies of the effects of turbid water on fish (marine mammal prey) suggest that concentrations of suspended sediment can reach thousands of milligrams per liter before an acute toxic reaction is expected (Burton, 1993).

Effects to turbidity and sedimentation are expected to be short-term, minor, and localized. Turbidity within the water column has the potential to reduce the level of oxygen in the water and irritate the gills of prey fish species in the proposed project area. However, turbidity plumes associated with the project would be temporary and localized, and fish in the proposed project area would be able to move away from and avoid the areas where plumes may occur. Therefore, it is expected that the impacts on prey fish species from turbidity, and therefore on marine mammals, would be minimal and temporary. In general, the area likely impacted by the proposed construction activities is relatively small compared to the available marine mammal habitat in the Chesapeake Bay and Atlantic Ocean.

Potential Effects on Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fishes, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Studies regarding the effects of noise on known marine mammal prey are described here.

Fishes utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds that are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. (Hastings and Popper, 2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fishes (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Peña *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012). More commonly, though, the impacts of noise on fishes are temporary. For example, during the Port of Alaska's Marine Terminal Redevelopment Project, the effects of impact and vibratory installation of 30-inch (76-cm (centimeter)) steel sheet piles at the POA on 133 caged juvenile coho salmon (*Oncorhynchus kisutc*) in Knik Arm were studied (Hart Crowser Incorporated *et al.,* 2009; Houghton *et al.,* 2010). Acute or delayed mortalities, or behavioral abnormalities were not observed in any of the coho salmon. Furthermore, results indicated that the pile driving had no adverse effect on feeding ability or the ability of the fish to respond normally to threatening stimuli (Hart Crowser Incorporated *et al.,* 2009; Houghton *et al.,* 2010).

SPLs of sufficient strength have been known to cause injury to fishes and fish mortality (summarized in Popper *et al.,* 2014). However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function is likely restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012b) showed that a TTS of 4 to 6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012a; Casper *et al.,* 2013, 2017).

Fish populations in the proposed project area that serve as marine mammal prey could be temporarily affected by noise from pile installation and removal. The frequency range in which fishes generally perceive underwater sounds is 50 to 2,000 Hz, with peak sensitivities below 800 Hz (Popper and Hastings, 2009). Fish behavior or distribution may change, especially with strong and/or intermittent sounds that could harm fishes. High underwater SPLs have been documented to alter behavior, cause hearing loss, and injure or kill individual fish by causing serious internal injury (Hastings and Popper, 2005).

Zooplankton is a food source for several marine mammal species, as well as a food source for fish that are then preyed upon by marine mammals. Population effects on zooplankton could have indirect effects on marine mammals. Data are limited on the effects of underwater sound on zooplankton species, particularly sound from construction (Erbe *et al.,* 2019). Popper and Hastings (2009) reviewed information on the effects of human-generated sound and concluded that no substantive data are available on whether the sound levels from pile driving, seismic activity, or any human-made sound would have physiological effects on invertebrates. Any such effects would be limited to the area very near (1 to 5 meters (m) (3.28 to 16.4 feet (ft))) to the sound source and would result in no population effects because of the relatively small area affected at any one time and the reproductive strategy of most zooplankton species (short generation, high fecundity, and very high natural mortality). No adverse impact on zooplankton populations is expected to occur from the specified activity due in part to large reproductive capacities and naturally high levels of predation and mortality of these populations. Any mortalities or impacts that might occur would be negligible.

The greatest potential impact to marine mammal prey during construction would occur during impact pile driving. However, in most cases, the duration of impact pile driving would be limited to the final stage of installation (proofing) after the pile has been driven as close as practicable to the design depth with a vibratory driver. In-water construction activities would only occur during daylight hours, allowing fish to forage and transit the project area in the evening. Vibratory pile driving could possibly elicit behavioral reactions from fishes, such as temporary avoidance of the area, but is unlikely to cause injuries to fishes or have persistent effects on local fish populations. Construction also would have minimal permanent and temporary impacts on benthic invertebrate species, a marine mammal prey source. In

addition, it should be noted that the area in question is low-quality habitat since it is already highly developed and experiences a high level of anthropogenic noise from normal operations and other vessel traffic.

Potential Effects on Foraging Habitat

The proposed project is not expected to result in any habitat related effects that could cause significant or long-term negative consequences for individual marine mammals or their populations, since installation and removal of in-water piles would be temporary and intermittent. The total seafloor area affected by pile installation and removal is a very small area compared to the vast foraging area available to marine mammals outside this project area. For marine mammals, while the area is commonly used or traversed by some species, the proposed project area does not contain any particularly high-value habitat and is not usually important to any of the other species potentially affected by HRCP's proposed activities. While opportunistic foraging could occur, more foraging habitat is available outside the Bay, in more open ocean waters. Overall, the area impacted by the project is relatively small compared to the available habitat just outside the project area, and there are no areas of particular importance that would be impacted by this project during the period planned for activities to occur. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for the HRCP's construction to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered insignificant. Therefore, impacts of the project are not likely to have adverse effects on marine mammal foraging habitat in the proposed project area.

In summary, given the relatively small areas being affected, as well as the temporary and mostly transitory nature of the proposed construction activities, any adverse effects from HRCP's activities on prey habitat or prey populations are expected to be minor and temporary. The most likely impact to fishes at the project site would be temporary avoidance of the area. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we preliminarily conclude that impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform NMFS' consideration of ''small numbers,'' the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (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 (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic source's (*i.e.,* impact pile driving, vibratory pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (AUD INJ) (Level A harassment) to result, primarily for very high frequency species, high frequency species and/or phocids. The large number of dolphins that are proposed for take increases the likelihood that some could enter in the Level A harassment zone. The cryptic nature of porpoises and seals means that some animals could enter into the Level A harassment zone unseen by observers. AUD INJ is unlikely to occur for low-frequency cetaceans since they are likely to be uncommon and unlikely to remain in the AUD INJ zone long enough to experience injury. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic criteria above which NMFS believes there is some reasonable potential for marine mammals to be behaviorally harassed or incur some degree of AUD INJ; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Criteria

NMFS recommends the use of acoustic criteria that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur AUD INJ of some degree (equated to Level A harassment). We note that the criteria for AUD INJ, as well as the names of two hearing groups, have been recently updated (NMFS, 2024) as reflected below in the Level A harassment section.

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007; Southall *et al.,* 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared sound pressure levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 µPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 µPa for non-

explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

HRCP's proposed pile driving includes the use of continuous (vibratory hammer) and impulsive (impact hammer) sources, and therefore the RMS SPL thresholds of 120 AND/OR 160 dB re 1 µPa are applicable.

Level A harassment—NMFS' Updated Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 3.0) (Updated Technical Guidance, 2024) identifies dual criteria to assess AUD INJ (Level A harassment) to five different underwater marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). HRCP's proposed pile driving includes the use of impulsive (impact hammer) and non-impulsive (vibratory hammer) sources.

The 2024 Updated Technical Guidance criteria include both updated thresholds and updated weighting functions for each hearing group (table 6). The thresholds are provided in the table below. The references, analysis, and methodology used in the development of the criteria are described in NMFS' 2024 Updated Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance-other-acoustic-tools.*

TABLE 6—THRESHOLDS IDENTIFYING THE ONSET OF AUDITORY INJURY

Hearing group	AUD INJ onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 222 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 197 dB.
High-Frequency (HF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,HF,24h}$: 193 dB	*Cell 4:* $L_{E,HF,24h}$: 201 dB.
Very High-Frequency (VHF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,VHF,24h}$: 159 dB	*Cell 6:* $L_{E,VHF,24h}$: 181 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 223 dB; $L_{E,PW,24h}$: 183 dB	*Cell 8:* $L_{E,PW,24h}$: 195 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 230 dB; $L_{E,OW,24h}$: 185 dB	*Cell 10:* $L_{E,OW,24h}$: 199 dB.

* Dual metric criteria for impulsive sounds: Use whichever criteria results in the larger isopleth for calculating AUD INJ onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level criteria associated with impulsive sounds, the PK SPL criteria are recommended for consideration for non-impulsive sources.

Note: Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 µPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1 μPa^2s. In this table, criteria are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript "*flat*" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals underwater (*i.e.,* 7 Hz to 165 kHz). The subscript associated with cumulative sound exposure level criteria indicates the designated marine mammal auditory weighting function (LF, HF, and VHF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level criteria could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these criteria will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving and vibratory pile driving). The source levels assumed for both removal and installation activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the scientific literature and from similar coastal construction projects. Derived by the applicant using Geographic Information System software, the source levels for the piles and activities (*i.e.,* installation and/or removal), and the information and literature used to determine appropriate proxy sources, where applicable, are presented in table 7. The source levels for vibratory removal and installation of piles of the same material and diameter are assumed to be the same.

TABLE 7—ESTIMATES OF UNDERWATER SOUND SOURCE LEVELS GENERATED DURING VIBRATORY AND IMPACT PILE INSTALLATION AND VIBRATORY REMOVAL

Pile type	rms	SEL	dB peak	Reference
Vibratory Hammer				
36-inch steel pile	170	.....	180	Caltrans 2015.
AZ 700 steel sheet pile	160	.....	175	Caltrans 2020.
Impact Hammer				
12-inch Composite pile *	153	143	177	Caltrans 2015.
36-inch steel pile	193	183	210	Caltrans 2020.
36-inch steel pile, attenuated **	188	178	205	Caltrans 2020.

TABLE 7—ESTIMATES OF UNDERWATER SOUND SOURCE LEVELS GENERATED DURING VIBRATORY AND IMPACT PILE INSTALLATION AND VIBRATORY REMOVAL—Continued

Pile type	rms	SEL	dB peak	Reference
54-inch concrete cylinder pile ***	183	170	192	MacGillivray *et al.* 2007.

Note: It is assumed that noise levels during pile installation and removal are similar. dB = decibel: SEL = sound exposure level; dB peak = peak sound level; rms = root mean square; DoN = Department of the Navy; CCA = Chromated Copper Arsenate, Caltrans = California Department of Transportation.
* SSL taken from 16-inch composite.
** SSLs taken from 36-inch concrete square piles, no project specific information provided.

Level B Harassment

Transmission Loss (*TL*) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. *TL* parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater *TL* is:

$TL = B \times Log_{10}(R1/R2),$

Where:

TL = transmission loss in dB,
B = transmission loss coefficient,
R1 = the distance of the modeled SPL from the driven pile, and
R2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero in this case. The degree to which underwater sound propagates away from a sound source depends on various factors, most notably the water bathymetry and the presence or absence of reflective or absorptive conditions, including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source ($20*\log_{10}$[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source ($10*\log_{10}$[range]). A practical spreading value of 15 is often used under conditions where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Absent site-specific acoustic monitoring with differing measured *TL,* practical spreading is used. Site-specific *TL* data for HRB is not available; therefore, the default coefficient of 15 is used to determine the distances to the Level A harassment and Level B harassment thresholds.

Level A Harassment

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the 2024 Updated Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers a practical, alternative way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources[such as pile driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur AUD INJ. Inputs used in the optional User Spreadsheet tool (table 8), and the resulting estimated isopleths (table 9, table 10) are reported below.

TABLE 8—USER SPREADSHEET INPUTS

Model parameter	Steel sheet	12-in comp	36-in steel pipe						54-in concrete
	Vib	Vib	Vib	Vib	Vib	Imp	Imp—Bubble	Imp—Bubble	Imp
Spreadsheet Tab	A.1	A.1	A.1	A.1	A.1	E.1	E.1	E.1	E.1
Weighting Factor Adjustment (kHz)	2.5	2.5	2.5	2.5	2.5	2	2	2	2
Sound Pressure Level (SPLrms)	160	153	170	170	170	193	188	188	183
SELss (LE, p, single strike) at 10 meters	.....	.....	.....	.....	.....	183	178	178	170
Lp, 0-pk at 10 meters	.....	.....	.....	.....	.....	210	205	205	192
Number of piles within 24-hour period	6	4	4	3	2	.....	2	3	1
Estimated Duration to drive a single pile (min)	30	30	30	30	30	.....	.....	.....	.....
Duration to drive a single pile (min)	30	30	30	30	30	.....	.....	.....	.....
Transmission loss coefficient	15	15	15	15	15	15	15	15	15
Distance from sound pressure level (SPLrms) measurement (m)	10	10	10	10	10	10	10	10	10
Strikes per pile	.....	.....	.....	.....	.....	40	40	40	2,100
Estimated Strikes per pile	.....	.....	.....	.....	.....	40	40	40	2,100

TABLE 9—CALCULATED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS DURING VIBRATORY PILE INSTALLATION AND REMOVAL WITH NO ATTENUATION

Project component	Size/type	Minutes per pile	Piles per day	LF*	HF*	VHF*	PW*	Level B isopleth (m)	Level B area (km^2)
North Trestle									
Template Piles	36-inch Pipe, Steel	30	3	48	19	40	62	21,544	390
North Shore Work & Jump Trestle	36-inch Pipe, Steel	30	3	48	19	40	62	21,544	390
North Shore abutment Island	Steel sheet	30	6	17	7	14	22	4,642	39
North Island									
Circulation Dock	36-inch Pipe, Steel	15	2	37	15	30	48	21,544	399
South Island									
TBM Platform & Conveyor	36-inch Pipe, Steel	30	3	48	19	40	62	21,544	504
Moorings	36-inch Pipe, Steel	30	4	59	23	48	75	21,544	504
South Trestle									
Template Piles	36-inch Pipe, Steel	30	3	48	19	40	62	21,544	408
Work Trestle, Jump Trestle, Demolition Trestle, Temporary MOT Trestle.	36-inch Pipe, Steel	30	2	37	15	30	48	21,544	408
Moorings	36-inch Pipe, Steel	30	4	59	23	48	75	21,544	408
Willoughby Bay									
Moorings (Safe Haven)	36-inch Pipe, Steel	30	4	59	23	48	75	21,544	32
Fender	12-inch Composite	30	4	5	2	4	6	1,585	7
Bulkhead Replacement	Steel sheet	30	6	17	7	14	22	4,642	5
Willoughby Split Laydown area									
Temp Dock/Finger Piers	36-inch Pipe, Steel	30	3	48	19	40	62	21,544	156

*All ensonified areas are ≤0.02 km^2.

TABLE 10—CALCULATED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS (m) AND AREAS (km^2) DURING IMPACT INSTALLATION WITH ATTENUATION (5 dB) FROM BUBBLE CURTAIN

Project component	Size/type	Strikes per pile	Piles per day	Level A harassment isopleth (area)				Level B harassment isopleth (area)
				LF	HF	VHF	PW	
North Trestle								
Permanent piles	54-inch Pipe, Concrete	2,100	1	222 (0.2)	28 (<0.01)	343 (0.4)	197 (0.12)	342 (0.4)
Work Trestle, Jump Trestle, Demolition Trestle.	36-inch Pipe, Steel	40	2	86 (0.02)	11 (<0.01)	133 (0.06)	77 (0.02)	736 (1.6)
South Island								
TBM Platform	36-inch Pipe, Steel	40	3	113 (0.04)	15 (<0.01)	174 (0.1)	100 (0.03)	736 (1.6)
South Trestle								
Work Trestle, Jump Trestle, Demolition Trestle, Temporary MOT Trestle.	36-inch Pipe, Steel	40	3	522 (0.9)	67 (0.02)	808 (2)	464 (0.69)	736 (1.6)
Permanent Piles	54-inch Pipe, Concrete	2,100	1	222 (0.2)	28 (<0.01)	343 (0.4)	197 (0.12)	342 (0.4)

Note that to minimize hydroacoustic impacts caused by the impact hammer, a bubble curtain will be used for installation of steel pipe piles in water depths greater than 20 feet. Portions of the South Trestle Jump Trestle in water depths less than 20 feet will be installed without a bubble curtain. Additionally, HRCP may employ more than one hammer operating simultaneously. However, separate pile driving actions will not be conducted in close proximity to each other. Therefore, there is no need to apply decibel addition when calculating isopleths given that the sources will be well separated.

Marine Mammal Occurrence and Take Estimation

In this section, we provide information about the occurrence of marine mammals, including density or other relevant information, which will inform the take calculations. Then, we describe how all of the information detailed above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

In the preceding LOA, NMFS and HRCP estimated potential exposure using daily sighting data for areas west of the HRBT area and within the Core Monitoring Area (CMA). The CMA encompasses the area south of the HRBT and north of the Hampton Roads Monitor-Merrimac Memorial Bridge-Tunnel (Interstate 664). This is the area that will be ensonified during most of the pile installation and removal activities.

Humpback Whale

Humpback whales are relatively rare in the Project area and density data for

this species within the Project vicinity do not exist or were not calculated because sample sizes were too small to produce reliable estimates of density. Humpback whale sighting data collected by the U.S. Navy near Naval Station Norfolk and Virginia Beach from 2012 to 2022 (Engelhaupt *et al.* 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022) and in the mid-Atlantic (including the Chesapeake Bay) from 2012 to 2022. Based on these data, and the known movement of humpback whales from November through April at the mouth of the Chesapeake Bay, HRCP is requesting two takes every month from May to October and three to four each month from November through April for the duration of in-water pile installation and removal as shown in table 11. A total of 37 takes of humpback whale by Level B harassment is proposed. Take by Level A is not proposed since there were zero takes of humpback whale according to the HRBT marine mammal monitoring reports from 2021 through 2024. This is the same total number of takes requested under the previous LOA.

TABLE 11—ESTIMATED NUMBERS OF HUMPBACK WHALES POTENTIALLY EXPOSED TO LEVEL A AND LEVEL B HARASSMENT SOUND LEVELS PER MONTH

Yr	April	M	J	J	A	S	O	N	D	J	F	Mar	Total
26–27	3	2	2	2	2	2	2	4	4	4	4	2	37

Bottlenose Dolphin

Estimated take of bottlenose dolphins was derived using daily sighting rates within the CMA from 2012 through 2016 by Engelhaupht *et al.* (2016). . Seasonal density data was also used to establish estimated take for areas northeast of the HRBT Project and outside the CMA. However, the incorporation of the density data outside of the CMA produced take estimates that were unrealistically high, based on the monitoring results of the project, as shown in reports submitted by HRCP (and available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-hampton-roads-bridge-tunnel-expansion-project-hampton-0*). Therefore, NMFS has not used these data for estimating take for this proposed IHA.

To estimate potential exposure west of the Project site and within the CMA, sighting rates (numbers of dolphins per day) were determined for each of the four seasons from sightings located in the inshore Chesapeake Bay zone (the Chesapeake Bay waters near Naval Station Norfolk). Sighting data were used to calculate the number of dolphins/day that could be anticipated to occur in the Project area for each of the four seasons. The number of anticipated days of in-water pile installation and removal for each activity was multiplied by the average daily sighting rate (table 12) to estimate the number of dolphins per month that could be exposed to Project noise. For most piles, the ensonified area is contained within the surrounding land features and cannot extend out into Chesapeake Bay. Therefore, this method is sufficient to calculate potential exposure. Table 13 shows the total annual proposed takes. HRCP and NMFS will assume that 1 percent of the total tales would be by Level A harassment since Level A harassment takes were recorded in monitoring reports submitted under the previous LOA. According to the HRBT marine mammal monitoring reports from 2021 through 2024 annual dolphin takes ranged from 0 to 2 by Level A harassment and 9 to 92 by Level B harassment per year.

TABLE 12—AVERAGE DAILY SIGHTING RATES WITHIN CORE MONITORING AREA

Season	Average sighted per day
Spring, March–May	17.33
Summer, June–August	16.43
Fall, Sept–Nov	27.22
Winter, Dec–Feb	0

TABLE 13—TOTAL ESTIMATED TAKES SHOWN BY MONTH

Month	Apr	M	J	J	A	S	O	N	D	J	F	M	
Daily avg.	17.33	17.33	16.43	16.43	16.43	27.22	27.22	27.22	0	0	0	17.33	.....
Total	519.9	537.23	492.9	509.33	509.33	816.6	843.82	816.6	0	0	0	537.23	5,583

The total number of bottlenose dolphin takes by Level A and Level B harassment is expected to be split between three bottlenose dolphin stocks: Western North Atlantic Southern Migratory Coastal; Western North Atlantic Northern Migratory Coastal; and NNCES. There is insufficient data available to apportion the requested takes precisely to each of these three stocks present in the project area. Given that most of the NNCES stock are found in the Pamlico Sound Estuarine System, HRCP and NMFS will assume that no more than 200 of the requested takes will be from this stock. Since members of the Western North Atlantic Northern Migratory Coastal and Western North Atlantic Southern Migratory Coastal stocks are thought to occur in or near the Project area in greater numbers, HRCP and NMFS will conservatively assume that half of the remaining animals will belong to either of these stocks. The breakout of Level A and Level B harassment by dolphin stock is shown in table 16.

Harbor Porpoise

Harbor porpoises are rarely seen in the project area although they are known to occur in the coastal waters near Virginia Beach (Hayes *et al.* 2020). They have been sighted on rare occasions in the Chesapeake Bay closer to Norfolk. Density data does not exist for this species within the project area and sighting data collected by the U.S. Navy near Naval Station Norfolk and Virginia Beach from 2012 to 2015 (Engelhaupt *et al.* 2014, 2015, 2016) did not produce high enough sample sizes to calculate densities. One group of two harbor porpoises was seen during spring 2015 (Engelhaupt *et al.* 2016). There were no recorded take of harbor porpoise reported in the HRBT annual marine mammal monitoring reports from 2021 through 2024.

HRCP estimated that one group of two harbor porpoises could be exposed to project-related underwater noise each month during the spring (March-May) for a total of six harbor porpoises takes

(*i.e.,* one group of two individuals per month × 3 months per year = six harbor porpoises). Given that porpoises are known to be cryptic animals it is possible, if unlikely, that porpoises could enter into the Level A harassment zone. HRCP has requested limited take by Level A harassment. While NMFS does not agree that take by Level A harassment is likely, due to the duration of time a harbor porpoise would be required to remain within the Level A zone to accumulate enough energy to experience AUD INJ, we nevertheless propose to authorize limited take. It is anticipated that no more than two individuals may enter the Level A harassment zone during pile installation and removal. Therefore, NMFS is authorizing four takes by Level B harassment and two Level A harassment takes.

Harbor Seal

The expected number of harbor seals in the Project area was estimated using systematic, land- and vessel-based survey data for in-water and hauled-out seals collected by the U.S. Navy at the Chesapeake Bay Bridge Tunnel (CBBT) rock armor and portal islands from November 2014 through April 2024 (Rees *et al.* 2016; Jones *et al.* 2018; Jones and Rees 2020,2024). The number of harbor seals sighted by month from 2014 through 2024, in the Chesapeake Bay waters, in the vicinity (lower Chesapeake Bay along the CBBT) of the Project, ranged from 0 to 170 individuals.

The estimated total number of harbor seals potentially exposed during the Project to in-water noise is 11.8 per day (the average of the 10-year average daily harbor seal count) (table 14) for 156 days based on a 6-day work week from mid-November to mid-May. Seals are not expected to be present in the Chesapeake Bay from June through October. In the event that unanticipated Level A take does occur, HRCP assumed it would not exceed 10 percent of total takes. Therefore, NMFS is proposing to authorize 187 Level A harassment takes of harbor seals and 1,685 Level B harassment takes of harbor seal (1,872 total takes − 187 Level A harassment takes = 1,685 Level B harassment takes). Note that no harbor seals takes were reported in HRBT annual marine mammal monitoring reports from 2021 through 2024.

TABLE 14—HARBOR SEAL SURVEY EFFORT, TOTAL COUNT, MAX COUNT, AND THE AVERAGE NUMBER OF SEALS OBSERVED PER SURVEY DAY AT THE CHESAPEAKE BAY BRIDGE TUNNEL SURVEY AREA

Year	Number survey days	Total seal count	Average seal count	Max daily seal count
2014–2015	11	113	10	33
2015–2016	14	187	13	39
2016–2017	22	308	14	40
2017–2018	15	340	23	45
2018–2019	10	82	8	17
2019–2020	6	29	5	6
2020–2021	11	137	12	32
2021–2022	10	98	10	25
2022–2023	11	110	10	31
2023–2024	7	92	13	38
Average	11.7	149.6	11.8	30.6

Gray Seal

The expected number of gray seals in the Project area was estimated using systematic, land- and vessel-based survey data for in-water and hauled-out seals collected by the U.S. Navy at the CBBT rock armor and portal islands from 2014 through 2019 (Rees *et al.* 2016; Jones *et al.* 2018; Jones and Rees 2020). Seasonal numbers of gray seals in the Chesapeake Bay waters in the vicinity of the Project area in previous years have been low as shown in table 15. Gray seals are not expected to be present in the Chesapeake Bay during the months of June through October. There were zero takes of gray seal reported in HRBT annual marine mammal monitoring reports from 2021 through 2024.

Gray seals are expected to be very uncommon in the Project area. It was assumed that three gray seals could be exposed to Level B harassment during each of the winter months (December through February). Therefore, HRCP conservatively requested and NMFS proposes that nine gray seals could be exposed to harassment (three gray seals per month × 3 months per year = nine gray seals). Given their cryptic nature, a small number of Level A harassment takes (two) were also requested by HRCP and are proposed by NMFS resulting in seven takes by Level B harassment and two takes by Level A harassment.

TABLE 15—AVERAGE NUMBER OF INDIVIDUAL GRAY SEAL SIGHTINGS SUMMARIZED BY SEASON

[2014–2019]

Spring (March–May)	0
Summer (June–August)	0
Fall (September–November)	0
Winter (December–February)	1

Table 16 summarizes proposed take by Level A and/or Level B harassment by stock, harassment type, and total proposed takes and as a percentage of stock abundance.

TABLE 16—PROPOSED TAKE BY STOCK, HARASSMENT TYPE, AND AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Stock abundance	Level A harassment take	Level B harassment take	Percentage
Humpback whale	Gulf of Maine	1,396	0	37	2.6
Bottlenose Dolphin	Western North Atlantic Southern Migratory Coastal	3,751	27	2,664	71.7
	Western North Atlantic Northern Migratory Coastal	6,639	27	2,665	40.5
	Northern North Carolina Estuarine System	823	2	198	24.3
Harbor porpoises	Gulf of Maine- Bay of Fundy	85,765	2	4	<0.01
Harbor seals	Western North Atlantic	61,336	184	1,647	0.30
Gray seals	Western North Atlantic	27,911	2	7	0.03

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and 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 certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations,

The mitigation requirements described in the following were proposed by HRCP in its adequate and complete application or are the result of subsequent coordination between NMFS and HRCP. HRCP has agreed that all of the mitigation measures are practicable. NMFS has fully reviewed the specified activities and the mitigation measures to determine if the mitigation measures would result in the least practicable adverse impact on marine mammals and their habitat, as required by the MMPA, and has determined the proposed measures are appropriate. NMFS describes these below as proposed mitigation requirements and has included them in the proposed IHA.

In addition to the measures described later in this section, HRCP would be required to follow these general mitigation measures:

- Takes proposed for authorization, by Level A harassment and Level B harassment only, would be limited to the species and numbers listed in table 16. Construction activities would be required to be halted upon observation of either a species for which incidental take was not authorized or for a species for which incidental take has been authorized but the number of takes has been met, entering or is within the harassment zone, if the IHA is issued.
- The taking by serious injury or death of any of the species listed in table 16 or any taking of any other species of marine mammal would be prohibited and would result in the modification, suspension, or revocation of the IHA, if issued. Any taking exceeding the amounts proposed for authorization listed in table 16 would be prohibited and would result in the modification, suspension, or revocation of the IHA, if issued;
- Ensure that construction supervisors and crews, the marine mammal monitoring team, and relevant HRCP staff are trained prior to the start of all construction activities, so that responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;
- HRCP, construction supervisors and crews, protected species observers PSOs, and relevant HRCP staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction
- Employ PSOs and establish monitoring locations as described in the Marine Mammal Monitoring and Mitigation Plan (MMMMP) (see NMFS' website). HRCP must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions.

Additionally, the following mitigation measures apply to HRCP's in-water construction activities.

Pre- and Post-Activity Monitoring

HRCP would be required to establish pre- and post-monitoring zones with radial distances (based on the distances to the Level B harassment threshold and feasibility for PSOs in the field) for all construction activities. Monitoring would take place from 30 minutes prior to initiation of any pile driving activity (*i.e.,* pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity. In addition, monitoring for 30 minutes would take place whenever a break in the specified activity (*i.e.,* impact pile driving, vibratory pile driving) of 30 minutes or longer occurs. Pre-start clearance monitoring would be conducted during periods of visibility sufficient for the Lead PSO to determine that the shutdown zones (indicated further below) are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals.

Soft-Start

HRCP would use soft start techniques when impact pile driving. Soft-start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy

strike sets. A soft-start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft-start procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity.

Establishment of Shutdown Zones

HRCP would be required to establish shutdown zones with radial distances, as identified in table 17 and table 18 for all construction activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Additionally, HRCP would be required to shutdown in the event an unauthorized species is present, to avoid take of that unauthorized species. Shutdown zones would vary based on the activity type and marine mammal hearing group.

If a marine mammal is observed entering or within the shutdown zones indicated in table 17 or table 18, pile driving activities must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zones or a specific time period has passed without re-detection of the animal (*i.e.,* 15 minutes). If a marine mammal comes within or approaches the shutdown zone indicated in table 16 or table 17 such operations must cease. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), HRCP shall delay pile driving and removal until observers are confident marine mammals within the shutdown zone could be detected.

TABLE 17—SHUTDOWN AND MONITORING ZONES DURING VIBRATORY PILE INSTALLATION AND REMOVAL

Project component	Size/type	Piles per day	LF	HF	VHF	PW	Level B isopleth (m) monitoring zone
North Trestle							
Template Piles	36-inch Pipe, Steel	3	50	20	40	65	21,544
North Shore Work & Jump Trestle	36-inch Pipe, Steel	3	50	20	40	65	21,544
North Shore abutment Island	Steel sheet	6	20	20	20	25	4,642
North Island							
Circulation Dock	36-inch Pipe, Steel	2	40	20	30	50	21,544
South Island							
TBM Platform & Conveyor	36-inch Pipe, Steel	3	50	20	40	65	21,544
Moorings	36-inch Pipe, Steel	4	60	25	50	75	21,544
South Trestle							
Template Piles	36-inch Pipe, Steel	3	50	20	40	65	21,544
Work Trestle, Jump Trestle, Demolition Trestle, Temporary MOT Trestle.	36-inch Pipe, Steel	2	40	20	30	50	21,544
Moorings	36-inch Pipe, Steel	4	60	25	50	75	21,544
Willoughby Bay							
Moorings (Safe Haven)	36-inch Pipe, Steel	4	60	25	50	75	21,544
Fender	12-inch Comp.	4	20	20	20	20	1,585
Bulkhead Replacement	Steel sheet	6	20	20	20	25	4,642
Willoughby Split Laydown area							
Temp Dock/Finger Piers	36-inch Pipe, Steel	3	50	20	40	65	21,544

TABLE 18—SHUTDOWN AND MONITORING ZONES DURING IMPACT INSTALLATION WITH ATTENUATION

Project component	Size/type	Piles per day	LF	HF	VHF	PW	Level B isopleth (m) monitoring zone
North trestle							
Permanent piles	54-inch Pipe, Concrete Cylinder.	1	225	30	350	200	158
Work Trestle, Jump Trestle, Demolition Trestle.	36-inch Pipe, Steel	2	90	20	140	80	736

TABLE 18—SHUTDOWN AND MONITORING ZONES DURING IMPACT INSTALLATION WITH ATTENUATION—Continued

Project component	Size/type	Piles per day	LF	HF	VHF	PW	Level B isopleth (m) monitoring zone
South Island							
TBM Platform	36-inch Pipe, Steel	3	120	20	175	100	736
South Trestle							
Work Trestle, Jump Trestle, Demolition Trestle, Temporary MOT Trestle.	36-inch Pipe, Steel	3	120	20	175	100	736
Permanent Piles	54-inch Pipe, Concrete Cylinder.	1	225	30	350	200	158

Bubble Curtain

A bubble curtain must be employed during all impact pile driving. A noise attenuation device would not be required during vibratory pile driving. The bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column. The lowest bubble ring must be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring must ensure 100 percent substrate contact. No parts of the ring or other objects may prevent full substrate contact. Air flow to the bubblers must be balanced around the circumference of the pile.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

The monitoring and reporting requirements described in the following were proposed by HRCP in its adequate and complete application and/or are the result of subsequent coordination between NMFS and HRCP. HRCP has agreed to the requirements. NMFS describes these below as requirements and has included them in the proposed IHA.

Visual Monitoring

All PSOs must be NMFS-approved. PSOs would be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods. At least one PSO would have prior experience performing the duties of a PSO during an activity pursuant to a NMFS-issued ITA. Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued ITA.

Additionally, PSOs would be required to meet the following qualifications:

- The ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to:

(1) Number and species of marine mammals observed;

(2) Dates and times when in-water construction activities were conducted;

(3) Dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and

(4) Marine mammal behavior.

- The ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

HRCP must establish monitoring locations, as described in MMMMP (see NMFS' website). Where a team of three or more PSOs is required, a lead observer (''*Lead PSO*'') or monitoring coordinator would be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued ITA.

For all pile driving activities, a minimum of two PSOs must be assigned. PSOs will be positioned at the best practical vantage point(s). The position(s) may vary based on construction activity and location of

piles or equipment. At least one of the monitoring locations will have an unobstructed view of the pile being driven and unobstructed view of the CMA, Level A harassment shutdown zone, and Level B harassment shutdown. Given the maximum effective observation distance, PSOs would be required to continuously monitor the entirety of the shutdown zones and as much as possible of the Level B harassment zones given visibility constraints, using binoculars and other resources to aid in observation. PSOs would be required to record all observations of marine mammals, regardless of distance from the pile being driven.

Proposed Reporting

HRCP would be required to submit an annual draft summary report on all construction activities and marine mammal monitoring results to NMFS within 90 days following the end of construction or 60 calendar days prior to the requested issuance of any subsequent IHA for similar activity at the same location, whichever comes first. The draft summary report would include an overall description of construction work completed, a narrative regarding marine mammal sightings, and associated raw PSO data sheets (in electronic spreadsheet format). Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including: (a) how many and what type of piles were driven or removed and the method (*i.e.,* impact and vibratory); and (b) the total duration of time for each pile (vibratory driving) or number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring; and
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

Upon observation of a marine mammal, the following information must be reported:

- Name of PSO who sighted the animal(s) and PSO location and activity at the time of the sighting;
- Time of the sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
- Distance and bearing of each observed marine mammal relative to the pile being driven or removed for each sighting;
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (*e.g.,* adults, juveniles, neonates, group composition, *etc.*);
- Animal's closest point of approach and estimated time spent within the estimated harassment zone(s);
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown) and time and location of the action.

If no comments are received from NMFS within 30 days after the submission of the draft summary report, the draft report would constitute the final report. If HRCP received comments from NMFS, a final summary report addressing NMFS' comments would be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in HRCP activities discover an injured or dead marine mammal, HRCP would report the incident to the NMFS Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov, ITP.Pauline@noaa.gov*) and to the Greater Atlantic Region New England/Mid-Atlantic Regional Stranding Coordinator (978–282–8478 or 978–281–9291) as soon as feasible. If the death or injury was clearly caused by the specified activity, HRCP would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the IHA. HRCP would not resume their activities until notified by NMFS. The report would include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in table 15, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Impact pile driving for installation and vibratory pile driving for installation and/or removal activities associated with the proposed project, as outlined previously, have the potential

to disturb or displace marine mammals. Specifically, the specified activities may result in take in the form of Level A harassment and/or Level B harassment from underwater sounds generated from pile driving installation and removal. Potential takes could occur if individuals of these species are present in zones ensonified above the thresholds for Level A harassment or Level B harassment identified above when these activities are underway.

Given the nature of the proposed activities, NMFS does not anticipate serious injury or mortality due to HRCP's proposed project, even in the absence of required mitigation. The Level A harassment zones are based upon an animal exposed to vibratory pile driving and/or impact pile driving for periods ranging from 30 to 180 minutes for in-water pile driving per day. Overall, construction activities are not expected to exceed 12 hours per day (likely ranging between 10–12 hours but not all of that would be spent actively pile driving). Exposures of this length are, however, unlikely for vibratory driving for installation and/or removal, given marine mammal movement throughout the area. Even during impact driving scenarios, an animal exposed to the accumulated sound energy would likely only experience limited AUD INJ at the lower frequencies where pile driving energy is concentrated.

As stated in the Proposed Mitigation section, HRCP would implement shutdown zones that equal or exceed many of the Level A harassment isopleths shown in table 16 and table 17. Take by Level A harassment is proposed for four marine mammal species/stocks. This is precautionary to account for the potential that an animal could enter and remain within the area between a Level A harassment zone and the shutdown zone for long enough to be taken by Level A harassment. Additionally, in some cases, this precaution would account for the possibility that an animal could enter a shutdown zone without detection and remain in the Level A harassment zone for a duration long enough to be taken by Level A harassment before being observed and a shutdown occurring. That said, any take by Level A harassment is expected to arise from, at most, a small degree of AUD INJ because animals would need to be exposed to higher levels and/or longer duration than are expected to occur here to incur any more than a small degree of AUD INJ. Additionally, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. Because of the small degree anticipated, any AUD INJ or TTS potentially incurred here is not expected to adversely affect an animal's individual fitness, let alone annual rates of recruitment or survival.

For all species and stocks, take is expected to occur within a limited, confined area (adjacent to the project site) of the stock's range. The intensity and duration of take by Level A harassment and Level B harassment would be expected to be minimized through the proposed mitigation measures described herein.

Behavioral responses of marine mammals to pile driving for pile installation and/or pile removal at the project site, if any, are expected to be mild, short-term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues if they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable, such as changes in vocalization patterns. Additionally, many of the species present in this region would only be present temporarily based on seasonal patterns or during active transit between other habitats. Most likely, during pile driving, individuals would be expected to move away from the sound source and be temporarily displaced from the areas of pile driving throughout the duration of pile driving activities. However, this reaction has been observed primarily associated with impact pile driving. While vibratory driving associated with the proposed project may produce sound at distances of many kilometers across the Chesapeake Bay from the site, the majority of sound fields produced by the specified activities are constrained by land masses to the north, south, and east of the site.

The potential for harassment is minimized by implementing the proposed mitigation measures. During all impact driving, implementation of soft-start procedures, use of bubble curtains, and monitoring of established shutdown zones by trained and qualified PSOs shall be required, significantly reducing any possibility of injury. Given sufficient notice through soft-start (for impact driving), marine mammals are expected to move away from an irritating sound source before it becomes potentially injurious.

Any impacts on marine mammal prey that would occur during HRCP's proposed activities would have, at most, short-term effects on foraging of individual marine mammals, and likely no effect on the populations of marine mammals as a whole. Indirect effects on marine mammal prey during the construction are expected to be minor, and these effects are unlikely to cause substantial effects on marine mammals at the individual level, with no expected effect on annual rates of recruitment or survival.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities will not modify existing marine mammal habitat. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the relatively small area of the habitat that may be affected (with no known particular importance to marine mammals), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Furthermore, there are no known biologically important areas (BIAs), or ESA-designated critical habitat.

With regard to the humpback whale UME, there is currently no cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or distinct population segment (DPS)) remains healthy. Although NMFS is proposing to authorize limited take by Level B harassment (37) since the whales have been observed in the Chesapeake Bay, there have been no reported takes of humpback whales in the HRBT monitoring reports from 2021 through 2024.

HRCP's proposed pile driving activities and associated impacts will occur within a limited portion of the confluence of the Chesapeake Bay area. It is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the reproduction or survival of any individuals, much less the stocks' annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or proposed for authorization;
- Any Level A harassment exposures are anticipated to result in slight AUD INJ (*i.e.,* of a few decibels) within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment would consist of, at worst,

temporary modifications in behavior that would not result in fitness impacts to individuals;

- The area affected by the specified activity is very small relative to the overall habitat ranges of all species and does not include (BIAs) or ESA-designated critical habitat.
- Effects on species that serve as prey for marine mammals are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations; and
- The proposed mitigation measures, such as employing vibratory driving to the maximum extent practicable, soft-starts, bubble curtains, and shutdowns, are expected to reduce the effects of the specified activity to the least practicable adverse impact level.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under section 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers (see 86 FR 5322, January 19, 2021). Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The maximum annual take of all species proposed for authorized take is less than one-third of the best available stock abundance estimate, with the exception of two stocks of bottlenose dolphin (table 3). Three bottlenose dolphin stocks could occur in the project area: WNA Coastal Northern Migratory (40.5 percent of stock abundance), WNA Coastal Southern Migratory (71.7 percent) and NNCES (24.3 percent) stocks. The estimated takes of bottlenose dolphin would likely be portioned among these stocks. Based on the stocks' respective occurrence in the area, NMFS estimated that there would be no more than 200 takes from the NNCES stock, with the remaining takes evenly split between the northern and southern migratory coastal stocks.

Both the WNA Coastal Northern Migratory and WNA Coastal Southern Migratory stocks have expansive ranges and they are the only dolphin stocks thought to make broad-scale, seasonal migrations in coastal waters of the western North Atlantic. Given the large ranges associated with these stocks it is unlikely that large segments of either stock would enter into the Chesapeake Bay and approach the project area. The majority of both stocks are likely to be found widely dispersed across their respective habitat ranges and unlikely to be concentrated in or near the Chesapeake Bay.

Furthermore, the Chesapeake Bay and nearby offshore waters represent the boundaries of the ranges of each of the two coastal stocks during migration. The WNA Coastal Northern Migratory stock occurs during warm water months from coastal Virginia, including the Chesapeake Bay, to Long Island, New York. The stock migrates south in late summer and fall. During cold-water months, dolphins may occur in coastal waters from Cape Lookout, North Carolina, to the North Carolina/Virginia border. During January-March, the WNA Coastal Southern Migratory stock appears to move as far south as northern Florida. From April to June, the stock moves back north to North Carolina. During the warm water months of July-August, the stock is presumed to occupy coastal waters north of Cape Lookout, North Carolina, to Assateague, Virginia, including the Chesapeake Bay. There is likely some overlap between the northern and southern migratory stocks during spring and fall migrations, but the extent of overlap is unknown.

The Chesapeake Bay and waters offshore of its mouth are located on the periphery of the migratory ranges of both coastal stocks (although during different seasons). Additionally, each of the migratory coastal stocks are likely to be located in the vicinity of the Chesapeake Bay for relatively short timeframes. Given the limited number of animals from each migratory coastal stock likely to be found at the seasonal migratory boundaries of their respective ranges, in combination with the short time periods (~2 months) animals might remain at these boundaries, it is reasonable to assume that takes are likely to occur to only a small portion of either of the migratory coastal stocks.

Both migratory coastal stocks likely overlap with the NNCES stock at various times during their seasonal migrations. The NNCES stock is defined as animals that primarily occupy waters of the Pamlico Sound estuarine system (which also includes Core, Roanoke, and Albemarle sounds, and the Neuse River) during warm water months (July–August). Animals from this stock also use coastal waters (≤1 km from shore) of North Carolina from Beaufort north to Virginia Beach, Virginia, including the lower Chesapeake Bay. Comparison of dolphin photo-identification data confirmed that limited numbers of individual dolphins observed in Roanoke Sound have also been sighted in the Chesapeake Bay (Young, 2018). Like the migratory coastal dolphin stocks, the NNCES stock covers a large range. The spatial extent of most small and resident bottlenose dolphin populations is on the order of 500 km^2, while the NNCES stock occupies over 8,000 km^2 (LeBrecque *et al.,* 2015). Given this large range, it is again unlikely that a preponderance of animals from the NNCES stock would depart the North Carolina estuarine system and travel to the northern extent of the stock's range.

Many of the dolphin observations in the Bay are likely repeated sightings of the same individuals. The Potomac-Chesapeake Dolphin Project has observed over 1,200 unique animals since observations began in 2015. Re-sightings of the same individual can be highly variable. Some dolphins are observed once per year, while others are highly regular with greater than 10 sightings per year (J. Mann, Potomac-Chesapeake Dolphin Project, pers. comm.). Similarly, using available photo-identification data, Engelhaupt *et al.* (2016) determined that specific individuals were often observed in close proximity to their original sighting locations and were observed multiple times in the same season or same year. Ninety-one percent of re-sighted individuals (100 of 110) in the study area were recorded less than 30 km from the initial sighting location. Multiple sightings of the same individual would considerably reduce the number of individual animals that are taken by Level B harassment. Furthermore, there is a resident dolphin population in the Bay which would likely increase the percentage of dolphin takes that are actually re-sightings of the same individuals in any given year.

In consideration of various factors described above, we have determined

the maximum number of individuals taken per year would likely comprise less than one-third of the best available population abundance estimate of either bottlenose dolphin coastal migratory stock.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensures that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of incidental take authorizations, NMFS consults internally whenever we propose to authorize take for ESA-listed species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to HRCP for construction activities associated with the Hampton Roads Bridge-Tunnel Expansion Project in Norfolk, Virginia, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed construction project. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).
- The request for renewal must include the following:

1. An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

2. A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: February 24, 2026.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2026–03945 Filed 2–26–26; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before March 30, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0025, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx*.

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should

include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Scott Thompson, Assistant General Counsel for Ethics, Office of the General Counsel, Commodity Futures Trading Commission; phone: 202–418–6590; email: *Ethics@cftc.gov,* and refer to OMB Control No. 3038–0025.

SUPPLEMENTARY INFORMATION:

Title: Practice by Former Members and Employees of the Commission (OMB Control No. 3038–0025). This is a request for an extension of a currently approved information collection.

Abstract: Commission Rule 140.735–6 governs the practice before the Commission of former members and employees of the Commission and is intended to ensure that the Commission is aware of any existing conflict of interest. The rule, at 17 CFR 140.735–6(e), requires former members and employees who are employed or retained to represent any person before the Commission within two years of their separation from the CFTC, to file a brief written statement with the Commission's Office of the General Counsel. The proposed rule was promulgated pursuant to the Commission's rulemaking authority contained in Section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (1994), as amended.

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.[2] On December 11, 2025, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 90 FR 57453 (''60-Day Notice''). The Commission did not receive any comments on the 60-Day Notice.

Burden Statement: The respondent burden for this collection is estimated to average 0.10 hours per response to file the brief written statement. This estimate includes the time needed to review instructions, utilize technology and systems for the purposes of collecting, validating, verifying, processing and disclosing information, and adjust/update existing methods to comply with any previously applicable instructions and requirements.

Estimated Number of Respondents: 20.

Estimated Average Burden Hours per Respondent: 0.10.

Estimated Total Annual Burden Hours: 2.

Frequency of Collection: On occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: February 25, 2026.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2026–03983 Filed 2–26–26; 8:45 am]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Privacy Act of 1974; Matching Program

AGENCY: Corporation for National and Community Service.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, OMB Final Guidance Interpreting the Provisions of the Computer Matching and Privacy Protection Act of 1988, and OMB Circular No. A–130, ''Management of Federal Information Resources,'' the Corporation for National and Community Service (operating as AmeriCorps) is issuing a public notice of the computer matching program with the Social Security Administration (SSA). The program will enable AmeriCorps to verify the Social Security numbers of individuals who are applying to serve in approved national service positions and those designated to receive national service education awards, to confirm that applicants meet eligibility requirements and to verify their statements regarding their citizenship status.

DATES: Comments must be received by March 30, 2026. If AmeriCorps determines that significant changes to the matching agreement are necessary, it will publish a revised notice with an additional 30-day public comment period. The matching program will begin April 1, 2026, and will continue for 18 months after the effective date. It may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

ADDRESSES: You may submit comments identified by the title of the information collection activity, by any of the following methods.

(1) Electronically through *www.regulations.gov* (preferred method).

(2) *By mail sent to:* AmeriCorps, Attention Bilal Razzaq, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (2) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Comments submitted in response to this notice may be made available to the public through regulations.gov. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Bilal Razzaq, Chief Information Security and Privacy Officer, 202–606–3254, or by email at *brazzaq@americorps.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), regulates the use of computer matching agreements by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching agreements to publish a notice

[1] 17 CFR 145.9.

[2] 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

in the **Federal Register** regarding the establishment of the matching program.

AmeriCorps has entered into a computer matching agreement with the Social Security Administration (SSA) to provide AmeriCorps with Social Security number verifications to ensure individuals meet the eligibility requirement for an education award in section 146(a)(3) of the National and Community Service Act of 1990, as amended (42 U.S.C. 12602(a)(3)). The agreement will be in effect for a period of 18 months, with a provision for a one-time extension for a period not to exceed 12 months. To renew the agreement, both AmeriCorps and SSA must certify to their respective Data Integrity Boards that: (1) the matching program will be conducted without change; and (2) the matching program has been conducted in compliance with the original agreement.

AmeriCorps will provide SSA with a data file including each applicant's and potential education award recipient's Social Security number, first and last names, and date of birth. SSA will conduct a match on the identifying information. If the match does not return a result verifying the individual's citizenship status, AmeriCorps will contact the individual or the grant recipient program that selected the individual to verify the results in accordance with the requirements of 5 U.S.C. 552a(p) and applicable OMB guidelines. The affected individual will have an opportunity to contest the accuracy of the information provided by SSA. The applicant will have at least 30 days from the date the notice is mailed or otherwise provided to the applicant to provide clear and convincing evidence of the accuracy of the Social Security number, proof of U.S. citizenship, or both.

Applicants will be informed at the time of application that information provided on the application is subject to verification through the Privacy Act Statement in the Member Portal. All members read and acknowledge the Privacy Act Statement when registering an account in the Member Portal, which is required as a part of the application process.

Section 148(f) of the NCSA authorizes recipients of education awards to a designated individual—the transferee. For transferees of education awards, at the time an award is transferred, AmeriCorps will provide the individual notice that the SSN is subject to verification through a computer matching program. AmeriCorps will send a privacy notice to the transferee, and in the case of a minor, to the parent or legal guardian. The transferee, parent, or legal guardian must sign the privacy certification authorizing AmeriCorps to verify the information provided.

AmeriCorps has furnished a copy of this notice to both Houses of Congress and the Office of Management and Budget.

Participating Agencies

Participants in this computer matching program are the Social Security Administration (source agency) and the Corporation for National and Community Service (recipient agency).

Authority for Conducting the Matching Program

This agreement is executed in compliance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a), and the regulations and guidance promulgated under the Act.

SSA's legal authority to enter into this agreement is pursuant to section 1106 of the Social Security Act (Act) (42 U.S.C. 1306); the Privacy Act and the regulations and guidance promulgated thereunder; the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Pub. L. 108–458 § 7213); and SSA's disclosure regulations at 20 CFR part 401.

Section 146(a)(3) of the National and Community Service Act of 1990, as amended (NCSA) (42 U.S.C. 12602(a)), sets forth the eligibility requirements for an individual to receive a national service educational award from the National Service Trust upon successful completion of a term of service in an approved national service position. Section 1711 of the Serve America Act (Pub. L. 111–13) directs AmeriCorps to enter into a data matching agreement to verify statements made by an individual declaring that such individual is in compliance with section 146(a)(3) of the NCSA shall be verified by comparing information provided by the individual with information relevant to such a declaration in the possession of another Federal agency. In accordance with the study AmeriCorps completed pursuant to section 1711 of the Serve America Act, AmeriCorps determined that a data matching program with SSA is the most effective means to verify an individual's statement that they are in compliance with section 146(a)(3) of the NCSA.

Purpose(s)

The computer match between AmeriCorps and SSA will enable AmeriCorps to verify the Social Security numbers of individuals who are applying to serve in approved national service positions and those designated to receive national service education awards under the NCSA to confirm that applicants meet the eligibility requirements in section 146(a)(3), that is that they are a citizen or national of the United States or a lawful permanent resident alien of the United States and verify statements made by those individuals regarding their citizenship status.

Categories of Individuals

Each individual who is eligible to receive an education award or applies to serve in an approved national service position, including positions in AmeriCorps State and National, AmeriCorps VISTA, AmeriCorps NCCC, and Serve America Fellows, must, at the time of acceptance of an education award or application to serve, certify that they meet the citizenship eligibility criteria to serve in the position—that is, that they are a citizen, national, or lawful permanent resident of the United States.

Categories of Records

The categories of records involved in the matching program are the applicants' Social Security Number, date of birth, and first and last name. AmeriCorps will provide SSA with the records and SSA will match the records and provide verification status.

System(s) of Records

SSA will match the data elements AmeriCorps transmits in its verification requests against SSA's records, as authorized by the Systems of Records (SOR) 60–0058, Master Files of Social Security Number (SSN) Holders and SSN Applications (Enumeration System). (90 FR 10025). The information AmeriCorps provides from the AmeriCorps Member Management Files, CNCS–04–CPO–MPMF, published August 13, 2024 (89 FR 65866) will be matched against this system of records and verification results will be disclosed under the applicable routine use.

Charndrea Leonard,

Senior Agency Official for Privacy.

[FR Doc. 2026–03927 Filed 2–26–26; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2026–SCC–0397]

Agency Information Collection Activities; Comment Request; U.S. Department of Education Supplemental Information for the SF–424 Form

AGENCY: Office of the Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 28, 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–0397. 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 *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 Office of Planning, Evaluation and Policy Development, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 4C227, Washington, DC 20202–1200.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kelly Terpak, 202–205–5231.

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: U.S. Department of Education Supplemental Information for the SF–424 Form.

OMB Control Number: 1894–0007.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments *Total Estimated Number of Annual Responses:* 5,976.

Total Estimated Number of Annual Burden Hours: 2,271.

Abstract: The U.S. Department of Education Supplemental Information form for the SF–424 is used together with the SF–424, Application for Federal Assistance. Several years ago ED made a decision to switch from the Application for Federal Education Assistance or ED 424 (1890–0017) collection (now 1894–0007) to the SF–424, in order to adhere with Federal-wide forms standardization and streamlining efforts, especially with widespread agency use of *Grants.gov*. There were several data elements/questions on the ED 424 that were required for applicants and were not included on the SF–424. Therefore, ED put these questions that were already cleared as part of the 1894–0007 collection on a form entitled the, U.S. Department of Education Supplemental Information for the SF–424. The questions on this form deal with the following areas: Project Director identifying and contact information; General Education Provision Act Section 427 Assurance; New Potential Grantee; Human Subjects Research; and Infrastructure Programs and Build America, Buy America Act Applicability (BABAA). The ED supplemental information form can be used with any of the SF–424 forms in the SF–424 forms family, as applicable.

Ross Santy,

Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2026–03982 Filed 2–26–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Competition Announcement; State Technical Assistance Projects To Improve Services and Results for DeafBlind Children

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (ED) announces the opportunity to apply for competitive grants for the Fiscal Year (FY) 2026 for State Technical Assistance Projects to Improve Services and Results for DeafBlind Children (State DeafBlind Projects), Assistance Listing Number (ALN) 84.326T.

DATES: Complete proposals must be submitted electronically through the *Grants.gov* ''APPLY'' function by 11:59:59 p.m. Eastern time April 21, 2026.

FOR FURTHER INFORMATION CONTACT: Rebecca Sheffield, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A232, Washington, DC 20202. Telephone: (202) 245–6490. Email: *rebecca.sheffield@ed.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the State DeafBlind Projects (84.326T) are to offer financial assistance to projects to establish and operate State DeafBlind Projects in the states of Connecticut, Maine, Massachusetts, New Hampshire, Oregon, Vermont, Washington, and Wisconsin. These projects will help education agencies, providers, teachers, and families to address the educational, related services, transitional, and early intervention needs of DeafBlind children. The FY 2026 competition includes an absolute priority, a competitive preference priority, selection criteria, and requirements. The absolute priority is: State Technical Assistance Projects to Improve Services and Results for DeafBlind Children. The competitive preference priority is: Returning Education to the States.

To Apply: The complete funding opportunity announcement and all information needed to apply, including the priority and program requirements, are available on ED's website at *https://*

www.ed.gov/about/ed-offices/osers/osep/new-osep-grant-competitions and on *Grants.gov* at *https://grants.gov/search-results-detail/361336.* The application notice and instructions on *grants.gov* is the official document governing the grant competition.

Program Authority: 20 U.S.C. 1462, 1463 and 1481.

Accessible Format: On request to the person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format.

Kimberly Richey,

Acting Assistant Secretary and Deputy Assistant Secretary, Delegated the authority to perform the functions and duties of Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2026–03909 Filed 2–26–26; 8:45 am]

BILLING CODE 4000–01–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: RP26–510–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20260223 Negotiated Rate Filing to be effective 2/24/2026.

Filed Date: 2/23/26.

Accession Number: 20260223–5155.

Comment Date: 5 p.m. ET 3/9/26.

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, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Dated: February 24, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–03949 Filed 2–26–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–8986–003]

Young, Erica; Notice of Filing

Take notice that on February 20, 2026, Erica Young submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and Part 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 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 March 13, 2026.

Dated: February 24, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–03950 Filed 2–26–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–502–003]

Iroquois Gas Transmission System, L.P.; Notice of Petition and Establishing Intervention Deadline

Take notice that on February 13, 2026, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, Suite 600, Shelton, Connecticut 06484, filed a petition under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations seeking reissuance of a certificate of public convenience and necessity authorizing Iroquois to construct and operate its previously approved Wright Interconnect Project (Project) and to abandon by lease the project capacity to Constitution Pipeline Company, LLC (Constitution) (Petition).[1]

Iroquois states that the project scope has not changed. Specifically, Iroquois requests reissuance of certificate authority to: (1) construct a new receipt point interconnection with Constitution;

[1] *Constitution Pipeline Co., LLC,* 149 FERC ¶ 61,199 (2014) (Certificate Order), *reh'd denied,* 154 FERC ¶ 61,046 (2016), *vacated sub nom. New York State Dep't of Envt. Conservation* v. *FERC,* No.19–4338 (2d Cir. Nov. 18, 2021).

(2) construct a new 21,800 horsepower transfer compressor station; (3) modify its Wright Compressor Station; (4) modify metering facilities; and (5) install various appurtenances, all located in Schoharie County, New York. The Project will create 650,000 dekatherms per day of transportation service which Iroquois will abandon by lease to Constitution. Iroquois updated the cost estimate for the Project to be $152,264,000, all as more fully set forth in the petition which is on file with the Commission and open for public inspection.

On January 8, 2026 in Docket Nos. CP13–499–006 and CP18–5–004, the Commission issued a Notice of Petition and Establishing Intervention Deadline (January 8 Notice) for Constitution's petition for reissuance of a certificate for its Constitution Pipeline Project and reaffirmation of the New York State Department of Environmental Conservation's waiver of authority under section 401 of the Clean Water Act. The Constitution Pipeline Project and the Wright Interconnect Project are inextricably linked. The January 8 Notice stated that ''Until the details of Iroquois's petition are filed and more fully understood, the Commission cannot complete its analysis of the Petition.'' With the filing of Iroquois' petition, we now can begin our analysis.

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 regarding the petition should be directed to Kimberly A.E. Pritchard, Vice President and General Counsel, Iroquois Pipeline Operating Company, One Corporate Drive, Suite 600, Shelton, Connecticut 06484, by phone at (203) 944–7032, or by email at *Kimberly_pritchard@iroquois.com.*

Public Participation

There are three ways to become involved in the Commission's review of this petition: you can file comments on the petition, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on March 17, 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.*

Comments

Any person wishing to comment on the petition may do so. Comments may include statements of support or objections, to the petition as a whole or specific aspects of the petition. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)[2] and 385.211[3] of the Commission's regulations under the NGA, any person[4] may file a protest to the petition. Protests must comply with the requirements specified in section 385.2001[5] of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before 5:00 p.m. Eastern Time on March 17, 2026.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Petition docket number CP13–502–003 in your submission.

(1) 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 the petition;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. 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 ''Comment on a Filing''; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Petition docket number (CP13–502–003).

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.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

The Commission considers all comments received about the petition in determining the appropriate action to be taken. However, 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. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[6] has the option to file a motion to intervene in this proceeding. Parties to the original docket (CP13–502–000) do not need to file a new motion to intervene. 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 Procedure[7] and the regulations under the NGA[8] by the intervention deadline for the petition, which is 5:00 p.m.

[2] 18 CFR 157.10(a)(4).

[3] 18 CFR 385.211.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[5] 18 CFR 385.2001.

[6] 18 CFR 385.102(d).

[7] 18 CFR 385.214.

[8] 18 CFR 157.10.

Eastern Time on March 17, 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 petition 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.*

There are two ways to submit your motion to intervene. In both instances, please reference the Petition docket number CP13–502–003 in your submission.

(1) You may file your motion to intervene 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 ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Petition docket number CP13–502–003.

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,

The Commission encourages electronic filing of motions to intervene (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 petitioner either by mail at: Kimberly A.E. Pritchard, Vice President and General Counsel, Iroquois Pipeline Operating Company, One Corporate Drive, Suite 600, Shelton, Connecticut 06484 or by email (with a link to the document) at *Kimberly_pritchard@iroquois.com.* Any subsequent submissions by an intervenor must be served on the petitioner and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [9] motions to intervene are automatically granted by operation of Rule 214(c)(1).[10] 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.[11] 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 petitioner and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the petition 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.*

Intervention Deadline: 5:00 p.m. Eastern Time on March 17, 2026.

(Authority: 18 CFR 2.1)

Dated: February 24, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–03948 Filed 2–26–26; 8:45 am]

BILLING CODE 6717–01–P

[9] The petitioner has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[10] 18 CFR 385.214(c)(1).

[11] 18 CFR 385.214(b)(3) and (d).

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: EC26–62–000.
Applicants: Sugar Maple Wind, LLC, Exus Sugar Maple Holdings LLC.
Description: Supplement to 02/06/2026 Joint Application for Authorization Under Section 203 of the Federal Power Act of Sugar Maple Wind, LLC, et al.
Filed Date: 2/24/26.
Accession Number: 20260224–5076.
Comment Date: 5 p.m. ET 3/6/26.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG26–161–000.
Applicants: Hecate Energy Cider Solar LLC.
Description: Hecate Energy Cider Solar LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 2/24/26.
Accession Number: 20260224–5070.
Comment Date: 5 p.m. ET 3/17/26.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL26–47–000.
Applicants: North Carolina Electric Membership Corporation v. Duke Energy Progress, LLC.
Description: Complaint of North Carolina Electric Membership Corporation v. Duke Energy Progress, LLC.
Filed Date: 2/23/26.
Accession Number: 20260223–5172.
Comment Date: 5 p.m. ET 3/25/26.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1123–014; ER10–1119–000.
Applicants: Central Illinois Public Service Company, Union Electric Company.
Description: Supplement to 01/07/2026, Notice of Non-Material Change in Status of Union Electric Company et al.
Filed Date: 2/18/26.
Accession Number: 20260218–5132.
Comment Date: 5 p.m. ET 3/11/26.
Docket Numbers: ER26–1475–000.
Applicants: Cheyenne Light, Fuel and Power Company.
Description: § 205(d) Rate Filing: Filing of Standard LGIA with Black Hills Electric Generation, LLC to be effective 2/10/2026.

Filed Date: 2/23/26.
Accession Number: 20260223–5165.
Comment Date: 5 p.m. ET 3/16/26.
Docket Numbers: ER26–1476–000.
Applicants: RWE Clean Energy O&M, LLC.
Description: Tariff Amendment: Cancellation of MBR Tariff to be effective 2/24/2026.
Filed Date: 2/23/26.
Accession Number: 20260223–5169.
Comment Date: 5 p.m. ET 3/16/26.
Docket Numbers: ER26–1477–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 4651 Willwood Light and Power Company Market Participant Agreement to be effective 4/1/2026.
Filed Date: 2/23/26.
Accession Number: 20260223–5176.
Comment Date: 5 p.m. ET 3/16/26.
Docket Numbers: ER26–1478–000.
Applicants: RWE Supply & Trading US, LLC.
Description: Tariff Amendment: Cancellation of MBR Tariff to be effective 2/24/2026.
Filed Date: 2/23/26.
Accession Number: 20260223–5178.
Comment Date: 5 p.m. ET 3/16/26.
Docket Numbers: ER26–1479–000.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Co-Located Load Tariff Revisions to Comply with Order in EL25–49, et al. to be effective 12/31/9998.
Filed Date: 2/23/26.
Accession Number: 20260223–5181.
Comment Date: 5 p.m. ET 3/16/26.
Docket Numbers: ER26–1480–000.
Applicants: Bee Hollow Solar, LLC.
Description: Initial Rate Filing: Market-Based Rate Application to be effective 2/24/2026.
Filed Date: 2/23/26.
Accession Number: 20260223–5184.
Comment Date: 5 p.m. ET 3/16/26.
Docket Numbers: ER26–1481–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 4648 Cty of Fountain, Colorado and Colorado Springs Utilities Meter Agent Agr to be effective 4/1/2026.
Filed Date: 2/24/26.
Accession Number: 20260224–5046.
Comment Date: 5 p.m. ET 3/17/26.
Docket Numbers: ER26–1482–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2026–02–24_SA 4596 Entergy Louisiana-Entergy Louisiana 1st Rev GIA (E0014) to be effective 2/19/2026.
Filed Date: 2/24/26.
Accession Number: 20260224–5047.
Comment Date: 5 p.m. ET 3/17/26.
Docket Numbers: ER26–1483–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: Surplus LGIA (Hornshadow Storage 1—SA No. 1198) to be effective 2/25/2026.
Filed Date: 2/24/26.
Accession Number: 20260224–5058.
Comment Date: 5 p.m. ET 3/17/26.
Docket Numbers: ER26–1484–000.
Applicants: Evergy Missouri West, Inc.
Description: § 205(d) Rate Filing: Osceola IA to be effective 5/1/2026.
Filed Date: 2/24/26.
Accession Number: 20260224–5067.
Comment Date: 5 p.m. ET 3/17/26.
Docket Numbers: ER26–1485–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2026–02–24_Filing to Remove Outdated Processes from Attachment U to be effective 4/26/2026.
Filed Date: 2/24/26.
Accession Number: 20260224–5069.
Comment Date: 5 p.m. ET 3/17/26.
Docket Numbers: ER26–1486–000.
Applicants: Evergy Missouri West, Inc.
Description: § 205(d) Rate Filing: Gilman City IA to be effective 5/1/2026.
Filed Date: 2/24/26.
Accession Number: 20260224–5074.
Comment Date: 5 p.m. ET 3/17/26.
Docket Numbers: ER26–1487–000.
Applicants: Hecate Energy Cider Solar LLC.
Description: § 205(d) Rate Filing: Hecate Energy Cider Solar LLC MBR Tariff to be effective 4/26/2026.
Filed Date: 2/24/26.
Accession Number: 20260224–5101.
Comment Date: 5 p.m. ET 3/17/26.
Docket Numbers: ER26–1488–000.
Applicants: Tucson Electric Power Company.
Description: § 205(d) Rate Filing: Service Agreement No. 623 to be effective 2/5/2026.
Filed Date: 2/24/26.
Accession Number: 20260224–5103.
Comment Date: 5 p.m. ET 3/17/26.
Docket Numbers: ER26–1489–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revision to Attachment AA for the 2025 CONE Update to be effective 4/26/2026.
Filed Date: 2/24/26.
Accession Number: 20260224–5118.
Comment Date: 5 p.m. ET 3/17/26.
Docket Numbers: ER26–1490–000.
Applicants: Duke Energy Florida, LLC.
Description: Tariff Amendment: DEF Cancellation of RS No. 422 to be effective 4/26/2026.
Filed Date: 2/24/26.
Accession Number: 20260224–5154.
Comment Date: 5 p.m. ET 3/17/26.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD26–4–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Errata to Reliability Standard BAL–007–1.
Filed Date: 2/23/26.
Accession Number: 20260223–5177.
Comment Date: 5 p.m. ET 3/25/26.

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 24, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–03951 Filed 2–26–26; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2025–3555; FRL–13147–01]

Tetflupyrolimet; Receipt of Applications for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing specific exemption requests from the Arkansas

and Missouri Departments of Agriculture to use the pesticide tetflupyrolimet, (CAS No. 2053901–33–8), to treat up to 546,000 and 100,000 acres of rice in Arkansas and Missouri, respectively to control Barnyardgrass resistant to multiple herbicides. The applicants propose the use of an active ingredient which has not been registered by EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before March 16, 2026.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2025–3555, is available online at *https://www.regulations.gov.* Additional information about dockets generally, 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 Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–2875; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General information

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 should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through email or *https://www.regulations.gov.* If you wish to include CBI in your comment, 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 so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. EPA implementing regulations are set forth in 40 CFR part 166.

II. What action is the Agency taking?

EPA is announcing receipt of requests submitted to EPA under FIFRA section 18. This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (*i.e.,* an active ingredient) which has not been registered by EPA.

II. Summary of the Request Received

The Arkansas and Missouri Departments of Agriculture have requested the EPA Administrator to issue specific exemptions for the use of tetflupyrolimet on rice to control Barnyardgrass resistant to multiple herbicides. Information in accordance with 40 CFR part 166 was submitted as part of this request. As part of this request, the applicants assert that emergency conditions exist due to insufficient means to control Barnyardgrass resistant to rice herbicides, especially Barnyardgrass resistant to multiple herbicides, which leaves rice growers without an effective control option. The use of tetflupyrolimet will help avert significant economic losses.

The Applicants propose to make up to two applications of 8.6 fluid ounces of the unregistered product, KEENALI HERBICIDE (containing 35.0% tetflupyrolimet, equivalent to 3.34 lbs. of tetflupyrolimet per gallon of product) on up to a total of 646,000 acres of rice (546,000 in Arkansas and 100,000 in Missouri), from March 1, 2026 to July 1, 2026. If a maximum of two applications are made to the maximum requested acreage, a potential of 43,399 gallons of product (equivalent to 146,080 pounds of tetflupyrolimet) could be used.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the Arkansas and Missouri Departments of Agriculture.

Authority: 7 U.S.C. 136 *et seq.*

Dated: February 2, 2026.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2026–03939 Filed 2–26–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OPRM–FAD–212]

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 13, 2026 10 a.m. EST Through February 23, 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. 20260016, Draft Supplement, USAF, USA, USCG, USN, GU, Mariana Islands Training and Testing, *Comment Period Ends:* 05/01/2026, *Contact:* Brian Whitehouse 808–471–4696.

EIS No. 20260017, Final, BLM, NV, Silver Peak Lithium Operation Expansion Project, *Contact:* Scott Distel 775–861–6476.

EIS No. 20260018, Final, BLM, NV, GridLiance West Core Upgrades Transmission Project Final EIS and RMP Amendment, *Review Period Ends:* 03/30/2026, *Contact:* Whitney Wirthlin 702–515–5117.

Dated: February 23, 2026.

Nancy Abrams,

Deputy Director, Federal Activities Division.

[FR Doc. 2026–03959 Filed 2–26–26; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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 paragraph 7 of the Act.

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 Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *Patriot Financial Partners IV, L.P., Patriot Financial Partners Parallel IV, L.P., Patriot Financial Partners GP IV, L.P., Patriot Financial Partners GP IV, LLC, Patriot Financial Partners V, L.P., Patriot Financial Partners GP V, L.P., Patriot Financial Partners GP V, LLC, Patriot Financial Partners VC Parallel V, L.P., Patriot Financial Partners Parallel GP V, LLC, Patriot Financial Advisors, L.P., Patriot Financial Advisors, LLC, W. Kirk Wycoff, and James Deutsch, all of Radnor, Pennsylvania;* as a group acting in concert, to acquire voting shares of Parkway Bancorp, Inc., and thereby indirectly acquire voting shares of Parkway Bank and Trust Company, both of Harwood Heights, Illinois.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026–03984 Filed 2–26–26; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0315; Docket No. 2025–0001; Sequence No. 20]

Submission for OMB Review; Ombudsman Inquiry/Request Instrument

AGENCY: Office of Acquisition Policy, Office of the Procurement Ombudsman (OPO), General Services Administration (GSA).

ACTION: Notice; request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the OMB a request to review and approve a reinstatement of an information collection requirement regarding OMB Control No: 3090–0315; Ombudsman Inquiry/Request Instrument.

DATES: Submit comments on or before March 30, 2026.

ADDRESSES: Written comments and recommendations for this 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Frederick Landry, GSA Procurement Ombudsman & Industry Liaison, at telephone 202–501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The online intake Instrument on the GSA Ombudsman's web page receives inquiries from vendors who are currently doing business with or interested in doing business with GSA. The inquiries are collected by the GSA Ombudsman and routed to the appropriate office for resolution and/or implementation in the case of recommendations for process or program improvements. Reporting of the data collected helps highlight thematic issues that vendors encounter with GSA acquisition programs, processes, or policies, and identify areas where training is needed. The information collected also assists in identifying and analyzing patterns and trends to help improve efficiencies and lead to improvements in current practices.

B. Annual Reporting Burden

Maximum Potential Respondents: 118.

Responses per Respondent: 1.

Total Maximum Potential Annual Responses: 118.

Hours per Response: .25.

Total Burden Hours: 29.5.

C. Public Comments

A 60-day notice was published in the **Federal Register** at 90 FR 60104. No public comments were received.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite ''Information Collection 3090–0315, Ombudsman Inquiry/Request Instrument'', in all correspondence.

Patrick Dale,

Team Lead, Regulatory Secretariat Division, General Services Administration.

[FR Doc. 2026–03989 Filed 2–26–26; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0331; Docket No. 2026–0001; Sequence No. 3]

Information Collection; Living Quarters Eligibility Questionnaire; GSA Form 5039

AGENCY: Office of Human Resource Management, Division of Human Capital Strategic Planning and Programs, General Services Administration (GSA).

ACTION: Notice; request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension to an existing information collection requirement.

DATES: Submit comments on or before April 28, 2026.

ADDRESSES: Submit comments identified by Information Collection 3090–0331; Living Quarters Eligibility

Questionnaire; GSA Form 5039 to: *https://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Information Collection 3090–0331, Living Quarters Eligibility Questionnaire; GSA Form 5039''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0331; Living Quarters Eligibility Questionnaire; GSA Form 5039''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0331; Living Quarters Allowance Eligibility Questionnaire; GSA Form 5039'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite Information Collection 3090–0331, Living Quarters Allowance Eligibility Questionnaire; GSA Form 5039, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Colin C. Bennett, Human Resources Specialist, Office of Human Resources Management, Division of Human Capital Strategic Planning and Programs, at telephone 240–418–6822 or via email to *colin.bennett@gsa.gov* for clarification of content.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA routinely hires, reassigns, promotes, or transfers Federal employees to duty stations in foreign areas (*i.e.,* outside of the United States and its territories and possessions). Civilian employees located in foreign areas are eligible for different compensation authorities compared to employees located in the United States or its territories or possessions. Besides basic pay, certain foreign allowances are often used as recruitment or retention incentives to make foreign service more attractive and economically feasible. One type of allowance is called a ''living quarters allowance,'' or ''LQA,'' and allows an agency to reimburse the cost of rental housing as well as utilities (such as electricity, natural gas, and water service). Under this authority (conveyed by the Overseas Differentials and Allowances Act of 1960, Pub. L. 86–707, Sept. 6, 1960, codified at 5 U.S.C. 5923(a)(2)), not all job candidates or overseas employees are necessarily eligible (for example, if Government-provided housing is made available). In addition, for those job candidates who are eligible, the amount of the benefit varies by rank (*i.e.,* GS grade), presence overseas with or without family, and overall family size. Detailed rules concerning eligibility and other matters are found in the State Department's *Department of State Standardized Regulations,* sections 031.12 and Chapter 130.

To more effectively administer LQA, GSA created GSA Form 5039, ''Living Quarters Allowance Eligibility Questionnaire''. This form collects basic demographic and housing-related information. It also includes questions meant to coordinate housing benefits between the U.S. military and other Federal agencies (for example, if two spouses work for different Federal agencies). Individuals who complete this pre-employment questionnaire are considered job candidates and members of the public (if not already Federal civilian employees). The purpose of this data collection is to ensure that eligible applicants receive allowance consideration, in the correct amounts based on the position and family size, and that ineligible candidates are not erroneously provided with this significant monetary benefit.

B. Annual Reporting Burden

Respondents: 25 per year.
Responses per Respondent: 1.
Total Annual Responses: 25.
Hours per Response: 1.
Total Burden Hours: 25.

C. Public Comments

Public comments are encouraged and are particularly invited on: (a) whether this collection of information is necessary, (b) whether it will have practical utility, (c) whether our estimate of the public burden of this collection of information is accurate (and based on valid assumptions and methodology), (d) whether or not there are ways to enhance the form's utility and clarity of the information to be collected, and (e) whether or not there might be ways in to minimize the data collection burden through the use of information technology.

Obtaining Copies of Proposals: Please visit the GSA Forms Library at *https://www.gsa.gov/forms-library* to view and/or download a copy of GSA Form 5039. Requesters may obtain a copy of the information collection documents from the GSA, Regulatory Secretariat Division, by emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0331, Living Quarters Allowance Eligibility Questionnaire; GSA Form 5039, in all correspondence.

Patrick Dale,

Team Lead, Regulatory Secretariat Division, General Services Administration.

[FR Doc. 2026–03991 Filed 2–26–26; 8:45 am]

BILLING CODE 6820–FM–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0034; Docket No. 2025–0120; Sequence No. 1]

Submission for OMB Review; Examination of Records by Comptroller General and Contract Audit

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB); Department of Defense (DOD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to OMB a request to review and approve an extension of a previously approved information collection requirement regarding examination of records by Comptroller General and contract audit.

DATES: Submit comments on or before March 30, 2026.

ADDRESSES: Written comments and recommendations for this 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: *FARPolicy@gsa.gov* or call 202–969–4075.

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0034, Examination of Records by Comptroller General and Contract Audit.

B. Need and Uses

This clearance covers the information that contractors must submit to comply with the following Federal Acquisition Regulation (FAR) requirements, as codified in Chapter 1 of Title 48 of the Code of Federal Regulations:

FAR 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Products and Commercial Services. Paragraph (d) of this clause requires contractors to make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction by the Comptroller General of the United States, or an authorized representative. As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form.

FAR 52.214–26, Audit and Records—Sealed Bidding. This clause requires contractors required to submit certified cost or pricing data in connection with the pricing of a modification under a contract and to make all records available to the contracting officer, or its authorized representative, including computations and projections related to the proposal for the modification; the discussions conducted on the proposal(s), including those related to negotiating; pricing of the modification; or performance of the modification. This clause requires contractors to make all records available to the Comptroller General of the United States, or an authorized representative, in the case of pricing a modification. This clause allows the Comptroller General to interview any current employee regarding such transactions.

FAR 52.215–2, Audit and Records—Negotiation. This clause requires contractors to maintain records for cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contracts, or any combination of these, for contracting officers, or an authorized representative, to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of a contract. The right of examination includes inspection at all reasonable times of contractor's plants, or parts of them, engaged in performing the pertinent contract. Contractors required to submit certified cost or pricing data in connection with a pricing action under a contract must make all records available to the contracting officer, or its authorized representative, including computations and projections related to the proposal for the contract, subcontract, or modification; the discussions conducted on the proposal(s), including those related to negotiating; pricing of the contract, subcontract, or modification; or performance of the contract, subcontract or modification. Also, this clause requires contractors to make all records available to the Comptroller General of the United States, or an authorized representative, to examine any of the contractor's directly pertinent records involving transactions under the pertinent contract or subcontract. This clause allows the Comptroller General to interview any current employee regarding such transactions.

The information must be retained so that audits necessary for contract surveillance, verification of contract pricing, and reimbursement of contractor costs can be performed. This information collection does not require contractors to create or maintain any record that the contractor does not maintain in its ordinary course of business.

C. Annual Burden

Respondents: 16,474.

Total Annual Responses: 52,344.

Total Burden Hours: 52,344.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 90 FR 59121, on December 18, 2025. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0034, Examination of Records by Comptroller General and Contract Audit.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2026–03910 Filed 2–26–26; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0329; Docket No. 2026–0001; Sequence No. 1]

Information Collection; Overseas Employment Service Agreement (GSA Form 5040)

AGENCY: Office of Human Resource Management, Human Capital Strategic Planning and Programs Division, General Services Administration (GSA).

ACTION: Notice; request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension to an existing information collection requirement.

DATES: Submit comments on or before April 28, 2026.

ADDRESSES: Submit comments identified by Information Collection 3090–0329; ''Overseas Employment Service Agreement (GSA Form 5040)'' to: *https://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Information Collection 3090–0329; Overseas Employment Service Agreement (GSA Form 5040).'' Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0329; Overseas Employment Service Agreement (GSA Form 5040).'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0329; *Overseas Employment Service Agreement (GSA Form 5040)*'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''Information Collection 3090–0329; Overseas Employment Service Agreement (GSA Form 5040),'' in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Colin C. Bennett, Human Resources Specialist, Office of Human Resources Management, Human Capital Planning

and Programs Division, at telephone 240–418–6822 or via email to *colin.bennett@gsa.gov* for clarification of content.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal leave law (5 U.S.C. 6304(b) and 6305) requires that employees be on defined, time-limited, foreign tours of duty as well as have agency agreements in place for return transportation. The Department of State Standardized Regulations (DSSR) covering living quarters allowance (5 U.S.C. 5923(a)(2) and DSSR 031.12) also require documented tours of duty with an agency commitment for return transportation. At GSA, the overseas tour of duty and permanent change of station commitments and requirements are contained within a single, standard agency form: GSA Form 5040, the ''Overseas Employment and Service Agreement''. As part of the Federal Travel Regulations (FTR) (41 CFR part 302), when an agency pays for permanent change of station the employee must commit to at least one year of subsequent agency service. This form also contains clauses that serve to create an enforceable service agreement under the FTR.

This form was first developed during 2022 and was published for public comment on February 14, 2023 (88 FR 9521) and then on June 8, 2023 (88 FR 37542). Our agency has subsequently used this form to determine leave benefits and foreign allowance eligibility, advise employees of their rights and responsibilities, and ensure that the human resources and payroll accounting records are accurate before, during and after the permanent change of station.

B. Annual Reporting Burden

Respondents: 25 per year.
Responses per Respondent: 1.
Total Annual Responses: 25.
Hours per Response: 8.
Total Burden Hours: 200.

C. Public Comments

Public comments are currently being solicited to help GSA understand whether any modifications or improvements to GSA Form 5040 are necessary, or would be beneficial, to streamline the leave and allowance eligibility approval process. Interested persons are also invited to send comments regarding: (a) whether this collection of information is necessary, (b) whether it will have practical utility, (c) whether our estimate of the public burden of this collection of information is accurate, and (d) whether or not there might be ways to minimize the data collection burden through the use of information technology.

Obtaining Copies of Proposals: Please visit the GSA Forms Library at *https://www.gsa.gov/forms-library* to view and/or download a copy of GSA Form 5040. Requesters may obtain a copy of the information collection documents from the GSA, Regulatory Secretariat Division by emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0329, ''Overseas Employment Service Agreement (GSA Form 5040),'' in all correspondence.

Patrick Dale,

Team Lead, Regulatory Secretariat Division, General Services Administration.

[FR Doc. 2026–03990 Filed 2–26–26; 8:45 am]

BILLING CODE 6820–FM–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–6099–N]

Medicare, Medicaid, and Children's Health Insurance Programs: Announcement of Nationwide Temporary Moratoria on Enrollment of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Supplier Medical Supply Companies

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

ACTION: Notice.

SUMMARY: This notice announces the imposition of a 6-month nationwide moratorium on the Medicare enrollment of DMEPOS supplier medical supply companies.

DATES: The moratorium takes effect February 27, 2026.

FOR FURTHER INFORMATION CONTACT: Frank Whelan, (410) 786–1302.

SUPPLEMENTARY INFORMATION:

I. Background

A. CMS' Authority To Impose Temporary Enrollment Moratoria

Under the Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively known as the Affordable Care Act), Congress provided the Secretary with new tools and resources to combat fraud, waste, and abuse in Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). One of these was section 6401(a) of the Affordable Care Act, which added a new section 1866(j)(7) to the Social Security Act (the Act). It provided the Secretary with authority to impose a temporary moratorium on the enrollment of new fee-for-service (FFS) Medicare, Medicaid or CHIP providers and suppliers, including categories of providers and suppliers, if the Secretary determines that a moratorium is necessary to prevent or combat fraud, waste, or abuse under these programs.

Section 6401(b) of the Affordable Care Act added specific moratorium language applicable to Medicaid at section 1902(kk)(4) of the Act, requiring States to comply with any moratorium imposed by the Secretary unless the state determines that the imposition of such moratorium would adversely impact Medicaid beneficiaries' access to care. Section 6401(c) of the Affordable Care Act amended section 2107(e)(1) of the Act to provide that all the Medicaid provisions in sections 1902(a)(77) and 1902(kk) are also applicable to CHIP.

In February 2011, in accordance with the aforementioned authority, CMS published a final rule with comment period titled, ''Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers'' (76 FR 5862). This final rule implemented section 1866(j)(7) of the Act by establishing new regulations at 42 CFR 424.570. Under § 424.570(a)(2)(i) and (iv), CMS, or CMS in consultation with the Department of Health and Human Services Office of Inspector General (HHS–OIG) or the Department of Justice (DOJ) or both, may impose a temporary moratorium on newly enrolling Medicare providers and suppliers if CMS determines that there is a significant potential for fraud, waste, or abuse with respect to a particular provider or supplier type or particular geographic areas or both. At § 424.570(a)(1)(ii), CMS stated that it would announce a temporary moratorium in a **Federal Register** notice that includes the rationale for the imposition of the temporary enrollment moratorium. This notice fulfills that requirement.

B. CMS' Previous Temporary Enrollment Moratoria

We first used our moratorium authority to prevent enrollment of new home health agencies, subunits, and branch locations (hereafter collectively referred to as HHAs) in Miami-Dade County, Florida and Cook County,

Illinois, as well as surrounding counties, and Part B ambulance suppliers in Harris County, Texas and surrounding counties, in a notice issued on July 31, 2013 (78 FR 46339). We exercised the moratorium authority again in a notice published on February 4, 2014 (79 FR 6475), when we extended the existing moratoria for an additional 6 months and expanded it to include enrollment of HHAs in Broward County, Florida; Dallas County, Texas; Harris County, Texas; and Wayne County, Michigan and surrounding counties, and enrollment of ground ambulance suppliers in Philadelphia, Pennsylvania and surrounding counties.

We extended these moratoria for an additional 6 months on August 1, 2014 (79 FR 44702), February 2, 2015 (80 FR 5551), July 28, 2015 (80 FR 44967), and February 2, 2016 (81 FR 5444). On August 3, 2016 (81 FR 51120), we extended the current moratoria for an additional 6 months and expanded them to statewide for the enrollment of new HHAs in Florida, Illinois, Michigan, and Texas, and Part B non-emergency ambulance suppliers in New Jersey, Pennsylvania, and Texas. On August 3, 2016, we announced the lifting of temporary moratoria for all Part B emergency ambulance suppliers. Ultimately, the original 2013 moratorium, after being extended and revised several times,[1] expired on January 30, 2019.

C. Determination of the Need for Moratoria

In determining whether to establish an enrollment moratorium, CMS considers whether a high risk of fraud, waste, or abuse exists. CMS relies on its and law enforcement's longstanding experience with ongoing and emerging fraud trends and activities gained through civil, criminal, and administrative investigations and prosecutions.

1. Consultation With Law Enforcement

The HHS–OIG over the years has highlighted the issue of DMEPOS supplier fraud, waste, and abuse in numerous reports. In February 2025, for instance, the OIG stated: ''For over a decade, OIG has raised concerns about fraudulent practices among DME suppliers and has highlighted billions of dollars in potentially improper Medicare payments made to suppliers.'' [2] We will discuss in more detail the OIG's longstanding concerns about DMEPOS fraud, waste, and abuse in section II. of this notice.

2. Data Analysis

In evaluating the need for the subject moratorium, we also used data analysis that included reviewing both current and historic Medicare enrollment and claims data. We analyzed key metrics pertaining to enrollment volume and trends for the more than 80 types of DMEPOS suppliers in the Medicare FFS program.[3] We also analyzed indicators of fraud, waste, and abuse, such as the percentages of DMEPOS suppliers within each type that had a revocation of Medicare billing privileges, payment suspension based on a credible allegation of fraud or reliable indication that an overpayment exists, law enforcement referral, investigation, or benefit integrity unit (BIU) complaint since 2023. The Medicare Data Analysis section of this notice details our Medicare FFS data analysis.

3. Beneficiary Access to Care

Beneficiary access to care in Medicare, Medicaid and CHIP is of critical importance to CMS and our state partners. CMS carefully evaluated access to care for Medicare beneficiaries nationwide. We discuss our findings for Medicare beneficiaries in the Beneficiary Access to Care section later in this notice. We also discuss the issue of Medicaid and CHIP beneficiary access in the Application to Medicaid and Children's Health Insurance Program (CHIP) section of this notice.

4. When a Temporary Moratorium Does Not Apply

Under § 424.570(a)(1)(iii), a temporary moratorium does not apply to any of the following:

- Changes in practice location (except if the location is changing from a location outside the moratorium area to a location inside the moratorium area).
- Changes in provider or supplier information, such as phone number or address.
- Changes in ownership (except changes in ownership of home health agencies that would require an initial enrollment).

Also, in accordance with § 424.570(a)(1)(iv), a temporary moratorium does not apply to any enrollment application that has been received by the Medicare contractor prior to the date the moratorium is imposed.

5. Lifting a Temporary Moratorium

In accordance with § 424.570(b), a temporary enrollment moratorium imposed by CMS remains in effect for 6 months. If CMS deems it necessary, the moratorium may be extended in 6-month increments. CMS evaluates whether to extend or lift the moratorium before the end of the initial 6-month period and, if applicable, before the expiration of any subsequent moratorium periods. If the moratorium announced in this notice is extended, CMS will publish a document regarding such extension(s) in the **Federal Register**.

As provided in § 424.570(d), CMS may lift a moratorium at any time if: (1) the President declares an area a disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act; (2) circumstances warranting the imposition of a moratorium have abated or CMS has implemented program safeguards to address the program vulnerability; (3) the Secretary has declared a public health emergency; or (4) in the judgment of the Secretary, the moratorium is no longer needed. Once a moratorium is lifted, the provider or supplier types that were unable to enroll because of the moratorium will be assigned to the ''high'' screening level in accordance with §§ 424.518(c)(3)(iii) and 455.450(e)(2) if such provider or supplier applies for enrollment at any time within 6 months from the date the moratorium was lifted.

[1] On January 9, 2017, CMS issued another notice to extend the temporary moratoria for a period of 6 months (82 FR 2363). On January 9, 2017 (82 FR 2363) and July 28, 2017 (82 FR 35122), CMS again issued a notice to extend the temporary moratoria for a period of 6 months. On September 1, 2017, CMS lifted the statewide temporary moratorium on the enrollment of new Medicare Part B non-emergency ground ambulance suppliers in Texas under the authority of § 424.570(d). This lifting of the moratorium also applied to Medicaid and CHIP in Texas. This decision was a result of the Presidential Disaster Declaration signed on August 25, 2017, for several counties in the State of Texas due to Hurricane Harvey. Upon declaration of the disaster, CMS carefully reviewed the potential impact of continued moratoria in Texas and decided to lift the temporary enrollment moratorium on non-emergency ground ambulance suppliers in Texas in order to aid in the disaster response. CMS published a formal announcement of this decision on November 3, 2017 (82 FR 51274). On January 30, 2018 (83 FR 4147), CMS announced the extension of the temporary moratoria for an additional 6 months. In August 2018, CMS announced the extension of the temporary moratoria for an additional 6 months. CMS allowed the temporary moratoria to expire on January 30, 2019.

[2] *https://www.oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000908.asp.*

[3] These types are listed on the Form CMS–855S (Medicare Enrollment Application—Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Suppliers; OMB Control No. 0938–1056) (*https://www.cms.gov/medicare/cms-forms/cms-forms/cms-forms-items/cms019480*). DMEPOS suppliers enroll in Medicare via the Form CMS–855S.

II. National DMEPOS Medical Supply Company Moratorium

Under its authority at § 424.570(a)(2)(i) and (a)(2)(iv), CMS is implementing a nationwide temporary moratorium on the Medicare enrollment of medical supply company DMEPOS suppliers nationwide. In this section, we explain the rationale for and scope of this moratorium.

A. Longstanding Program Integrity Problems Within the Overall DMEPOS Supplier Sphere

As we explained at length in the Calendar Year (CY) 2026 Home Health Prospective Payment System (HH PPS) proposed rule [4] (published in the July 2, 2025, **Federal Register** (90 FR 29108)), DMEPOS fraud, waste, and abuse has been a very serious problem for many years, putting hundreds of millions (even billions) of taxpayer dollars at risk and potentially resulting in patient harm, such as in cases where beneficiaries use unnecessary or substandard items. Indeed, numerous OIG reports since 1998 have outlined payment safeguard issues associated with DMEPOS suppliers as a whole. For example, in 2024 the OIG stated: ''Although CMS has a number of safeguards in place to prevent bad actors from billing DMEPOS in Medicare, fraudulent billing for DMEPOS continues to be a major concern. Recent cases demonstrate that DMEPOS continues to be a target of fraudulent billing and that new schemes have developed.'' [5] In fact, the OIG has several pending DMEPOS-focused studies based on concerning trends and the high risk of fraud, waste, and abuse historically associated with this supplier type:

- OEI–02–24–00311: White Paper: Fraud, Waste, and Abuse Related to Durable Medical Equipment in Medicare (Expected FY 2026).[6]
- OEI–03–25–00080: CMS's Use of Surety Bonds To Protect Medicare Part B From Overpayments to Durable Medical Equipment Suppliers (expected FY 2026).[7]
- OEI–02–24–00310: Durable Medical Equipment Fraud and Safeguards in Medicare (expected FY 2026).[8]
- SRS–A–25–030: Audits of the Medicare Enrollment Screening Process for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (expected FY 2027).[9]

Considering the wide and ever-changing range of payment safeguard risks associated with DMEPOS suppliers, we have taken and will continue to take measures to address them.

B. Specific Concerns About Medical Supply Companies and Certain Types of Supplies

DMEPOS fraud schemes do not necessarily follow a consistent pattern but can vary widely in their particular facts. Too, DMEPOS fraud, waste, and abuse is not restricted to certain types of items or particular areas of the country but occurs with numerous different product types and in many geographic areas. Both CMS and the OIG have, though, seen particular issues with certain types of DMEPOS suppliers and supplies.

As an illustration, the OIG in May 2024 issued a report titled ''Medicare Remains Vulnerable to Fraud, Waste, and Abuse Related to Off-the-Shelf Orthotic Braces, Which May Result in Improper Payments and Impact the Health of Enrollees'' (A–09–21–03019). The report noted that prior OIG reviews identified vulnerabilities associated with orthotic braces, such as: (1) questionable DMEPOS supplier billing practices; (2) improper payments made for braces that were not medically necessary or were not documented; and (3) fraud related to off-the shelf (OTS) braces.[10] The May 2024 report also cited issues related to Medicare's oversight of OTS braces, including the following:

- Medicare paid for OTS braces that were—
  - ++ Ordered by suppliers that did not have treating relationships with beneficiaries; and
  - ++ Marketed to beneficiaries by telemarketers using prohibited direct solicitation.
- Payments to suppliers for fraudulently billed OTS braces have cost Medicare millions of dollars.[11]

Given these issues, the OIG recommended that CMS analyze DMEPOS supplier billing patterns, identify emerging fraud schemes related to OTS braces, and use CMS's authority to prevent further losses to the Medicare program.[12] Significantly, for purposes of this CMS notice, this included using DMEPOS billing patterns to determine, in part, whether to impose a temporary moratorium on enrolling new DMEPOS suppliers of OTS braces.[13]

Another OIG report cited in the CY 2026 HH PPS proposed rule (90 FR 29108), titled ''Medicare Improperly Paid Suppliers for Intermittent Urinary Catheters'' (A–09–22–03019), was released in February 2025. Citing the ongoing risk of improper payments, the OIG performed a nationwide audit to determine whether Medicare paid suppliers for catheters consistent with Medicare requirements for catheters furnished to beneficiaries between July 2021 through June 2022.[14] The OIG found that payments for 15 sample items did not comply with Medicare requirements, in some cases because suppliers were non-compliant with requirements for catheter refills, proof of delivery, or a standard written order; this resulted in approximately $35.1 million in improper payments.[15] Even before this report, though, CMS in early 2023 had identified a concerning rise in urinary catheter billings attributed to a fraud scheme involving 15 DMEPOS companies that had recently changed ownership. CMS' own investigation of this matter determined that: (1) Medicare beneficiaries did not receive catheters from these DMEPOS companies and were not billed directly; (2) physicians did not order these supplies; and (3) the supplies were not needed.[16] Although CMS took prompt action to address this matter, including stopping payments from being made to these suppliers and revoking the Medicare enrollments of all 15

[4] ''Medicare and Medicaid Programs; Calendar Year 2026 Home Health Prospective Payment System (HH PPS) Rate Update; Requirements for the HH Quality Reporting Program and the HH Value-Based Purchasing Expanded Model; Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program Updates; DMEPOS Accreditation Requirements; Provider Enrollment; and Other Medicare and Medicaid Policies. The CY 2026 HH PPS rule contained a number of DMEPOS related provisions'' (90 FR 29199 through 29201).

[5] *https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000867.asp.*

[6] *https://www.oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000939.asp.*

[7] *https://oig.hhs.gov/reports/work-plan/browse-work-plan-projects/cmss-use-of-surety-bonds-to-protect-medicare-part-b-from-overpayments-to-durable-medical-equipment-suppliers/.*

[8] *https://www.oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000867.asp.*

[9] *https://oig.hhs.gov/reports/work-plan/browse-work-plan-projects/srs-a-25-030/.*

[10] *https://oig.hhs.gov/reports/all/2024/medicare-remains-vulnerable-to-fraud-waste-and-abuse-related-to-off-the-shelf-orthotic-braces-which-may-result-in-improper-payments-and-impact-the-health-of-enrollees/#:~:.*

[11] Ibid. pp. 7–12.

[12] Ibid., p. 13.

[13] HHS–OIG report A–09–21–03019: ''Medicare Remains Vulnerable to Fraud, Waste, and Abuse Related to Off-the-Shelf Orthotic Braces, Which May Result in Improper Payments and Impact the Health of Enrollees'' (page 15) May 2024. *https://oig.hhs.gov/documents/audit/9902/A-09-21-03019.pdf.*

[14] *https://oig.hhs.gov/reports/all/2025/medicare-improperly-paid-suppliers-for-intermittent-urinary-catheters/.*

[15] Ibid.

[16] Ibid.

suppliers, both the OIG report and our investigation underscored the program integrity issues in the DMEPOS arena.[17]

There have also been a considerable number of criminal convictions and other findings over the last several years involving DMEPOS suppliers. We included a non-exhaustive list of such recent cases in the CY 2026 HH PPS proposed rule (90 FR 29199–29201). We restate several here, each of which involved medical supply company specialties:

- A California woman was sentenced in December 2023 to 15 years in prison for billing Medicare for over $24 million by submitting fraudulent claims for medically unnecessary DME—mostly power wheelchairs (PWC)—and PWC repairs. As the *de facto* owner of two DMEPOS supplier companies (both of which were Medicare-enrolled in the names of her out-of-state relatives), the individual orchestrated a scheme in which she paid marketers for patient referrals and then directed them to take patients to physicians, who prescribed medically unnecessary DMEPOS (including PWCs) that her companies used to submit fraudulent claims to Medicare. Two other defendants were convicted in this case, including one who worked at both DMEPOS companies as a repair technician.[18]
- In September 2023, a federal district court entered a judgment against a Virginia DMEPOS supplier for damages and penalties under the False Claims Act for over $12 million. In its complaint filed in district court, the United States alleged that over a nearly 6-year period, Medicare paid the supplier over $600,000 for medical braces furnished to Medicare beneficiaries related to DMEPOS prescriptions that the supplier illegally purchased from marketing companies. The DMEPOS supplier paid a fee for each prescription that it purchased and then used these prescriptions (along with personal and medical data provided by the marketing companies) to submit 923 fraudulent Medicare claims.[19]
- A California father and son in March 2024 were sentenced to prison for their roles in fraudulently receiving over $21 million in Medicare payments. The pair, along with others, conspired to commit Medicare fraud by billing for medically unnecessary DME, such as knee, ankle, shoulder, wrist and back braces. They had established two DMEPOS supplier companies; to find customers, they entered into sham agreements with ''marketing'' companies that, instead of marketing, provided information about Medicare beneficiaries for $125 to $350 each. The packets included, among other things, a signed prescription from a physician (obtained via telemedicine) claiming that the brace was medically necessary for the beneficiary. Yet, in almost all cases, the physician signing the prescription had no previous doctor-patient relationship with the beneficiary. The two men then billed Medicare through their DMEPOS companies for the unnecessary items.[20]
- A Texas man was sentenced to prison in February 2024 for conspiring to pay health care kickback payments for unnecessary DME, resulting in over $20 million in claims to—and $13 million in payments from—the Medicare program. The individual owned and operated two DMEPOS suppliers. Through another entity, the individual secured access to thousands of Medicare beneficiaries' information by paying, on a weekly basis, kickbacks in exchange for signed physician orders for the braces.[21]
- In August 2023, a Florida man was sentenced to prison for conspiring to defraud the Medicare program. The individual and another person illegally paid kickbacks of over $565,000 to buy fraudulent DMEPOS orders, including orders purportedly ''signed'' by physicians who, in fact, never signed or authorized these orders and did not know their names and identities were being used in this manner. They also resold some of the fraudulent orders to other DMEPOS suppliers—receiving more than $425,000 in proceeds—so that those suppliers, in turn, could fraudulently bill Medicare for DMEPOS items. Furthermore, the two individuals acquired five of their own fraudulent DMEPOS supply companies and themselves used fraudulent DMEPOS orders to file more than $11 million in fraudulent Medicare claims.[22]
- Several DMEPOS suppliers in January 2024 agreed to pay $2.1 million to resolve allegations that they violated the False Claims Act by submitting false claims for payment to Medicare and other federal health care programs. The settlement resolved allegations that over a 9-year period, the companies:

++ Sold used beds but billed federal health care programs as if they were new beds.

++ Sold various hospital beds and pressure support surfaces to beneficiaries of federal health care programs under a miscellaneous code, which sometimes resulted in the federal program paying a higher price.

++ Presented claims to the federal government and its contractors that mischaracterized travel time as DMEPOS repair time in order for it to be reimbursable by federal health care programs.[23]

- A Florida man was sentenced to 87 months in prison in September 2022 for his role in using a DMEPOS company to commit Medicare and Medicaid fraud. Having established the company, he sought to conceal his role as its true owner who exercised control over the company (and the fraud) by listing a nominee or ''straw'' owner as the owner on its corporate records and bank account. The individual admitted that he—and not a straw owner—bought lists of Medicare ''patients'' and then directed a ''biller'' to submit fraudulent claims to Medicare for DMEPOS that a physician did not prescribe, that were not medically necessary, and that were not being supplied to any Medicare beneficiary or Medicaid recipient. During a 3-month period—and under the individual's direction—the supplier submitted over $2.3 million in fraudulent claims to Medicare and Medicaid and was paid over $1.6 million. The proceeds of the fraud were transferred from the supplier's account to accounts held in the names of shell companies. Those proceeds were then withdrawn from the shell company accounts by others so they could not be traced to the individual.[24]
- A South Carolina man was sentenced to 9 years in prison in March 2024 for his role in a nearly $100 million healthcare fraud scheme. The individual controlled and operated at least 10 DMEPOS companies located throughout the United States. The person and his conspirators used these companies to submit false and fraudulent claims to Medicare for braces that were not medically necessary and/or were obtained through the payment of kickbacks and bribes. Specifically, the companies entered into agreements with an offshore, advertised call center

[17] Ibid.

[18] *https://www.justice.gov/usao-cdca/pr/redondo-beach-woman-sentenced-15-years-prison-leading-24-million-scam-billed-medicare.*

[19] *https://www.justice.gov/usao-edva/pr/virginia-medical-equipment-provider-ordered-pay-12-m-medicare-fraud-scheme-civil.*

[20] *https://www.justice.gov/usao-sdca/pr/father-and-son-duo-sentenced-prison-21-million-dollar-medicare-scheme.*

[21] *https://www.justice.gov/usao-ndga/pr/operator-durable-medical-equipment-companies-sentenced-healthcare-kickback-scheme.*

[22] *https://www.justice.gov/usao-sdny/pr/florida-business-owner-sentenced-five-years-prison-defrauding-medicare-more-11-million.*

[23] *https://www.justice.gov/usao-sc/pr/durable-medical-equipment-companies-pay-millions-false-claims-settlement.*

[24] *https://www.justice.gov/usao-sdfl/pr/miami-man-who-used-durable-medical-equipment-company-front-health-care-fraud-sentenced.*

to purchase physicians' orders so the DMEPOS companies could bill Medicare. When a Medicare beneficiary called the applicable 1–800 number, the beneficiary would be screened for eligibility and then convinced that the beneficiary needed a brace and oftentimes upsold on other braces. The call center would then contact a telemedicine company whose physician or nurse practitioner would issue a prescription without regard to the medical necessity. Beneficiaries were prescribed braces without ever being examined by, seeing, or, in some instances, even speaking to a medical professional.[25]

Elderly diabetics have also been a target for DMEPOS suppliers. For example, a Florida diabetic shoe company and its president agreed in January 2022 to pay over $5.5 million to settle claims brought under the False Claims Act that it sold custom diabetic shoe inserts that were not actually custom-fabricated in accordance with Medicare standards. The company billed Medicare for the custom version or sold the inserts to other providers who then billed Medicare, which allowed the company to produce and sell more inserts and increase profits by ''cutting corners.'' [26]

C. Consultation With Law Enforcement and Moratorium Determination

In light of these concerns, pursuant to our consultations with both the OIG and the Department of Justice under § 424.570(a)(2)(iv) regarding a DMEPOS moratorium, and as outlined in greater detail in the Data Analysis section of this notice, CMS has determined that medical supply companies have significant potential for fraud, waste or abuse. Accordingly, and also given the recent nationwide trends of OIG and DOJ investigating and charging owners of DMEPOS suppliers across the country for fraudulent billing schemes, we believe that a moratorium on the enrollment of medical supply companies into Medicare could assist in stemming this activity.

We recognize that a moratorium under § 424.570 only applies to newly enrolling providers and suppliers, and that currently enrolled medical supply companies under our initiative will be largely unaffected unless they are opening a new location in the moratorium area. (As each DMEPOS supplier location must be separately and individually enrolled in accordance with § 424.57(b)(1), enrolling a new location is considered an initial enrollment.) Yet preventing medical supply company fraud, waste, and abuse requires a wide-ranging and comprehensive approach involving multiple components, not merely one or two. By blocking the initial enrollments of these very high-risk supplier types, we can help prevent the aforementioned problems from worsening. This, in turn, would complement other means we have in place to address program integrity issues involving enrolled medical supply companies (for example, site visits, requiring surety bonds and annual reaccreditation, etc.)

D. Scope of DMEPOS Medical Supply Company Moratorium

Beginning on the effective date of this notice, no new DMEPOS suppliers of the following seven types (as well as no new practice locations of these seven types) will be enrolled into Medicare unless the supplier's enrollment application was received by the applicable Medicare contractor prior to this notice's effective date; geographically, the moratorium applies to suppliers of these seven types seeking to enroll anywhere in the United States, including all states, territories, and the District of Columbia. Said types are included in the moratorium due to a significant potential for fraud, waste, and abuse. The seven supplier types are as follows:

- Medical supply company.
- Medical supply company with orthotics personnel.
- Medical supply company with pedorthic personnel.
- Medical supply company with prosthetics personnel.
- Medical supply company with prosthetic and orthotic personnel.
- Medical supply company with registered pharmacist.
- Medical supply company with respiratory therapist.

Exclusively for purposes of the moratorium's applicability, a medical supply company is considered a business whose principal function is to furnish DMEPOS supplies (regardless of supply type) directly to another party, such as, but not limited to: (1) beneficiaries with a medical order (for example, via mail order); (2) medical providers and suppliers; or (3) both. As an illustration, a grocery store's, pharmacy's, or inpatient or outpatient medical provider's principal function is typically not the provision of DMEPOS. It is instead, for instance, the selling of food or toiletries, the dispensing of medicines, the direct provision of medical care (such as a hospital, HHA, physician's office), etc. Hence, the moratorium would generally not apply to these DMEPOS suppliers.

For those previously referenced medical supply types requiring specific personnel (for example, prosthetics personnel), the supplier—again, for moratorium purposes only—has at least one such individual serving in an employment, advisory, contractual, or other role; thus, a ''medical supply company with orthotics personnel'' would be a medical supply company with at least one orthotic professional in one of the roles noted previously (such as advisory).

We emphasize that CMS will very closely screen all DMEPOS supplier applications submitted during the moratorium to ensure that the supplier is not a medical supply company. This will include, but not be limited to, site visits and online research of the business. We also note that under § 424.530(a)(4) and (f), we have the authority to deny enrollment and impose a reapplication bar of up to 10 years for a provider's or supplier's submission of false or misleading information on (or omission of information from) the enrollment application in order to gain enrollment in the Medicare program. We have similar grounds for revoking a provider's enrollment for the submission of false or misleading information, and under § 424.535(a) we can impose a reenrollment bar of up to 10 years. We thus caution medical supply companies that any attempt to circumvent the moratorium by enrolling as another DMEPOS supplier type could lead to the supplier being: (1) effectively banned from Medicare for many years; and (2) as indicated in § 424.530(a)(4) and on the Form CMS–855S certification statement, subject to referral to the OIG for investigation and possible criminal, civil, or administrative penalties.

Furthermore, we note that under § 424.551, a DMEPOS supplier that undergoes a non-exempt change in majority ownership (CIMO) within 36 months of its initial enrollment (or within 36 months of its most recent CIMO) must enroll in Medicare as a brand new supplier, undergo a survey, and become newly accredited. The supplier's current enrollment is terminated. This means that the supplier's new enrollment is an initial enrollment no less than if the supplier had never enrolled in Medicare before. Hence, our moratorium would prohibit the supplier in this § 424.551 situation from reenrolling in Medicare because, again, it would constitute an initial

[25] *https://www.justice.gov/usao-sc/pr/mt-pleasant-man-sentenced-nine-years-federal-prison-role-one-largest-medicare-fraud.*

[26] *https://www.justice.gov/usao-sdfl/pr/diabetic-shoe-company-agrees-pay-55-million-resolve-false-claims-act-allegations.*

enrollment; the supplier is ''new.'' The aforementioned moratorium exemption under § 424.570 for changes of ownership does not apply to such a scenario.

E. Application to Medicaid and CHIP

Section 1866(j)(7) of the Act authorizes imposition of a temporary enrollment moratorium for Medicare, Medicaid or CHIP if the Secretary determines such moratorium is necessary to prevent or combat fraud, waste, or abuse under either program. The Secretary is not required to impose a particular moratorium on all three programs. The statutory discretion noted previously affords the Secretary the opportunity to impose a moratorium on any combination of the three programs or one program alone.[27]

At this time, we believe it is in the best interest of Medicaid and CHIP beneficiaries across the country to allow each state to decide whether some form of a DME moratorium is appropriate for their respective Medicaid and CHIP programs, and the scope of any such moratorium. Each state has greater expertise and experience with their pool of DME provider types—including the requirements for each type of DME provider—than CMS. Nevertheless, CMS encourages each state to, as appropriate, implement a DME provider moratorium tailored to the specifics of their beneficiary population as well as any geographic considerations. Additionally, CMS is offering every state and territory the opportunity to consult with CMS on the prospect of implementing a Medicaid- or CHIP-based (or both) DME moratorium in their jurisdictions.

F. Data Analysis

1. Medicare

Our review of Medicare payment and enrollment data supports the need for a national moratorium on medical supply companies. As background, CMS data indicates that small DMEPOS suppliers drive overall Medicare DMEPOS payments despite serving roughly the same number of beneficiaries as large suppliers.[28] In fact, data from 2023 to 2025 reflects that about 85 percent of DMEPOS supplier payments from 2023 to present went to small DMEPOS suppliers. Further, within the category of small DMEPOS suppliers, 'medical supply company' suppliers account for the majority of Medicare FFS payments from 2023 to October 2025. During that same period, medical supply company specialties (medical supply company, medical supply company with orthotics personnel, etc.) had a 17 percent revocation rate, meaning that 17 percent of these suppliers eventually had their Medicare enrollments revoked. This is nearly triple the rate for other DMEPOS supplier types. Yet the higher prevalence of program integrity issues associated with medical supply companies compared to other DMEPOS supplier types is not limited to revocation rates. Medical supply companies also had higher payment suspension, law enforcement referral, and BIU complaint rates from 2023 through late October 2025 than other DMEPOS supplier types. Consider the following:

- The 7 types of medical supply companies listed in section II.D. of this notice were all in the top 20 out of over 80 DMEPOS supplier specialty types when looking at the highest percentage of DMEPOS suppliers of a specific specialty type that were revoked at least once since 2023.
- Five of the 7 types of medical supply companies were in the top 10 when reviewing the highest percentage of DMEPOS suppliers with a payment suspension since 2023.
- Six of the 7 types of medical supply companies were in the top 10 when examining the highest percentages of law enforcement referrals since 2023.
- All 7 types were in the top 15 when looking at the highest percentage of BIU complaints for each DMEPOS supplier type since 2023.

Of the nearly 80,000 DMEPOS suppliers enrolled in Medicare as of October 2025, medical supply companies are one of the largest categories with more than 6,000 enrollments, or 7.5 percent of the national DMEPOS supplier universe. (Though the number varies by year, approximately 600 medical supply companies enroll in Medicare each year (or 300 over a 6-month period)). Establishing a moratorium on medical supply companies will simultaneously help address the heart of DMEPOS fraud while still maintaining a large pool of—

- Medical supply companies (that is, over 6,000 that are currently enrolled); and
- Non-medical supply company DMEPOS suppliers (for example, pharmacies) that are either presently enrolled or can newly enroll/open new practice locations.

Explained otherwise, the moratorium will only impact prospective newly enrolling medical supply companies in one of the aforementioned seven categories. As discussed in more detail later in this section, there is already an adequate nationwide quantity of such suppliers. Therefore, we do not foresee shortages or access to care issues arising from the moratorium. In addition, beneficiaries who do not receive supplies directly from a medical supply company (for example, the patient receives supplies from the hospital at which the individual is an inpatient) will not be impacted; again, the ability of a variety of DMEPOS supplier types to continue to open new locations (for example, pharmacies) minimizes any concerns pertaining to limiting beneficiary access-to-care. Moreover, because many DMEPOS items are delivered across state borders via mail orders, we have less concern with a medical supply company/DMEPOS moratorium than other provider or supplier types.

2. Orthotic Brace Codes on the Master List of DMEPOS Items

CMS publishes a ''Master List of DMEPOS Items Potentially Subject to Face-to-Face Encounter and Written Orders Prior to Delivery and/or Prior Authorization Requirements'' (the ''Master List'').[29] The Master List is a library of items that have been identified as potential vulnerabilities to the Trust Funds based on criteria outlined in 42 CFR 414.234(b), from which items may be selected to be placed on either the Required Face-to-

[27] The aforementioned February 2, 2011, final rule also established new Medicaid regulations at 42 CFR part 455, subpart E, including § 455.470, which implements the moratoria authority under section 1902(kk)(4) of the Act. In a similar vein, that final rule implemented § 457.990, providing that part 455, subpart E applies to CHIP in the same manner as it applies to Medicaid. Under § 455.470(a)(1) through (3), the Secretary may impose a temporary moratorium, in accordance with § 424.570, on the enrollment of new providers or provider types after consulting with any affected State Medicaid agencies. The State Medicaid agency will impose a temporary moratorium on the enrollment of new providers or provider types identified by the Secretary as posing an increased risk to the Medicaid program unless the state later determines that the imposition of a moratorium would adversely affect Medicaid beneficiaries' access to medical assistance and so notifies the Secretary in writing.

[28] Within the context of CMS's data review, large DMEPOS suppliers are those with a tax identification number (TIN) that is associated with 25 or more Medicare FFS enrollments. All other DMEPOS suppliers are small suppliers.

[29] See the November 18, 2019, final rule titled ''Medicare Program; End-Stage Renal Disease Prospective Payment System, Payment for Renal Dialysis Services Furnished to Individuals with Acute Kidney Injury, End-Stage Renal Disease Quality Incentive Program, Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule Amounts, DMEPOS Competitive Bidding Program (CBP) Amendments, Standard Elements for a DMEPOS Order, and Master List of DMEPOS Items Potentially Subject to a Face-to-Face Encounter and Written Order Prior to Delivery and/or Prior Authorization Requirements'' (84 FR 60648) and also 42 CFR 410.38.

Face Encounter and Written Orders Prior to Delivery List (the ''F2F/WOPD List'') and/or Required Prior Authorization List under the authority provided under sections 1834(a)(1)(E)(iv), 1834(a)(11)(B), and 1834(a)(15) of the Act. In general, some of this criteria include that the DMEPOS item has—

- An average purchase fee of $500 in the DMEPOS fee schedule or a $50 monthly rental cost, subject to annual adjustments; and
- Been identified as having a high rate of potential fraud or unnecessary utilization in an OIG or Government Accountability Office report that is national in scope and published in 2015 or later—or listed in the 2018 or later Comprehensive Error Rate Testing (CERT) Medicare Fee-for-Service (FFS) Supplemental Improper Payment Data report as having a high improper payment rate.

The DMEPOS Master List also includes any items with at least 1,000 claims and $1 million in payments during a recent 12-month period that are determined to have aberrant billing patterns [30] and lack explanatory contributing factors (for example, new technology or coverage policies).

The orthotic braces on the Master List are items that are susceptible to fraud, waste, and abuse based on multiple factors. There are currently 32 braces that fall into the category of prefabricated braces. Nine of those 32 braces also fall into the category of OTS braces, the same class of braces highlighted as a major risk for fraud, waste, and abuse in the OIG's 2024 report on OTS orthotics fraud, waste, and abuse.[31] Per CMS billing data from CY 2023 through late October 2025 for the 32 Healthcare Common Procedure Coding System (HCPCS) Level II codes at issue, medical supply companies submitted more than 70 percent of the more than 2.1 million claim lines for the 32 prefabricated orthotic brace codes on the Master List. With respect to the most problematic category of braces—the OTS variety—medical supply companies submitted more than 80 percent of the more than 1.5 million claim lines submitted by DMEPOS suppliers between 2023 and late October 2025. This data regarding the highest risk orthotic braces—namely those on the Master List—complemented our other fact gathering that pointed toward a nationwide medical supply company DMEPOS moratorium.

3. Medicaid and CHIP

As previously discussed, at this time we believe it is in the best interests of Medicaid and CHIP beneficiaries and the states to delegate to each state the decision as to whether a DME moratorium is appropriate for that state. CMS encourages states to, where appropriate, implement a DME provider moratorium tailored to the specifics of their beneficiary population, as well as any geographic considerations. Accordingly, we did not perform a Medicaid and CHIP data analysis as part of this moratorium initiative.

G. Beneficiary Access to Care

With more than 79,000 DMEPOS suppliers of all types currently approved nationwide, CMS data analysis indicates that the current supplier network adequately supports beneficiary needs without compromising access or the quality of care. Indeed, access to care appears strong on state and local levels. Two other considerations indicate that our moratorium will not negatively impact Medicare beneficiary access-to-care. First, only seven medical supply company types of DMEPOS suppliers will be subject to the moratorium. Pharmacies, physicians, hospitals, physical therapists, and other DMEPOS supplier types will remain able to open new practice locations throughout the country. If a need arises in a particular geographic location, a variety of DMEPOS supplier types can potentially fill the gap. Second, many categories of DMEPOS supplies can be shipped via mail order, even across the country. Mail order DMEPOS services are common today and can help alleviate limitations on medical supply companies not being able to open new locations during the moratorium.

Given all the foregoing, we do not believe a nationwide medical supply company moratorium will substantially limit Medicare beneficiary access to care.

III. No Judicial Review of CMS's Decision To Impose an Enrollment Moratorium

In accordance with section 1866(j)(7)(B) of the Act, there is no judicial review under sections 1869 and 1878 of the Act, or otherwise, of the decision to impose a temporary enrollment moratorium. CMS under §§ 424.530(a)(10) and 424.570(c) denies the enrollment application of a provider or supplier if the provider or supplier is subject to a moratorium. However, § 424.514(d)(2)(v)(C)) states that if the provider or supplier was required to pay an application fee, the fee will be refunded if the application is denied because of the imposition of a moratorium. A provider or supplier that is impacted by a moratorium also may use the existing procedures at 42 CFR part 498 to administratively appeal such denial based on the moratorium; under 42 CFR 498.5(l)(4), though, the scope of any such appeal would be limited solely to assessing whether the temporary moratorium applies to the provider or supplier appealing the denial.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. Regulatory Impact Statement

A. Statement of Need

This notice is necessary to help reduce the prevalence of Medicare fraud, waste, and abuse among DMEPOS medical supply companies.

B. Overall Impact

We have examined the impacts of this notice as required by E.O. 12866, ''Regulatory Planning and Review''; E.O. 13132, ''Federalism; E.O. 13563, ''Improving Regulation and Regulatory Review''; E.O. 14192, ''Unleashing Prosperity Through Deregulation''; and the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612; section 1102(b) of the Social Security Act; section 202 of the Unfunded Mandates Reform Act of 1995; and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts). Based on our analysis, the Office of Information and Regulatory Affairs (OIRA) has determined that this

[30] Items with aberrant billing patterns would be identified as those items with payments during a 12-month timeframe that exceed payments made during the preceding 12-months, by the greater of:(A) Double the percent change of all DMEPOS claim payments for items that meet the aformentioned claim and payment criteria, from the preceding 12-month period; or (B) Exceeding a 30 percent increase in payment.

[31] HHS–OIG report A–09–21–03019: ''Medicare Remains Vulnerable to Fraud, Waste, and Abuse Related to Off-the-Shelf Orthotic Braces, Which May Result in Improper Payments and Impact the Health of Enrollees'') May 2024. A–09–21–03019.pdf.

notice is not significant pursuant to section 3(f)(1) of Executive Order 12866. In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget. In accordance with Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act)), OIRA has also determined that this notice does not meet the criteria for a major rule as defined in 5 U.S.C. 804(2).

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the RFA provisions at 5 U.S.C. 604. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This notice is primarily applicable to DMEPOS suppliers, not rural hospitals. Therefore, the Secretary has certified that this notice will not have a significant economic impact on the operations of small rural hospitals.

We expect savings to the Medicare program from the reduction in the number of newly enrolling medical supply companies. However, we do not have data upon which to base an estimate of the amount of savings.

C. Regulatory Flexibility Analysis (RFA)

1. Small Business Impact

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organization, and small governmental jurisdictions. Most entities and most other providers and suppliers are small entities, either by nonprofit status or by having revenues less than $37.5 million to $41 million in any 1 year. Individuals and states are not included in the definition of a small entity. For several reasons, we do not believe that our DMEPOS moratorium will have a significant economic impact on a substantial number of small businesses.

First, in 2025 there were 79,360 approved DMEPOS supplier Medicare enrollments, representing an 8.3 percent decrease since 2023. This reflects a consolidating but mature market. The consolidation of the DMEPOS marketplace reflects a certain level of saturation, whereby the number of currently enrolled DMEPOS suppliers can meet the demand for items/supplies from the Medicare beneficiary population. As of October 2025, over 6,000 of the nearly 80,000 approved DMEPOS suppliers are medical supply companies. We believe that most small medical supply companies in this sector are already enrolled. Hence, the moratorium would not directly harm their ongoing operations. All currently enrolled medical supply companies could continue billing Medicare and operating normally. Once the medical supply company moratorium is in effect, we anticipate that small businesses hoping to establish themselves as medical supply companies will be able to pivot to other sectors.

Second, even though some small businesses hoping to enroll in Medicare as medical supply companies will be impacted, many other small businesses can still enroll as a different type of DMEPOS supplier; for example, over 30 percent of all retail pharmacies in the United States are believed to be independent community pharmacies. While not necessarily purely equivalent to small businesses, independent pharmacies stand as a sound proxy for the concept of a small business in the pharmacy space. Moreover, the number of potentially impacted medical supply companies is miniscule—very far from substantial—when compared to the well over 2 million Medicare providers and suppliers, many of which are small businesses.

Third, even though some small businesses will be impacted by the moratorium, the risk to the Medicare Trust Funds and Medicare beneficiaries by nefarious medical supply companies, small or large, is too great to warrant refraining from this moratorium. The negative effect on some small businesses that seek to enter the program as a medical supply company is outweighed by the benefit of protecting the Trust Funds, beneficiaries, and the taxpayers from substantial fraud, waste, and abuse.

2. Alternatives Considered

There are three principal alternatives we considered in preparing this notice. First, we considered forgoing a moratorium entirely. Yet the ongoing, serious problem of DMEPOS fraud, waste, and abuse requires measures beyond those that CMS currently utilizes; indeed, while these measures have certainly been helpful, the issue of DMEPOS program integrity remains. Second, we contemplated a moratorium on all DMEPOS supplier types. We chose not to because this could unnecessarily impact certain DMEPOS supplier types that are not typically among the highest risk sub-types. Third, we considered limiting the moratorium to certain states. We believe, though, that the problems the moratorium seeks to address are nationwide rather than restricted to particular geographic areas.

D. Unfunded Mandates Reform Act (UMRA)

Section 202 of UMRA of 1995 UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2026, that threshold is approximately $187 million. This notice will not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $187 million in any one year.

E. State and Local Costs

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed regulatory action (and subsequent final action) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this notice does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Dr. Mehmet Oz, having reviewed and approved this document, authorizes Chyana Woodyard, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Chyana Woodyard,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2026–03971 Filed 2–25–26; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Product-Specific Guidances; Draft and Revised Draft Guidances for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of

additional draft and revised draft product-specific guidances. The draft guidances provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website. The draft guidances identified in this notice were developed using the process described in that guidance.

DATES: Submit either electronic or written comments on the draft guidance by April 28, 2026 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any 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–2007–D–0369 for ''Product-Specific Guidances; Draft and Revised Draft Guidances for Industry.'' 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 draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. 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: Joseph Kotsybar, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 3623A, Silver Spring, MD 20993–0002, 240–402–1062, *PSG-Questions@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs.*

As described in that guidance, FDA adopted this process to develop and disseminate product-specific guidances and provide a meaningful opportunity for the public to consider and comment on those guidances. Under that process, draft guidances are posted on FDA's website and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final guidances or publishes revised draft guidances for comment. Guidances were last announced in the **Federal Register** on December 5, 2025 (90 FR 56161). This notice announces draft product-specific guidances, either new or revised, that are posted on FDA's website.

II. Drug Products for Which New Draft Product-Specific Guidances Are Available

FDA is announcing the availability of new draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Aceclidine hydrochloride.
Acetaminophen.
Acoltremon.
Alpelisib (multiple reference listed drugs).
Apixaban.
Avacincaptad pegol sodium.
Bisoprolol fumarate.
Buprenorphine.
Cephalexin.
Dabrafenib mesylate.
Dexamethasone.
Diazoxide choline.
Entrectinib.
Foscarbidopa; Foslevodopa.
Glecaprevir; Pibrentasvir.
Imatinib mesylate.
Landiolol hydrochloride.
Letermovir.
Meloxicam; Rizatriptan benzoate.
Mometasone furoate.
Paliperidone palmitate.
Phenylephrine hydrochloride; Tropicamide.
Ribavirin.
Rilpivirine hydrochloride.
Semaglutide.
Sofosbuvir; Velpatasvir.
Tadalafil.
Testosterone cypionate (multiple reference listed drugs).
Tolmetin sodium (multiple reference listed drugs).

III. Drug Products for Which Revised Draft Product-Specific Guidances Are Available

FDA is announcing the availability of revised draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Acetaminophen; Ibuprofen.
Alpelisib.
Amoxicillin; Omeprazole magnesium; Rifabutin.
Apixaban.
Asenapine.
Baclofen.
Baloxavir marboxil.
Barium sulfate (multiple reference listed drugs).
Buprenorphine (multiple reference listed drugs).
Buspirone hydrochloride.
Capsaicin.
Chlorthalidone.
Clonidine.
Clozapine (multiple reference listed drugs).
Cobicistat; Darunavir.
Dasatinib.
Dextroamphetamine.

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS—Continued

Active ingredient(s)
Diclofenac epolamine.
Donepezil hydrochloride.
Duloxetine hydrochloride (multiple reference listed drugs).
Estradiol (multiple reference listed drugs).
Estradiol; Levonorgestrel.
Estradiol; Norethindrone acetate.
Ethinyl estradiol; Levonorgestrel.
Ethinyl estradiol; Norelgestromin.
Fentanyl.
Ferric derisomaltose.
Formoterol fumarate.
Granisetron.
Imatinib mesylate.
Ketoconazole (multiple reference listed drugs).
Lidocaine (multiple reference listed drugs).
Lorazepam.
Lorlatinib.
Loxapine.
Menthol; Methyl salicylate.
Metformin hydrochloride.
Methylphenidate.
Nicotine.
Nitroglycerin (multiple reference listed drugs).
Octreotide acetate.
Oxybutynin (multiple reference listed drugs).
Paliperidone palmitate.
Perfluorohexyloctane.
Rivastigmine.
Rotigotine.
Sacubitril; Valsartan.
Scopolamine.
Selegiline.
Selinexor.
Testosterone.
Testosterone undecanoate (multiple reference listed drugs).
Tiopronin.
Tizanidine hydrochloride.
Venlafaxine besylate.
Venlafaxine hydrochloride.

For a complete history of previously published **Federal Register** notices related to product-specific guidances, go to *https://www.regulations.gov* and enter Docket No. FDA–2007–D–0369.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized, will represent the current thinking of FDA on, among other things, the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

As we develop final guidance on this topic, FDA will consider comments on costs or cost savings the guidance may generate, relevant for Executive Order 14192.

IV. Paperwork Reduction Act of 1995

While these guidances contain no collection of information, they do refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 for investigational new drugs have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 for applications for FDA approval to market a new drug and in 21 CFR part 320 for bioavailability and bioequivalence requirements have been approved under OMB control number 0910–0001.

V. Electronic Access

Persons with access to the internet may obtain the draft guidance at https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, *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. 2026–03963 Filed 2–26–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2026–N–1486]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product; ZYCUBO (Copper Histidinate)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that ZYCUBO (copper histidinate), approved January 12, 2026, manufactured by Sentynl Therapeutics Inc., meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Quyen Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Room 5324, Silver Spring, MD 20993–0002, 301–796–2771, *Quyen.Tran1@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined ZYCUBO (copper histidinate), manufactured by Sentynl Therapeutics Inc., meets the criteria for a priority review voucher. ZYCUBO (copper histidinate) injection is indicated for treatment of Menkes disease in pediatric patients.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about ZYCUBO (copper histidinate), go to the ''*Drugs@FDA*'' website at *https://www.accessdata.fda.gov/scripts/cder/daf.*

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–03925 Filed 2–26–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2026–N–1628]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; Scheduling Recommendations; N-Pyrrolidino Isotonitazene; N-Desethyl Etonitazene; Coca Leaf; MDMB-FUBINACA; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is providing interested persons with the opportunity to submit written comments concerning recommendations to impose international manufacturing and distributing restrictions on certain drug substances, under international drug control treaties. The comments received in response to this notice will be considered in preparing the United States' position on these proposals for a meeting of the United Nations Commission on Narcotic Drugs (CND) in Vienna, Austria, in March 9–13, 2026. This notice is issued under the Controlled Substances Act (CSA).

DATES: Submit either electronic or written comments by March 5, 2026.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 5, 2026. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 5, 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–2026–N–1628 for ''International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; Scheduling Recommendations; *N*-Pyrrolidino isotonitazene; *N*-Desethyl etonitazene; Coca leaf; MDMB-FUBINACA; Request for Comments.'' Received comments, those filed in a timely manner (see), 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.

FOR FURTHER INFORMATION CONTACT: Edward (Greg) Hawkins, Center for Drug Evaluation and Research, Controlled Substance Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5110, Silver Spring, MD 20993–0002, 301–796–0727, *Edward.hawkins@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a party to the 1971 Convention on Psychotropic Substances (1971 Convention). Section 201(d)(2)(B) of the CSA (21 U.S.C. 811(d)(2)(B)) provides that when the United States is notified under Article 2 of the 1971 Convention that the CND proposes to decide whether to add a drug or other substance to one of the schedules of the 1971 Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State must transmit notice of such information to the Secretary of Health and Human Services (Secretary of HHS). The Secretary of HHS must then publish a summary of such information in the **Federal Register** and provide opportunity for interested persons to submit comments. The Secretary of HHS must then evaluate the proposal and the comments received from interested persons, and furnish a recommendation to the Secretary of State that shall be binding on the representative of the United States in discussions and negotiations relating to the proposal.

As detailed in the following paragraphs, the Secretary of State has received notification from the Secretary-General of the United Nations (the Secretary-General) regarding one substance to be considered for control under the 1971 Convention. Section 201(d)(2)(B) of the CSA requires the Secretary of HHS, after receiving a notification proposing scheduling, to publish a notice in the **Federal Register** to provide the opportunity for interested persons to submit information and comments on the proposed scheduling action.

The United States is also a party to the 1961 Single Convention on Narcotic Drugs (1961 Convention). The Secretary of State has received a notification from the Secretary-General regarding three substances to be considered for control under this convention. The CSA does not require HHS to publish a summary of such information in the **Federal Register**. Nevertheless, to provide interested and affected persons an opportunity to submit comments regarding the recommendations for drugs under the 1961 Convention, the notification regarding these substances is also included in this **Federal Register** notice. The comments will be shared with other relevant Agencies to assist the Secretary of State in formulating the position of the United States on the control of these substances. The HHS recommendations are not binding on the representative of the United States in discussions and negotiations relating to the proposal regarding control of substances under the 1961 Convention.

II. United Nations Notification

The United Nations identified the drug substances and explains the basis for the scheduling recommendations as follows:

Substances Recommended To Be Added to Schedule I of the Single Convention (1961)

—*N*-Pyrrolidino isotonitazene
IUPAC name: 5-Nitro-2-[4-(2-propoxy)benzyl]-1-[2-pyrrolidin-1-yl]-1*H*-benzo[d]imidazole
Alternate names: Isotonitazepyne
—*N*-Desethyl etonitazene
IUPAC name: 2-[(4-Ethoxyphenyl)methyl]-*N*-ethyl-5-nitro-1*H*-benzimidazole-1-ethanamine

Substance Recommended To Be Retained in Schedule I of the Single Convention (1961)

—Coca leaf
IUPAC name: n/a

Substance Recommended To Be Added to Schedule II of the Psychotropic Convention (1971)

—MDMB-FUBINACA
UPAC name: Methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate

Additional Information Regarding Substances To Be Added to Schedule I of the Single Convention on Narcotic Drugs (1961)

N-Pyrrolidino Isotonitazene

Substance Identification

N-Pyrrolidino isotonitazene (IUPAC name: 5-nitro-2-(4-(2-propoxy)benzyl]-1-[2-(pyrrolidin-1-yl)ethyl]lH-benzo[d] imidazole, also known as isotonitazepyne) is a 5-nitro-2-benzylbenzimidazole synthetic opioid.

N-Pyrrolidino isotonitazene has been described as a crystalline solid and has also been detected in falsified pharmaceuticals, appearing as coloured tablets.

Review History

N-Pyrrolidino isotonitazene has not previously been reviewed and is not currently under international control. Information was brought to the review committees' the attention that the substance is manufactured clandestinely, poses a risk to public health and has no recognized therapeutic use.

Similarity to Known Substances and Effects on the Central Nervous System

The chemical structure and pharmacological effects of *N*-pyrrolidino isotonitazene closely resemble those of *N*-pyrrolidino protonitazene, which is controlled under Schedule I of the Single Convention on Narcotic Drugs of 1961.

Studies in animals have demonstrated that *N*-pyrrolidino isotonitazene is a full agonist at μ-opioid receptors, with greater potency than morphine and fentanyl. Its effects are blocked by the opioid antagonist, naltrexone.

Convertibility Into Controlled Substances

It is not known whether *N*-pyrrolidino isotonitazene can be converted into a controlled substance.

Dependence Potential

No controlled studies of the dependence potential *N*-pyrrolidino isotonitazene in animals or humans have been reported. As it is a potent μ-opioid receptor agonist, it would be expected to produce dependence similar to that of other opioids, such as morphine and fentanyl.

Actual Abuse and/or Evidence of Likelihood of Abuse

In animals, *N*-pyrrolidino isotonitazene had effects suggestive of an abuse potential similar to that of morphine and fentanyl. Its potency was greater than that of morphine and fentanyl. These effects were blocked by the opioid antagonist naltrexone. Euphoria and self-management of opioid withdrawal have been described by people who report its use.

Other Health Harms

The presence of *N*-pyrrolidino isotonitazene has been reported in many countries in many regions, although the extent of use is unknown. *N*-Pyrrolidino isotonitazene has been analytically confirmed in fatal and non-fatal cases of overdose, including in cases in which it was the only substance detected.

Detection of *N*-pyrrolidino isotonitazene in falsified pharmaceutical drugs in many countries and regions indicates a risk of unintentional use and harm.

Therapeutic Usefulness

N-Pyrrolidino isotonitazene is not known to have any therapeutic use.

Recommendation

N-Pyrrolidino isotonitazene, also referred to as isotonitazepyne, is a synthetic opioid that is liable to abuse and produces effects similar to those of other opioids that are controlled under Schedule I of the 1961 Single Convention on Narcotic Drugs. Its use causes substantial harm, including death. It has no known therapeutic use.

Recommendation: The Committee recommended that *N*-pyrrolidino isotonitazene, also referred to as isotonitazepyne, be added to Schedule I of the 1961 Single Convention on Narcotic Drugs.

N-Desethyl Etonitazene

Substance Identification

N-Desethyl etonitazene (IUPAC name: 2-[(4-ethoxyphenyl)methyl]-N-ethyl-5-nitro-lH-

benzimidazole-1-ethana mine) is a 5-nitro-2-benzylbenzimidazole synthetic opioid. *N*-Desethyl etonitazene has been described as a crystalline solid and as a yellow or beige powder. It has been found in falsified pharmaceutical opioid tablets.

Review History

N-Desethyl etonitazene has not previously been reviewed and is not currently under international control. Information was brought to the attention of the reviewers that the substance is manufactured clandestinely, poses a risk to public health and has no recognized therapeutic use.

Similarity to Known Substances and Effects on the Central Nervous System

N-Desethyl etonitazene is a metabolite of etonitazene, which is controlled under Schedule I of the 1961 Convention on Narcotic Drugs.

Studies of receptor binding indicate that *N*-desethyl etonitazene is a full agonist at μ-opioid receptors, with greater potency than morphine and fentanyl.

Convertibility Into Controlled Substances

It is not known whether *N*-desethyl etonitazene can be converted into a controlled substance, although this is theoretically possible.

Dependence Potential

No controlled studies of the dependence potential of *N*-desethyl etonitazene in animals or humans have been reported. As it is a potent μ-opioid receptor agonist, it would be expected to produce dependence similar to that produced by other opioids, such as morphine and fentanyl.

Actual Abuse and/or Evidence of Likelihood of Abuse

The presence of *N*-desethyl etonitazene has been reported in at least 10 countries, although the extent of use is unknown.

Other Health Harms

At least three deaths have been reported in which *N*-desethyl etonitazene was analytically confirmed, including when no other opioids were involved. *N*-Pyrrolidino etonitazene has also been analytically confirmed in non-fatal overdoses. The detection of *N*-pyrrolidino etonitazene in falsified pharmaceutical drugs indicates a risk of unintentional use and harm.

Therapeutic Usefulness

N-Desethyl etonitazene is not known to have any therapeutic use.

Recommendation

N-Desethyl etonitazene is a synthetic opioid that is liable to abuse and produces ill effects similar to those produced by other opioids that are controlled under Schedule I of the 1961 Single Convention on Narcotic Drugs. It could theoretically be converted into a controlled substance, although this has not been demonstrated. Its use causes substantial harm, including death. It has no known therapeutic use.

Recommendation: The Committee recommended that *N*-desethyl etonitazene be added to Schedule I of the 1961Single Convention on Narcotic Drugs.

Substances To Remain in Schedule I of the Single Convention on Narcotic Drugs (1961)

Coca Leaf

Substance Identification

Coca leaf is defined in the 1961 United Nations Single Convention on Narcotic Drugs as the leaf of the coca bush, except when all ecgonine, cocaine and any other ecgonine alkaloid have been removed. ''Coca bush'' refers to the plant of any species of the genus Erythroxylon. ''Coca leaf preparations'' refer to mixtures or products containing the coca leaf (in whole or in part). This excludes isolated alkaloids such as cocaine and ecgonine, which are controlled separately under the Convention.

More than 250 Erythroxylum species exist, including four primary cultivated varieties. Coca leaf cultivation is most prevalent at high altitudes in the Andean region and in the Amazon basin but is increasingly being reported in other parts of the Region of the Americas. Coca leaf is cultivated from plants grown from seeds or cuttings. Plants can produce leaves for 20–30 years.

Coca leaves are similar in appearance to those of *Laurus nobilis,* the most common characteristic trait in all species being a darker color on the upper than on the underside of the leaf and two lines parallel to the midrib of the leaf.

Coca leaf preparations are marketed as branded products. They include teas, nutritional supplements, and essential oil. Coca leaves can be pulverized finely into a greenish powder.

Coca leaf products are traditionally administered by two primary routes: chewing and infusion. Chewing of coca leaves is widespread and culturally accepted in the Andean highlands. The process involves placing a wad of dried leaves in the buccal cavity, either alone or with an alkaline substance such as lime or sodium bicarbonate to enhance extraction of alkaloids into the oral mucosa. Coca leaves are also infused in water and consumed as tea. Coca leaf flour (finely ground coca leaves) can be used to make a strong tea and is sold as a nutritional supplement.

Review History

Coca-leaf chewing was discussed at the 3rd (1952) and 4th (1954) meetings of the Expert Committee on Drugs Liable to Produce Addiction, which concluded that it was a form of addiction. Coca leaf was subsequently placed under Schedule I of the 1961 Single Convention on Narcotic Drugs.

In 1992, a pre-review of coca leaf was conducted and the reviewers considered that coca leaf was appropriately scheduled under the 1961 Convention, as cocaine is readily extractable from the leaf.

In 2023, an official request from a Member State for a critical review of coca leaf. A critical review was initiated, for conclusion in 2025.

Similarity to Known Substances and Effects on the Central Nervous System

Coca leaf contains a mix of alkaloids, flavonoids, terpenes, tannins, and phenols. Cocaine and ecgonine are naturally occurring alkaloids of note in the coca leaf. The total alkaloid content is 0.5–2.4%, depending on the species, growth environment, and stage of leaf development. Cocaine, one alkaloid in the leaf, is produced in significant amounts in cultivated varieties of the Erythroxylum species, whereas wild species contain either none or only small quantities of this alkaloid. When present, the cocaine content of cultivated species varies among regions from 0.11% to 1.02% of the weight of dried coca leaf. Absorption of alkaloids from coca leaf depends on the route of administration, the quantity of leaves used, the type of alkali added, and if masticated, the duration of mastication. The plasma concentrations of cocaine resulting from coca leaf chewing or ingestion may overlap with plasma concentrations of cocaine resulting from cocaine use by inhalation or injection.

It has been demonstrated in animal models that coca leaf alkaloids affect the central nervous system, including decreasing food intake. Some coca leaf extracts increase locomotor activity, while others do not. The stimulant effects of coca leaf in animal models may be due to inhibition of monoamine re-uptake. Local anesthetic effects have also been observed in animal models.

People who chew coca leaf report mild psychostimulant effects, including euphoria, and have described it as an ''energizer''. Increased heart rate and blood pressure and vasoconstriction have also been reported. Analgesic effects of high-dose coca leaf preparations have been attributed to a local anesthetic effect.

Convertibility Into Controlled Substances

Coca leaf contains cocaine, a naturally occurring alkaloid that can be processed to obtain coca paste. Coca paste is filtered and dried to obtain cocaine base, which is further processed to obtain cocaine hydrochloride. By chemical definition, the manufacture of cocaine from coca leaf is an extraction; however, the reference in the Guidance document for the understanding of this term reads as follows:

A substance is convertible if it is of such a kind as to make it, by the ease of the process and by the yield, practicable and profitable for a clandestine manufacturer to transform the substance in question into controlled drugs.

Obtaining coca paste from coca leaf and purification of different forms of cocaine from coca paste are straightforward and do not require special expertise or equipment. Except for kerosene, the chemicals and reagents used in these processes are listed in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

Most coca leaf is used for clandestine manufacture of cocaine in at least some countries. It is estimated that 1 ha of coca bush cultivation produces approximately 4.2 tons of fresh coca leaves per year; 1 ton of fresh leaves produces approximately 1.5 kg of coca paste or 1.4 kg of cocaine base; 1 kg of cocaine base results in roughly 0.9 kg of cocaine hydrochloride, which typically contains about 85% pure cocaine. Cocaine production has increased significantly in several countries, in parallel with increased coca bush cultivation. Some countries have reported historically high levels in recent

years. Globally, a 34% increase in cocaine production was reported in 2023 over the previous year.

The 1961 Convention lists both coca leaf and cocaine as controlled substances under Schedule 1. Accordingly, as coca leaf is used to manufacture cocaine, one controlled substance (cocaine) is made from another (coca leaf), thereby meeting the Convention's criterion for convertibility.

Dependence Potential

No controlled studies in animal models of the dependence potential of coca leaf were identified.

A few studies in humans assessed development of a dependence syndrome with coca leaf. Older ethnographic studies did not describe tolerance, withdrawal symptoms, or compulsive patterns of use; however, a recent epidemiological study of more than 1300 people who chewed coca leaf found that 2.3% of those who reported ever chewing coca leaf met the ICD–10 criterion for dependence.

People who met the criterion had a lower quality of life than people who did not. Two countries in different geographical regions reported presentations for drug dependence treatment related to coca leaf use. No studies were available that provided robust evidence to determine the prevalence of coca leaf dependence.

Actual Abuse and/or Evidence of Likelihood of Abuse

In a model of drug discrimination in animals, high-dose preparations of coca leaf produced effects that closely resembled those of cocaine.

Many countries in various regions have reported nonmedical use of coca leaf and increasing numbers of seizures of coca leaf.

Other Health Harms

Few high-quality data are available on the acute toxicity associated with coca leaf. No fatal overdoses have been documented after traditional use of coca leaf, although coca leaf may not readily be differentiated from cocaine in biological samples from such cases.

Reported adverse effects of chewing coca leaf appear to be limited. They include oral problems (including risk of oral carcinoma) and cardiovascular, intestinal, hormonal, and neurological issues.

Therapeutic Usefulness

The potential therapeutic effects of various Erythroxylum species have been investigated in vitro and in animal models. Recent investigations have been conducted of its antioxidant, antibiotic, anticancer, antihypertensive, antidiabetic, and neuroprotective effects. For example, some Erythroxylum species may have anticancer effects, comparable to those of standard chemotherapy agents in some cases; however, the activity varies with different extracts and cell lines. Similarly, studies in vitro and in vivo show variable but sometimes strong antioxidant and anti-inflammatory effects. In humans, use of E. coca by chewing and drinking tea reduced post-meal glucose in people with no underlying metabolic disorder. Overall, studies in animals and humans suggest that coca leaf may have some therapeutic applications, although the evidence is limited.

Traditional use of coca leaf in Andean regions includes chewing and infusion to increase energy and prevent altitude sickness, although evidence of its usefulness for treating altitude sickness is mixed. Its use as a nutritional supplement is limited by its cocaine content. Use of coca leaf for the manufacture of pharmaceutical and industrial products has decreased with time. In a few countries, preparations of coca leaf are used as traditional herbal medicines. Use of coca leaf is permitted under national legislation in some countries when practiced within traditional or cultural contexts.

Recommendation

The Expert Committee, when deciding whether to recommend international control, decides whether a substance: ''{l) is liable to similar abuse and productive of similar ill-effects as the substances in Schedule I or Schedule II; or (2) is convertible into a substance already in Schedule I or Schedule II.'' The reference in the Guidance document for the understanding of this term reads as follows:

A substance is convertible if it is of such a kind as to make it, by the ease of the process and by the yield, practicable and profitable for a clandestine manufacturer to transform the substance in question into controlled drugs.

In the 1961 Single Convention on Narcotic Drugs, coca leaf is defined as the leaf of the coca bush, except when all ecgonine, cocaine, and any other ecgonine alkaloids have been removed. Coca leaf and cocaine are classified as distinct substances under Schedule I of the 1961 Single Convention. The simplicity of extracting cocaine from coca leaf and its high yield and profitability are well known.

Accordingly, conversion of coca leaf into cocaine constitutes production of one substance (cocaine) in Schedule I from another substance in Schedule I (coca leaf), thereby meeting the Convention's criterion for convertibility. The Committee also reviewed evidence of a marked increase in coca leaf cultivation and in the production of cocaine-related substances, in the context of significant, increasing public health concern about cocaine use. In that context, the Committee considered that reducing or removing existing international controls on coca leaf could pose an especially serious risk to public health.

The evidence presented in the critical review and other information considered by the Committee indicate that traditional coca leaf use by chewing or in tea does not appear to pose a particularly serious public health risk, although the safety of long-term use is not well documented. In addition, it was recognized that coca leaf has an important cultural and therapeutic significance for Indigenous peoples and other communities and that there are exemptions for traditional use of coca leaf in certain national frameworks. Emerging research may support the therapeutic applications of coca leaf; however, the current body of evidence does not provide a robust basis for such use.

Recommendation: The Committee recommended that coca leaf be retained in Schedule I of the 1961 Single Convention on Narcotic Drugs.

Substances To Be Added to Schedule IV of the Psychotropic Convention (1971)

MDMB-FUBINACA

Substance Identification

MDMB-FUBINACA {IUPAC name: Methyl 2-{[1-{4-fluorobenzyl)indazole-3-carbonyl]amino}-3,3-dimethylbutanoate) is a synthetic cannabinoid with a stereogenic centre (C2), which can exist as two stereoisomers (enantiomers): methyl (25)-2-{[1-(4-fluorobenzyl)indazole-3-carbonyl]amino}-3,3-dimethylbutanoate and methyl (2R)-2-{[1-{ 4-fluorobenzyl)i ndazole-3-carbonyl]amino}-3,3-dimethylbutanoate.

MDMB-FUBINACA has been described as a powder (usually white) and has been found sprayed onto herbal products. It is often marketed as dried leaves or powder and sold in e-liquids for vaping.

Review History

MDMB-FUBINACA has not previously been reviewed and is not currently under international control. Information was brought to the reviewers attention that this substance is manufactured clandestinely, poses a risk to public health and has no recognized therapeutic use.

Similarity to Known Substances and Effects on the Central Nervous System

MDMB-FUBINACA is a synthetic cannabinoid that binds to CBl and CB2 receptors with high affinity and is a potent full agonist at both receptors. Its effects are similar to those of other potent CBl agonists that are currently controlled under Schedule II of the Convention on Psychotropic Substances of 1971. No controlled studies of the effects of MDMB-FUBINACA have been reported. In animals, it has been shown to produce behavioral effects consistent with delta-9-THC, with the effects lasting many hours. In humans, it produces symptoms typical of high doses of cannabinoids, including agitation or sedation, vomiting, short-term memory loss, salivation, rhinorrhoea, mydriasis, tachycardia and anxiety.

Convertibility Into Controlled Substances

MDMB-FUBINACA can be chemically modified to produce structurally related synthetic cannabinoids such as ADB-FUBINACA. The yields and prevalence of such conversions are, however, uncertain.

Dependence Potential

No studies of the dependence potential of MDMB-FUBINACA in animals or humans have been reported. Its effects at CB1 receptors suggest that it would produce dependence similar to that produced by delta-9-THC and other synthetic cannabinoid receptor agonists. Countries in two regions reported presentations for treatment of drug dependence due to the use of MDMB-FUBINACA.

Actual abuse and/or evidence of likelihood of abuse:

In an animal model predictive of abuse potential, MDMB-FUBINACA had effects

similar to delta-9-THC. No studies have been conducted to determine the likelihood of abuse of MDMB-FUBINACA in humans.

Other Health Harms

MDMB-FUBINACA use has been associated with mortality and morbidity in several countries, including a large number of non-fatal poisonings. Documented adverse effects include agitation or sedation, vomiting, short-term memory loss, salivation, rhinorrhoea, mydriasis, tachycardia and anxiety, similar to those seen with delta-9-THC and other synthetic cannabinoid receptor agonists. The increased detection of MDMB-FUBINACA has been linked to emergence of a simplified one-step synthesis method, which requires readily available precursor chemicals.

Therapeutic Usefulness

MDMB-FUBINACA is not known to have any therapeutic use.

Recommendation

MDMB-FUBINACA is a synthetic cannabinoid receptor agonist administered by smoking plant material sprayed with the substance or inhaling vapor after heating. Its mode of action suggests the potential for dependence and the likelihood of abuse. Its use has been associated with a range of severe adverse effects, including death. These effects are similar to those produced by other synthetic cannabinoids that are placed in Schedule II of the Convention on Psychotropic Substances of 1971.

MDMB-FUBINACA has no therapeutic use.

Recommendation: The Committee recommended that MDMB-FUBINACA be added to Schedule II of the Convention on Psychotropic Substances of 1971.

III. Discussion

Although specific scheduling recommendations for each of the drug substances have been made, the CND is not obliged to follow those recommendations. Options available to the CND for substances considered for control under the 1971 Convention include the following: (1) accept the recommendations; (2) accept the recommendations to control but control the drug substance in a schedule other than that recommended; or (3) reject the recommendations entirely.

N-Pyrrolidino isotonitazene (isotonitazepyne) is a synthetic opioid of the benzimidazole class that is similar in structure to isotonitazene. In vitro binding and activity data indicate that isotonitazepyne is approximately 10-fold more potent at the mu opioid receptor than fentanyl. Isotonitazepyne has been detected in several toxicology cases in the United States, Europe, and Australia. Common adverse events of opioid agonists include nausea, vomiting, constipation, pruritus, dizziness, sedation, and respiratory depression, where significant respiratory depression can lead to death. Based on in vitro pharmacology and case reports, substances in the nitazepyne class are expected to produce euphoria and have a high potential for abuse and physical dependence. Repeated non-medical use would likely result in tolerance, physical dependence, and withdrawal effects consistent with other potent opioids. There are no commercial uses or approved medical uses for isotonitazepyne in the United States. Isotonitazepyne is controlled in Schedule I under the CSA and will not require additional permanent controls domestically if it is placed in Schedule I of the 1961 Single Convention.

N-Desethyl etonitazene is a synthetic opioid of the nitazene class that is similar in structure to etonitazene. In vitro binding and activity data indicate that *N*-desethyl etonitazene is approximately 10-fold more potent at the mu opioid receptor than fentanyl. In animal behavior studies it produced subjective effects that were indistinguishable from morphine. As a result, it is assumed that metonitazepyne will have an abuse potential similar to that of other opioid agonists and produce adverse events that include nausea, vomiting, constipation, pruritus, dizziness, sedation, and respiratory depression, where significant respiratory depression can lead to death. In the United States, *N*-Desethyl etonitazene was detected in 2 toxicology cases; however, other NPS or other drugs of abuse were detected in these individuals and could have been a contributing factor to the fatality. According to the NFLIS database, *N*-Desethyl etonitazene was first detected in 2023, and there have been seven confirmed law enforcement seizures to date. There are no commercial uses or approved medical uses for *N*-Desethyl etonitazene in the United States. *N*-Desethyl etonitazene is controlled in Schedule I under the CSA and will not require additional permanent controls domestically if it is placed in Schedule I of the 1961 Single Convention.

Coca leaf is defined by the 1961 United Nations Single Convention on Narcotic Drugs as the leaf of the coca bush, except when all ecgonine, cocaine, and any other ecgonine alkaloids have been removed. Coca leaf is consumed through two primary mechanisms (1) direct chewing of the leaves, which also involves placing the leaves in the buccal cavity, and (2) extraction of the alkaloids for oral consumption as through a tea. The coca leaf contains several substances; alkaloids, flavonoids, terpenes, and phenols, several of which either are, or can be easily converted, into substances with known abuse potential and physical dependence. People who chew coca leaves have reported psychostimulant effects such as euphoria and increased energy. The coca leaf contains cocaine, a known stimulant with a high potential for abuse. The coca leaf is used to clandestinely manufacture cocaine which is illicitly distributed throughout the world. In the U.S., federal law enforcement reported seizing more than 91,600 kg of cocaine in the first half of 2025 alone. According to the National Survey on Drug Use and Health, approximately 470,000 U.S. residents age 12 or older reported past-year use of cocaine in 2023, with the National Center for Health Statistics reporting 29,918 overdose deaths involving cocaine in the same year. Cocaine is approved as a nasal and topical analgesic in the U.S., and is controlled in schedule II under the CSA. Coca leaf (leaves), which contains cocaine, is also controlled in Schedule II under the CSA. Domestic scheduling actions on the coca leaf will not be necessary regardless of the outcome of the vote for coca leaf to remain in Schedule I of the 1961 Convention.

MDMB-FUBINACA is a semi-synthetic cannabinoid which functions as an agonist of the cannabinoid 1 (CB1) receptor. MDMB-FUBINACA is reported to produce similar effects as tetrahydrocannabinol (THC) after smoking or oral administration. In animals, MDMB-FUBINACA produced suppression of locomotor activity, analgesia, hypothermia, and ring mobility similar to delta-9-THC. MDMB-FUBINACA also fully substituted for the effects of THC in a drug discrimination study. It was first identified in law enforcement seizures in the U.S. in 2017 and has since been identified in 824 drug seizures. There are no commercial or approved medical uses for MDMB-FUBINACA. MDMB-FUBINACA is controlled in Schedule I under the CSA and will not require additional permanent controls domestically if it is placed in Schedule II of the 1971 Psychotropic Convention.

FDA, on behalf of the Secretary of HHS, invites interested persons to submit comments on the recommendations from the United Nations concerning these drug substances. FDA, in cooperation with the National Institute on Drug Abuse, will consider the comments on behalf of HHS in evaluating the scheduling recommendations. Then, under section 201(d)(2)(B) of the CSA, HHS will recommend to the Secretary of State what position the United States should take when voting on the recommendations for control of

substances under the 1971 Convention at the CND meeting in March 2025.

Comments regarding the recommendations for control of *N*-pyrrolidino isotonitazene, *N*-desethyl etonitazene, and coca leaf under the 1961 Single Convention will also be forwarded to the relevant Agencies for consideration in developing the U.S. position regarding narcotic substances at the CND meeting.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–03914 Filed 2–26–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0119]

Fiscal Year 2026 Generic Drug Science and Research Initiatives Workshop; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the following public workshop entitled ''Fiscal Year 2026 Generic Drug Science and Research Initiatives Workshop.'' The purpose of the public workshop is to provide an overview of the status of science and research initiatives for generic drugs and an opportunity for public input on these initiatives. FDA is seeking this input from a variety of interested parties—industry, academia, patient advocates, professional societies, and other interested parties—as it fulfills its commitment under the Generic Drug User Fee Amendments of 2022 (GDUFA III) to develop an annual list of science and research initiatives specific to generic drugs. FDA will take the information it obtains from the public workshop into account in developing its fiscal year (FY) 2027 Generic Drug User Fee Amendments (GDUFA) science and research initiatives.

DATES: The public workshop will be held on June 8 and 9, 2026. Either electronic or written comments on this public workshop must be submitted by July 10, 2026. See the **SUPPLEMENTARY INFORMATION** section for additional information.

ADDRESSES: The public workshop will be held in person and will be accessible virtually (See *Streaming Webcast of the Public Workshop* below). The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Avenue, Building 31 Conference Center, the Great Room (Room 1503), Silver Spring, MD 20993. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/about-fda/visitor-information.*

The procedures to submit comments are outlined below. 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 July 10, 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–2023–N–0119 for ''Fiscal Year 2026 Generic Drug Science and Research Initiatives Workshop; Public Workshop; Request for Comments.'' 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 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: Sam Raney, Ph.D., Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4732, Silver Spring, MD 20993, 240–402–7967, *Sameersingh.Raney@fda.hhs.gov;* or Robert Lionberger, Ph.D., Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4722, Silver Spring, MD 20993, 240–402–7957, *Robert.Lionberger@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In July 2012, Congress passed the Generic Drug User Fee Amendments of 2012 (GDUFA I) (Pub. L. 112–144). GDUFA I was designed to enhance public access to safe, high-quality generic drugs and to modernize the generic drug program. To support this goal, FDA agreed in the Generic Drug User Fee Act Program Performance Goals and Procedures (GDUFA I commitment letter) to work with industry and interested parties on identifying science and research initiatives specific to generic drugs for each fiscal year covered by GDUFA I.

In August 2017, GDUFA was reauthorized until September 2022 through the Generic Drug User Fee Amendments of 2017 (GDUFA II) (Pub. L. 115–52), and in September 2022, GDUFA was reauthorized until September 2027 through GDUFA III (Pub. L. 117–180, 136 Stat. 2155). In the GDUFA Reauthorization Performance Goals and Program Enhancements Fiscal Years 2023–2027 (GDUFA III commitment letter),[1] FDA agreed to conduct annual public workshops to solicit input from industry and interested parties for inclusion in an annual list of GDUFA III regulatory science initiatives. This public workshop scheduled for June 8 and 9, 2026, seeks to fulfill this agreement.

II. Topics for Discussion at the Public Workshop

The purpose of this public workshop is to obtain input from industry and other interested parties on identifying generic drug science and research initiatives for FY 2027. FDA is interested in receiving input about regulatory science initiatives for the ongoing years of the GDUFA III science and research program, and particularly for FY 2027.

Topics discussed during the workshop will focus on research that is needed to address scientific knowledge gaps and associated challenges impacting the development and regulatory assessment of generic products, including complex generics. As examples, topics discussed will likely focus on identifying approaches to leverage generic drug industry expertise and insights when advancing GDUFA research, and when prioritizing the development of product-specific guidances. Specific technical discussions will likely explore what new research is needed to address ongoing challenges with impurities such as nitrosamines, to expand regulatory flexibility with bioequivalence standards, to employ artificial intelligence tools in practical ways that reduce barriers for generic drug development and assessment, and to standardize product characterization test methods that support demonstrations of bioequivalence and product quality. Additional topics that can enhance public access to high-quality, safe, and effective generic products may also be discussed. Specific presentations and discussions at this workshop will be announced at a later date and may differ from the topics above. Input about the topics above will help the Agency identify and expand its scientific focus for the next fiscal year.

FDA will consider all comments made at this workshop or received through the docket (see **ADDRESSES**) as it develops its FY 2027 science and research initiatives. Information concerning the science and research initiatives for generic drugs can be found on the Science & Research website at *https://www.fda.gov/drugs/generic-drugs/science-research.*

III. Participating in the Public Workshop

Registration: Persons interested in attending this public workshop do not need to register in advance. Those interested in attending in-person are encouraged to contact FDA at *GDUFARegulatoryScience@fda.hhs.gov* to confirm the availability of space prior to making travel arrangements; while there has historically been ample space to accommodate all in-person attendees, seating is limited.

If you need special accommodations due to a disability, please contact FDA via email at *GDUFARegulatoryScience@fda.hhs.gov* no later than 11:59 p.m. Eastern Time on May 15, 2026.

Requests for Oral Presentations: Requests to provide public comments via a prerecorded presentation or a live presentation, including in-person or virtual presentations, should be submitted via email to *GDUFARegulatoryScience@fda.hhs.gov* by 11:59 p.m. Eastern Time on April 3, 2026. The request should briefly describe the topic(s) of the comments, and specify whether the comments would be presented in person or as a pre-recorded presentation. FDA will do its best to accommodate requests to make public comments that are within the scope of this public workshop, *i.e.,* those that identify what research is needed to address specific challenges for generic product development or regulatory assessment. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the workshop. Based on the public comment presentation requests received by April 3, 2026, at 11:59 p.m. Eastern Time, FDA will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin. By April 30, 2026, FDA will select and notify persons who request to present prepared public comment if they are selected for presentation during the workshop. Any presentation materials must then be emailed to *GDUFARegulatoryScience@fda.hhs.gov* no later than May 20, 2026, 11:59 p.m. Eastern Time. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Streaming Webcast of the Public Workshop: This public workshop will be webcast. The link to the streaming webcast of the workshop on June 8, 2026 (Day 1 of the workshop), is: *https://teams.microsoft.com/meet/29276529473988?p=3uD9Z7KE.* The link to the streaming webcast of the workshop on June 9, 2026 (Day 2 of the workshop), is: *https://teams.microsoft.com/meet/29105893294615?p=fZ9hG2BU.* Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

Transcripts: Please be advised that as soon as a video recording and audio transcript of the public workshop are available, they will be accessible at *https://www.regulations.gov* or via the Science & Research FDA website accessible at *https://www.fda.gov/drugs/generic-drugs/science-research.* They may also be available for viewing at the

[1] The GDUFA III commitment letter is available at *https://www.fda.gov/media/153631/download.*

Dockets Management Staff (see **ADDRESSES**).

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–03961 Filed 2–26–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Ryan White HIV/AIDS Program Part F Dental Services Report, OMB No. 0915–0151—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than March 30, 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 information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Ryan White HIV/AIDS Program Part F Dental Services Report, OMB No. 0915–0151—Revision.

Abstract: The Dental Reimbursement Program (DRP) and the Community Based Dental Partnership Program (CBDPP) under Part F of the Ryan White HIV/AIDS Program (RWHAP) offer funding to accredited dental education programs to support the education and training of oral health providers in HIV oral health care and reimbursement for the provision of oral health services for people eligible for the RWHAP. Institutions eligible for the RWHAP DRP and CBDPP are accredited schools of dentistry and other accredited dental education programs, such as dental hygiene programs or those sponsored by a school of dentistry, a hospital, or a public or private institution that offers postdoctoral training in the specialties of dentistry, advanced education in general dentistry, or a dental general practice residency. The RWHAP DRP Application for the Notice of Funding Opportunity includes the Dental Services Report (DSR) that applicants use to apply for funding of non-reimbursed costs incurred in providing oral health care to clients with HIV and to report annual program data. Awards are authorized under section 2692(b) of the Public Health Service Act (42 U.S.C. 300ff–111(b)). The DSR is also used by CBDPP recipients to report on services rendered, clients served, and partnerships as an annual requirement. The DSR collects data on program information, client demographics, oral health services, funding, and training. It also requests applicants and recipients provide a narrative description of the services offered, the types of facilities available, and their linkage and collaboration with community-based oral health service providers.

Beginning with the 2022 DSR submission, the DSR website provided RWHAP DRP applicants and RWHAP CBDPP recipients an easily accessible and secure location to enter and submit their aggregate DSR data annually. All RWHAP DRP applicants and RWHAP CBDPP recipients will be authorized users of a web-based platform that allows users to easily navigate the site and enter their data. Users can see their report submission status and no longer need to email their dataset to HRSA. The implementation of the DSR website contributed to the overall decrease in burden hours. HRSA proposes minor modifications to the DSR data reporting tool:

- Remove the question regarding gender to align with administrative priorities.
- Add an ''Unknown'' response option for the ''Sex at Birth'' variable.
- Remove ''People and Communities Disproportionately Impacted by HIV'' from section 4.

A 60-day notice was published in the **Federal Register** on November 26, 2025, vol. 90, No. 226; pp. 34332–33. There were no public comments.

Need and Proposed Use of the Information: The primary purpose of collecting this information annually is to verify applicant eligibility and determine reimbursement amounts for DRP applicants, as well as to document the program accomplishments of CBDDP grant recipients. This information allows HRSA to learn about (1) the extent of the involvement of dental schools and programs in treating persons with HIV, (2) the number and characteristics of clients who receive RWHAP supported oral health services, (3) the types and frequency of the provision of these services, (4) the non-reimbursed costs of oral health care provided to persons with HIV, and (5) the scope of grant recipients' community-based collaborations and training of providers. In addition to meeting the goal of accountability to Congress, clients, community groups, and the public, information collected in the DSR is critical for HRSA and recipients to assess the status of existing HIV-related health service delivery systems. The information will provide the measurement data for the HRSA budget justifications on the following indicators: number of persons for whom a portion/percentage of their unreimbursed oral health costs were reimbursed and the number of providers trained through the RWHAP Part F Dental Reimbursement and Community-Based Partnership Programs.

Likely Respondents: Accredited schools of dentistry and other accredited dental education programs, such as dental hygiene programs or those sponsored by a school of dentistry, a hospital, or a public or private institution that offers postdoctoral training in the specialties of dentistry, advanced education in general dentistry, or a general dental practice residency.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and use technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden

hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Dental Services Report	DRP Applicants	56	1	56	32.0	1,792
	CBDPP Recipients	12	1	12	1.5	18
Total	.....	68	.....	68	.....	1,810

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2026–03981 Filed 2–26–26; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0488–30D]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, Administration for Strategic Preparedness and Response (ASPR), U.S. Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Administration for Strategic Preparedness and Response (ASPR), HHS, submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on the ICR must be received on or before March 30, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice via *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under Review'' and ''Select Agency: Department of Health and Human Services''.

FOR FURTHER INFORMATION CONTACT: Wayland Coker, ASPR Center for Industrial Base Management and Supply Chain (IBMSC), Chief Supply Chain Strategist, and Acting Interim Assistant Director of IBMSC at *wayland.coker@hhs.gov,* or call (202) 875–1103. When submitting comments or requesting information, please include the document identifier 0990–0488–30D and project title for reference.

SUPPLEMENTARY INFORMATION: OS, ASPR, and HHS, is announcing that a proposed extension of a generic information collection has been submitted to OMB for review and approval. OMB will accept further comments from the public during the review and approval period. No comments were received in the initial 60-day comment period. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Ensure a Strong Public Health Supply Chain Through Streamlined Oversight and American Priorities.

Type of Collection: Extension.

Office of Management and Budget (OMB) No. 0990–0488—Administration for Strategic Preparedness and Response—Center for Industrial Base Management and Supply Chain.

Abstract: HHS, ASPR is seeking approval by OMB on an extension of the existing clearance (OMB Control Number: 0990–0488, Expiration Date: March 31, 2026). HHS is working with the White House and across the federal interagency to launch a multiyear implementation involving the identification and coordination of measurable activities across the United States government, state, local, tribal, and territorial (SLTT) jurisdictions, and private sector partners. Cross-sectoral engagement is the underpinning of many of the interdependent implementation activities. For example, one such activity involves information collection from SLTT partners on facility, local, and state stockpiling plans to ensure coordinated plans are in place for a future public health emergency. Potential engagements include, and are not limited to, surveys, stakeholder meetings, requests for information (RFI), town hall meetings, and workshops. With each of these different mechanisms of engagement, there is a varied frequency ranging from single engagements to regularly recurring meetings.

In 2025, the White House capacity and strengthening the public health supply chain through a series of executive actions focused on reducing foreign dependency, enhancing domestic manufacturing capacity, and improving emergency preparedness. This includes the establishment of the Strategic Active Pharmaceutical Ingredients Reserve (SAPIR), directed by HHS and managed through ASPR, to ensure a secure, domestic supply of essential drug components. The administration has also invoked Section 232 of the *Trade Expansion Act* of 1962 to assess whether reliance on imports of materials such as processed critical minerals and copper poses a national security risk, including risks to the production of pharmaceuticals and other medical countermeasures. These coordinated efforts reflect a broader federal strategy to increase the resilience, agility, and visibility of the public health supply chain in support of future emergency response operations. To support White House priorities, HHS seeks a 3-year extension to its Paperwork Reduction Act clearance and will engage with SLTT, trade groups, mixed cross-sector audiences, non-governmental organizations, manufacturers, academia, health care providers and facilities, and local communities.

ESTIMATED ANNUALIZED BURDEN TABLE OVER THREE YEARS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Private sector companies, SLTT, Trade groups and associations, NGOs, Manufacturers, distributors, Academia, Healthcare delivery providers/facilities, Public, USG Supply chain inventory holders, Biopharmaceutical industry, Biotechnology development companies, Communities, GPOs, standards development organizations, logistics, third party contractors, purchasing organizations, professional associations/societies, Mixed cross-sector audience, labor unions, workforce training providers, organizations, state and local workforce boards, and individuals who rely on wearable medical countermeasures.	Informed consent	32,800	1	0.08	2,624
	Demographics standardized questionnaire with decision logic allowing some questions to be omitted.	32,800	1	0.25	8,200
	Cognitive questionnaire	5,990	1	8	47,920
	Formative interviews and focus groups.	6,600	2	4	52,800
	Town halls and public meetings	10,200	2	8	163,200
	Supply chain questionnaires	1,000	156	0.5	78,000
	Knowledge-based questionnaires	6,000	1	0.5	3,000
	Interviews and focus groups	3,000	1	1	3,000
	Instrumented information collection	160	1	0.5	80
Total Burden Hours Over Three Years					358,824

Catherine Howard,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary

[FR Doc. 2026–03919 Filed 2–26–26; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Avenir Award Program for Genetics or Epigenetics of Substance Use Disorders.

Date: March 31, 2026.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Gagan Deep Bajaj, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892, (301) 594–7377, *gagan.bajaj@nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: March 31, 2026.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Brittany I. Mason-Mah, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000A, Bethesda, MD 20892, (301) 594–3163, *masonmahbl@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cancer Immunology and Immunotherapy II.

Date: April 1, 2026.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Hasan Siddiqui, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20817, (301) 451–0395, *hasan.siddiqui@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Hepatology, Toxicology, and Xenobiotic Metabolism and Disposition.

Date: April 1, 2026.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Charlene J. Repique, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892, (301) 594–8858, *charlene.repique@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Projects: Cardiovascular Biology and Hematology.

Date: April 1, 2026.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Manoj Kumar Valiyaveettil, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892, (301) 402–1616, *manoj.valiyaveettil@nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Pathophysiology of Eye Disease—2 Study Section.

Date: April 1–2, 2026.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Barbara Susanne Mallon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–8992, *mallonb@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Medical Imaging Research.

Date: April 1, 2026.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Debanjan Goswami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Office 810–G, Bethesda, MD 20892, (301) 451–1587, *debanjan.goswami@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Maximizing Investigators' Research Award (R35).

Date: April 1–2, 2026.

Time: 9:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Mufeng Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 507–9155, *mufeng.li@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–25–447: NHLBI TOPMed—Omics Phenotypes of Heart, Lung, and Blood Disorders.

Date: April 1, 2026.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Dharmendar Rathore, MSC, BSC, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892 (301) 496–6431, *dharmendar.rathore@nih.gov*.

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group Molecular Neurogenetics Study Section.

Date: April 2–3, 2026.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Prithi Rajan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892, (301) 594–8206, *prithi.rajan@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 24, 2026.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–03913 Filed 2–26–26; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors of the NIH Clinical Center, March 16, 2026, 10:00 a.m. to March 17, 2026, 12:30 p.m., National Institutes of Health, Clinical Center, 10 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on January 12, 2026, 91 FR 1192.

This notice is being amended due to a change in Designated Federal Officer (DFO). Ms. Julie Goldberg will be the new DFO and point of contact for this meeting. The agenda will remain the same. This meeting is closed to the public.

Dated: February 24, 2026.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–03908 Filed 2–26–26; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Powered Gait Assistance Systems and Gait Assistance Systems and Methods of Control Thereof

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Clinical Center 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 patent applications listed in the Supplementary Information section of this notice to Bionic Power Inc., a company organized in British Columbia, Canada.

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 16, 2026 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated an Exclusive Patent License should be directed to: Edward Fenn, Senior Technology Transfer Manager, NCI Technology Transfer Center, Telephone: (240)–276–6833; Email *Tedd.Fenn@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

1. US Provisional Patent Application No. 62/368,926 filed July 29, 2016, and entitled ''Powered Gait Assistance Systems'' [HHS Reference No. E–096–2016–0–US–01];

2. International PCT Application No. PCT/US2017/044625 filed July 31, 2017, and entitled ''Powered Gait Assistance Systems'' [HHS Reference No. E–096–2016–0–PCT–02];

3. US Patent No. 11,801,153 issued 10/31/2023, and entitled ''Powered Gait Assistance Systems'' [HHS Reference No. E–096–2016–0–US–03];

4. US Patent Application No. 18/243,573, filed 9/7/2023, and entitled ''Powered Gait Assistance Systems'' [HHS Reference No. E–096–2016–0–US–04];

5. US Provisional Patent Application No. 63/539,898 filed September 22, 2023, and entitled ''Powered Gait Assistance Systems'' [HHS Reference No. E–241–2023–0–US–01];

6. International PCT Application No. PCT/US2024/047743 filed September 20, 2024, and entitled ''Powered Gait Assistance Systems'' [HHS Reference No. E–241–2023–PCT–02];

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 where patent rights exist and the field of use may be limited to the following:

''For the treatment of human movement disorders.''

The subject technologies relate to systems, methods, and devices for powered gait assistance—that may be integrated to comprise a wearable orthosis (for example a powered exoskeletal device) that attaches to the leg of a user who has a movement disorder, such as a gait disorder. The technologies can augment and provide assistance and training for improvements to walking. The system can detect movements, such as gait phases and adjust torque in real time to provide assistive torque during stance and resistive torque during training to improve strength and movement mechanics of the user. For example, it can provide assistance with gait movement for patients with knee extension deficits in conditions such as crouch gait in cerebral palsy, or spina bifida, stroke and other movement disorders).

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 25, 2026.

Richard U. Rodriguez,

Supervisory Technology Transfer and Patent Specialist, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2026–03994 Filed 2–26–26; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; A Generic Submission for Formative Research, Pilot Testing, Pretesting and Customer Satisfaction of NIH Communication and Education Resources (OD/OER)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the Office of Extramural Research (OER), in the Office of the Director (OD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

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: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Mikia P. Currie, Chief, Project Clearance Branch (PCB), Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 803–B, Bethesda, Maryland 20892 or call non-toll-free number (301) 435–0941 or Email your request, including your address to: *curriem@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on December 15, 2025, page 58023 (90 FR No.238) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The Office of Extramural Research (OER), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: A Generic Submission for Formative Research, Pilot Testing, Pretesting and Customer Satisfaction of NIH Communication and Education Resources (OD/OER), 0925–0046, Revision, exp., date 02/28/2026. Office of Extramural Research (OER), National Institutes of Health (NIH).

Need and Use of Information Collection: This information collection request is to approve a revision to the Generic Submission for Formative Research, Pilot Testing, Pretesting and Customer Satisfaction of NIH Communication and Education Resources. This clearance explores testing messages, forms, applications and materials to assess their potential effectiveness in reaching and communicating with their intended audience while they are still in the developmental stage. The formative research, pilot testing and pretesting process must ensure the relevance, utility, and appropriateness of the many mediums used for forms/applications, educational programs and products that the agency produces. Customer satisfaction studies help identify modifications necessary to meet the needs of various target audiences. Approval is requested for the conduct of multiple studies annually using such methods as interviews, focus groups, and various types of surveys, forms or applications. The content, timing, and respondents included in each sub-study will vary depending on the nature of the message/material/program being assessed, the methodology selected, and the target audiences.

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 13,500.

TABLE A.12–1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of espondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Focus Groups, Individual In-Depth Interviews, Brief Interviews, Surveys, Website Usability Testing, Applications, Forms.	Individuals (General Public).	9,000	1	45/60	6,750

TABLE A.12–1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondents	Number of espondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Focus Groups, Individual In-Depth Interviews, Brief Interviews, Surveys, Website Usability Testing, Applications, Forms.	Individuals (Health Care Professionals).	9,000	1	45/60	6,750
Totals			18,000		13,500

Dated: February 24, 2026.

Michelle Bulls,

Director, Office of Policy for Extramural Research Administration, OER, National Institutes of Health.

[FR Doc. 2026–03956 Filed 2–26–26; 8:45 am]

BILLING CODE 4140–01–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; Correction

AGENCY: National Institutes of Health, HHS.

ACTION: Notice; correction.

SUMMARY: The Department of Health and Human Services, National Institutes of Health published a Notice in the **Federal Register** on February 20, 2025. That notice requires a correction in the **SUMMARY** section.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 20, 2026, in FR Doc. 2026–03337, on page 8261, in the third column, the first sentence of the **SUMMARY** section is corrected to read: ''The Department of Health and Human Services, National Institutes of Health published a Notice in the **Federal Register** on February 13, 2025.''

Alycia Booth,

NIH Federal Register Certifying Official, National Institutes of Health.

[FR Doc. 2026–03978 Filed 2–26–26; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R5–MB–2025–1497; FXMB1231099BPP0–267–FF09M21200; OMB Control Number 1018–0195]

Agency Information Collection Activities; Northeast Region Hunter Participation Surveys

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), we, the U.S. Fish and Wildlife Service (Service), are proposing to revise a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before April 28, 2026.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (please reference Office of Management and Budget (OMB) Control No. 1018–0195 in the subject line of your comment):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2025–1497.
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320, all information collections require approval under the PRA. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again inviting the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire

comment—including your personal identifying information—may be publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Service has overall Federal responsibility for managing the Nation's fish and wildlife resources. One of the Service's priorities is to provide the public with wildlife-based outdoor recreation opportunities on National Wildlife Refuges, National Fish Hatcheries, and other Service lands (collectively, refuges). These outdoor recreation opportunities include hunting, which is an important opportunity for people to connect with nature, harvest food, and assist the Service in managing wildlife populations.

The National Wildlife Refuge System Administration Act, as amended by the National Wildlife Refuge System Improvement Act (the Act; 16 U.S.C. 668dd *et seq.*) stipulates that refuges undergo a comprehensive conservation planning process that, among other things, must look at the compatibility of wildlife-dependent recreation (including hunting) on refuges. We will use the information from the proposed survey effort to inform planning on refuges as mandated by the Act.

Hunting on refuges is regulated by both State and Federal laws, as well as through refuge-specific regulations. These refuge-specific regulations are made in accordance with hunt plans required to be developed for each refuge. These hunt plans outline refuge-specific bag limits, season dates, areas open and closed to hunting, allowed hunting time, and other requirements. The hunt plans are an important tool that refuges use to manage harvest, safety, and visitor experience.

Creating hunt plans relies on sound biological and social data. Understanding hunter experience, preference, and harvest helps refuge managers and planners tailor hunt plans to suit biological and visitor objectives and maintain a safe environment for hunters and non-hunting visitors.

To ensure the surveys were comprehensive, the Service convened an interdisciplinary team made up of biologists, managers, visitor services specialists, social scientists, and law enforcement officers. The team identified data gaps needed to inform future hunt plan development, identified safety concerns, and considered methods to better understand hunter preference in order to improve visitor experience.

Proposed Changes to the Survey Instruments

The Services proposes the following non-substantive changes to the existing information collections below:

1. Form 3–2557, ''*Hunter Satisfaction Survey*''—

a. Big game question 2ii—The question currently reads, ''What method (s) of take did you use?'' To minimize confusion to respondents, we propose to change that question to ''What method(s) of take did you use, regardless of whether you harvested an animal?''

b. Small game question 4—The question currently reads, ''What methods did you use to hunt *small game* on the refuge?'' To minimize confusion to respondents, we propose to change that question to ''What method(s) of take did you use to hunt *small game* on the refuge, regardless of whether you harvested an animal?''

2. Form 3–2558, ''*Spring Turkey Hunter Participation Survey*''—

a. Question 3 currently reads, ''What method of take did you use to hunt turkey during the previous *spring turkey* hunting season?'' To minimize confusion to respondents, we propose to change the question to ''What method of take did you use to hunt turkey during the previous *spring turkey* hunting season, regardless of whether you harvested an animal?''

The public may request copies of any form or document contained in this information collection by sending a request to the Service Information Collection Clearance Officer in **ADDRESSES**, above.

Title of Collection: Northeast Region Hunter Participation Surveys.

OMB Control Number: 1018–0195.

Form Numbers: Forms 3–2557 and 3–2558.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals.

Respondent's Obligation: Voluntary.

Total Estimated Number of Annual Respondents: 100.

Total Estimated Number of Annual Responses: 100.

Estimated Completion Time per Response: 20 minutes for Form 3–2557 and 10 minutes for Form 3–2558.

Total Estimated Number of Annual Burden Hours: 25.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2026–03946 Filed 2–26–26; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A2407–014–004–065516, #O2509–014–004–125222; LLAZP040000]

Notice of Intent To Amend the Resource Management Plan for the Sonoran Desert National Monument, Arizona, and Prepare an Associated Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Arizona State Director intends to prepare a Resource Management Plan (RMP) Amendment with an associated environmental assessment (EA) concerning recreational target shooting for the Sonoran Desert National Monument (SDNM). By this notice the BLM is announcing the beginning of the scoping period to solicit public comments and identify issues and is providing the planning criteria for public review.

DATES: The BLM requests that the public submit comments concerning the scope of the analysis, potential alternatives, planning criteria, and identification of relevant information, and studies by March 30, 2026. To afford the BLM the opportunity to consider issues, please ensure your comments are received prior to the close of the 30-day scoping period.

ADDRESSES: You may submit comments on issues and planning criteria related to the SDNM RMP amendment and EA addressing recreational target shooting availability in the monument by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/project/2039927/510.*
- *Email: BLM_AZ_SDNMtargetshooting@blm.gov.*
- *Mail:* BLM Sonoran Desert National Monument, Attn.: RMP Amendment, 2020 E Bell Road, Phoenix, AZ 85022.

Documents pertinent to this proposal may be examined online at *https://*

eplanning.blm.gov/eplanning-ui/project/2039927/510 and at the Phoenix District Office, 2020 East Bell Road, Phoenix, Arizona 85022.

FOR FURTHER INFORMATION CONTACT: Terrance Scott, Lower Sonoran Field Manager, telephone 602–867–5400; address 2020 East Bell Road, Phoenix, Arizona 85022; email *tscott@blm.gov.* Contact Mr. Scott to have your name added to our mailing list. 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 for contacting Mr. Scott. 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: This document provides notice that the BLM Arizona State Director intends to prepare and consider an RMP amendment with an associated EA for recreational target shooting availability in the SDNM, announces the beginning of the scoping process, and seeks public input on issues, preliminary alternatives, and planning criteria. The RMP amendment would change the dispersed recreational shooting allocations in the existing approved RMP amendment for the SDNM, as amended. Pursuant to the last RMP amendment, which occurred in 2024, dispersed recreational shooting is currently allowed on approximately 5,295 acres of the monument and is prohibited on approximately 480,496 acres of the monument.

The planning area is located in Maricopa and Pinal counties, Arizona, and encompasses approximately 486,400 acres of public land.

The scope of this land use planning process does not include addressing the evaluation or designation of Areas of Critical Environmental Concern (ACECs), and the BLM is not considering ACEC nominations as part of this process.

Purpose and Need

The purpose of the planning process is to consider allocations and management guidance concerning dispersed recreational shooting on public land within the SDNM, consistent with the SDNM proclamation (January 17, 2001) and other resource decisions in the 2012 SDNM Record of Decision and Approved RMP, as amended. The planning effort will review recreational shooting allocations following policy changes identified in Section 2(b) of Executive Order 14313, ''Establishing the President's Make America Beautiful Again Commission,'' which directed Federal land management agencies to ''expand access to public lands and waters for recreation, hunting, and fishing.''

Preliminary Alternatives

The RMP amendment process will consider whether and where recreational target shooting should be allowed in the SDNM, along with any associated management actions. Preliminary alternatives include the No Action alternative, which reflects the 2024 Decision Record and Approved RMP Amendment that identified approximately 5,295 acres of public land as available for dispersed recreational target shooting along with a monitoring and mitigation protocol to avoid or minimize impacts on monument objects while increasing public safety. The BLM welcomes comments on the preliminary No Action alternative as well as suggestions for additional alternatives.

Planning Criteria

The planning criteria guide the planning effort and lay the groundwork for effects analysis by identifying the preliminary issues and their analytical frameworks.

Preliminary issues for the planning area have been identified by BLM personnel and from early engagement conducted for this planning effort with Federal, State, and local agencies; Tribes; and other stakeholders. The BLM has identified four preliminary issues for this planning effort's analysis: (1) impacts on monument objects from recreational target shooting, (2) effectiveness of the mitigation and monitoring protocol in protecting monument objects, (3) public health and safety, and (4) impacts to recreational target shooting availability. The planning criteria are available for public review and comment at the National NEPA Register project website (see **ADDRESSES**).

Public Scoping Process

This notice of intent initiates the scoping period and public review of the planning criteria, which guide the development and analysis of the RMP amendment and EA.

The BLM does not intend to hold any public meetings, in-person or virtual, during the public scoping period. Should the BLM later determine to hold public meetings, the specific date(s) and location(s) of any meeting will be announced at least 15 days in advance through news release, social media, on the BLM National NEPA Register project web page and the *BLM.gov* website. You may submit comments to the BLM using one of the methods listed in the **ADDRESSES** section previously.

EXPLORE Act and Dingell Act Recreational Target Shooting Closures

If the BLM proposes recreational shooting closures as part of the RMP amendment process, it will comply with the requirements of Section 4103 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 (16 U.S.C. 7913) and Section 123 of the Expanding Public Lands Outdoor Recreation Experiences (EXPLORE) Act (16 U.S.C. 8423).

Interdisciplinary Team

The BLM will use an interdisciplinary approach to develop the RMP amendment to consider the variety of resource issues and concerns identified. Specialists with expertise in various disciplines, such as recreation management, National Conservation Lands, wildlife, vegetation, range management and soils, cultural and heritage resources, socioeconomics, planning and environmental coordination, and geographic information systems will be involved in this planning effort.

Additional Information

The BLM will utilize and coordinate the NEPA and land use planning processes for this planning effort to help support compliance with applicable procedural requirements under the Endangered Species Act (16 U.S.C. 1536) and section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including public involvement requirements of section 106. The information about historic and cultural resources and threatened and endangered species within the area potentially affected by the proposed RMP amendment will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM Manual Section 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with Indian Tribal Nations and other stakeholders that may be interested in or affected by the proposed RMP amendment that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or

be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 1610.2)

Raymond Suazo,

State Director.

[FR Doc. 2026–03912 Filed 2–26–26; 8:45 am]

BILLING CODE 4331–12–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–COMP–NPS0041983; OMB Control Number 1024–0279; PPWOCOPP0, PPMPSD1YM0000 (255)]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; National Park Service Lost and Found Report

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection without change.

DATES: Interested persons are invited to submit comments, which NPS must receive on or before March 30, 2026.

ADDRESSES: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *http://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 13461 Sunrise Valley Drive, (MS–263) Herndon, VA 20191 (mail); or *phadrea_ponds@nps.gov* (email). Please include ''1024–0279'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Marlene Haynes, Senior Property Manager Office of the Comptroller, National Park Service; or by email at *marlene_haynes@nps.gov;* or by telephone at 703–487–9311. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 15, 2025 (90 FR 39417). We did not receive any comments in response to that Notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Each year, over 7,000 visitors report lost or found items in the National Park System. According to 36 CFR 2.22, ''Disposition of Property,'' unattended property is considered abandoned if not claimed within 60 days. This period begins when the owner is notified, or when the item is placed in custody if the owner is unknown.

Unclaimed property must be stored for at least 60 days. If unclaimed, the finder (if not an NPS employee) may claim it. Otherwise, it will be disposed of according to federal regulations.

To comply with 36 CFR 2.22, Form 10–166, ''Lost—Found Report,'' is used to identify and return lost items to their rightful owners. The form collects necessary information from the reporting visitor. NPS Form 10–166 collects the following information from the visitor filing the report: (1) Park name, receiving station (if appropriate), and date item was lost or found, (2) Name, address, city, state, zip code, email address, and contact phone numbers, (3) Type of item, detailed description of item, and location where the item was last seen or found and (4) Photograph of item (if available).

Title of Collection: National Park Service Lost and Found Report.

OMB Control Number: 1024–0279.

Form Number: NPS Form 10–166 ''Lost—Found Report.''

Type of Review: Extension of a currently approved collection.

Description of Respondents: Visitors of NPS units who file reports of lost or found items.

Total Estimated Number of Annual Respondents: 7,500.

Total Estimated Number of Annual Responses: 7,500.

Estimated Completion Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 625 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Non Hour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2026–03920 Filed 2–26–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2025–0681]

Notice of Intent To Prepare a Programmatic Environmental Impact Statement for Proposed Oil and Gas Lease Sales in the Northern, Central, and Southern California Program Areas

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of intent to prepare a programmatic environmental impact statement; request for comments.

SUMMARY: Consistent with the U.S. Department of the Interior (Department or DOI) regulations and handbook implementing the National Environmental Policy Act (NEPA), the Bureau of Ocean Energy Management (BOEM) announces its intent to prepare a programmatic environmental impact statement (PEIS) (Unique Identification Number DOI–BOEM–PC–2026–0001–EIS) for proposed oil and gas lease sales in the Northern, Central, and Southern California Program Areas (California Oil and Gas PEIS). This notice of intent (NOI) serves to announce the scoping process BOEM will use to identify significant issues and potential alternatives for consideration in the California Oil and Gas PEIS. On November 20, 2025, DOI published the first of three proposals during the development of the 11th National Outer Continental Shelf (OCS) Oil and Gas Leasing Program (11th National Program). The Secretary's Draft Proposed Program for the 11th National Program includes one proposed lease sale in the Northern California Program Area, two proposed lease sales in the Central California Program Area, and three proposed lease sales in the Southern California Program Area. Because the first California lease sale is tentatively scheduled to occur near the beginning of the 11th National Program and given the long lead time needed to prepare for a proposed sale, BOEM must initiate the lease sale planning process and prepare the PEIS simultaneously with the development of the 11th National Program.

DATES: BOEM will consider comments from all interested parties including Federal, State and local governments, and the general public, may submit written comments by March 30, 2026.

ADDRESSES: Information regarding the scoping process for the PEIS is available on the BOEM website at: *https://www.boem.gov/CA-OGPEIS.*

Written comments can be submitted through the *regulations.gov* web portal: Navigate to *https://www.regulations.gov* and search for Docket BOEM–2025–0681, or ''Pacific Region Outer Continental Shelf (OCS) Oil and Gas Programmatic Environmental Impact Statement, California Program Areas'', and click on the ''Comment'' button. Enter your information and comment, and then click ''Submit.''

FOR FURTHER INFORMATION CONTACT: For information on the California Oil and Gas PEIS, the submission of comments, or BOEM's policies associated with this notice, please contact Susan Zaleski, Acting Regional Supervisor, Office of Environment, BOEM, Pacific OCS Region, 760 Paseo Camarillo, Suite 102, Camarillo, CA 93010, (805) 384–6328 or *susan.zaleski@boem.gov.*

SUPPLEMENTARY INFORMATION: The proposed lease sale areas in the Draft Proposed Program include all available OCS blocks in the Northern, Central, and Southern California Program Areas. The Northern, Central, and Southern California Program Areas are located offshore of the State of California and consist of 11,876 whole and partial lease blocks covering roughly 26.2 million hectares (approximately 65 million acres) of the Pacific Ocean. On January 27, 2026, the Calls for Information and Nominations (Call) for the proposed lease sales offshore Southern California (91 FR 3537) and Central California (91 FR 3534) were published in the **Federal Register**. Information regarding the Calls, including maps of the proposed Program Areas, are available on the BOEM website at: *https://www.boem.gov/California-oil-and-gas-leasing.*

Purpose and Need for the Proposed Action:

The purpose of the Proposed Action is to provide access to OCS lease blocks that may contain economically recoverable oil and gas reserves. After additional reviews and authorizations, the Proposed Action would facilitate potential exploration, development and production on the leased blocks. A lease sale would provide a bidding opportunity to obtain a lease with conditional rights to explore, develop, and produce oil and natural gas.

The need for the Proposed Action is to further the orderly development of OCS oil and gas resources in accordance with the Outer Continental Shelf Lands Act of 1953 (OCSLA), as amended (43 United States Code [U.S.C.] 1331 *et seq.*). A proposed OCS lease sale offshore California may lead to oil and gas exploration, development, and production. Oil and gas from the California OCS could help meet national energy needs, in accordance with Executive Order (E.O.) 14154, *Unleashing American Energy* (January 20, 2025) and E.O. 14156, *Declaring a National Energy Emergency* (January 20, 2025).

Proposed Action and Preliminary Alternatives

The Proposed Action (Alternative A) evaluated in this PEIS (Unique Identification Number DOI–BOEM–PC–2026–0001–EIS) is to hold an oil and gas lease sale on the OCS offshore California offering all lease blocks for the three California Program Areas. The analysis will cover leasing and steps through exploratory drilling. The PEIS will also address at a high-level the effects from reasonably foreseeable development and production activities. This PEIS is expected to be used to inform the decision for the first California lease sale proposed in the 11th National Program. It also is expected to be used, and supplemented as appropriate, for individual decisions on future proposed California lease sales. BOEM will have more specific information at the Development and Production Plan stage and will also conduct an Environmental Impact Statement at that stage, should any leases reach development and the lessees submit one or more plans.

In this PEIS, BOEM expects to consider two alternatives to the Proposed Action: Alternative B, the No Action Alternative and Alternative C, an Existing Infrastructure lease sale. Alternative B (No Action) is the cancellation of a single proposed California lease sale.

Alternative C (Existing Infrastructure). Under Alternative C, a California lease sale would include only lease blocks that could be developed from existing infrastructure. The only existing infrastructure offshore California is in the Southern California Program Area, where oil and gas activities have been permitted since the 1920's. There have been over 1,650 exploratory and development wells drilled in the Southern California Program Area as a result of leasing from past OCS programs.

Under this Alternative, the lease sale area would be reduced to an area expected to result in the leases that could be issued near or adjacent to existing infrastructure, allowing lessees to use existing infrastructure to develop nearby newly leased fields. Under Alternative C, the lease sale area would be within a reasonable range of the existing infrastructure in the Southern California Program Area, and while there would be additional wells expected, other infrastructure could be tied into existing offshore infrastructure (*e.g.,* pipelines for transport to shore and for processing), likely reducing the need for new infrastructure in state submerged waters or to reach the coast for onshore transport and processing.

Summary of Potential Impacts

Potential impacts to resources may include adverse or beneficial impacts on air quality; water quality; vegetation and wetlands; benthic communities and habitats; fishes and invertebrates; marine and coastal birds; marine mammals; terrestrial mammals; economic factors; and cultural, historical, and archaeological resources. These potential impacts will be analyzed in the California Oil and Gas PEIS.

Based on a preliminary evaluation of these resources, BOEM expects potential impacts on the resources listed above from routine air emissions, discharges and wastes, bottom disturbance, noise, coastal land use or modification, lighting and visual impacts, offshore habitat modification or space use, and socioeconomic changes. Additional impacts may occur from accidental events, such as unintentional releases into the environment, response activities, or strikes and collisions.

In accordance with the Department's NEPA implementing regulations and handbook, BOEM does not plan to issue a draft PEIS for public comment and will not hold any public meetings. Public comments on preparation of the California Oil and Gas PEIS will be accepted during the 30-day scoping comment period. After the California Oil and Gas PEIS is completed, BOEM will make the PEIS available on its website and the U.S. Environmental Protection Agency will publish a notice of availability. If the 11th National Program includes Northern, Central, or Southern California lease sales and, at the conclusion of the lease sale process the Secretary or their designee decides to hold a sale, a Record of Decision and Final Notice of Sale will be issued at least 30 days prior to each California lease sale.

Scoping Process

This NOI does not announce a decision to hold a lease sale, but serves to commence the information gathering process for identifying issues and potential alternatives for consideration in the California Oil and Gas PEIS. Comments received during the scoping period will inform the scope and content of the California Oil and Gas PEIS. Throughout the scoping process, Federal, Tribal, State, and local governments, and the general public have the opportunity to provide input to BOEM in determining significant resources, issues, impacting factors, reasonable alternatives, and potential mitigation measures to be analyzed in the PEIS, and to provide additional information. BOEM will consider alternatives, exclusion, and/or mitigation suggestions identified during the comment period initiated by this NOI in the preparation of the PEIS. BOEM will also use the NEPA comment process to seek public involvement and to initiate, as warranted, the Section 106 consultation process under the National Historic Preservation Act (NHPA) (54 U.S.C. 300101 *et seq.*), as provided for in 36 CFR 800.2(d)(3). As part of its compliance with NHPA Section 106 and its implementing regulations (36 CFR part 800), BOEM seeks comment and input from the public and consulting parties regarding the identification of historic properties and potential effects within the Program Areas.

Cooperating Agencies

BOEM, as the lead agency, invites qualified government entities, such as Federally Recognized Tribes, other Federal agencies, and State, and local governments, to consider becoming cooperating agencies for the preparation of the California Lease Sale PEIS. Following the guidelines in Section 1.7 of the DOI NEPA Handbook and DOI's NEPA implementing regulations at 43 CFR part 46, qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process. Upon request, BOEM will provide potential cooperating agencies with a written summary of guidelines for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and availability of pre-decisional information. BOEM anticipates this summary will form the basis for a Memorandum of Understanding between BOEM and any cooperating agency. BOEM, as the lead agency, will not provide financial assistance to cooperating agencies. For additional information about cooperating agencies, please contact Susan Zaleski, Acting Regional Supervisor, Office of Environment, BOEM (805) 384–6328 or *susan.zaleski@boem.gov.*

Request for Comments

All interested parties, including Federal, State, and local governments, and the general public, may submit written comments on the scope of the California Oil and Gas PEIS, significant issues, reasonable alternatives, potential mitigation measures, and the types of oil and gas activities of interest in the proposed lease sale areas. Federally recognized tribal nations wishing to comment may choose when and how to convey their input, including through the comment process described here, and they may also choose to request government-to-government consultation.

Comments that you submit in response to this NOI are a matter of public record. You should be aware that your entire comment—including your address, phone number, email address, or other personally identifiable information included in your comment—may be made publicly available at any time. Even if BOEM withholds your personally identifiable information in the context of this NOI, your comment is subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552). Your information will only be withheld if a determination is made that one of the FOIA exemptions to disclosure applies. Such a determination will be made in accordance with the Department's FOIA implementing regulations (43 CFR part 2) and applicable laws.

In order for BOEM to consider withholding from disclosure your

personally identifiable information, you must identify, in a cover letter, any information contained in the submittal of your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. Note that BOEM will make available for public inspection, in their entirety, all comments submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

Authority: This NOI is published pursuant to DOI's regulations (43 CFR part 46) implementing the procedural provisions of NEPA, as amended (42 U.S.C. 4321 *et seq.*).

Matthew Giacona,

Acting Director, Bureau of Ocean Energy Management.

[FR Doc. 2026–03973 Filed 2–26–26; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain In-Vehicle Infotainment Systems, Components Thereof, and Products Containing the Same, DN 3886;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (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 United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.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 has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Zync Inc. on February 24, 2026. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain in-vehicle infotainment systems, components thereof, and products containing the same. The complaint names as a respondents: Bayerische Motoren Werke AG of Germany; and BMW of North America, LLC of Woodcliff Lake, New Jersey. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j)

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3886'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 24, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–03928 Filed 2–26–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1132 and 1134 (Third Review) and 701–TA–415 and 731–TA–933–934 (Fourth Review)]

Polyethylene Terephthalate (PET) Film, Sheet, and Strip From China, India, Taiwan, and United Arab Emirates; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty orders on polyethylene terephthalate film, sheet, and strip (''PET film'') from China, India, Taiwan, and the United Arab Emirates and the countervailing duty order on PET film from India would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: December 22, 2025.

FOR FURTHER INFORMATION CONTACT: Charles Cummings (202–708–1666), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 22, 2025, the Commission determined that the domestic interested party group response to its notice of institution (90 FR 36188, August 1, 2025) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate with respect to each subject country. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act (19 U.S.C. 1675(c)(3)).[2]

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record and will be made available to persons on the Administrative Protective Order service list for these reviews on February 20, 2026. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before February 26, 2026, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by February 26, 2026. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] Commissioner David S. Johanson voted to conduct full reviews.

[3] The Commission has found the responses submitted on behalf of Mitsubishi Chemical America, Inc.—Polyester Film Division; Microworks America, Inc.; Polyplex USA LLC; Polyplex Corporation, Ltd.; and Terphane, Inc. to be individually adequate. The Commission also found the response submitted on behalf of and DNP Imagingcomm America Corporation to be individually adequate with respect to the antidumping duty order on China. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

Issued: February 24, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–03911 Filed 2–26–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation. No. 337–TA–1485]

Certain Beverage Brewing Products and Components Thereof; Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 23, 2026, under section 337 of the Tariff Act of 1930 on behalf of Adrian Rivera Maynez Enterprises, Inc. of La Mirada, California. An amended complaint was filed on February 3, 2026. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain beverage brewing products and components thereof by reason of the infringement of certain claims of U.S. Patent No. 12,396,588 (''the '588 patent''); U.S. Patent No. 11,737,597 (''the '597 patent''); and U.S. Patent No. 10,865,039 (''the '039 patent''). The amended complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist order.

ADDRESSES: The amended complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Orndoff, The Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2026).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on February 24, 2026, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–4 and 7–10 of the '588 patent; claims 1–5 and 29–33 of the '597 patent; and claim 1 of the '039 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''beverage brewing capsules and filters for single-serve beverage brewers'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) *The complainant is:* Adrian Rivera Maynez Enterprises, Inc., 16141 Heron Ave., La Mirada, CA 90638.

(b) *The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:* Denys Orlov d/b/a GoodCups, 2710 Alpine Blvd., Unit K, Alpine, CA 91901.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: February 24, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–03924 Filed 2–26–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–787–788 and 731–TA–1775–1776 (Preliminary)]

Large Diameter Graphite Electrodes From China and India; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–787–788 and 731–TA–1775–1776 (Preliminary) pursuant to the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of large diameter graphite electrodes from China and India, provided for in statistical reporting

number 8545.11.0020 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of China and India. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by April 10, 2026. The Commission's views must be transmitted to Commerce within five business days thereafter, or by April 17, 2026.

DATES: February 24, 2026.

FOR FURTHER INFORMATION CONTACT: Camille Bryan (202–205–2811), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on February 24, 2026, by Resonac Graphite America Inc., Ridgeville, South Carolina; and Tokai Carbon GE LLC, Charlotte, North Carolina.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. 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 duty 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 these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.— The Office of Investigations will hold a staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on Tuesday, March 17, 2026. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before noon on Friday, March 13, 2026. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation, including guidance for requests to appear as a witness via videoconference, will be available on the Commission's Public Calendar (Calendar (USITC) | United States International Trade Commission). A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before 5:15 p.m. on March 20, 2026, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than 4:00 p.m. on March 16, 2026. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: February 25, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–03954 Filed 2–26–26; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0039]

Intertek Testing Services NA, Inc.: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of Intertek Testing Services NA, Inc., for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before March 16, 2026.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2007–0039). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before March 16, 2026 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–1911 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that Intertek Testing Services NA, Inc. (ITSNA), is applying for an expansion of current recognition as a NRTL. ITSNA requests the addition of one test site to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including ITSNA, which details that NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

ITSNA currently has thirty-four facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: Intertek Testing Services NA, Inc., 545 East Algonquin Road, Suite F, Arlington Heights, Illinois 60005, USA. A complete list of ITSNA sites recognized by OSHA is available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

II. General Background on the Application

ITSNA submitted an application, dated February 14, 2024 (OSHA–2007–0039–0071), to expand recognition as a NRTL to include one additional test site located at: Intertek Testing Services (Singapore) Pte Ltd., No. 5 Pereira Road, #06–01 Asiawide Industrial Building, Singapore 368025. OSHA staff performed an on-site review of ITSNA's testing facility at ITSNA Singapore on February 20–21, 2025, in which assessors found some nonconformances with the requirements of 29 CFR 1910.7. ITSNA has addressed these issues sufficiently, and OSHA staff has preliminarily determined that OSHA should grant the application.

III. Preliminary Finding on the Application

ITSNA submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file and pertinent documentation preliminarily indicates that ITSNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include one additional test site for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of ITSNA's application.

OSHA seeks public comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether ITSNA meets the requirements of 29 CFR 1910.7 for

expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibit identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2007–0039 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant ITSNA's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

IV. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 7–2025 (90 FR 27878; June 30, 2025), and 29 CFR 1910.7.

Signed at Washington, DC, on February 12, 2026.

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026–03964 Filed 2–26–26; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–010; NRC–2026–1090]

Constellation Energy Generation, LLC; Dresden Nuclear Power Station, Unit 1; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC, or Commission) has issued an exemption in response to a request from Constellation Energy Generation, LLC, to allow the completion of decommissioning beyond 60 years of permanent cessation of operations for the Dresden Nuclear Power Station, Unit 1.

DATES: The exemption was issued on February 19, 2026.

ADDRESSES: Please refer to Docket ID NRC–2026–1090 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–2026–1090. 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.
- *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: Tanya E. Hood, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1387; email: *Tanya.Hood@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: February 25, 2026.

For the Nuclear Regulatory Commission.

Tanya Hood,

Project Manager, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

Docket No. 50–010; Constellation Energy Generation, LLC; Dresden Nuclear Power Station, Unit 1; Exemption

I. Background

By letter dated March 14, 2024 (Agencywide Documents Access and Management System Accession No. ML24074A437), as supplemented by letters dated July 22, 2024, July 31, 2024, and December 5, 2024 (ML24204A219, ML24213A313, and ML24340A271 respectively), Constellation Energy Generation, LLC (the licensee) submitted a request for an alternative decommissioning schedule for Dresden Nuclear Power Station, Unit 1 (Dresden Unit 1) that would allow the completion of decommissioning for Dresden Unit 1 in conjunction with the decommissioning of Dresden's operating units, Units 2 and 3, thereby extending decommissioning beyond 60 years of permanent cessation of operations.

The Dresden Nuclear Power Station is in Grundy County, IL and is composed of three reactor licenses: Dresden Unit 1 (License No. DPR–2), which is presently in a long-term storage condition for a permanently shut down nuclear power plant, referred to as SAFSTOR and is the subject of this request, along with Dresden Unit 2 (DPR–19) and Dresden Unit 3 (DPR–25), which are actively operating. Dresden Unit 1 is licensed pursuant to Section 104(b) of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Paragraph 50.82(a)(2) to possess but not operate the facility.

Dresden Unit 1 was a boiling water reactor that permanently ceased operations on October 31, 1978. In October 1984, a decision was made to decommission Dresden Unit 1 and a chemical decontamination of the primary system was completed. On July 23, 1986, the U.S. Nuclear Regulatory Commission (NRC or Commission) issued a license amendment to alter the Dresden Unit 1 operating license to possession only status. Between 1986 and 2006, various decommissioning activities were performed at Dresden Unit 1, including the transfer of the spent fuel to the onsite independent spent fuel storage installation (ISFSI); the September 1993 approval of the decommissioning plan (ML20057A646); the

May 1998, submission by the Commonwealth Edison Company of the Dresden Post-Shutdown Decommissioning Activities Report (PSDAR) to the NRC (ML20248H086); and the revision of the Decommissioning Program Plan to the current Defueled Safety Analysis Report (DSAR) format. Since that time, Dresden Unit 1 has been monitored and controlled in SAFSTOR in accordance with the Facility Operating License, Technical Specifications as amended, and Decommissioning Plan.

II. Request/Action

The regulation at 10 CFR 50.82(a)(3) requires power reactor licensees to complete decommissioning within 60 years of permanent cessation of operations. The regulation provides that completion of decommissioning beyond 60 years will be considered by the Commission only when necessary to protect public health and safety, with site-specific factors considered when reviewing such requests, including the presence of other nuclear facilities at the site.

The licensee requested an alternative to the 60 year decommissioning schedule requirements in 10 CFR 50.82(a)(3) to decommission Dresden Unit 1 to coincide with the eventual decommissioning of Dresden Units 2 and 3. The licensee stated its alternative request ''meets the evaluation factors in 10 CFR 50.82(a)(3) due to the potential impact on public health and safety with other nuclear facilities present at the site'' and that ''[t]here are site-specific factors, supporting the operation of Dresden Units, 2 and 3, that necessitate decommissioning of Dresden, Unit 1, beyond 60 years of permanent cessation of operations to best protect public health and safety.''

On September 30, 2025, the NRC issued subsequent renewed facility operating licenses for Dresden Units 2 and 3 (ML25233A275), which included the expiration dates of December 22, 2049, and January 12, 2051, respectively. The licensee is requesting extension of Dresden Unit 1 decommissioning completion and license termination to be concurrent with that of Dresden Units 2 and 3.

III. Discussion

Under 10 CFR 50.82(a)(3), the Commission will approve an alternative that provides for completion of decommissioning beyond 60 years of permanent cessation of operations only when necessary to protect public health and safety. In evaluating whether an alternative is necessary, the regulations provide that the Commission will consider factors such as unavailability of waste disposal capacity; or other site-specific factors affecting the licensee's capability to carry out decommissioning, including presence of other nuclear facilities at the site. Prior to this request for an alternative decommissioning schedule, Dresden Unit 1, was required to complete decommissioning by October 31, 2038.

The NRC staff's approach in evaluating the 10 CFR 50.82(a)(3) criteria is documented, in part, in SECY–24–0073, ''Site-Specific Considerations for Review of Requests to Complete Power Reactor Decommissioning Beyond 60 Years from Permanent Cessation of Operations,'' dated September 3, 2024 (ML24100A760). As explained in more detail below, the NRC has determined that the licensee has met the ''only when necessary to protect public health and safety'' criterion because the licensee demonstrated that Dresden Unit 1 decommissioning activities could result in site-specific impacts on public health and safety due to the increased risk to structures, systems, and components (SSCs) supporting the adjacent operating Dresden Units 2 and 3 and the associated security measures.

Presence of Other Nuclear Facilities

The licensee's request for an alternative decommissioning schedule was based on the potential impacts to public health and safety from decommissioning Dresden Unit 1, while there are two other operating nuclear facilities at the site. Specifically, the licensee noted that the proximity and interconnectivity of Dresden Unit 1 to the operating Units, Dresden Units 2 and 3, pose unique challenges to decommissioning Unit 1 while the remaining units continue to operate.

In support of its exemption request, the licensee noted that Dresden Unit 1 is structurally connected to Dresden Units 2 and 3. To complete decommissioning of Dresden Unit 1, several large components of Dresden Unit 1, including the reactor vessel, supporting reactor coolant systems, and steam supply systems, must be removed and shipped for disposal. Removal of these large components from Dresden Unit 1 while Dresden Units 2 and 3 continue to operate would be particularly challenging given the proximity and shared structures between Dresden Unit 1 and the operating units, Dresden Units 2 and 3. In support of its exemption request, the licensee noted that removal of the remaining large components and conducting other decommissioning activities at Dresden Unit 1 while Units 2 and 3 continue to operate would require the structural separation of the Main Control Room and Turbine Building to permit demolition of the Dresden Unit 1 Turbine Building structure. The licensee's assessment determined that attempting to separate the structures was prohibitive as the Main Control Room resides in both Dresden Unit 1 and Dresden Unit 2 Turbine Buildings, rendering the Dresden Unit 1 Turbine Building necessary to support safe operation of Units 2 and 3.

The licensee also indicated that the operating Dresden Units 2 and 3, have underground cable tunnels that are in close proximity to the Dresden Unit 1 containment structure. These various buried power and mechanical systems within the previous operating area of Dresden Unit 1, create site characteristics not normally encountered during decommissioning activities. In this instance, the close proximity of the underground cable tunnels to the Dresden Unit 1 buildings that would be decommissioned would require relocation. Physical relocation of these systems would require new robust structures, installation of redundant equipment, and space outside of Dresden Unit 1 operating areas being decommissioned.

Additionally, the licensee notes that the entire site containing Dresden Units 1, 2, and 3, along with the associated ISFSI, are within a common site Protected Area under the site Physical Security Plan, which meets the physical protection requirements of 10 CFR part 73 for operating power reactors. Generally, as power reactors begin decommissioning, the sites transition to security plans meeting 10 CFR part 72 for ISFSIs and 10 CFR part 37 for security of radioactive materials. However, the licensee states that under both SAFSTOR and during dismantlement of Dresden Unit 1, due to the physical site characteristics, implementation of 10 CFR part 37 and 72 security plans for Dresden Unit 1 would not be feasible given the proximity and interconnectivity of Dresden Unit 1 to Dresden Units 2 and 3. These unique physical site characteristics make isolating areas of Dresden Unit 1 for decommissioning, and for implementation of a 10 CFR part 72 and Part 37 security plan for Dresden Unit 1, impractical. Therefore, according to the licensee, and consistent with the licensee's current decommissioning strategy as stated in the Dresden Unit 1 PSDAR, delaying the decommissioning of Dresden Unit 1 to coincide with shutdown of Dresden Units 2 and 3 would permit the implementation of a 10 CFR part 72 and Part 37 site-wide Physical Security Plan during decommissioning where common decommissioning techniques would be utilized across all units to provide for safe and efficient conduct of decommissioning operations.

In evaluating this information, the NRC staff has determined that the interconnectivity and proximity of Dresden Unit 1 to the operating Dresden Units 2 and 3, as well as the need to maintain a combined site Physical Security Plan that encompasses all the Units, are site specific factors that affect the licensee's capability to safely carry out decommissioning of Dresden Unit 1 while Dresden Units 2 and 3 continue to operate. Therefore, the presence of the operating Dresden Units 2 and 3 at the site, supports an alternative decommissioning schedule for Dresden Unit 1, pursuant to 50.82(a)(3).

Capacity and Capability of the Power Systems

The licensee raised concerns with potential impacts to the electric power systems and the mechanical systems if Dresden Unit 1 were required to be decommissioned on the original 60-year schedule. According to the licensee, the potential damage to a station blackout (SBO) cable tunnel could result in loss of the SBO function to one or both of the operating Units for an extended duration. The licensee explained that, although probability can be reduced through mitigation, the consequence of this risk represents an increased risk to protect public health and safety. The licensee stated that loss of the Dresden Units 2 and 3 SBO function would result in reduced defense-in-depth for the mitigation capability of the site during a loss of offsite power transient. Given the location of the SBO cable tunnel to Dresden Unit 1, common decommissioning techniques such as structure/site wide

electrical isolation, structure/site wide support system isolation (*e.g.,* air, water, fire suppression), heavy equipment demolition and heavy equipment excavation, could not be executed due to the risk of damaging the SBO cable tunnel during decommissioning of Dresden Unit 1, which could negatively impact the operation of Dresden Units 2 and 3.

According to the licensee, decommissioning of Dresden Unit 1 would also require relocation of 4 kilovolt and 480 volt buses and distribution lines throughout the Dresden Unit 1 Turbine Building because this distribution system supports Dresden Units 2 and 3 SBO equipment and provides industrial power to a large portion of the site. Physical relocation would require new robust structures, installation of redundant equipment, and space outside of Dresden Unit 1 operating areas being decommissioned. To mitigate potential effects of demolition activities such as impacting sensitive equipment within proximity of, and inadvertent damage to electric power or mechanical systems not isolated, detailed isolation and demolition plans would be required. The licensee indicated that this would involve assessing the status of each mechanical and electrical component by area to ensure decommissioning activities do not adversely affect operation of Dresden Units 2 and 3, or personal safety of individuals executing decommissioning activities.

Based on this information, the NRC staff has determined that decommissioning Dresden Unit 1 would impact the capacity and capability of the electric power or mechanical systems of the operating Dresden Units 2 and 3. Therefore, the NRC staff finds that the capacity and capability of the power systems at the Dresden Nuclear Power Station is a factor that, in combination with other factors discussed above, supports an alternative decommissioning schedule pursuant to 50.82(a)(3).

IV. Environmental Review Under the National Environmental Policy Act

The NRC staff has determined that the proposed exemption can be categorically excluded under 10 CFR 51.22(c)(25) from NRC requirements under the National Environmental Policy Act to conduct an environmental assessment or an environmental impact statement. The categorical exclusion in 10 CFR 51.22(c)(25) states that the granting of an exemption from the requirements of any NRC regulation may be categorically excluded as long as the conditions of 10 CFR 51.22(c)(25)(i)–(vi) are met.

In this instance, the NRC staff determined all the conditions of 10 CFR 51.22(c)(25)(i)–(v) have been satisfied. Approving this exemption would not: result in conditions that could significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident; result in a significant change in the types or a significant increase in the amounts of any effluents that may be released offsite; result in increases to public and occupational radiation exposure; result in a significant construction impact; or result in a significant increase in the potential for or consequences from radiological accidents. Approval in this instance only continues the current status and activities at the facility. During the duration of the decommissioning delay, the licensee will maintain Dresden Unit 1 in SAFSTOR condition in accordance with the Updated Final Safety Analysis Report, technical specifications, and licensee procedures for Dresden Unit 1. The licensee will continue ongoing monitoring activities, such as capturing any identified degradations in structural inspection reports and the Corrective Action Program for resolution.

Finally, the NRC staff has determined that the request satisfies 10 CFR 51.22(c)(25)(vi) because the exemption applies to the following specific activities associated with Dresden Unit 1 that support the continued maintenance of Dresden Unit 1 in SAFSTOR into the period approved in the alternative decommissioning schedule: (A) recordkeeping requirements; (B) reporting requirements; (C) inspection and surveillance requirements; (D) equipment servicing or maintenance scheduling requirements; (F) safeguard plans, and materials control and accounting inventory scheduling requirements; and (G) scheduling requirements.

Based on the above assessment, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's consideration of this exemption request.

VII. Conclusions

For the reasons described above, the NRC concludes that, pursuant to 10 CFR 50.82(a)(3), there are site-specific factors affecting the licensee's capability to carry out decommissioning at Dresden Unit 1 because of the presence of the operating units at the site such that an alternative decommissioning schedule is necessary to protect public health and safety. The NRC's determination is based on the multiple connections that exist between Dresden Unit 1 and the operating units, Dresden Units 2 and 3, and the associated site-wide security measures. Therefore, the NRC grants Constellation Energy Generation, LLC, a one-time exemption from 10 CFR 50.82(a)(3) to allow the licensee an alternative decommissioning schedule that requires the decommissioning of Dresden Unit 1, 20 years after the permanent cessation of operations of either Dresden Units 2 or 3, whichever is earlier, and in no case beyond 2071. With this approval, the licensee's SAFSTOR program will continue for the extended period of decommissioning and the licensee should update its program accordingly. For the period beyond 60 years, the NRC will continue its inspection of the SAFSTOR program as outlined in the Updated Final Safety Analysis Report, technical specifications, and licensee procedures.

The exemption will be effective upon issuance.

Dated: this 19th day of February 2026.

For the Nuclear Regulatory Commission.

/RA/

Jane Marshall,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2026–03957 Filed 2–26–26; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2025–1998]

Revision of the NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision to policy statement.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing a revision to its Enforcement Policy (Policy) to incorporate multiple changes approved by the Commission.

DATES: This revision is effective on February 27, 2026. The NRC is not soliciting comments on this revision to its Policy at this time.

ADDRESSES: Please refer to Docket ID NRC–2025–1998 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:* Electronically at *https://www.regulations.gov.* Search for Docket ID NRC–2025–1998. Address questions about NRC dockets to Helen Chang; telephone: 301–415–3228; email: *Helen.Chang@nrc.gov*.
- *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.*
- *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, Monday through Friday, except Federal holidays. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is

mentioned in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Gerry Gulla, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–287–9143, email: *Gerald.Gulla@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The mission of the NRC is to protect public health and safety and advance the nation's common defense and security by enabling the safe and secure use and deployment of civilian nuclear energy technologies and radioactive materials through efficient and reliable licensing, oversight, and regulation for the benefit of society and the environment. The NRC supports this mission through its use of its Enforcement Policy (Policy). Adequate protection is presumptively assured by compliance with the NRC's regulations, and the Policy contains the basic procedures used to assess and disposition apparent violations of the NRC's requirements.

The NRC initially published the Policy in the **Federal Register** on October 7, 1980 (45 FR 66754). Since its initial publication, the Policy has been revised on a number of occasions to address changing requirements and lessons learned. The most recent Policy revision is dated January 13, 2023. That revision incorporated changes to the monetary amounts listed in Section 8.0, ''Table of Base Civil Penalties.'' This revision meets the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Improvements Act), which requires Federal agencies to adjust their civil monetary penalties annually for inflation no later than January 15 of each year.

This current revision to the Policy is a staff initiative to incorporate lessons learned along with miscellaneous clarifications and additions. These revisions include clarifying and relocating the current Policy on lost or missing sources to a new separate section; removing the significance determination process qualitative color descriptions; revising guidance on miscellaneous actions involving individuals; adding a new section for independent spent fuel storage installations; revising several severity level violation examples, including examples for import/export activities, licensed reactor operators, materials operations, and fuel cycle operations; and sunsetting Interim Enforcement Policy 9.2, ''Enforcement Discretion for Permanent Implant Brachytherapy Medical Event Reporting (10 CFR 35.3045),'' for permanent implant brachytherapy medical reporting requirements.

The NRC provided an opportunity for the public to comment on these Policy revisions in a document published in the **Federal Register** on December 3, 2020, (85 FR 78046). The NRC received multiple comments from Enercon Talisman, the Nuclear Energy Institute, and Louisiana Energy Services, LLC. These comments and the disposition of them are included in enclosure 1. The revision to the Policy and enclosures is available in ADAMS under Accession Numbers:

Memo: ML22318A123
Enclosure 1: ML22318A130
Enclosure 2: ML22318A132
Enclosure 3: ML22318A138
Enclosure 4: ML23038A220

II. Paperwork Reduction Act Statement

This policy statement does not contain any new or amended collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget (OMB), approval numbers 3150–0010 and 3150–0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

III. Congressional Review Act

This action is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has determined that it is not a ''major rule'' as defined by the Congressional Review Act.

Dated: February 24, 2026.

For the Nuclear Regulatory Commission.

Michael King,

Executive Director for Operations.

[FR Doc. 2026–03929 Filed 2–26–26; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2026–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of March 2, 9 16, 23, and 30 and April 6, 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 and closed.

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 March 2, 2026

Tuesday, March 3, 2026

10:00 a.m. Briefing on NRC International Activities (Closed Ex. 1 and 9)

Wednesday, March 4, 2026

9:45 a.m. Affirmation Session (Public Meeting) (Tentative)

(a) Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2); Appeal of LBP–24–7 (Tentative)

(b) Florida Power & Light Company (Turkey Point Nuclear Generating Units 3 and 4), Petition for Review of LBP–24–8 (Tentative)

(c) Notice and Order for Global Laser Enrichment, LLC Paducah Laser Enrichment Facility (Tentative)

(d) Freedom of Information Act Implementing Regulations (Tentative)

(e) Entergy Nuclear Operation, Inc., Entergy Nuclear Palisades, LLC, Holtec International, and Holtec Decommissioning International, LLC-Applicants' Motion to Dismiss the Contention as Moot and to Terminate the Proceeding (Tentative)

(Contact: Wesley Held: 301–287–3591)

Additional Information: The public is invited to observe the Commission's

meeting live by webcast at the Web address—*https://video.nrc.gov/*.

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.

Week of March 30, 2026—Tentative

There are no meetings scheduled for the week of March 30, 2026.

Week of April 6, 2026—Tentative

There are no meetings scheduled for the week of April 6, 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 25, 2026.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2026–03998 Filed 2–25–26; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–616 and 50–617; NRC–2026–0265]

SMR, LLC; Pioneer Units 1 and 2; Phased Construction Permit Application—Limited Work Authorization

AGENCY: Nuclear Regulatory Commission.

ACTION: Acceptance for docketing; opportunity to request a hearing and petition for leave to intervene; request for comment; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has accepted for review and docketed the first part of a phased construction permit (CP) application, including a limited work authorization (LWA) request, submitted by SMR, LLC (SMR), a Holtec International Company, for a dual-unit SMR–300 plant located at the Palisades Energy Center (PEC) in Covert, Michigan. The units are individually named Pioneer Unit 1 and Pioneer Unit 2. In addition, the NRC is providing notice that an uncontested hearing will be held on SMR's application at a time and place to be set in the future by the presiding officer for the uncontested hearing. This notice also provides the public with an opportunity to request a hearing and petition for leave to intervene (*i.e.,* contested hearing) with respect to that application. If the NRC issues an LWA, the applicant, SMR, would be authorized to conduct certain early construction activities of a dual-unit SMR–300 plant at the PEC site. Because the application contains Sensitive Unclassified Non-Safeguards Information (SUNSI), this notice includes an order that imposes procedures to obtain access to SUNSI for contention preparation.

DATES: A request for a hearing or petition for leave to intervene must be filed by April 28, 2026. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by March 9, 2026.

ADDRESSES: Please refer to Docket ID NRC–2026–0265 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–2026–0265. 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 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.* Part 1 of the Pioneer Units 1 and 2 phased construction permit application, including the Limited Work Authorization request, is available in ADAMS under Package Accession No. ML25365A983.
- *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.
- *NRC's Public Website:* Part 1 of the phased construction permit application, including the Limited Work Authorization request, is available under the NRC's Pioneer Units 1 and 2 Limited Work Authorization Application public website *https://www.nrc.gov/reactors/new-reactors/advanced/who-were-working-with/applicant-projects/pioneer.*

FOR FURTHER INFORMATION CONTACT: Victoria Huckabay, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5183; email: *Victoria.Huckabay@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

On December 31, 2025, SMR, on behalf of Palisades SMR, LLC, filed with the NRC the first part (Part 1) of a phased CP application for a utilization facility pursuant to Section 103 of the Atomic Energy Act and title 10 of the *Code Federal Regulations* (10 CFR) part 50, ''Domestic Licensing of Production and Utilization Facilities.'' Part 1 of the application includes a limited work authorization request pursuant to 10 CFR 50.10(d), ''Request for limited work authorization''; three exemption requests; and a comprehensive environmental report. The submittal is the first part of a CP application for a dual-unit SMR–300 nuclear power plant, consisting of two individual SMR–300 small modular reactors individually named Pioneer 1 and Pioneer 2, respectively, at the PEC in Covert, Michigan. SMR plans to submit Part 2 the phased CP application no later than 18 months after this Part 1 submittal. Consistent with the Atomic Energy Act of 1954, as amended, and NRC regulations, the NRC is not publishing a notice of opportunity for hearing on the exemption requests.

A notice of receipt and availability of this application was previously published in the **Federal Register** on January 22, 2026 (91 FR 2803). In accordance with the requirements of 10 CFR 50.43(a)(3), additional notices of receipt and availability are planned to be published for four consecutive weeks.

The NRC staff has determined that Part 1 of SMR's phased CP application, including the LWA request, is acceptable for docketing in accordance

with 10 CFR 2.101(a) and 10 CFR part 50, and assigned docket numbers ''50–616'' and ''50–617'' for Pioneer Units 1 and 2, respectively. The NRC staff provided SMR notice of the staff's determination that Part 1 of the phased CP application was acceptable for docketing by letter dated February 13, 2026 (ADAMS Accession No. ML26041A223).

The NRC staff will perform a detailed technical review of Part 1 of the phased CP application and document its safety and environmental findings in a safety evaluation report and an environmental document, respectively. As Part 1 of the phased CP application for the proposed Pioneer Units 1 and 2 contains a comprehensive Environmental Report, the staff's environmental review will address the environmental impacts associated with the LWA activities (including the requested exemptions), the remainder of construction to complete the plant, and plant operations.

Docketing of the application does not preclude the NRC staff from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The Commission will conduct a hearing in accordance with Subpart L, ''Simplified Hearing Procedures for NRC Adjudications,'' of 10 CFR part 2. Only after competition of the staff's safety and environmental reviews, and if the Commission finds that the application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that required notifications to other agencies and bodies have been made, the Commission will issue an LWA, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

II. Hearing

Pursuant to the Atomic Energy Act of 1954, as amended, 10 CFR part 2, ''Agency Rules of Practice and Procedure,'' and 10 CFR part 50, notice is hereby given that an uncontested (*i.e.,* mandatory) hearing will be held, at a time and place to be set in the future by the presiding officer for the uncontested hearing.

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. A hearing, if requested, will relate only to matters related to 10 CFR 50.33(a) through (f), and the issues under review for Part 1 of the phased CP application.

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 60-day 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).

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 at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.*

IV. Opportunity To Comment

The NRC staff requests comments on Part 1 of the phased construction permit application, including the limited work authorization request, from Federal, State, and local agencies and interested persons, consistent with 10 CFR 2.643. Comments should be submitted by April 28, 2026, as described in the **ADDRESSES** section of this document.

V. Electronic Submissions (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'' (ADAMS Accession No. 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 (*https://www.nrc.gov/site-help/e-submittals/getting-started.html*). After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website (*https://www.nrc.gov/site-help/electronic-sub-ref-mat*). 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 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 (*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 on the NRC's public website (*https://adams.nrc.gov/ehd*), unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets 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.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non- Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing or opportunity for hearing, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order,[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or

(c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: February 25, 2026.

For the Nuclear Regulatory Commission.

Carrie Safford,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing or opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: (i) supporting the standing of a potential party identified by name and address; and (ii) describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (*i.e.,* preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Agreement or Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement or Affidavit for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to SUNSI (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Agreements or Affidavits. Access provided to SUNSI consistent with decision issuing the Protective Order.
A + 28 ..	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or notice of opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53 ..	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60 ..	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2026–03943 Filed 2–26–26; 8:45 am]

BILLING CODE 7590–01–P

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012; 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0237, Information and Instructions on Your Reconsideration Rights, RI 38–47

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an expiring information collection request (ICR), Information and Instruction on Your Reconsideration Rights, RI 38–47.

DATES: Comments are encouraged and will be accepted until April 28, 2026.

ADDRESSES: You may submit comments using the Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–BD, Washington, DC 20415, Attention: Cyrus S. Benson, or by email to *RSPublicationsTeam@opm.gov.*

SUPPLEMENTARY INFORMATION: RI 38–47 outlines the procedures required to request reconsideration of an initial OPM decision about Civil Service or Federal Employees retirement, Federal or Retired Federal Employees Health Benefits requests to enroll or change enrollment, or Federal Employees' Group Life Insurance coverage. This form lists the procedures and time periods required for requesting reconsideration.

As required by the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35), OPM is soliciting comments for this collection (OMB No. 3206–0237). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Information and Instruction on Your Reconsideration Rights.

OMB: 3206–0237.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 3,100.

Estimated Time per Respondent: 45 minutes.

Total Burden Hours: 2,325 hours.

Office of Personnel Management.

Alexys Stanley,

Federal Register Liaison.

[FR Doc. 2026–03997 Filed 2–26–26; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2024–488; CP2024–703; MC2026–165 and K2026–165]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 3, 2026.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Public Proceeding(s)
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I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests. The comment due date discussed below does not apply to Section III proceedings (Docket Nos. MC2026–165 and K2026–165).

II. Public Proceeding(s)

1. *Docket No(s).:* CP2024–488; *Filing Title:* USPS Request Concerning Amendment One to Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 201, with Materials Filed Under Seal; *Filing Acceptance Date:* February 23, 2026; *Filing Authority:* 39 CFR 3035.105 and 39 CFR 3041.505; *Public Representative:* Kenneth Moeller; *Comments Due:* March 3, 2026.

2. *Docket No(s).:* CP2024–703; *Filing Title:* USPS Request Concerning Amendment One to Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 348, with Materials Filed Under Seal; *Filing Acceptance Date:* February 23, 2026; *Filing Authority:* 39 CFR 3035.105 and 39 CFR 3041.505; *Public Representative:* Christopher Mohr; *Comments Due:* March 3, 2026.

III. Summary Proceeding(s)

1. *Docket No(s).:* MC2026–165 and K2026–165; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 939, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 23, 2026; Filing Authority: 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

This Notice will be published in the **Federal Register**.

Danielle LeFlore,

Alternate Federal Register Liaison.

[FR Doc. 2026–03922 Filed 2–26–26; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104882; File No. SR–OCC–2026–001]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change by The Options Clearing Corporation Concerning a Change in Types of Acceptable Collateral and an Update To Mitigate Wrong-Way Risk

February 24, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 12, 2026, The Options Clearing Corporation (''OCC'' or ''Corporation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change would discontinue two underutilized collater [sic] types and update OCC's rules to mitigate wrong-way risk. As the sole clearing agency for standardized equity options listed on national securities exchanges registered with the SEC, and with respect to the other products it clears, OCC is exposed to certain risks, including credit risk arising from its relationships with the Clearing Members for which OCC becomes the buyer to every seller and the seller to ever buyer with respect to listed options. In order to manage counterparty credit risk and mitigate related systemic risks, OCC requires Clearing Members to collateralize financial obligations that result from maintaining options, futures and stock loan positions at OCC.

OCC maintains policies filed with the Commission as OCC rules that are designed to address such credit risk, including the Collateral Risk Management (''CRM'') Policy. The CRM Policy identifies OCC's approach for managing the risks associated with accepting collateral deposits.[3] Specifically, the CRM Policy sets the governance processes for establishing and maintaining standards used to determine acceptable forms of collateral, as well as the methodology for establishing the valuation practices, including applicable haircuts and concentration limits to effectively manage OCC's credit exposure.[4] In addition, the CRM Policy describes the requirements for periodically evaluating the forms of accepted collateral and the ongoing adequacy of the valuation processes.[5]

Consistent with regulatory obligations,[6] OCC and its Board reviews these risk management policies at least annually. Through these annual reviews, OCC has identified certain changes to: (i) discontinue two underutilized collateral types, and (ii) update OCC's rules design to mitigate wrong-way risk. In connection with these changes, OCC also proposes to reorganize and restate OCC Rule 604 (Form of Margin Assets) to improve its clarity and concision.[7] Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[8] and Rule 19b–4 thereunder,[9] OCC is filing with Commission a proposed rule change to make those changes.

Proposed changes to OCC's By-Laws and Rules are included in Exhibits 5A and 5B to File No. SR–OCC–2026–001, respectively. Proposed changes to OCC's CRM Policy, Default Management Policy, Liquidity Risk Management Framework (''LRMF''), Margin Policy, Recovery and Orderly Wind-Down (''RWD'') Plan, Risk Management Framework, and STANS Methodology Description (collectively, the ''Policies'') are included in confidential Exhibits 5C, 5D, 5E, 5F, 5G, 5H, and 5I to File No. SR–OCC–2026–001. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] S*ee* Exchange Act Release No. 82311 (Dec. 13, 2017), 82 FR 60252, 60252–53 (Dec. 19, 2017) (SR–OCC–2017–008).

[4] *See id.*

[5] *See id.* at 60253.

[6] *See* 17 CFR 240.17Ad–22(e)(3)(i) (requiring, among other things, that a covered clearing agency subject its risk management policies, procedures and systems to review on a specified periodic basis and approval by the board of directors annually).

[7] *See https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf#page=59.* OCC's full By-Laws and Rules can also be found on OCC's public website: *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 240.19b–4.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OCC proposes to make the following changes to its By-Laws, Rules, and Policies:

a. Discontinue Underutilized Collateral Types

Due to underutilization, OCC is discontinuing letters of credit [10] and GSE debt securities [11] as acceptable collateral types under OCC's rules. Utilization of these collateral types has historically been low relative to other eligible collateral types. Since 2023, when OCC modified its rules concerning its acceptance of letters of credit and the valuation of GSE debt securities,[12] OCC has observed a decline in utilization of these collateral types. For instance, no Clearing Member has pledged GSE debt securities as margin collateral since July 11, 2023. From July 3, 2023 through June 30, 2024, use of letters of credit decreased by 78% (from $115 million to $25 million), with the remaining amount comprised of a single letter of credit for a single Clearing Member.[13] Currently, no letters of credit remain on deposit.

Continuing to maintain support for these underutilized collateral types would impose burdens on OCC and its Clearing Members, including the cost associated with ongoing risk monitoring and reviews of OCC's procedures related to these collateral types, as well as the costs of maintaining systems to facilitate OCC's acceptance of these collateral types. For example, if OCC were to continue to accept this collateral, OCC and its Clearing Members would need to test the functionality to support these collateral types in the new clearance and settlement system, Ovation, that OCC has been developing to replace its current system, Encore. In light of the decline in utilization, OCC does not believe these costs are justified. Accordingly, OCC determined to phase out these collateral types. On December 19, 2024, OCC issued an Information Memo [14] announcing that OCC had determined to disallow letters of credit and GSE debt securities by exercising its discretion under I&P .06 to Rule 604 [15] to withdraw its approval for the institutions approved as letter of credit issuers and disapproving GSE debt securities as acceptable collateral under I&P .15 to Rule 604.[16] As the next phase, this proposed rule change would remove these collateral types from OCC's rules as follows.

First, OCC would remove those provisions of the By-Laws and Rules that govern the acceptance and valuation of these collateral types. Specifically, OCC would delete Rule 604(b)(2) (GSE Debt Securities) and Rule 604(c) (Letters of Credit) in their entirety. OCC would also amend Rule 604(g) and (e) (renumbered as proposed Rules 604C(a) and (b), respectively), which concerns OCC's valuation of Government securities and GSE debt securities, to remove reference to GSE debt securities. OCC would make the same change to I&P .17 to Rule 604, which concerns the manner in which Clearing Members may deposit Government securities and GSE debt securities. OCC would also delete I&Ps .01 through .06 and .09 through .10 to Rule 604, each of which concerns standards for letters of credit issuers or limitations on the acceptance of letters of credit. Remaining provisions of Rule 604 would be renumbered as discussed below in connection with the reorganization and restatement of Rule 604. OCC would also make the following amendments to other By-Laws and Rules:

- Rule 101 (Definitions) would be amended to remove the definition for the term ''Restricted Letter of Credit.''
- Rule 705 (Forms of Margin) would be amended to delete reference to GSE debt securities and letters of credit as acceptable forms of margin in X–M accounts.
- Rule 1104 (Creation of Liquidating Settlement Account) would be amended to remove provisions in paragraphs (a) and (d) related to the contribution of funds received from a letter of credit issuer in the event of a Clearing Member default.
- By-Law Article I (definitions) would be amended to remove the definition for the term ''GSE debt securities'' and renumber other definitions accordingly.
- By-Law Article VI, Section 27 (Close-Out Netting) would be amended to delete reference to letters of credit as margin assets and provisions related thereto in paragraphs (f) and (h).

OCC would also amend the CRM Policy to remove provisions related to letters of credit and GSE debt securities. Specifically, OCC would:

- Delete a paragraph specific to how OCC manages the counterparty credit risk presented by letter of credit issuers.
- Delete a sentence in the discussion of how OCC manages sovereign credit risk specific to a foreign-based entity approved to issue letters of credit.
- Delete three sentences in the discussion of how OCC manages concentration risk specific to letters of credit.
- Delete a reference to ''government sponsored entity securities'' in the discussion of how OCC applies collateral haircuts to certain collateral, including Government securities and GSE debt securities.

OCC would also make conforming amendments to other rules that reference letters of credit and/or GSE debt securities. Specifically, OCC would:

- Delete a reference to letters of credit in the Default Management Policy's discussion of how OCC would transfer the proceeds from any demand of payment on a letter of credit to the appropriate liquidity settlement account in the event of a Clearing Member's default.
- Delete letters of credit and GSE debt securities from the LRMF's list of other liquidity resources that may be used to address foreseeable liquidity shortfalls

[10] OCC Rule 604(c) currently allows Clearing Members to deposit letters of credit issued by a bank or trust company approved by OCC for that purpose subject to certain criteria identified therein and the Interpretations and Policies (''I&Ps'') to Rule 604.

[11] OCC's By-Laws define ''GSE debt securities'' to mean such debt securities issued by Congressionally chartered corporations as the Risk Committee may from time to time approve for deposit as margin. OCC's acceptance of GSE debt securities as collateral is governed by Rule 604(b)(2) and the I&Ps to Rule 604.

[12] *See* Exchange Act Release No. 98101 (August 10, 2023), 88 FR 55775 (Aug. 16, 2023) (SR–OCC–2022–012).

[13] OCC has communicated this proposed change with that member. Discontinuing letters of credit is not expected to have a material impact on that Clearing Member.

[14] OCC Information Memo #55740 (Dec. 19, 2024), *available at https://infomemo.theocc.com/infomemos?number=55740.*

[15] OCC Rule 604, I&P .06 (''[OCC] reserves the right in its sole discretion to refuse or revoke approval of any institution as an issuer of letters of credit at any time.'').

[16] OCC Rule 604, I&P .15 (''[OCC] may in its discretion determine that a security which meets the criteria listed in Rule 604(b) is nevertheless disapproved as margin collateral with respect to all accounts of all Clearing Members, and therefore not grant margin credit, based on such factors as (i) trade volume, (ii) number of outstanding shareholders, (iii) number of outstanding shares, (iv) volatility and liquidity and (v) any other factors the Corporation determines are relevant.'')

that would not be covered by OCC's committed resources and help OCC seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations in the event of the default of the Clearing Member who deposited them.

OCC would also make conforming amendments to its RWD Plan to delete references to remove descriptions related to letters of credit and/or GSE debt securities. Specifically, OCC would:

- Delete letters of credit and GSE debt securities from a description of the collateral accepted through cross-margin arrangements.
- Delete a description of OCC's external interconnection with letter of credit banks.
- Delete a reference to letters of credit as one of the types of banking relations for which OCC maintains tools to address credit risks resulting from bank failures.
- Delete a reference to GSE debt securities as among the collateral OCC may pledge to the syndicated bank credit facility that OCC maintains as a source of committed liquidity to meet settlement obligations as a central counterparty.

b. Wrong-Way Risk Updates

With respect to the collateral that Clearing Members pledge to satisfy margin requirements, ''wrong-way risk'' is the risk that the value of the collateral is positively correlated with the creditworthiness of the Clearing Member.[17] OCC manages such wrong-way risk by (1) limiting the valuation of collateral that would likely lose value in the event that the Clearing Member providing the collateral defaults, and (2) prohibiting participants from receiving value for depositing their own, or an affiliate's, debt or equity securities as collateral.[18]

OCC is proposing changes to address the wrong-way risk related to a Clearing Member's cleared positions in exchange traded products (''ETPs'')[19] that hold spot cryptocurrency[20] for which the Clearing Member serves as the custodian of the fund's cryptocurrency holdings.[21] Under OCC's existing Margin Policy, OCC applies a SWWR Add-on based on the assumption that, when a Clearing Member defaults, the value of any equity security issued by the Clearing Member or its affiliates would fall to zero. OCC proposes to amend the Margin Policy to extend this approach to a Clearing Member's positions in spot cryptocurrency fund shares for which the Clearing Member or its affiliates serve as the custodian of the fund's cryptocurrency holdings (*e.g.,* all fund shares, call options and put options would be valued at zero). OCC believes that extending the SWWR Add-on to spot cryptocurrency ETPs when the Clearing Member is affiliated with the custodian of such ETP is appropriate given the unique custody risks associated with cryptocurrencies. For example, a cybersecurity event affecting a Clearing Member and its affiliates may result in the theft or loss of the cryptocurrency and a potential decline in the value of the ETP at the same time that the Clearing Member may default on obligations to OCC. OCC does not expect this change to have any impact on existing Clearing Members, only one of whom has an affiliate that is a trust custodian for a spot cryptocurrency ETP.

c. Rule 604 Restatement

In addition to the substantive changes to OCC's By-Laws, Rules and Procedures discussed above, OCC also proposes to reorganize and restate Rule 604 to provide a clearer and more transparent presentation of the details. In particular, OCC proposes to (i) subdivide Rule 604 into three parts—Rule 604A, Rule 604B, and Rule 604C—to align with the three topics currently addressed by Rule 604, namely (A) the form of margin collateral that OCC accepts, (B) how OCC holds and invests such collateral, and (C) how OCC values the collateral; (ii), to incorporate those of the eighteen existing I&Ps that remain after the deletions specific to letters of credit, discussed above, into the relevant text of Rules 604A through 604C, so that the provisions applicable to a particular type collateral are consolidated within the Rules governing these three topics, and (iii) make other textual edits to improve clarity without changing the meaning of the existing rules, including the following types of changes:

- Dividing lengthy paragraphs into subdivisions organized logically by topic, as discussed in connection with the reorganization discussed below.
- Adding titles to paragraphs, as appropriate, to improve clarity and organization.
- Restate provisions in the active voice.[22]
- Restate provisions using plain language (*e.g.,* replacing ''shall'' with ''must,'' ''will,'' ''is'' or ''may,'' as the context dictates, and otherwise eliminating formal legal phrases).[23]
- Renumbering cross-references to other Rules or I&Ps, consistent with the proposed reorganization and restatement.

i. Rule 604A (Form of Margin Assets)

Proposed Rule 604A would capture the existing requirements for eligible collateral, other than GSE debt securities and letters of credit, currently captured in Rule 604(a) (Cash) and Rule

[17] Separately, OCC has established a margin add-on charge, the Specific Wrong-Way Risk (''SWWR'') Add-on, to address specific wrong-way risk related to a Clearing Member's positions in cleared contracts related to securities, including index-linked securities, issued by that Clearing Member or its affiliates. *See* Exchange Act Release No. 87718 (Dec. 11, 2019), 84 FR 68992 (Dec. 17, 2019) (SR–OCC–2019–010). SWWR is the risk that a clearing agency's exposure to a participant is highly likely to increase when the creditworthiness of that participant is deteriorating. *See* Exchange Act Release No. 78961 (Sept. 29, 2016), 81 FR 70786, 70816 n.317 (Oct. 13, 2016) (S7–03–14).

[18] Notwithstanding this prohibition, securities of participants can be used to hedge options positions on such securities. *See* OCC Rule 604, I&P .16. In that event, OCC systematically limits the number of shares the Clearing Member is allowed to deposit to the delta offset. *See infra* note 19.

[19] OCC's By-Laws define ''fund share'' to mean a publicly traded security, as defined in Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10), that represents an interest in a trust, investment company, commodity pool, or similar entity holding and/or trading in one or more investments and, where the investments are commodities, that is subject to any applicable advisory exemption or other relief or guidance issued by the CFTC. As such, the definition encompasses ETPs.

[20] On January 10, 2024, the Commission approved proposed rule changes filed by several national securities exchanges to list spot bitcoin-based, commodity-based ETPs. *See* Exchange Act Release No. 99306 (Jan 10, 2024), 89 FR 3008 (Jan. 17, 2024) (SR–NYSEARCA–2021–90, et al.). This proposed rule change would apply to those fund shares and any other commodity-based ETPs holding cryptocurrency that are subsequently approved or listed.

[21] Under I&P .15 and .16 to current Rule 604, OCC already limits such ETPs as collateral to the amount that is risk reducing for activity in cleared positions. *See* OCC Information Memo #54918 (July 22, 2024), *available at https://infomemo.theocc.com/infomemos?number=54918.* Such cleared positions include both stock borrow positions and options positions following the Commission's approval of proposed rule changes filed by national securities exchanges to permit the listing and trading of options on such fund shares. *See, e.g.,* Exchange Act Release No. 101128 (Sept. 20, 2024), 89 FR 78942 (Sept. 26, 2024) (SR–ISE–2024–03). OCC began clearing options on such fund shares after staff of the CFTC's Division of Clearing and Risk issued a staff advisory regarding the clearing of options on spot commodity-based ETPs. *See* Staff Advisory Relating to the Clearing of Options on Spot Commodity Exchange Traded Funds (ETFs), CFTC Letter No. 24–16 (Nov. 15, 2024), *available at https://www.cftc.gov/csl/24-16/download.*

[22] *See* Exhibit 5B, proposed Rules 604A(b)(2)(D), 604A(b)(4)(D), 604A(b)(4)(F), 604A(b)(5), 604B(b)(1), 604B(c)(1), 604B(c)(2), 604B(d)(1), 604B(d)(2), 604B(d)(3), 604B(e), 604B(f)(1), 604B(g)(1), Rule 604C(b), Rule 604C(c).

[23] *See* Exhibit 5B, proposes Rules 604A(b)(2)(B), 604A(b)(2)(C), 604A(b)(3)(A), 604A(b)(3)(B)(ii), 604A(b)(4)(D), 604A(b)(4)(E), 604A(b)(4)(F), 604A(b)(5), Rule 604B(a), 604B(b)(1), 604B(b)(2)(A), 604B(b)(3), 604B(b)(4), 604B(c)(1), 604B(c)(3). 604B(d)(2), 604B(d)(3), 604B(d)(4), 604B(e), 604B(f)(1), 604B(f)(2), 604B(g)(1), 604B(g)(2), 604C(a), 604C(e).

604(b) (Securities) and certain interpretations and policies that address OCC's authority to disapprove otherwise eligible collateral or accept collateral that does not meet the minimum requirements. Specifically, the first sentence of Rule 604(a), which provides that Clearing Members may deposit U.S. dollars in accordance with procedures acceptable to OCC, would be renumbered Rule 604A(a) and amended to provide that such deposits may be made ''[t]o satisfy margin requirements.'' The same amendment would be added to the beginning of each provision that introduces an acceptable type of margin collateral.[24] As so amended, the introductory paragraph to existing Rule 604 would no longer be necessary and would therefore be deleted.[25] Other provisions of current Rule 604(a) would be relocated to proposed Rule 604B (Holding and Investing Margin Assets), as discussed below.

Current Rule 604(b), which concerns the deposit of securities to satisfy margin requirements, would be renumbered Rule 604A(b). The first sentence of current Rule 604(b)(1), which concerns the deposit of Government securities, would become Rule 604A(b)(1). Other provisions of current Rule 604(b) would be relocated to Rule 604B, as discussed below. Current Rule 604(b)(4)(i), which concerns the deposit of stocks, would be renumbered Rule 604A(b)(2). The existing definition of ''stocks'' as applicable to Rule 604, which includes ETPs (*i.e.,* ''fund shares'') [26] and exchange traded notes (''ETNs'' or ''index-linked securities'') [27] as those terms are defined in Article I of OCC's By-Laws, would be relocated from Rule 604(b)(4)(iii) to the introductory paragraph of proposed Rule 604A(b)(2).[28] The term ''stock'' would be used throughout the remainder of the proposed rule, rather than ''common stock,'' except where the provision applies specifically to a particular type of stock, such as a fund share or index-linked security. In addition, OCC would subdivide other relevant provisions of Rule 604(b)(4)(i) [29] into items (A), (B) and (D), which would provide that:

(A) A stock must be a ''covered security'' within the meaning of Section 18(b)(1) of the Securities Act of 1933 [30] (*i.e.,* authorized for listing on a national securities exchange);

(B) A stock that is neither an underlying security nor a fund share that has as its reference index an index that underlies any cleared contract must have a market value of at least $3 per share, as determined by the Corporation, subject to OCC's right to waive the minimum value requirement; [31] and

(D) A Clearing Member may not deposit a stock that is suspended from trading by the market that listed or qualified the stock for trading because of volatility, lack of liquidity, or similar characteristics, subject to OCC's discretion in cases where markets do not take the same action with respect to the stock.

OCC would also relocate the second sentence of current Rule 604(b)(4)(iii), which provides that fund shares and index-linked securities must be of a class approved by the Corporation for deposit as margin, as proposed Rule 604(b)(4)(C). As reorganized, OCC would further amend the provision to remove unnecessary and redundant reference to the other requirements Rule 604(b)(4). Current Rule 604(b)(4)(ii), which concerns the manner of depositing securities, requirements for securities depositories, as defined below, and the Clearing Member's interest in any dividends or gains received on stocks deposited as margin, would be relocated to proposed Rule 604B, as discussed below.

Current I&Ps .15 and .16 to Rule 604, which address the circumstances in which OCC may disapprove securities that otherwise meet the requirements of Rule 604, would be relocated to proposed Rule 604A(b)(3). Proposed Rule 604A(b)(3)(A) would relocate I&P .15, which concerns the factors OCC may use in exercising its authority to disapprove a security as margin collateral with respect to all accounts of all Clearing Members, and therefore not grant margin credit. Proposed Rule 604A(b)(3)(B) would relocate the provisions related to disapproval of securities as margin collateral for a particular Clearing Member found in I&P .16 current to Rule 604. That Rule would be further subdivided into sections addressing (i) disapproval with respect to some or all of the shares of a stock to address concentration risk, and (ii) disapproval with respect to stocks issued by such Clearing Member or an affiliate of such Clearing Member to address wrong-way risk. The final sentence of I&P .16 to current Rule 604, which provides an exception for securities disapproved under this Rule to the extent they hedge cleared contracts held in the same account, would be relocated to proposed Rule 604A(b)(3)(C).

Current Rule 604(b)(3) (Money Market Fund Shares or ''MMF Shares''), would be relocated to proposed Rule 604A(b)(4).[32] An introductory paragraph would be added that authorizes Clearing Members to deposit MMF shares to satisfy margin requirements if such MMF Shares satisfy the requirements found in existing items (i) through (v), which would be renumbered as Items A through F.[33] In addition, the provision regarding limits to address wrong-way risk (current Rule 604(b)(3)(iii)/proposed Rule 604A(b)(4)(D)) would be restated to conform the language to other provisions regarding wrong-way risk in Rule 604A.

Finally, I&P .13 to current Rule 604 would be relocated to propose Rule 604A(b)(5). That provision would address OCC's authority to accept securities deposited by Clearing Members that do not satisfy the requirements of propose Rule 604A and that such securities and any securities that cease to meet the requirements of Rule 604A will be subject to OCC's lien and other rights under the Rule and By-Laws, but that they will be valued at zero for margin purposes unless and

[24] *See* Exhibit 5B, Proposed Rules 604A(b)(1) (Government Securities); 604A(b)(2) (Stocks); 604A(b)(4) (Money Market Fund Shares).

[25] For the same reason, OCC proposes to delete the introductory paragraph to current Rule 604(b).

[26] OCC's By-Laws define ''fund share'' to mean a publicly traded security, as defined in Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10), that represents an interest in a trust, investment company, commodity pool, or similar entity holding and/or trading in one or more investments and, where the investments are commodities, that is subject to any applicable advisory exemption or other relief or guidance issued by the CFTC. As such, the definition encompasses ETPs.

[27] OCC By-Laws define ''index-linked security'' to mean a debt security listed on a national securities exchange, the payment upon maturity of which is based in whole or in part upon the performance of an index or indexes of equity securities or futures contracts, one or more physical commodities, currencies or debt securities, or a combination of any of the foregoing. As such, the definition encompasses ETNs.

[28] For the avoidance of doubt, ''includes'' as used in this definition means ''includes, but is not limited.'' The definition is meant to indicate that fund shares and index-linked securities are included within the meaning of ''stock.'' However, per proposed Rule 604A(b)(2)(A), ''stock'' also includes any covered security within the meaning of Section 18(b)(1) of the Securities Act of 1933.

[29] The penultimate sentence of current Rule 604(b)(4)(i) would be deleted as redundant of proposed Rule 604B(b), which relocates the third sentence of current Rule 604(d). The final sentence of current Rule 604(b)(4)(i) would be relocated to proposed Rule 604C, as discussed below.

[30] *See* 17 U.S.C. 77r(b)(1).

[31] *See* Exchange Act Release No. 61006 (Nov. 16, 2009), 74 FR 61182 (Nov. 23, 2009) (SR–OCC–2009–15) (establishing a minimum value requirement for collateral other than ''Options-Related Stocks,'' which are already subject to minimum requirements by virtue of OCC's agreements with and the rules of the options exchanges).

[32] No MMF Shares are currently deposited as collateral, and additional changes to the Rules are contemplated before MMF Shares could be accepted. OCC is not seeking to pursue such changes at this time. The proposed changes are merely to restate the existing requirements consistent with the broader reorganization of exiting Rule 604.

[33] The last two sentences of current Rule 604(b)(3)(i) would be reorganized into its own item (B) of Rule 604A(b)(4).

until such securities meet such requirements.

ii. Rule 604B (Holding and Investing Margin Assets)

Proposed Rule 604B would relocate existing provisions of Rule 604 and its interpretations and policies that specify a Clearing Member's property interest in margin assets, the manner in which margin assets must be deposited by a Clearing Member and held by OCC, the Clearing Member's rights to gains received in respect of the margin deposits, and OCC's current authority to invest margin cash in Government securities for its own account. Specifically, Rule 604B(a) (Clearing Member Funds) would relocate the first sentence of existing Rule 604(d), which concerns a Clearing Member's property interest in margin assets.

Proposed Rule 604B(b) would aggregate existing requirements related to the deposit of margin, including (1) the manner in which Clearing Members must deposit margin assets and (2) the manner in which the Corporation will hold such funds at approved depositories. Specifically, proposed Rule 604B(b)(1) would provide that (A) a Clearing Member must deposit margin assets with respect to a designated account of a Clearing Member in an OCC account in an approved depository in OCC's name, or by such other method as OCC may from time to time approve (current Rule 604(b)(1) and (4)(i)); (B) that all assets pledged to OCC must be free of any lien or other encumbrances senior to that of OCC (I&P .07 to current Rule 604); and (C) that margin assets in the form of securities are deemed to be deposited when OCC receives written confirmation from the depository or confirmation that the securities have been pledged to the Corporation (*i.e.,* with respect to deposits in lieu of margin under Rule 610) (penultimate sentence of current Rule 604(b)(4)(ii)). With respect to conditions for approved depositories, Rule 604(b)(2) would relocate provisions requiring that (A) except as otherwise under subitem (B) of the proposed Rule,[34] margin assets will be held in accounts at such approved depositories designated as Clearing Member margin accounts (current Rule 604(d)); (C) the arrangement with the depository must (i) permit the securities to be promptly sold by or on OCC's order for the account of the Clearing Member without notice and (ii) require the Clearing Member to pay all fees and expenses incident to the ownership or sale of the securities or the arrangement with the depository (current Rule 604(b)(4)(ii)); and (D) OCC will not accept margin securities from a depository if such depository, a parent, or an affiliate has an equity interest of 20% or more in the depositing Clearing Member's total capital (current Rule 604, I&P .11).

Proposed Rule 604B(c) would aggregate provisions concerning the commingling of funds, including that: (1) OCC will not commingle margin assets with OCC's own funds or use margin assets as working capital (current Rule 604(d)); (2) notwithstanding proposed Rule 604B(c)(1), OCC may commingle non-customer funds with cash Clearing Fund contributions in an account at a Federal Reserve Bank that is not designated as a Clearing Member margin account [35] (current Rule 604, I&P .18); and (3) OCC may commingle margin assets for the account of any Clearing Member with margin assets as margin for other Clearing Members (current Rule 604(d)).

Proposed Rule 604B(d) would relocate current Rule 604(b)(5), which concerns restrictions on the types of accounts to which a Clearing Member may deposit securities held for the account of others (*i.e.,* non-firm accounts). The proposed Rule would subdivide these restrictions into those that: (1) prohibit a Clearing Member from depositing securities held for the account of a securities customer in any account other than a customers' account and customers' lien account, (2) prohibit a Clearing Member from depositing securities held for any Market Maker in any account other than a Market-Makers' account in which such Market Maker is a participant, and (3) prohibit the deposit of a ''fully paid security'' or an ''excess margin security'' within the meaning of SEC Rule 15c3–3 [36] in any account except to the extent permitted pursuant to interpretative guidance or no-action relief of the SEC or another SRO.[37] The last sentence of current Rule 604(b)(5), which concerns securities held for the account of a futures customer, would be renumbered Rule 604B(d)(4) and amended in line with the other provisions of proposed Rule 604(b) to prohibit a Clearing Member from depositing securities held for the account of a futures customer in any account other than a segregated futures account or segregated futures professional account. Current Rule 604(d)'s requirement that OCC hold margin assets in respect of a segregated futures account in accordance with Section 4d of the Commodity Exchange Act [38] and regulations thereunder [39] would be renumbered as Rule 604B(e).

Proposed Rule 604B(f) would aggregate provisions concerning a Clearing Member's rights to any interest, dividend or gain received on securities. Specifically, proposed Rule 604B(f)(1) would relocate the final sentence of Rule 604(b)(1), which provides that all interest or gain received or accrued on Government securities deposited as margin collateral, prior to any sale or negotiation, will belong to the depositing Clearing Member, and OCC will credit any interest on, or proceeds from the maturity of, such Government securities that OCC receives to the account of the Clearing Member in respect of which the deposit was made. Proposed Rule 604B(f)(2) would relocate the final sentence of current Rule 604(b)(4)(ii), which provides that all dividends or gain received or accrued on stocks, prior to any sale or negotiation, will belong to the depositing Clearing Member.

Proposed Rule 604B(g) would aggregate provisions concerning OCC's investment of margin cash. Specifically, the second sentence of current Rule 604(a), which provides OCC's authority to invest margin cash deposits, partially or in whole, for its account in Government securities, would be renumbered Rule 604B(g)(1). The penultimate sentence of current Rule 604(d), which provides that OCC will maintain records clearly identifying any Government securities from such investment as held in trust for Clearing Members, would become Rule 604B(g)(2). Current I&P .12 to Rule 04, which provides that OCC will invest margin in a segregated futures account or segregated futures professional account in accordance with Commodity Futures Trading Commission (''CFTC'') Regulations 1.25, 1.26, and 1.27 [40] and such other rules as may be adopted by the CFTC to govern the investment of such funds, would become Rule

[34] Currently, Rule 604(d) provides two exceptions for when margin assets need not be held in an account at a depository designated as a Clearing Member margin account: (i) margin cash invested in Government securities under current Rule 601(a), and (ii) funds credited to a Liquidating Settlement Account under Chapter XI of OCC's Rules for managing a Clearing Member default. For clarity, proposed Rule 604B(b)(2)(B) would add a third exception with respect to non-customer margin funds held in an account a Federal Reserve Bank, which is currently addressed by I&P .18 to Rule 604.

[35] *See* Exchange Act Release No. 90100 (Oct. 6, 2020), 85 FR 64603 (Oct. 13, 2020) (SR–OCC–2020–010) (approving OCC's proposal to hold cash Clearing Fund contributions and certain non-customer cash margin assets in OCC's account at the Federal Reserve Bank of Chicago).

[36] 17 CFR 240.15c3–3.

[37] *See* Exchange Act Release No. 61425 (Jan. 26, 2010), 75 FR 5366 (Feb. 2, 2010).

[38] 7 U.S.C. 6d.

[39] *See* 17 CFR 1.20.

[40] 17 CFR 1.25–1.27.

604B(g)(3). In addition, that provision would be restated as a conditional statement (*i.e.,* ''[i]f the Corporation invests'' such segregated futures customer account funds, then proposed Rule 604B(g)(2) would apply). OCC does not currently invest such futures customer cash margin under its Cash and Investment Management Policy.[41]

iii. Rule 604C (Valuation of Margin Assets)

Proposed Rule 604C (Holding and Investing Margin Assets) would relocate existing provisions of existing Rule 604 and its interpretations and policies that specify how OCC values margin assets deposited to meet margin requirements. Specifically, current Rule 604(g), which provides that OCC may elect to value margin assets in the form of securities, other than Government securities,[42] using the same multivariate analysis applied under Rule 601 to underlying interests rather than assigning any fixed dollar value to such margin assets, would be renumbered Rule 604C(a). Current Rule 604(e), which concerns collateral haircuts for Government securities and GSE debt securities, would be relocated to Rule 604C(b), as amended to remove reference to GSE debt securities. With respect to the valuation of MMF Shares, the last two sentences of current Rule 604(b)(3)(iv) would become Rule 604C(c). Current Rule 604(f), which provides that OCC may value assets denominated in a foreign currency using such exchange rates and applying such ''haircuts'' as it deems appropriate for its protection, would become Rule 604C(d). Finally, the final sentence of current Rule 604(b)(4)(i), which provides that OCC will assign no value to stock deposited pursuant to Rule 610[43] (*i.e.,* deposits in lieu of margin) for purposes of Rule 604C, would become Rule 604C(e). Rule 604C(e) would be further amended to remove reference to Rule 610T, which was a rule that predated current Rule 610.[44] Rule 610T was removed from OCC's Rules following a transitional period to the current escrow deposit program.[45] Accordingly, references to the transitional Rule 610T throughout OCC's Rules are no longer necessary.

iv. Conforming Changes

In connection with the reorganization discussed above, OCC would amend cross references to Rule 604 in other rules. Specifically, OCC would:

- Amend Rule 601(c) to refer to proposed Rule 604C when referencing the Rule providing for how OCC values margin assets. In addition, OCC would add numbering and titles to the multiple paragraphs of Rule 601(c) for clarity and ease of reference.
- Amend I&P .06 to Rule 601 to refer to proposed Rule 604C when referring to the Rule that provides for how OCC values margin assets other than stocks. In addition, that I&P would be further amended to (i) conform with Rule 604A(b)(2)'s definition of ''stock'' and include a cross-reference thereto; and (ii) conform a cross reference to the new paragraph numbers under Rule 601(c).
- Amend Rule 610 to refer to proposed Rule 604A(b)(1) when referencing the Rule governing the eligibility of Government securities as collateral.
- Amend Rule 705 to refer to proposed Rule 604A(b)(2) when referencing the Rule governing eligibility of stock as collateral, and to conform with Rule 604A's definition of ''stock.''
- Amend I&P .04 to Rule 1002 to refer to proposed Rule 604B(c)(2) when referencing the Rule providing OCC with authority to commingle non-customer margin assets with Clearing Fund contributions at an account at a Federal Reserve Bank.
- Amend Rules 1006(c) and 1006(f)(1)(C) and the Risk Management Framework[46] to refer to proposed Rule 604B(g) when referencing the rules governing OCC's investment of margin cash.
- Amend the CRM Policy and the Margin Policy[47] to refer to proposed Rule 604A when referencing the rules governing eligible forms of collateral.
- Amend the CRM Policy to refer to proposed Rule 604B when referencing the rules governing deposit of margin assets.
- Amend a footnote in the CRM Policy concerning the rules governing the eligibility of MMF Shares to refer to proposed Rule 604A(b)(4).
- Amend the CRM Policy to refer to proposed Rule 604C(b) when referring to the rules governing collateral haircuts applicable to Government securities.
- Amend the RWD Plan to correct a cross reference to current Rule 604(a) when it would be more appropriate to cite to Rule 609(b) when referring to OCC's authority to require the deposit of intra-day margin in the form of required cash if OCC forecasts that Clearing Member's potential settlement obligations could be in excess of OCC's liquidity resources.
- Amend the Risk Management Framework's discussion of OCC's management of collateral risk to reference proposed OCC Rules 604A through 604C.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act[48] and the Exchange Act Rules 17Ad–22(e)(1), (3), (5), and (21)[49] thereunder for the reasons discussed below.

Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act[50] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing or agency or for which it is responsible. The proposed changes to OCC's rules with respect to the management of wrong-way risk and concentration risk are intended to ensure that OCC maintains sufficient collateral, in both form and amount, to address the default of the depositing Clearing Member. OCC would use the margin collateral it has collected from a defaulting Clearing Member to protect other Clearing Members and their customers from default losses and ensure that OCC can continue the prompt and accurate clearance and settlement for the markets it serves. In addition, OCC believes the proposed restatement of Rule 604 is designed to

[41] *See* Exchange Act Release No. 93916 (Jan. 6, 2022), 87 FR 1819, 1822 n.29 (Jan 12, 2022) (SR–OCC–2021–014).

[42] *See* Exchange Act Release No. 98101 (Aug. 10, 2023), 88 FR 55775 (Aug. 16, 2023) (SR–OCC–2022–012).

[43] OCC would also delete an outdated reference to Rule 610T, which was a temporary Rule in effect during a transition period to the current means of making deposits in lieu of margin under current Rules 610, 610A, 610B and 610C.

[44] OCC would apply the same change to Rules 1506, 1701, 2301, and 2701. Rule 1506 would be further amended for grammatical consistency with those other Rules.

[45] *See* Exchange Act Release No. 78675 (Aug. 25, 2016), 81 FR 60099, 60105 (Aug. 31, 2016) (SR–OCC–2016–009).

[46] In addition, OCC would also amend the applicable statement in the Risk Management Framework to refer to OCC's Cash and Investment Management Policy, which has been filed with the Commission. *See* Exchange Act Release No. 93916, *supra* note 39.

[47] In addition, OCC would amend the Margin Policy to correct an outdated reference to its Business Backtesting Procedures, which were retired in favor of OCC's consolidated Backtesting Procedures. *See* Exchange Act Release No. 100998 (Sept. 11, 2024), 89 FR 76171 (Sept. 17, 2024) (SR–OCC–2024–009).

[48] 15 U.S.C. 78q–1.

[49] 17 CFR 240.17Ad–22(e)(1), (3), (5), (21).

[50] 15 U.S.C. 78q–1(b)(3)(F).

provide for the safeguarding of securities and funds in OCC's custody or control by providing additional clarity and transparency about how securities and funds are held and/or invested by OCC (*i.e.,* proposed Rule 604B) and by removing unnecessary Rules related to the acceptance of collateral types that OCC will no longer accept going forward (*i.e.,* letters of credit and GSE debt securities).

Exchange Act Rule 17Ad–22(e)(1)

Exchange Act Rule 17Ad–22(e)(1) requires OCC to establish, maintain and enforce written policies and procedures reasonably designed to, among other things, ensure a clear and transparent legal basis for each aspect of OCC's activities in all relevant jurisdictions.[51] In connection with the annual review of its collateral risk management practices, OCC has determined to no longer accept certain underutilized collateral types, pursuant to existing authority to disapprove such collateral. This proposed rule change would remove those collateral types from OCC rules, which provide the legal basis for OCC's clearance and settlement activity, to enhance their clarity and transparency. In addition, OCC proposes to reorganize and restate OCC Rule 604, including by organizing the surviving provisions of that Rule by topic into Rules 604A, 604B and 604C, integrating the surviving interpretations and policies to that Rule into the text of the re-organized Rules, and restating the rules to reduce the use of passive voice and to promote the use of plain language. OCC believes that these proposed enhancements to the presentation of Rule 604 are consistent with Exchange Act Rule 17Ad–22(e)(1) [52] by enhancing the clarity and transparency of its Rules.

Exchange Act Rule 17Ad–22(e)(3)

Exchange Act Rule 17Ad–22(e)(3) requires OCC to establish, maintain and enforce written policies and procedures reasonably designed to, among other things, maintain a sound risk management framework that includes policies, procedures and systems that are designed to manage risks that arise in or are borne by OCC and which are subject to periodic review and annual approval by OCC's Board.[53] As discussed above, the proposed changes arise from OCC's annual review of its collateral risk management, presented to and approved by its Board. OCC believes the change to recognize the wrong-way risk inherent in spot cryptocurrency where the Clearing Member or its affiliate serve as custodian of that cryptocurrency, and to impose a SWWR Add-on for such cryptocurrency, limits the risk that a Clearing Member may lose the cryptocurrency at or around the same time that it may default on its obligations to OCC. Accordingly, OCC believes the proposed changes help to maintain the soundness of its risk management framework by limiting that specific risk borne by OCC, consistent with Exchange Act Rule 17Ad–22(e)(3).[54]

Exchange Act Rule 17Ad–22(e)(5)

Exchange Act Rule 17Ad–22(e)(5) requires OCC to establish, maintain and enforce written policies and procedures reasonably designed to, among other things, limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and set and enforce appropriately conservative collateral concentration limits, and require a review of the sufficiency of such concentration limits not less than annually.[55] When adopting the Standards for Covered Clearing Agencies, the Commission noted that when assessing compliance with the requirements of Exchange Act Rule 17Ad–22(e)(5),[56] a covered clearing agency's policies and procedures generally should account for wrong-way risk by limiting the acceptance of collateral that would likely lose value in the event that the participant providing the collateral defaults.[57] The Board has approved changes to address the potential wrong-way risk associated with collateral in the form of a spot cryptocurrency ETP for a Clearing Member who is the custodian or is affiliated with the custodian of that ETP. As discussed above, the proposed changes are designed to address custody risks that are unique to cryptocurrency that could result in a loss of value for the spot cryptocurrency ETP for which the Clearing Member or its affiliate serves as a custodian at the same time that the Clearing Member may experience financial or operational difficulty in meeting its obligations to OCC. OCC believes the proposed changes would help to ensure that the collateral it accepts from that Clearing Member is of low credit risk by limiting the value it would assign to spot cryptocurrency ETPs. As such OCC believes that the proposed changes are consistent with Exchange Act Rule 17Ad–22(e)(5).[58]

Exchange Act Rule 17Ad–22(e)(21)

Exchange Act Rule 17Ad–22(e)(21) requires OCC to establish, maintain and enforce written policies and procedures reasonably designed to, among other things, be efficient and effective in meeting the requirements of its participants and the markets it serves, and that OCC's management regularly review the efficiency and effectiveness of its clearing and settlement arrangements and operating structure, including risk management policies, procedures and systems.[59] In connection with OCC's annual review of its collateral risk management, OCC has determined to discontinue the acceptance of letters of credit and GSE debt securities as margin collateral. Utilization of these collateral types by OCC's participants has declined since the last time that OCC amended the rules applicable thereto in 2023. GSE debt securities have not been pledged since July of 2023 and no letters of credit remain on deposit. As such, OCC does not believe that the operational burden associated with maintaining these collateral types is justified. In making this determination, OCC has also considered the burden on OCC and its Clearing Members that would be associated with testing the functionality for supporting these collateral types in Ovation, OCC's forthcoming clearance and settlement system. Accordingly, OCC believes that eliminating these underutilized collateral types and removing them from OCC's rules would promote OCC's efficiency and effectiveness, consistent with Exchange Act Rule 17Ad–22(e)(21).[60]

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act [61] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule changes concerning removing letters of credit and GSE debt securities as collateral types under OCC rules, or the reorganization or restatement of Rule 604 would impact or impose any burden on competition. None of these changes would inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another, and all

[51] 17 CFR 240.17Ad–22(e)(1).

[52] *Id.*

[53] 17 CFR 240.17Ad–22(e)(3).

[54] 17 CFR 240.17Ad–22(e)(3).

[55] 17 CFR 240.17Ad–22(e)(5).

[56] 17 CFR 240.17Ad–22(e)(5).

[57] *See* Exchange Act Release No. 78961, *supra* note 15, 81 FR at 70816.

[58] 17 CFR 240.17Ad–22(e)(5).

[59] 17 CFR 240.17Ad–22(e)(21).

[60] *Id.*

[61] 15 U.S.C. 78q–1(b)(3)(I).

of the changes would be applied uniformly to all Clearing Members. In addition, the changes to collateral types are not expected to have an impact on Clearing Members because no GSE debt securities or letters of credit are currently deposited. Accordingly, the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user.

While management of wrong-way risk is necessarily specific to the firm pledging the collateral, and the impact on any one firm will be dependent on the identity of that firm and its affiliates, the collateral that it pledges and its cleared contracts, OCC believes that the proposed changes are necessary and appropriate in furtherance of the purposes of the Act. As discussed above, OCC is proposing changes to its collateral risk management to extend its approach to managing SWWR to spot cryptocurrency fund shares for which the Clearing Member or an affiliate acts as a custodian of the fund's cryptocurrency holdings to address collateral risks that are unique to these new types of ETPs. To the extent the proposed changes cause any burden on competition, OCC believes that they are necessary to fairly account for the SWWR inherent in these new products that were not contemplated when the current SWWR Add-ons were implemented. OCC further believes that these proposed changes would better enable OCC to account for wrong-way risk, consistent with and appropriate in furtherance of the purposes of Rule 17Ad–22(e)(5) under the Act.[62]

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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 self-regulatory organization 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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–OCC–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–OCC–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 such filing will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

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–OCC–2026–001 and should be submitted on or before March 20, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[63]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–03915 Filed 2–26–26; 8:45 am]

BILLING CODE 8011–01–P

[62] 17 CFR 240.17Ad–22(e)(5).

[63] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104884; File No. SR–ISE–2025–26]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Amendment No. 5 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 5, To Amend the Position and Exercise Limits for IBIT Options

February 24, 2026.

I. Introduction

On November 13, 2025, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase the position and exercise limits for options on the iShares Bitcoin Trust ETF (''IBIT'') to 1,000,000 contracts and to amend the position and exercise limits for flexible exchange (''FLEX'') IBIT options. The proposed rule change was published for comment in the **Federal Register** on November 26, 2025.[3] The Commission received no comments regarding the proposed rule change. On November 24, 2025, the Exchange filed Amendment No. 1 to the proposed rule change. On January 5, 2026, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On January 26, 2026, the Exchange filed Amendment No. 2 to the proposed rule change. On January 27, 2026, the Exchange filed Amendment No. 3 to the proposed rule change, withdrew Amendment Nos. 2 and 3, and filed Amendment No. 4 to the proposed rule change. On February 20, 2026, the Exchange filed Amendment No. 5 to the proposal, which supersedes and replaces the original proposal, as modified by Amendment Nos. 1and 4,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 104235 (Nov. 21, 2025), 90 FR 54414.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 104542 (Jan. 5, 2026), 91 FR 750 (Jan. 8, 2026). The Commission designated February 24, 2026, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

in their entirety.[6] The Commission is publishing this notice to solicit comment on Amendment No. 5 in Sections II and III below, which sections are being published verbatim as filed by the Exchange, and is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 5.

II. Self-Regulatory Organization's Description of the Proposed Rule Change, as Modified by Amendment No. 5

The Exchange proposes to amend Options 9, Sections 13 and 15 to increase the position and exercise limits for options on iShares Bitcoin Trust ETF (''IBIT''). This Amendment No. 5 replaces and supersedes the original filing as modified by Amendment Nos. 1 and 4 in their entirety and proposes to update the data in this proposal.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rulefilings,* and at the principal office of the Exchange.

III. 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 Options 9, Section 13, Position Limits, and Options 9, Section 15, Exercise Limits, to increase the position and exercise limits for options on IBIT.

IBIT is an Exchange-Traded Fund (''ETF'') that holds Bitcoin and is listed on The Nasdaq Stock Market LLC.[8] On September 20, 2024, ISE received approval to list options on IBIT.[9] The position and exercise limits for IBIT options are currently set as stated in Options 9, Sections 13 and 15.[10]

Position limits, and exercise limits, are designed to limit the number of options contracts traded on the exchange in an underlying security that an investor, acting alone or in concert with others directly or indirectly, may control. These limits, which are described in ISE Options 9, Sections 13 and 15, are intended to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. Position and exercise limits must balance concerns regarding mitigating potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.

To achieve this balance, ISE proposes to increase the position limits and exercise limits for options on IBIT to 1,000,000 contracts by noting the proposed position limit in Supplementary Material .01 to Options 9, Section 13 and noting the proposed exercise limits in Supplementary Material .01 to Options 9, Section 15. The position limit for options on IBIT is currently set pursuant to ISE Options 9, Section 13(d) where the largest in capitalization and the most frequently traded stocks and ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, recapitalizations, etc.) on the same side of the market. The Exchange notes that the proposed position limits and exercise limits for options on IBIT are consistent with existing position limits and exercise limits for options on iShares MSCI Emerging Markets, iShares China Large-Cap ETF and iShares MSCI EAFE ETF.

Composition and Growth Analysis for Underlying ETFs

As stated above, position (and exercise) limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate the underlying market so as to benefit options positions. The Commission has recognized that these limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market, as well as serve to reduce the possibility for disruption of the options market itself, especially in illiquid classes.[11]

Per the Commission, ''rules regarding position and exercise limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options positions.'' [12] For this reason, the Commission requires that ''position and exercise limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security.'' [13] The Exchange has observed an ongoing increase in demand in options on IBIT in 2025.[14] The Exchange believes the current position limit and exercise limit of 250,000 contracts (the highest position limit available pursuant to Options 9, Section 13 and exercise limit pursuant to Options 9, Section 15) will impede trading activity and strategies of investors, such as use of effective hedging vehicles or income generating strategies (*e.g.,* buy-write or put-write), and the ability of Market Makers to

[6] Amendment No. 5 revises the proposal to provide updated information regarding IBIT's trading volume, market capitalization, and other metrics discussed in the proposal; eliminate the proposed changes related to the position and exercise limits for FLEX IBIT options; remove statements indicating that the proposed position and exercise limits would be reviewed on a six-month basis pursuant to Options 9, Section 13(d); and eliminate references to reports provided in connection with the Penny Program.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] Nasdaq received approval to list and trade Bitcoin-Based Commodity-Based Trust Shares in IBIT pursuant to Rule 5711(d) of Nasdaq. *See* Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (SR–NASDAQ–2023–016) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units). IBIT started trading on January 11, 2024.

[9] *See* Securities Exchange Act Release No. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR–ISE–2024–03) (Notice of Filing of Amendment Nos. 4 and 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 4, and 5, To Permit the Listing and Trading of Options on the iShares Bitcoin Trust) (''IBIT Approval Order''). ISE began trading IBIT options on November 19, 2024.

[10] IBIT currently has a position limit of 250,000 contracts.

[11] *See* Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (SR–NYSEAmex–2012–29).

[12] *See supra* note 4, IBIT Approval Order, 89 FR 78946.

[13] *See id.*

[14] In 2024, the Exchange filed a rule proposal, which was later approved in 2025, to eliminate the 25,000 contract position and exercise limits for IBIT options and apply the position and exercise limits in ISE Options 9, Sections 13 and 15 to IBIT options utilizing November 25, 2024 data. *See* Securities Exchange Act Release No. 103564 (July 29, 2025), 90 FR 36229 (August 1, 2025) (SR–ISE–2024–62) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, Regarding Position and Exercise Limits for Options on the iShares Bitcoin Trust ETF) (''SR–ISE–2024–62'').

make liquid markets with tighter spreads in IBIT options.

The Exchange believes that increasing the position limit (and exercise limit) for options on IBIT to 1,000,000 contracts would enable liquidity providers to provide additional liquidity to the Exchange, as well as other options exchange on which they participate. As described in further detail below, the Exchange believes that the continuously increasing market capitalization of IBIT options, as well as the highly liquid markets for those securities, reduces the concerns for potential market manipulation and/or disruption in the underlying markets upon increasing position limits, while the rising demand for trading options on IBIT for legitimate economic purposes compels an increase in position limits (and corresponding exercise limits).

IBIT currently qualifies for a 250,000 contract position limit pursuant to the criteria in Options 9, Section 13(d), which requires that, for the most recent six-month period, trading volume for the underlying security be at least 100 million shares.[15] As of February 11, 2026, the market capitalization for IBIT was 52,661,063,818 [16] with an average daily volume (''ADV''), for the preceding 6 months prior to February 11, 2026 of 61,803,035 shares. By comparison on the same day, the iShares MSCI Emerging Markets (''EEM'') has an ADV of 29,459,889 shares and an AUM of 27,761,941,292 the iShares China Large-Cap ETF (''FXI'') has an ADV 31,656,532 and an AUM of 6,594,337,253, and the iShares MSCI EAFE ETF (''EFA'') has an ADV of 17,215,037 shares and an AUM of 76,788,457,200.[17]

In addition to IBIT's Options 9, Section 13(d) eligibility for 1,000,000 contracts, the Exchange performed additional analysis with respect to IBIT. First, ISE considered IBIT's market capitalization and ADV, and prospective position limit in relation to other securities. In measuring IBIT against other securities, ISE aggregated market capitalization and volume data for securities that have defined position limits utilizing data from The Options Clearing Corporations (''OCC'').[18] This pool of data took into consideration 3,797 options on single stock securities, excluding broad based ETFs.[19] Next, the data was aggregated based on market capitalization and ADV and grouped by option symbol and position limit utilizing statistical thresholds for ADV, based on 180 days, and market capitalization that were one standard deviation [20] above the mean for each position limit category (*i.e.,* 25,000, 50,000 to 52,000, 75,000, 200,000, 250,000 to 375,000, 450,000 to 650,000, 750,000 to 1,250,000 and, and greater than or equal to 2,000,000).[21] This exercise was performed to demonstrate IBIT's position limit relative to other options symbols in terms of market capitalization and ADV. For reference, the market capitalization for IBIT was $52,661,063,818 [22] with an ADV, for the preceding 180 days prior to February 11, 2026, of 61,803,035 shares.

ADV data	25k	50k–52K	75k	200K	250k–375K	450K–650K	750K–1.25mm	>2mm
:								
Number of observations	392	401	547	232	2154	27	8	9
Average	91157.18	218871.78	445897.84	664343.12	4749775.74	5176137.15	6008710.88	47286595.89
Median	83656	206731	426420	679891.5	2015092	4027803	5637387.5	27354715.0
Min	9725	51064	27845	28156	22931	931337	4628363	11811713
Max	499461	1211984	3658653	3138784	170721127	19492918	8116652	182173328
Standard deviation	57591.57	86620.56	224453.69	242713.70	9812734.84	4852687.63	1079816.30	54318913.92
IBIT rank	1	1	1	1	15	1	1	3
IBIT % rank	99.75	99.75	99.82	99.57	99.30	96.43	88.89	70.00
Market Cap Statistics:								
Number of observations	392	401	547	232	2154	27	8	9
Average	1,057M	2,401M	4,105M	5,417M	28,792M	65,956M	70,543M	776,666M
Median	364M	737M	1,375M	1,551M	3,769M	14,822M	56,721M	49,215M
Min	7.697M	16.1M	2.164M	3.030M	0.470M	1,440M	11.43M	371M
Max	62.137M	139,006M	102,316M	125,661M	4,070,890M	656,022M	177,131M	4,618,220M
Standard deviation	4,002M	8,164M	8,576M	12,956M	150,096M	142,724M	58,978M	1,529,883M
IBIT rank	2	3	5	5	221	7	5	5
IBIT % rank	99.49	99.25	99.09	97.85	89.74	75.00	44.44	50.00

Based on the above table, if IBIT were compared to the 10 stocks that have position limits of 750,000 contracts to 1.25 million contracts it would rank in the 45th percentile for market capitalization and the 89th percentile for ADV.

The Exchange also analyzed the position limits for IBIT by regressing the median elements from each bucket of market capitalization and 180-day ADV of all non-ETF equities, against their respective position limit figures. From this regression, the Exchange was able to determine the implied coefficients to create a formulaic method for determining an appropriate position limit.[23] The Exchange utilized a linear model approach which incorporated the median metric from each bucket given the data at both the lower end of each position limit bucket and the higher end of each position limit bucket could be

[15] Options 9, Section 13(d), Equity Option Position Limits, provides at subparagraph (5) that to be eligible for the 250,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totalled at least 100 million shares or the most recent six-month trading volume of the underlying security must have totalled at least seventy-five (75) million shares and the underlying security must have at least 300 million shares currently outstanding.

[16] The market capitalization was determined by multiplying a Net Asset Value [sic] of $38.29 by the number of shares outstanding 1,337,920,000. This figure was acquired as of February 11, 2026. *See https://www.ishares.com/us/products/333011/ishares-Bitcoin-trust-etf.*

[17] These figures are from February 11, 2026.

[18] The computations are based on OCC data from February 11, 2026. Data displaying zero values in market capitalization or ADV were removed.

[19] IBIT has one asset and therefore is not comparable to a broad-based ETF where there are typically multiple components.

[20] The standard deviation added limited utility to the analysis given the heavily skewed distribution of market capitalizations in the single stock securities.

[21] These buckets are based on OCC's current positions limits. *See https://www.theocc.com/market-data/market-data-reports/series-and-trading-data/position-limits.* ISE Options 9, Section 13(d) sets out position limits for various contracts. For example, a 25,000 contract limit applies to those options having an underlying security that does not meet the requirements for a higher options contract limit. The Exchange notes that position limits may also be higher due to corporate actions in the underlying equities, such as a stock split.

[22] Net Asset Value of $38.29 by the number of shares outstanding 1,337,920,000. This figure was acquired as of February 11, 2026. *See https://www.ishares.com/us/products/333011/ishares-Bitcoin-trust-etf.*

[23] The Exchange utilized Excel's Data Analysis Package to model the position limit.

considered significant outliers, thereby skewing the results. Below are various linear models utilizing market capitalization and ADV as well as a two-factor model to determine the appropriate coefficients when both metrics are incorporated into the same model.[24]

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Figure 1

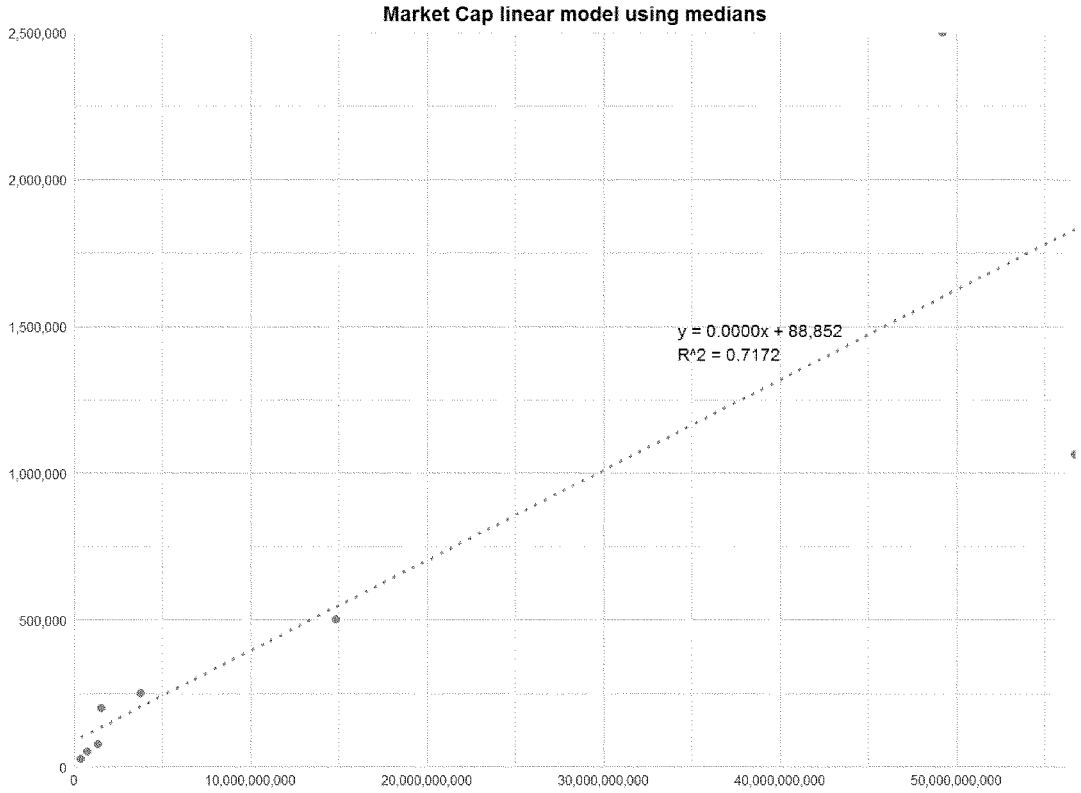

Figure 1 utilizes IBIT's market capitalization of 52,661,063,818 to arrive at a modeled position limit of 1,707,654.

[24] *See id.*

Figure 2

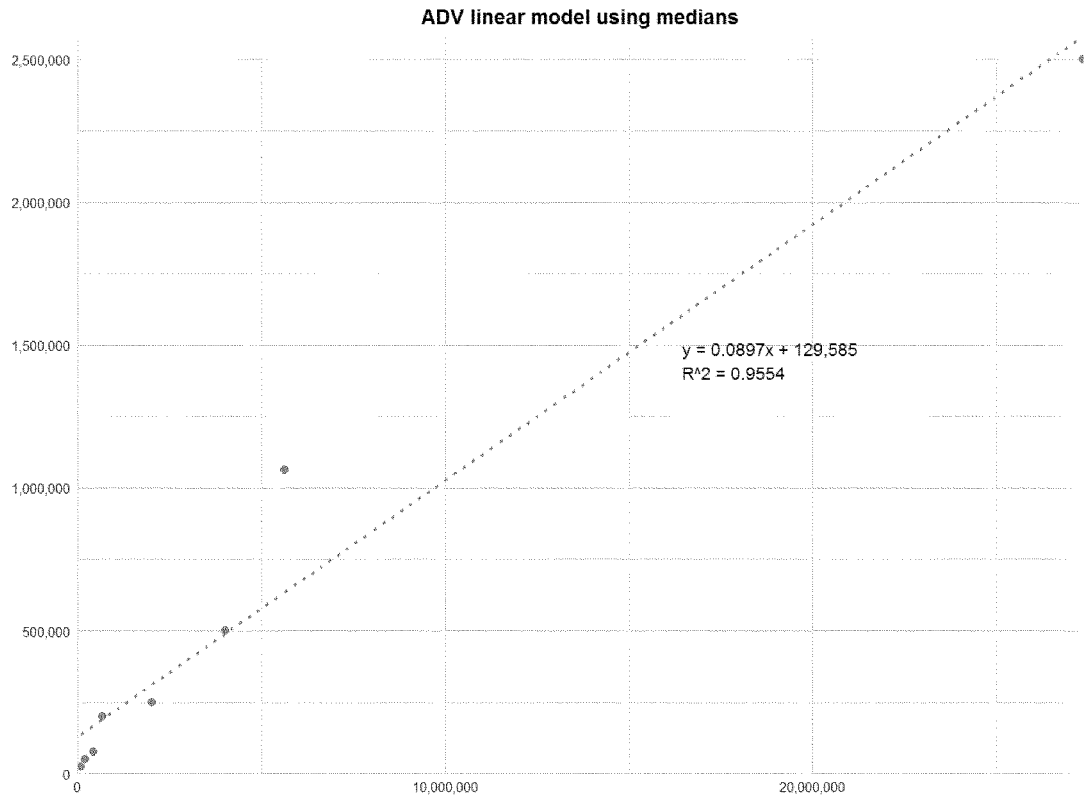

Figure 2 utilizes IBIT's ADV of 61,803,035 to arrive at a modeled position limit of 5,672,081. Based on the aforementioned analysis, the Exchange believes that the proposed 1,000,000 contracts position and exercise limit is appropriate.

Figure 3

Two Factor Model

SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.99904 0
R Square	0.99808 2
Adjusted R Square	0.99731 5
Standard Error	43896.7
Observations	8

ANOVA

	df	*SS*	*MS*	*F*	*Significance F*
Regression	2	501315836775 5	2506579 183878	1300.82	0.00000 0161147
Residual	5	963460 0995	1926920 199		
Total	7	502279 296875 0			

	Coefficients	*Standard Error*	*t Stat*	*P-value*	*Lower 95%*	*Upper 95%*
Intercept	55312.4	19311	2.86430	0.03522 87	5672	104953
ADV median of bucket market cap	0.00001 08019	0.0000 010239 0	10.5498	0.00013 2176	0.00000 816993	0.00001 34340
median of bucket	0.07002 82	0.0025 8812	27.0575	0.00000 128981	0.06337 52	0.07668 12

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Figure 3 shows the results when constructing a two-factor model employing both metrics (180-day ADV and market capitalization). The result is a modeled position limit of 4,952,107.[25]

Second, ISE reviewed IBIT's data relative to the market capitalization of the entire Bitcoin market in terms of exercise risk and availability of deliverables. Also, as of February 11, 2026, there were approximately 20.5 million Bitcoins in circulation.[26] At a price of $66,938,[27] that equates to a market capitalization of greater than $1.374 trillion US. If a position limit of 1,000,000 contracts were considered, the exercisable risk would represent 7.474%[28] of the outstanding shares outstanding of IBIT. Since IBIT has a creation and redemption process managed through the issuer, the position limit can be compared to the total market capitalization of the entire Bitcoin market and in that case, the exercisable risk for options on IBIT would represent 0.278% of all Bitcoin

[25] *See id.*

[26] *See https://www.coingecko.com/en/coins/Bitcoin.*

[27] This is the approximate price of Bitcoin from February 11, 2026.

[28] This percentage is arrived at with this equation: (1,000,000 contract limit * 100 share per option/ 1,337,920,000 shares outstanding).

outstanding.[29] Assuming a scenario where all options on IBIT shares were exercised given the proposed 1,000,000-contract position limit (and exercise limit), this would have a virtually unnoticed impact on the entire Bitcoin market. This analysis demonstrates that the proposed 1,000,000 per same side position and exercise limit is appropriate for options on IBIT given its liquidity.

Third, ISE reviewed the proposed position limit by comparing it to position limits for derivative products regulated by the Commodity Futures Trading Commission (''CFTC''). While the CFTC, through the relevant Designated Contract Markets, only regulates options positions based upon delta equivalents (creating a less stringent standard), ISE examined equivalent bitcoin futures position limits. In particular, ISE looked to the CME bitcoin futures contract [30] that has a position limit of 2,000 futures.[31] On February 11, 2026, CME bitcoin futures settled at $67,71570,406.33.[sic][32] On February 11, 2026, IBIT settled at $38.29, which would equate to greater than 17,684,774 shares of IBIT if the CME notional position limit was utilized. Since substantial portions of any distributed options portfolio is likely to be out of the money on expiration, an options position limit equivalent to the CME position limit for bitcoin futures (considering that all options deltas are <=1.00) should be a bit higher than the CME implied 176,848 limit. Of note, unlike options contracts, CME position limits are calculated on a net futures-equivalent basis by contract and include contracts that aggregate into one or more base contracts according to an aggregation ratio(s).[33] Therefore, if a portfolio includes positions in options on futures, CME would aggregate those positions into the underlying futures contracts in accordance with a table published by CME on a delta equivalent value for the relevant spot month, subsequent spot month, single month and all month position limits.[34] If a position exceeds position limits because of an option assignment, CME permits market participants to liquidate the excess position within one business day without being considered in violation of its rules. Additionally, if at the close of trading, a position that includes options exceeds position limits for futures contracts, when evaluated using the delta factors as of that day's close of trading, but does not exceed the limits when evaluated using the previous day's delta factors, then the position shall not constitute a position limit violation. Based on the aforementioned analysis, the Exchange believes that the proposed 1,000,000 contracts position and exercise limit is appropriate.

Fourth, ISE analyzed a position limit and exercise limit of 1,000,000 for IBIT options against other options on ETFs with an underlying commodity, namely SPDR Gold Shares (''GLD''), iShares Silver Trust (''SLV''), and ProShares Bitcoin ETF (''BITO'').[35] GLD has a float of 377 million shares [36] and a position limit of 250,000 contract. SLV has a float of 552 million shares,[37] and a position limit of 250,000 contracts. Finally, BITO has 200.89 million shares outstanding [38] and a position limit of 250,000 contracts. As previously noted, position limits and exercise limits are designed to limit the number of options contracts traded on the exchange in an underlying security that an investor, acting alone or in concert with others directly or indirectly, may control. A position limit exercise in GLD would represent 6.63% of the float of GLD; a position limit exercise in SLV would represent 4.53% of the float of SLV, and a position limit exercise of BITO would represent 12.44% of the float of BITO. In comparison, a 1,000,000-contract position limit in IBIT options would represent 7.474%[39] of the float of IBIT. Consequently, the 1,000,000 proposed IBIT options position and exercise limit is more conservative than the standard applied to GLD, SLV and BITO, and appropriate.

Fifth, ISE notes that IBIT began trading in penny increments as of January 2, 2025 pursuant to the Penny Interval Program.[40] The Commission noted that evidence and analysis provided in connection with the Penny Pilot demonstrated that the Pilot benefitted investors and other market participants in the form of narrower spreads.[41] The most actively traded options classes are included in the Penny Program based on certain objective criteria (trading volume thresholds and initial price tests). As noted in the Penny Approval Order, the Penny Program reflects a certain level of trading interest (either because the class is newly listed or a class experienced a significant growth in investor interest) to quote in finer trading increments, which in turn should benefit market participants by reducing the cost of trading such options.[42] IBIT options is among a select group of products that have achieved a certain level of liquidity that have garnered it the ability to trade in finer increments. Failing to increase position and exercise limits for IBIT options, now that it is trading in finer increments, may artificially inhibit liquidity and create price inefficiency. The Exchange notes that options on iShares MSCI Emerging Markets, iShares China Large-Cap ETF and iShares MSCI EAFE ETF also trade in penny increments based on their liquidity.

The Exchange believes that IBIT options have more than sufficient liquidity to garner an increased position

[29] This number was arrived at with this calculation: (1,000,000 limit * 100 shares per option * $38.29 IBIT NAV)/(20,528,687 BTC outstanding * $66,938 BTC price).

[30] CME Bitcoin Futures are described in Chapter 350 of CME's Rulebook.

[31] *See* the Position Accountability and Reportable Level Table in the Interpretations & Special Notices Section of Chapter 5 of CME's Rulebook.

[32] 2,000 futures at a 5 bitcoin multiplier (per the contract specifications) equates to $677,150,000 (2,000 contracts * 5 BTC per contract * $67,715 price of February BTC future) of notional value.

[33] *See https://www.cmegroup.com/education/courses/market-regulation/position-limits/position-limits-aggregation-of-contracts-and-table.htm.*

[34] *Id.*

[35] GLD, SLV and BITO each hold one asset in trust similar to IBIT.

[36] *See https://www.ssga.com/us/en/intermediary/etfs/spdr-gold-shares-gld.*

[37] *See https://www.ishares.com/us/products/239855/ishares-silver-trust-fund.*

[38] *See https://www.marketwatch.com/investing/fund/bito.*

[39] This percentage is arrived at with this equation: (1,000,000 contract limit * 100 share per option/1,337,920,000 shares outstanding). This information was captured on February 11, 2026.

[40] The Exchange may add to the Penny Program a newly listed option class provided that (i) it is among the 300 most actively traded multiply listed option classes, as ranked by National Cleared Volume at OCC, in its first full calendar month of trading and (ii) the underlying security is priced below $200 or the underlying index is at an index level below $200. Any option class added under this provision will be added on the first trading day of the month after it qualifies and will remain in the Penny Program for one full calendar year, after which it will be subject to the Annual Review described in Supplementary Material .01(b) to Options 3, Section 3. The Exchange may add any option class to the Penny Program, provided that (i) it is among the 75 most actively traded multiply listed option classes, as ranked by National Cleared Volume at OCC, in the past six full calendar months of trading and (ii) the underlying security is priced below $200 or the underlying index is at an index level below $200. Any option class added under this provision will be added on the first trading day of the second full month after it qualifies and will remain in the Penny Program for the rest of the calendar year, after which it will be subject to the Annual Review as described in Supplementary Material .01(b) to Options 3, Section 3. *See* Supplementary Material .01 to ISE Options 3, Section 3.

[41] *See* Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545, 19548 (April 7, 2020) (File No. 4–443) (Joint Industry Plan; Order Approving Amendment No. 5 to the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options To Adopt a Penny Interval Program) (''Penny Approval Order'').

[42] *Id.* at 19548.

and exercise limit of 1,000,000 contracts. The Exchange believes that any concerns related to manipulation and protection of investors are mollified by the significant liquidity provision in IBIT. The Exchange states that, as a general principle, increases in active trading volume and deep liquidity of the underlying securities do not lead to manipulation and/or disruption.

The Exchange believes that increasing the position (and exercise) limits for IBIT options would lead to a more liquid and competitive market environment for IBIT options, which will benefit customers that trade these options. Further, the reporting requirement for such options would remain unchanged. Thus, the Exchange will still require that each Member that maintains positions in impacted options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information includes, but would not be limited to, the options' positions, whether such positions are hedged and, if so, a description of the hedge(s). Market Makers would continue to be exempt from this reporting requirement, however, the Exchange may access Market Maker position information.[43] Moreover, the Exchange's requirement that Members file reports with the Exchange for any customer who held aggregate large long or short positions on the same side of the market of 200 or more option contracts of any single class for the previous day will remain at this level and will continue to serve as an important part of the Exchange's surveillance efforts.[44]

The Exchange also has no reason to believe that the growth in trading volume in IBIT will not continue. Rather, the Exchange expects continued options volume growth in IBIT as opportunities for investors to participate in the options markets increase and evolve. The Exchange believes that the current position and exercise limits in IBIT options are restrictive and will hamper the listed options markets from being able to compete fairly and effectively with the over-the-counter (''OTC'') markets. OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process on a public exchange or other lit markets. The Exchange believes that without the proposed changes to position and exercise limits for IBIT options, market participants will find the 250,000-contract position limit an impediment to their business and investment objectives as well as an impediment to efficient pricing. As such, market participants may find the less transparent OTC markets a more attractive alternative to achieve their investment and hedging objectives, leading to a retreat from the listed options markets, where trades are subject to reporting requirements and daily surveillance.

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange are capable of properly identifying disruptive and/or manipulative trading activity. The Exchange also represents that it has adequate surveillances in place to detect potential manipulation, as well as reviews in place to identify continued compliance with the Exchange's listing standards. These procedures monitor market activity via automated surveillance techniques to identify unusual activity in both options and the underlyings, as applicable. The Exchange also notes that large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G,[45] which are used to report ownership of stock which exceeds 5% of a company's total stock issue and may assist in providing information in monitoring for any potential manipulative schemes. Further, the Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in equity options. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a Member must maintain for a large position held by itself or by its customer.[46] In addition, Rule 15c3–1 [47] imposes a capital charge on Members to the extent of any margin deficiency resulting from the higher margin requirement.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[48] in general, and furthers the objectives of Section 6(b)(5) of the Act,[49] in particular, in that it is 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) [50] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that increasing the position limit and exercise limit for options on IBIT to 1,000,000 contracts is consistent with the Act. This proposal will 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, because it will provide market participants with the ability to more effectively execute their trading and hedging activities. Also, based on current trading volume, the resulting increase in the position (and exercise) limits for IBIT options may allow Market Makers to maintain their liquidity in these options in amounts commensurate with the continued high consumer demand in IBIT options. The increased position and exercise limits may also encourage other liquidity providers to continue to trade on the Exchange rather than shift their volume to OTC markets, which will enhance the process of price discovery conducted on the Exchange through increased order flow. Further, this amendment would allow institutional investors to utilize IBIT options for prudent risk management purposes.

In addition, the Exchange believes that the current liquidity in IBIT will continue to mitigate concerns regarding potential manipulation of IBIT options and/or disruption of IBIT upon amending the table of position limits in Supplementary Material .01 to Options 9, Section 13 and the table of exercise limits in Supplementary Material .01 to Options 9, Section 15.

Comparing IBIT's data relative to the market capitalization of the entire Bitcoin market in terms of exercise risk and availability of deliverables, the

[43] OCC through the Large Option Position Reporting (''LOPR'') system acts as a centralized service provider for Member compliance with position reporting requirements by collecting data from each Member, consolidating the information, and ultimately providing detailed listings of each Member's report to the Exchange, as well as Financial Industry Regulatory Authority, Inc. (''FINRA''), acting as its agent pursuant to a regulatory services agreement (''RSA'').

[44] *See* Options 9, Section 16.

[45] 17 CFR 240.13d–1.

[46] *See* Options 9, Section 3 regarding margin requirements.

[47] 17 CFR 240.15c3–1.

[48] 15 U.S.C. 78f(b).

[49] 15 U.S.C. 78f(b)(5).

[50] 15 U.S.C. 78(f)(b)(5).

Exchange was able to conclude that if a position limit of 1,000,000 contracts were considered, the exercisable risk would represent 7.474% [51] of the shares outstanding of IBIT. Since IBIT has a creation and redemption process managed through the issuer (whereby Bitcoin is used to create IBIT shares), the position limit can be compared to the total market capitalization of the entire Bitcoin market and in that case, the exercisable risk for options on IBIT would represent less than 0.278% of all Bitcoin outstanding.[52] This analysis demonstrated that a 1,000,000 contracts position and exercise limits would be appropriate.

Comparing a position limit of 1,000,000 for IBIT options against other options on ETFs with an underlying commodity, namely GLD, SLV and BITO, a position limit exercise in GLD represents 6.63% of the float of GLD, a position limit exercise in SLV represents 4.53% of the float of SLV, and a position limit exercise of BITO represents 12.44% of the float of BITO. In comparison, a 1,000,000-contract position limit in IBIT options would represent 7.474% [53] of the float of IBIT. Consequently, a 1,000,000 IBIT options position limit is generally aligned with the standards applied to GLD, SLV and BITO, and appropriate.

ISE notes that IBIT began trading in penny increments on January 2, 2025 pursuant to the Penny Interval Program.[54] The Commission noted that evidence and analysis provided in connection with the Penny Pilot demonstrated that the Pilot benefitted investors and other market participants in the form of narrower spreads.[55] The most actively traded options classes are included in the Penny Program based on certain objective criteria (trading volume thresholds and initial price tests).[56] As noted in the Penny Approval Order, the Penny Program reflects a certain level of trading interest (either because the class is newly listed or a class that experience a significant growth in investor interest) to quote in finer trading increments, which in turn should benefit market participants by reducing the cost of trading such options.[57] IBIT options are among a select group of products that have achieved a certain level of liquidity that have garnered it the ability to trade in finer increments pursuant to the Penny Interval Program. Failing to permit IBIT options to potentially increase position and exercise limits given the trading in finer increments, may artificially inhibit liquidity and create price inefficiency for IBIT options.

Finally, as discussed above, the Exchange's surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior that might arise from increasing or eliminating position and exercise limits in certain classes. The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in the options on the underlying securities, further promoting just and equitable principles of trading, the maintenance of a fair and orderly market, and the protection of investors.

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 inter-market competition as the proposal is not competitive in nature. The Exchange expects that all option exchanges will adopt substantively similar proposals, such that the Exchange's proposal would benefit competition. For these reasons, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange's proposal does not burden intra-market competition because all Members would be subject to the position limits in Options 9, Sections 13 and corresponding exercise limits in Options 9, Section 15. The Exchange believes that the proposed rule change will also provide additional opportunities for market participants to continue to efficiently achieve their investment and trading objectives for equity options on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

IV. Proceedings To Determine Whether To Approve or Disapprove SR–ISE–2025–26, as Modified by Amendment No. 5, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [58] to determine whether the proposed rule change, as modified by Amendment No. 5, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[59] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with the Act and, in particular, with Section 6(b)(5) of the

[51] This percentage is arrived at with this equation: (1,000,000 contract limit * 100 share per option/1,337,920,000 shares outstanding). This information was captured on February 11, 2026.

[52] This number was arrived at with this calculation: (1,000,000 limit * 100 shares per option * $38.29 IBIT NAV)/(20,528,687 BTC outstanding * $66,938 BTC price).

[53] This percentage is arrived at with this equation: (1,000,000 contract limit * 100 share per option/1,337,920,000 shares outstanding). This information was captured on February 11, 2026.

[54] The Exchange may add to the Penny Program a newly listed option class provided that (i) it is among the 300 most actively traded multiply listed option classes, as ranked by National Cleared Volume at OCC, in its first full calendar month of trading and (ii) the underlying security is priced below $200 or the underlying index is at an index level below $200. Any option class added under this provision will be added on the first trading day of the month after it qualifies and will remain in the Penny Program for one full calendar year, after which it will be subject to the Annual Review described in Supplementary Material .01(b) to Options 3, Section 3. The Exchange may add any option class to the Penny Program, provided that (i) it is among the 75 most actively traded multiply listed option classes, as ranked by National Cleared Volume at OCC, in the past six full calendar months of trading and (ii) the underlying security is priced below $200 or the underlying index is at an index level below $200. Any option class added under this provision will be added on the first trading day of the second full month after it qualifies and will remain in the Penny Program for the rest of the calendar year, after which it will be subject to the Annual Review as described in Supplementary Material .01(b) to Options 3, Section 3. *See* Supplementary Material .01 to ISE Options 3, Section 3.

[55] *See* Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545, 19548 (April 7, 2020) (File No. 4–443) (Joint Industry Plan; Order Approving Amendment No. 5 to the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options To Adopt a Penny Interval Program) (''Penny Approval Order'').

[56] Options on iShares MSCI Emerging Markets, iShares China Large-Cap ETF and iShares MSCI EAFE ETF also trade in penny increments based on their liquidity.

[57] *Id.* at 19548.

[58] 15 U.S.C. 78s(b)(2)(B).

[59] *Id.*

Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and to protect investors and the public interest.[60]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on whether the data and analysis provided by the Exchange support a conclusion that the proposed position and exercise limits for IBIT options are consistent with the requirements of Section 6(b)(5) of the Act, including the requirements that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal, as modified by Amendment No. 5. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[61]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by March 20, 2026. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 3, 2026.

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–ISE–2025–26 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–ISE–2025–26. 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–ISE–2025–26 and should be submitted on or before March 20, 2026. Rebuttal comments should be submitted by April 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[62]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–03917 Filed 2–26–26; 8:45 am]

BILLING CODE 8011–01–P

[60] 15 U.S.C. 78f(b)(5).

[61] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[62] 17 CFR 200.30–3(a)(12), (57).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21450 and #21451; Washington Disaster Number WA–20025]

Administrative Declaration Amendment of a Disaster for the State of Washington

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Administrative declaration of disaster for the State of Washington dated February 24, 2026.

Incident: 2025 Severe Winter Storms.

DATES: Issued on February 25, 2026.

Incident Period: December 5, 2025 through December 25, 2025.

Physical Loan Application Deadline Date: April 27, 2026.

Economic Injury (EIDL) Loan Application Deadline Date: November 24, 2026.

ADDRESSES: Visit the MySBA Loan Portal at *https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Jennifer Talarico, 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: The notice of an Administrative declaration for the State of Washington, dated February 24, 2026, is hereby amended to include the following area as adversely affected by the disaster.

Contiguous County:

Washington: San Juan.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority:13 CFR 123.(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2026–03986 Filed 2–26–26; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21450 and #21451; Washington Disaster Number WA–20025]

Administrative Declaration of a Disaster for the State of Washington

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of an Administrative declaration of a disaster for the state of Washington dated February 24, 2026.

Incident: 2025 Severe Winter Storms.

DATES: Issued on February 24, 2026.

Incident Period: December 5, 2025 through December 22, 2025.

Physical Loan Application Deadline Date: April 27, 2026.

Economic Injury (EIDL) Loan Application Deadline Date: November 24, 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 Counties: King, Lewis, Skagit, Snohomish, Whatcom.

Contiguous Counties:

Washington: Chelan, Cowlitz, Grays Harbor, Island, Kitsap, Kittitas, Okanogan, Pacific, Pierce, Skamania, Thurston, Wahkiakum, Yakima.

The Interest Rates are:

	Percent
For Physical Damage:	
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
For Economic Injury:	
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 214506 and for economic injury is 214510.

The states which received an SBA Administrative declaration are Washington.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2026–03916 Filed 2–26–26; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0174]

Commercial Driver's License Standards: Application for Exemption Renewal; Wilson Logistics

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; grant of application for exemption renewal.

SUMMARY: FMCSA announces its final decision to renew the exemption granted to Wilson Logistics from the requirement that a commercial driver's license (CDL) holder with the proper class and endorsements be seated in the front seat of the commercial motor vehicle (CMV) at all times while the commercial learner's permit (CLP) holder is engaged in behind-the-wheel training on public roads or highways, but only after the CLP holder has passed the CDL skills test. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions set forth below, is likely to achieve a level of safety that is equivalent to, or greater than, the level that would be achieved in the absence of the exemption.

DATES: The renewed exemption is effective February 24, 2026, and expires February 24, 2031.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; *richard.clemente@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2019-0174/document* and choose the document to review. To view comments, click this notice, then click ''Browse 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. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant's safety analysis. The Agency must provide an opportunity for public comment on the request.

The Agency reviews the application, safety analyses, and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved without the exemption, pursuant to the standard set forth in 49 U.S.C. 31315(b)(1). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

Section 383.25(a)(1) requires a CDL holder with the proper CDL class and endorsements necessary to operate the CMV to accompany a CLP holder and be physically present in the front seat of the CMV next to the CLP holder at all times or, in a commercial passenger vehicle, directly behind or in the front row behind the driver and must have the CLP holder under observation and direct supervision.

Applicant's Request

Wilson Logistics' application for an exemption renewal was described in detail in a **Federal Register** notice published on December 10, 2025 (90 FR

57274) and will not be repeated as the facts have not changed.

IV. Public Comments

The Agency received 74 comments, most of which were submitted by individuals. Five individuals commented in support, 65 commented in opposition, and four commenters were neither for nor against granting the exemption.

Some of the commenters in support of granting the exemption have experience similar to the training described by the applicant. Alan Stancombe, J.D., said that, while he had not worked for Wilson Logistics, ''I personally have fellow CDL A driver trainers. I am very aware of their in-house training program that is the very best that any company has to offer.'' Otto Ammer said that, based on the description of Wilson Logistics' training that he read about in a December 31, 2025 article in CDL Life, Wilson Logistics is ''doing it the right way'' and that it ''is the same type of program'' that his first employer used when he began driving in 1980. Other supportive commenters said they saw value in Wilson Logistics' training program. Alec Green said, ''As long as the holder of the CDL or (trainer) is in the vehicle not sleeping, it should be permitted.''

Some of the commenters who opposed granting the exemption believe the applicant is using the exemption to cut costs and not for training. An anonymous commenter said, ''This is not driver training, it's cheap labor while one sleeps.'' Keith Case said that the CLP holder ''is just being used as an extra logbook so that Wilson can book better paying freight while still paying the CLP holder a minimum amount.'' Other opposing commenters noted the safety risks posed by inexperienced drivers.

Bruce Stockton, a former employee of Wilson Logistics who submitted Wilson Logistics' exemption renewal application, submitted an opposing comment to the docket. His comment states that he has ''personal knowledge that the application for renewal may contain incorrect or false data.'' He indicates that Wilson Logistics changed the driver qualifications for new CLP applicants and shortened the training since the exemption renewal request was submitted. Mr. Stockton recommends the Agency investigate Wilson Logistics before considering renewal.

Commenters who were neither for nor against the exemption offered suggestions on the applicant's training practices. Dave Clancy said, ''I truly believe that a licensed 'trainer' should ride with a new applicant for 50% of his training period to help instill the importance of safety and to [e]nsure the applicant follows all laws within the trucking industry.''

V. FMCSA Decision

The Agency acknowledges the concerns of commenters regarding the safety risks posed by inexperienced drivers and emphasizes that the exemption renewal applies only to Wilson Logistics drivers who have completed the required entry-level driver training requirements, set forth in 49 CFR part 380, subpart F, and passed the CDL skills test. CLP holders who have passed the CDL skills test have demonstrated their abilities to safely operate the CMV. If these CLP holders had passed the skills test in their home State of domicile, they could immediately obtain their permanent or temporary CDL and begin driving CMVs without any on-board supervision. Drivers who have passed the CDL skills test outside their State of domicile must obtain the physical CDL credential from their State of domicile. The exemption therefore permits these individuals who are employed by Wilson Logistics to work productively as team CMV drivers during the period between passing the CDL skills test and receiving their CDL, without requiring the accompanying CDL holders to be on duty and in the front seat.

To address the commenters' concerns that the exemption allows Wilson Logistics to use trainees for cost-cutting purposes, rather than focusing on training, FMCSA clarifies in the terms and conditions below that the CLP holder may operate for no more than 30 days after passing the CDL skills test without a CDL holder present in the front passenger seat. This allows the CLP holder time to travel to his or her State of domicile to retrieve the CDL document. FMCSA will follow up on Mr. Stockton's allegations regarding Wilson Logistics' entry level driver training and third-party testing programs.

FMCSA is unaware of any evidence of a degradation of safety attributable to the current exemption for Wilson Logistics drivers. There is no indication of an adverse impact on safety while operating under the terms and conditions specified in the initial exemption or exemption renewal. Furthermore, the Agency has granted the same exemption to other applicants.[1] FMCSA concludes that the exemption, subject to the terms and conditions set forth in section VI, would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, in accordance with 49 U.S.C. 31315(b)(1). FMCSA has authority to revoke the exemption if (1) Wilson Logistics or the drivers operating under the exemption fail to comply with the terms and conditions of the exemption; (2) the exemption results in a lower level of safety than was achieved before it was granted; or (3) FMCSA determines that continuation of the exemption would not be consistent with the goals and objectives of Title 49, chapter 313 or section 31136.

VI. Exemption Decision

A. Grant of Exemption

FMCSA renews the exemption for a period of five years subject to the terms and conditions of this decision. The exemption from the requirement in 49 CFR 383.25(a)(1) that a valid CDL holder be in the front seat of the vehicle next to the CLP holder, is effective February 24, 2026, and expires February 24, 2031, 11:59 p.m. local time.

B. Applicability of Exemption

The exemption from 49 CFR 383.25(a)(1) permits Wilson Logistics drivers who hold a CLP and have successfully passed a CDL skills test, to drive a CMV without a CDL holder being present in the front seat of the vehicle for no more than 30 days after the CLP holder has passed the CDL skills test.

C. Terms and Conditions

When operating under this exemption, Wilson Logistics and its drivers are subject to the following terms and conditions:

(1) Wilson Logistics and its drivers must comply with all other applicable FMCSRs (49 CFR parts 350–399);

(2) A CLP holder may operate under the exemption for no more than 30 days after passing the CDL skills test;

(3) The drivers must be in possession of a valid State driver's license, CLP with the required endorsements, and documentation that they have passed the CDL skills test;

(4) The drivers must not be subject to any out-of-service order or suspension of driving privileges;

(5) The accompanying CDL holder must have the proper CDL class and

[1] To CRST Expedited [83 FR 53149, September 23, 2018 (original) and 89 FR 42055, September 24, 2023 (renewal)]; to New PRIME [82 FR 29143, June 27, 2017 (original) and 87 FR 38449, June 28, 2022 (renewal)]; to C.R. England [82 FR 26975, June 12, 2017 (original) and 87 FR 36360, June 16, 2022 (renewal)]; and to Werner Enterprises, Inc. [87 FR 18855, March 31, 2022].

endorsements necessary to operate the CMV operated by the CLP holder; and

(6) The drivers must provide this exemption document upon demand to enforcement officials.

D. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

E. Notification to FMCSA

Wilson Logistics must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5T) involving any of its CMVs operating under the terms of this exemption. The notification must include the following information:

(a) Name of the exemption: ''Wilson Logistics'';

(b) Date of the accident;

(c) City or town, and State, in which the accident occurred, or closest to the accident scene;

(d) Driver's name and license number, and the name and number of the co-driver;

(e) Vehicle number and State license number;

(f) Number of individuals suffering physical injury;

(g) Number of fatalities;

(h) The police-reported cause of the accident;

(i) Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations; and

(j) The driver's total driving time and total on-duty time prior to the accident.

Reports filed under this provision shall be emailed to *MCPSD@DOT.GOV* with ''Wilson Logistics and FMCSA–2019–0174'' in the subject line.

VII. Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, the exemption will be revoked if: (1) Wilson Logistics or the drivers operating under the exemption fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of Title 49, chapter 313 or section 31136.

Derek Barrs,

Administrator.

[FR Doc. 2026–03926 Filed 2–26–26; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2026–0265]

Request for Comments on the Renewal of a Previously Approved Information Collection: Effective U.S. Control (EUSC)/Parent Company

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: MARAD invites public comments on its intention to request Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 21330511 (Effective U.S. Control (EUSC)/Parent Company) is used to identify useful and available oceangoing vessels for the deployment of U.S. military equipment and supplies for the Department of Defense, to sustain U.S. forces during a foreign theater of operations. MARAD is required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: George Jackson, 202–366–4029, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, Email: *george.jackson@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Effective U.S. Control (EUSC)/Parent Company.

OMB Control Number: 2133–0511.

Type of Request: Extension without change of a previously approved collection.

Abstract: This information collection includes a detailed inventory of foreign-registered vessels owned by U.S. citizens, which is essential to logistical support planning operations conducted by MARAD officials. Collected information could also be vital during national and international emergencies.

Respondents: U.S. citizens who own foreign-registered vessels.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 60.

Estimated Number of Responses: 60.

Estimated Hours per Response: 1.

Annual Estimated Total Annual Burden Hours: 60.

Frequency of Response: Annually.

A 60-day **Federal Register** Notice soliciting comments on this information collection was published on December 23, 2026 (90 **Federal Register** (FR) 60235).

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2026–03974 Filed 2–26–26; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2026–0266]

Request for Comments on the Renewal of a Previously Approved Information Collection: Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, State Maritime Academies and Non-Profit Maritime Training Facilities

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: MARAD invites public comments on its intention to request Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133–0504 (Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, State Maritime Academies and Non-Profit Maritime Training Facilities) is used to determine compliance with applicable statutory requirements regarding surplus government property. This collection is being revised to include a new form MA–1073C Agreement for Donation of Federal Property for Historical

Purposes. MARAD is required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

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: Katrina McRae, 202–366–3198, Office of Sealift Support, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, Email: *Katrina.mcrae@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, State Maritime Academies and Non-Profit Maritime Training Facilities.

OMB Control Number: 2133–0504.

Type of Request: Revision of a currently approved collection.

Abstract: MARAD requires approved maritime training institutions seeking excess or surplus government property to provide a statement of need/or justification prior to acquiring the property, using this information collection.

Respondents: Maritime training institutions, such as the U.S. Merchant Marine Academy, State Maritime Academies and non-profit maritime institutions.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 40.

Estimated Number of Responses: 360.

Estimated Hours per Response: Between 1 and 4.

Annual Estimated Total Annual Burden Hours: 360.

Frequency of Response: Annually.

A 60-day **Federal Register** Notice soliciting comments on this information collection was published on December 23, 2025, (90 **Federal Register** (FR) 60233).

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2026–03976 Filed 2–26–26; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2026–0267]

Request for Comments on the Renewal of a Previously Approved Information Collection: Ocean Shipments Moving Under Export-Import Bank Financing

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: MARAD invites public comments on its intention to request Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133–0013 (Ocean Shipments Moving Under Export-Import (EXIM) Bank Financing) is used to document shipments made during the life of certain EXIM Bank financed projects. Collected information is necessary for MARAD to fulfill its legislative requirement to monitor the percentage of ocean freight revenues and tonnage. MARAD is required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Lisa Burley, Office of Cargo and Commercial Sealift, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, Email: *cargo.marad@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Ocean Shipments Moving Under Export-Import Bank Financing.

OMB Control Number: 2133–0013.

Type of Request: Extension without change of a currently approved collection.

Abstract: MARAD uses this information collection to monitor compliance with the cargo preference laws by parties covered under Procedural Regulation 17 (PR 17) and 46 U.S.C. 55304, compile annual information on EXIM Bank-financed shipments, and when applicable, provide for an informal grievance procedure, in the event there is a question or complaint pertaining to cargo preference matters.

The monthly shipping reports, with substantiating documents, provide the only basis for MARAD to exercise its legislative responsibility to monitor EXIM Bank-financed cargoes that are transported on U.S.-flag vessels, recipient flag vessels, and on third-flag vessels, according to the determinations and certifications of vessel non-availability that MARAD has granted. The compilation of the statistics from the shipping reports forms the basis for determining compliance with PR 17 for each loan participant. This information is also provided to the EXIM Bank and is the nucleus for conducting annual reviews of the shipping activities of the EXIM Bank programs.

Respondents: All EXIM Bank loan and certain loan guarantee recipients and designated representatives charged with the responsibility of monthly and annual reporting. These respondents include but are not limited to can be contractors, ocean transportation intermediaries, and suppliers, etc.

Affected Public: EXIM Bank loan and certain loan guarantee recipients.

Estimated Number of Respondents: 30.

Estimated Number of Responses: 390.

Estimated Hours per Response: .5.

Annual Estimated Total Annual Burden Hours: 195.

Frequency of Response: Monthly and Annually.

A 60-day **Federal Register** Notice soliciting comments on this information collection was published on December 23, 2025 (90 **Federal Register** (FR) 60233).

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2026–03975 Filed 2–26–26; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Great Lakes St. Lawrence Seaway Development Corporation

Meeting of the Great Lakes St. Lawrence Seaway Development Corporation (GLS) Advisory Board

AGENCY: Great Lakes St. Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the virtual public meeting of the Great Lakes St. Lawrence Seaway

Development Corporation (GLS) Advisory Board.

DATES: The virtual public meeting will be held on:

- Thursday, March 26, 2026, from 10 a.m.–12 p.m. EDT
  - Requests to participate in the meeting must be received by March 12, 2026.
  - Requests for accommodations to a disability must be received by March 12, 2026.
  - If you wish to speak during the meeting, you must submit a written copy of your remarks to GLS by March 5, 2026.
  - Requests to submit written materials to be reviewed during the meeting must be received by GLS no later than March 5, 2025.

ADDRESSES: The meeting will be held virtual. Details on how to participate will be forwarded to those who RSVP.

FOR FURTHER INFORMATION CONTACT: Sylvonica Madlock, Executive Officer, Great Lakes St. Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE, Suite W74–302, Washington, DC 20590; (202) 870–6335.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of meetings of the GLS Advisory Board. The agenda for each meeting is the same and will be as follows:

1. Opening Remarks
2. Consideration of Minutes of Past Meeting
3. Quarterly Report
4. Old and New Business
5. Closing Discussion
6. Adjournment

Public Participation

Attendance at the meeting is open to the interested public. With the approval of the Administrator, members of the public may present oral statements during the meeting. Persons wishing further information should contact the person listed under the heading, **FOR FURTHER INFORMATION CONTACT**. There will be three (3) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, GLS will conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to GLS Advisory Board members. All prepared remarks submitted will be accepted and considered as part of the meeting's record. Any member of the public may submit a written statement after the meeting deadline, and it will be presented to the committee.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Any member of the public may present a written statement to the Advisory Board at any time.

Donna O'Berry,

Chief Counsel.

[FR Doc. 2026–03992 Filed 2–26–26; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; OCC Supplier Registration Form

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning a revision to its information collection titled, ''OCC Supplier Registration Form.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by March 30, 2026.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0316, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0316'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* You can find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of the Treasury'' and then click ''submit.'' This information collection can be located by searching OMB control number ''1557–0316'' or ''OCC Supplier Registration Form.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer,

(202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements, imposed on ten or more persons, that members of the public submit reports, keep records, or provide information to a third party. The OCC asks the OMB to extend its approval of the collection in this notice.

Title: OCC Supplier Registration Form.

OMB Control No.: 1557–0316.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Description: The OCC Supplier Registration Form is used to update and enhance an internal database of entities interested in doing business with the agency. This collection of information from interested suppliers facilitates early market research by allowing businesses to provide specific information to the OCC about capabilities that meet the OCC's needs and in specific purchasing areas.

The collection also allows the OCC to build a robust internal database of interested small businesses. In collaboration with the U.S. Department of the Treasury and U.S. Small Business Administration, the OCC establishes annual small business contracting goals. This collection helps ensure the maximum participation of small business concerns in the OCC's procurement process.

The OCC is revising the Supplier Registration Form by changing the format of the business classification information requested on the form; however, this revision will not impact the ability of suppliers to provide business classification information or otherwise continue submitting expressions of interest in doing business with the agency.

Estimated Burden

Estimated Frequency of Response: On occasion.

Estimated Number of Respondents: 100.

Estimated Burden per Response: 10 minutes.

Estimated Total Annual Burden: 17 hours.

Comments: On December 23, 2023, the OCC published a 60-day notice for this information collection, (90 FR 60237). No comments were received.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Charles A. Davis,

Assistant Director, Office of the Comptroller of the Currency.

[FR Doc. 2026–03935 Filed 2–26–26; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Appraisals for Higher-Priced Mortgage Loans

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, ''Appraisals for Higher-Priced Mortgage Loans.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by March 30, 2026.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0313, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0313'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* You can find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of the Treasury'' and then click ''submit.'' This information collection can be located by searching OMB control number ''1557–0313'' or ''Appraisals for Higher-Priced Mortgage Loans.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the

Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks the OMB to extend its approval of the collection in this notice.

Title: Appraisals for Higher-Priced Mortgage Loans.

OMB Control Number: 1557–0313.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Description: This information collection relates to section 1471 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which added a new section 129H to the Truth in Lending Act (TILA) establishing special appraisal requirements for ''higher-risk mortgages.'' For certain mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, creditors must obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used to evaluate real estate collateral. The statute permits the OCC to issue a rule to include exemptions from these requirements.

The information collection requirements are found in 12 CFR 34.203(c)(1), (c)(2), (d), (e) and (f). This information is required to protect consumers and promote the safety and soundness of creditors making higher-priced mortgage loans (HPMLs) subject to 12 CFR part 34, subpart G. This information is used by creditors to evaluate real estate collateral securing HPMLs subject to 12 CFR 34.203(c) and by consumers entering these transactions. The collections of information are mandatory for creditors making HPMLs subject to 12 CFR part 34, subpart G.

Under 12 CFR 34.203(e) and (f), a creditor must, no later than the third business day after the creditor receives a consumer's application for an HPML, provide the consumer with a disclosure that informs the consumer that the creditor may order an appraisal to determine the value of the property and charge the consumer for that appraisal, that the creditor will provide the consumer with a copy of any appraisal, and that the consumer may choose to have an additional appraisal conducted at the expense of the consumer. If a loan is an HPML subject to 12 CFR 34.203(c), then, under 12 CFR 34.203(c)(1) and (2), the creditor is required to obtain a written appraisal prepared by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction (Written Appraisal). Under 12 CFR 34.203(d)(1), a creditor is required to obtain an additional appraisal (Additional Written Appraisal) for an HPML that is subject to 12 CFR part 34, subpart G if: (1) the seller acquired the property securing the loan 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10 percent; or (2) the seller acquired the property securing the loan 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 20 percent.

Under 12 CFR 34.203(d)(3) and (4), the Additional Written Appraisal must meet the requirements described in 12 CFR 34.203(c)(1) and also include an analysis of: (1) the difference between the price at which the seller acquired the property and the price the consumer is obligated to pay to acquire the property; (2) changes in market conditions between the date the seller acquired the property and the date of the consumer's agreement to acquire the property; and (3) any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property. Under 12 CFR 34.203(f), a creditor is required to provide the consumer with a copy of the Written Appraisal or Additional Written Appraisal, as applicable.

Estimated Burden

Estimated Frequency of Response: On occasion.

Estimated Number of Respondents: 1,011.

Estimated Total Annual Burden: 261 hours.

Comments: On December 23, 2025, the OCC published a 60-day notice for this information collection (90 FR 60236). No comments were received.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Ji Y. Cheon,

Assistant Director, Office of the Comptroller of the Currency.

[FR Doc. 2026–03977 Filed 2–26–26; 8:45 am]

BILLING CODE 4810–33–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 25, 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 25, 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 authorities listed below.

Individuals

1. ZAND, Mehdi, Iran; DOB 06 Apr 1986; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; National ID No. 0386329192 (Iran) (individual) [IRAN–CON–ARMS–E.O.] (Linked To: QODS AVIATION INDUSTRIES).

Designated pursuant to section 1(a)(v) of Executive Order 13949 of September 21, 2020, ''Blocking Property of Certain Persons With Respect to the Conventional Arms Activities of Iran,'' 85 FR 60043, 3 CFR, 2020 Comp., p. 430 (''E.O. 13949''), for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, QODS AVIATION INDUSTRIES, a person whose property and interests in property are blocked pursuant to E.O. 13949.

2. JAFARI, Mehrdad, Iran; DOB 25 Dec 1986; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport A65005073 (Iran); National ID No. 0080721966 (Iran) (individual) [IRAN–CON–ARMS–E.O.] (Linked To: QODS AVIATION INDUSTRIES).

Designated pursuant to section 1(a)(v) of E.O. 13949 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, QODS AVIATION INDUSTRIES, a person whose property and interests in property are blocked pursuant to E.O. 13949.

3. SHARIATZADEH, Ebrahim, Iran; DOB 07 Jan 1985; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport 101957390 (Iran); National ID No. 0829468048 (Iran) (individual) [IRAN–CON–ARMS–E.O.] (Linked To: QODS AVIATION INDUSTRIES).

Designated pursuant to section 1(a)(v) of E.O. 13949 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, QODS AVIATION INDUSTRIES, a person whose property and interests in property are blocked pursuant to E.O. 13949.

4. ABEDINI, Mohammad, Iran; DOB 27 Aug 1995; nationality Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male; Passport T54523589 (Iran); National ID No. 5100152982 (Iran) (individual) [IRAN–CON–ARMS–E.O.] (Linked To: QODS AVIATION INDUSTRIES).

Designated pursuant to section 1(a)(v) of E.O. 13949 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, QODS AVIATION INDUSTRIES, a person whose property and interests in property are blocked pursuant to E.O. 13949.

Entities

1. PAROS MARITIME S.A., Panama City, Panama; Organization Established Date 22 Nov 2021; RUC # 155715457–2–2021 (Panama); Identification Number IMO 6272687 (Panama) [IRAN–EO13902].

Designated pursuant to to section 1(a)(i) of Executive Order 13902 of September 28, 2010, ''Imposing Sanctions With Respect to Additional Sectors of Iran,'' 85 FR 2003, 3 CFR, 2020 Comp., p. 299 (E.O. 13902), for operating in the petroleum sector of the Iranian economy.

2. WANSA GAS SHIPPING CO., Trust Company Complex, Ajeltake Road, Majuro, Ajeltake Island 96960, Marshall Islands; Office 2505, Silver Tower, Business Bay, Dubai, United Arab Emirates; Organization Established Date 17 Feb 2025; Identification Number IMO 0191721; Registration Number 130159 (Marshall Islands) [IRAN–EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

3. MISTRAL FLEET CO LTD (a.k.a. MISTRAL FLEET COMPANY LIMITED), Road Town, Tortola, Virgin Islands, British; Nationality of Registration Virgin Islands, British; Organization Established Date 2025; Identification Number IMO 0334947 [IRAN–EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

4. OCEAN KUDOS SHIPPING COMPANY LIMITED, Trust Company Complex, Ajeltake Road, Majuro, Ajeltake Island 96960, Marshall Islands; Organization Established Date 26 Nov 2024; Identification Number IMO 0118435; Registration Number 129014 (Marshall Islands) [IRAN–EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

5. POROS MARITIME VENTURES S.A., 21st Floor, Global Plaza, Calle 50, Panama City, Panama; Organization Established Date 04 Jun 2025; RUC # 155768186–2–2025 (Panama); Identification Number IMO 0260904 [IRAN–EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

6. VAST MARINE INC (a.k.a. VAST MARINE INCORPORATED), 80 Broad Street, Monrovia, Liberia; Organization Established Date 2023; Identification Number IMO 6421571 [IRAN–EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

7. BEHENGAM TADBIR QESHM SHIPPING AND MARITIME SERVICES COMPANY (Arabic: شركت خدمات دريايى و كشتيرانى بهنگام تدبير قشم) (a.k.a. BEHENGAM TADBEER QESHM SHIPPING COMPANY), Gholestan Boulevard, Between Imam Gholi Khan Square and Hafez Square, Saman Administrative Site, Qeshm, Iran 7951613612, Iran; Irancheh, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Organization Established Date 25 Dec 2012; National ID No. 14003124066 (Iran); Identification Number IMO 5965711; Registration Number 3663 (Iran) [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

8. GOLDWAVE MARITIME SERVICES INC, Trust Company Complex, Ajeltake Road, Majuro, Ajeltake Island 96960, Marshall Islands; Organization Established Date 21 Aug 2024; Identification Number IMO 0042648; Registration Number 127600 (Marshall Islands) [IRAN–EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

9. ITHAKI MARITIME AND TRADING S.A., Global Plaza Tower, Calle 50, Panama City, Panama; Organization Established Date 2022; RUC # 155721579–2–2022 (Panama); Identification Number IMO 6329280 [IRAN–EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

10. KAITO NAVIGATION SA, 80 Broad Street, Monrovia, Liberia; Organization Established Date 2024; Identification Number IMO 0092021 [IRAN–EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum and petrochemical sectors of the Iranian economy.

11. NYR SHIPPING CO., Trust Company Complex, Ajeltake Road, Majuro, Ajeltake Island 96960, Marshall Islands; Organization Established Date 31 May 2024; Identification Number IMO 0148434; Registration Number 126284 (Marshall Islands) [IRAN–EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petrochemical sector of the Iranian economy.

12. ALTIS TEKSTIL MAKINA TICARET LIMITED SIRKETI (a.k.a. ALTIS TEXTILE MACHINERY TRADING COMPANY LIMITED), Yakupulu Neighborhood, Hurriyet Boulevard, Skyport Site, Skyport Residence, No. 1, Suite No. 62, Beylikduzu, Istanbul 34524, Turkey; Additional Sanctions Information—Subject to Secondary Sanctions; Organization Established Date 24 Dec 2024; Business Registration Number 1059763 (Turkey) [NPWMD] [IFSR] (Linked To: OJE PARVAZ MADO NAFAR COMPANY).

Designated pursuant to section 1(a)(iii) of Executive Order (E.O.) 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters,'' 70 FR 38567, 3 CFR, 2005 Comp., p. 170 (E.O. 13382), for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, OJE PARVAZ MADO NAFAR COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

13. ARYA GLOBAL GIDA SANAYI VE TICARET LIMITED SIRKETI, 198, No:22–1 Atakoy 7–8–9–10, Kisim Mahallesi, Cobancesme E–5 Yan Yol Caddesi, Bakirkoy, Istanbul 34158, Turkey; Additional Sanctions Information—Subject to Secondary Sanctions; Organization Established Date 08 Oct 2024; Tax ID No. 0861684402 (Turkey); Business Registration Number 1042035 (Turkey) [NPWMD] [IFSR] (Linked To: OJE PARVAZ MADO NAFAR COMPANY).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, OJE PARVAZ MADO NAFAR COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

14. UTUS GUMRUKLEME GIDA TEKSTIL ITHALAT IHRACAT DIS TICARET VE SANAYI LIMITED SIRKETI, 198, No:22–1 Atakoy 7–8–9–10, Kisim Mahallesi, Cobancesme, E–5 Yan Yol Caddesi, Bakirkoy, Istanbul 34158, Turkey; Additional Sanctions Information—Subject to Secondary Sanctions; Organization Established Date 06 Dec 2024; Tax ID No. 8971008150 (Turkey); Business Registration Number 1055686 (Turkey) [NPWMD] [IFSR] (Linked To: OJE PARVAZ MADO NAFAR COMPANY).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, OJE PARVAZ MADO NAFAR COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

15. ADAK PARGAS PARS TRADING COMPANY, Bandar Abbas, Hormozgan, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Organization Established Date 06 Mar 2023; National ID No. 14012064114 (Iran); Registration Number 22875 (Iran) [NPWMD] [IFSR] (Linked To: KLINGE, Marco).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, KLINGE, Marco, a person whose property and interests in property are blocked pursuant to E.O. 13382.

16. MOSTAFA ROKNIFARD PRIME CHOICE GENERAL TRADING LLC (a.k.a. MOSTAFA ROKNIFARD PERFUMES AND COSMETICS TRADING LLC), Dubai, United Arab Emirates; Additional Sanctions Information—Subject to Secondary Sanctions; Organization Established Date 01 Oct 2021 to 31 Oct 2021; Commercial Registry Number 1627661 (United Arab Emirates); Chamber of Commerce Number 377082 (United Arab Emirates); Business Registration Number 996003 (United Arab Emirates) [NPWMD] [IFSR] (Linked To: KLINGE, Marco).

Designated pursuant to section 1(a)(iii) of E.O. 13382 for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, KLINGE, Marco, a person whose property and interests in property are blocked pursuant to E.O. 13382.

On February 25, 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. LUMA (YJQY4) LPG Tanker Vanuatu flag; Vessel Year of Build 1993; Vessel Registration Identification IMO 9034690; MMSI 577277000 (vessel) [IRAN–EO13902] (Linked To: WANSA GAS SHIPPING CO.).

Identified as property in which WANSA GAS SHIPPING CO., a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

2. NIBA (T8A4992) LPG Tanker Palau flag; Vessel Year of Build 1993; Vessel Registration Identification IMO 9046784; MMSI 511101558 (vessel) [IRAN–EO13902] (Linked To: PAROS MARITIME S.A.).

Identified as property in which PAROS MARITIME S.A., a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

3. FELICITA (D6A3040) Crude Oil Tanker Comoros flag; Vessel Year of Build 2000; Vessel Registration Identification IMO 9167162; MMSI 620999032 (vessel) [IRAN–EO13902] (Linked To: VAST MARINE INC).

Identified as property in which VAST MARINE INC, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

4. HOOT (3FIQ9) LPG Tanker Panama flag; Vessel Year of Build 2003; Vessel Registration Identification IMO

9267962; MMSI 371686000 (vessel) [IRAN–EO13902] (Linked To: POROS MARITIME VENTURES S.A.).

Identified as property in which POROS MARITIME VENTURES S.A., a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

5. NORTH STAR (8PPB) Crude Oil Tanker Barbados flag; Vessel Year of Build 2005; Vessel Registration Identification IMO 9299563; MMSI 314109000 (vessel) [IRAN–EO13902] (Linked To: MISTRAL FLEET CO LTD).

Identified as property in which MISTRAL FLEET CO LTD, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

6. OCEAN KOI (8P2574) Crude Oil Tanker Barbados flag; Vessel Year of Build 2004; Vessel Registration Identification IMO 9255933; MMSI 314001038 (vessel) [IRAN–EO13902] (Linked To: OCEAN KUDOS SHIPPING COMPANY LIMITED).

Identified as property in which OCEAN KUDOS SHIPPING COMPANY LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

7. ATEELA 1 (EPCF9) Products Tanker Iran flag; Vessel Year of Build 2009; Vessel Registration Identification IMO 9548990; MMSI 422044800 (vessel) [IRAN–EO13902] (Linked To: BEHENGAM TADBIR QESHM SHIPPING AND MARITIME SERVICES COMPANY).

Identified as property in which BEHENGAM TADBIR QESHM SHIPPING AND MARITIME SERVICES COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

8. ATEELA 2 (EPCG2) Products Tanker Iran flag; Vessel Year of Build 2010; Vessel Registration Identification IMO 9549009; MMSI 422044900 (vessel) [IRAN–EO13902] (Linked To: BEHENGAM TADBIR QESHM SHIPPING AND MARITIME SERVICES COMPANY).

Identified as property in which BEHENGAM TADBIR QESHM SHIPPING AND MARITIME SERVICES COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

9. ALAA (T8A5128) LPG Tanker Palau flag; Vessel Year of Build 1998; Vessel Registration Identification IMO 9155341; MMSI 511101662 (vessel) [IRAN–EO13902] (Linked To: KAITO NAVIGATION SA).

Identified as property in which KAITO NAVIGATION SA, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

10. DANUTA I (T8A4990) LPG Tanker Palau flag; Vessel Year of Build 2000; Vessel Registration Identification IMO 9193721; MMSI 511101556 (vessel) [IRAN–EO13902] (Linked To: ITHAKI MARITIME AND TRADING S.A.).

Identified as property in which ITHAKI MARITIME AND TRADING S.A., a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

11. GAS FATE (3E6859) LPG Tanker Panama flag; Vessel Year of Build 1999; Vessel Registration Identification IMO 9147394; MMSI 352004577 (vessel) [IRAN–EO13902] (Linked To: NYR SHIPPING CO.).

Identified as property in which NYR SHIPPING CO., a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

12. REMIZ (3E8793) Crude Oil Tanker Panama flag; Vessel Year of Build 2002; Vessel Registration Identification IMO 9223344; MMSI 352005545 (vessel) [IRAN–EO13902] (Linked To: GOLDWAVE MARITIME SERVICES INC).

Identified as property in which GOLDWAVE MARITIME SERVICES INC, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

(Authority: E.O. 13902; E.O. 13382; E.O. 13949.)

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2026–03988 Filed 2–26–26; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

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 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. OFAC is also publishing updates to identifying information of one or more persons currently included in the SDN List.

DATES: This action was issued on February 19, 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 Actions

On February 19, 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

1. ADAM, Elfateh Abdullah Idris (a.k.a. IDRIS, Al-Fateh Abdullah; a.k.a. ''ABU LULU''; a.k.a. ''ISSA ABU LULU''), Sudan; nationality Sudan; Gender Male; Rapid Support Forces Commander in Sudan (individual) [SUDAN–EO14098].

Designated pursuant to section 1(a)(i)(G) of Executive Order 14098 of May 4, 2023, ''Imposing Sanctions on Certain Persons Destabilizing Sudan and Undermining the Goal of a Democratic Transition'' (E.O. 14098), for being a foreign person who is responsible for, or complicit in, or has directly or indirectly engaged or attempted to engage in, the targeting of women, children, or any other civilians through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute a serious abuse or violation of human rights or a violation of international humanitarian law.

2. MOHAMED, Gedo Hamdan Ahmed (Arabic: جدو حمدان أحمد محمد) (a.k.a. ''ABANSHUK''; a.k.a. ''ABU NSHOUK''; a.k.a. ''ABU SHOK''), Sudan; DOB 1973; POB Kutum, North Darfur, Sudan; nationality Sudan; Gender Male; National ID No. 21932935991 (Sudan) (individual) [SUDAN-EO14098].

Designated pursuant to section 1(a)(ii)(A) of E.O. 14098, for being a foreign person who is or has been a leader, official, senior executive officer, or member of the board of directors of the Rapid Support Forces (RSF), an entity that has, or whose members have, been responsible for, or complicit in, or have directly or indirectly engaged in actions or policies that threaten the peace, security, or stability of Sudan relating to the tenure of such leader, official, senior executive officer, or member of the board of directors.

3. MOHAMED, Tijani Ibrahim Moussa (a.k.a. ''AL ZEER SALEM''; a.k.a. ''AL ZEIR SALEM''), Sudan; nationality Sudan; Gender Male; Rapid Support Forces Field Commander in Sudan (individual) [SUDAN–EO14098].

Designated pursuant to section 1(a)(ii)(A) of E.O. 14098, for being a foreign person who is or has been a leader, official, senior executive officer, or member of the board of directors of the RSF, an entity that has, or whose members have, been responsible for, or complicit in, or have directly or indirectly engaged in actions or policies that threaten the peace, security, or stability of Sudan relating to the tenure of such leader, official, senior executive officer, or member of the board of directors.

On February 19, 2026, OFAC updated the entry on the SDN List for the following person, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under the relevant sanctions authorities listed below.

Individual

1. MUSA, Algoney Hamdan Daglo (Arabic: القوني حمدان دقلو موسى) (a.k.a. DAGALO, Algoney Hamdan; a.k.a. DAGALO, Al-Qoni Hamdan), Dubai, United Arab Emirates; DOB 07 Aug 1990; POB Nayala North, Sudan; nationality Sudan; Gender Male; Passport B00017334 (Sudan); alt. Passport B00024943 (Sudan) expires 27 Sep 2031 (individual) [SUDAN-EO14098].

The listing for the individual now appears as follows:

MUSA, Algoney Hamdan Daglo (Arabic: القوني حمدان دقلو موسى) (a.k.a. DAGALO, Algoney Hamdan; a.k.a. DAGALO, Al-Qoni Hamdan), Dubai, United Arab Emirates; DOB 07 Aug 1990; POB Nayala North, Sudan; nationality Sudan; Gender Male; Passport B00017334 (Sudan); alt. Passport B00024943 (Sudan) expires 27 Sep 2031; alt. Passport AK1586127 (Kenya); UAE Identification 784199014302485 (United Arab Emirates) (individual) [SUDAN-EO14098].

(Authority: E.O. 14098.)

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2026–03966 Filed 2–26–26; 8:45 am]

BILLING CODE 4810–AL–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 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.

DATES: This action was issued on September 18, 2025. See **SUPPLEMENTARY INFORMATION** section 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 September 18, 2025, OFAC determined that the persons identified below meet one or more of the criteria for the imposition of sanctions set forth in section 1(a)–(c) of Executive Order 14059 of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' 86 FR 71549 (E.O. 14059). OFAC has selected to impose blocking sanctions pursuant to section 2(a)(i) of E.O. 14059 on the persons identified below.

OFAC further determined that the persons identified below meet one or more of the criteria for designation pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism,'' 66 FR

49079, as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended).

As a result, the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. PONCE FELIX, Juan Jose (a.k.a. FELIX, Alejandro Fernandez; a.k.a. FELIX, Jesus Sanchez; a.k.a. SANCHEZ FELIX, Jesus Alexandro; a.k.a. SANCHEZ, Jesus Alejandro; a.k.a. ''El Ruso''; a.k.a. ''El Russo''; a.k.a. ''Ginete''), Mexicali, Baja California, Mexico; DOB 20 May 1982; alt. DOB 20 Jun 1982; POB Sonora, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. POFJ820520HSRNLN04 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. ARCEGA AGUIRRE, Candelario (a.k.a. ARCEAGA AGUIRRE, Candelario; a.k.a. ESCARCEGA AGUIRRE, Candelario; a.k.a. ''El Cande''), Tijuana, Baja California, Mexico; DOB 11 Jul 1968; POB Colima, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport N00300826 (Mexico); C.U.R.P. AEAC680711HCMRGN03 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. BROWN FIGUEREDO, Hilda Araceli (a.k.a. BROWN DE JAIMES, Hilda Araceli), Playas de Rosarito, Baja California, Mexico; DOB 02 Oct 1970; POB Baja California, Mexico; nationality Mexico; Gender Female; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport G41854935 (Mexico); C.U.R.P. BOFH701002MBCRGL02 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. GONZALEZ LOMELI, Jesus, Playas de Rosarito, Baja California, Mexico; DOB 23 Aug 1979; POB Tijuana, Baja California, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport G19323961 (Mexico); C.U.R.P. GOLJ790823HBCNMS01 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. HERRERA SANCHEZ, Karlo Omar (a.k.a. HERRERA SANCHEZ, Carlo Omar), Rosarito, Baja California, Mexico; DOB 19 Apr 1982; POB Baja California, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. HESK820419HBCRNR08 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. HERRERA SANCHEZ, Mario Alberto, Rosarito, Baja California, Mexico; DOB 02 Apr 1981; POB Baja California, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. HESM810402HBCRNR04 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. PAEZ PEREDA, Carlos Alberto, Laguna Colorada, Sinaloa, Mexico; DOB 27 Sep 1995; POB Sinaloa, Mexico; nationality Mexico; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.U.R.P. PAPC950927HSLZRR02 (Mexico) (individual) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for owned, controlled, or being directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. LOS MAYOS (a.k.a. LA MAYIZA), Culiacan, Sinaloa, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Target Type Criminal Organization [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: SINALOA CARTEL).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, the Sinaloa Cartel, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. GRUPO JRCP, S. DE R.L. (a.k.a. MARISCOS EL CAIMAN), Ensenada—Rosarito 1360, San Fernando, Playas de Rosarito, Baja California 22703, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 28 Mar 2023; Organization Type: Restaurants and mobile food service activities; R.F.C. GJR230209738 (Mexico); Folio Mercantil No. N–2023023616 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: GONZALEZ LOMELI, Jesus).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. SABOR TAPATIO, S. DE R.L. DE C.V., Playas de Rosarito, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 14 Jun 2021; Organization Type: Restaurants and mobile food service activities; Folio Mercantil No. N–2021040792 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: GONZALEZ LOMELI, Jesus).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. GOTOCO ALIMENTOS PROCESADOS S. DE R.L. DE C.V. (a.k.a. EL REY DE LOS CANTARITOS), Blvd. Benito Juarez 4356, Playas de Rosarito, Baja California 22700, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 23 Feb 2016; Organization Type: Restaurants and mobile food service activities; RFC GAP160115RL8 (Mexico); Folio Mercantil No. 906 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: GONZALEZ LOMELI, Jesus).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. ALIMENTOS Y DIVERSION INSURGENTES, S. DE R.L. DE C.V., Playas de Rosarito, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 25 Apr 2013; Organization Type: Other amusement and recreation activities; Folio Mercantil No. 772 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: GONZALEZ LOMELI, Jesus).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. COMPLEJO TURISTICO JJJ, S.A. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 18 Oct 2021; Organization Type: Real estate activities with own or leased property; Folio Mercantil No. N–2021076993 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: GONZALEZ LOMELI, Jesus).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. OPERADORA DE ESPECTACULOS, ALIMENTOS Y BEBIDAS J AND R S.A. DE C.V. (a.k.a. OPERADORA DE ESPECTACULOS, ALIMENTOS Y BEBIDAS J&R S.A. DE C.V.), Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 26 Mar 2020; Organization Type:

Restaurants and mobile food service activities; Folio Mercantil No. N–2020019416 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: GONZALEZ LOMELI, Jesus).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. SUNSET SERVICIOS GASTRONOMICOS S. DE R.L. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 20 Jan 2017; Organization Type: Restaurants and mobile food service activities; Folio Mercantil No. N–2017005115 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: GONZALEZ LOMELI, Jesus).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

9. JJ GONVER S. DE R.L. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 01 Nov 2018; Organization Type: Restaurants and mobile food service activities; Folio Mercantil No. N–2018089050 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: GONZALEZ LOMELI, Jesus).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

10. OPERADORA DE ALIMENTOS CON ORIGENES DE MEXICO, S. DE R.L. DE C.V., Playas de Rosarito, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 07 Jun 2022; Organization Type: Restaurants and mobile food service activities; Folio Mercantil No. N–2022040331 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: GONZALEZ LOMELI, Jesus).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

11. VEINTIUNO MEXICALI, S. DE R.L. DE C.V., Guadalajara, Jalisco, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 06 May 2021; Organization Type: Restaurants and mobile food service activities; Folio Mercantil No. N–2021030181 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: GONZALEZ LOMELI, Jesus).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

12. COCO BEACH BAR, S. DE R.L. DE C.V. (a.k.a. ''COCO BEACH CLUB''), Av. Rosarito 499, Zona Centro, Playas de Rosarito, Baja California 22710, Mexico; website *http://www.cocobeachrosarito.com/;* Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 13 Jul 2016; Organization Type: Restaurants and mobile food service activities; Folio Mercantil No. N–2016010376 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: GONZALEZ LOMELI, Jesus).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

13. CAVALLY ANTRO AND BAR (a.k.a. CAVALLY ANTRO & BAR), Calle Xavier Villa Urrutia 1205, Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 01 Jun 2016; Organization Type: Restaurants and mobile food service activities [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: GONZALEZ LOMELI, Jesus).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

14. GRUPO HOTELERO JJJ, S.A. DE C.V., Tijuana, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization

Established Date 18 Oct 2021; Organization Type: Real estate activities with own or leased property; Folio Mercantil No. N–2021077001 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: GONZALEZ LOMELI, Jesus).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

15. JR ALIMENTOS DEL MAR, S. DE R.L. DE C.V. (a.k.a. BOMBAY BEACH CLUB), Eucalipto 10102, Playas de Rosarito, Baja California 22700, Mexico; website *https://bombayrosarito.com/;* Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 13 Jul 2016; Organization Type: Restaurants and mobile food service activities; R.F.C. JAM160616N96 (Mexico); Folio Mercantil No. N–2016010379 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: GONZALEZ LOMELI, Jesus).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Jesus Gonzalez Lomeli, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

16. TRANSPORTE URBANO Y SUBURBANO DEL V MUNICIPIO S.A. DE C.V., Playas de Rosarito, Baja California, Mexico; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 17 Sep 2007; Organization Type: Other transportation support activities; Folio Mercantil No. 471 (Mexico) [SDGT] [ILLICIT–DRUGS–EO14059] (Linked To: ARCEGA AGUIRRE, Candelario).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Candelario Arcega Aguirre, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Candelario Arcega Aguirre, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2026–03941 Filed 2–26–26; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Fiscal Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before March 30, 2026 to be assured of consideration.

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: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Bureau of the Fiscal Service (BFS)

1. Title: Notice of Reclamation.

OMB Control Number: 1530–0003.

Type of Request: Extension without change of a currently approved collection.

Description: A program agency authorizes Treasury to recover payments that have been issued after the death of the beneficiary. FS Form 133 is used to notify the financial institution. If the financial institution does not respond to the FS–133, a debit request (Form 135) is sent to the Federal Reserve Bank.

Form: FS Form 133.

Affected Public: Financial institutions.

Estimated Number of Respondents: 26,895.

Frequency of Response: 8.3 per year.

Estimated Total Number of Annual Responses: 223,128.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 29,750.

2. Title: Accounts Receivable Forms for Debt Repayment.

OMB Control Number: 1530–0075.

Type of Request: Extension without change of a currently approved collection.

Description: The principal purpose for gathering this information is to evaluate a debtor's ability to pay their debt and to obtain the debtor's ACH payment information so recurring electronic payments can be set up to pay their debt.

Form: FS Form 122, FS Form 123.

Affected Public: Individuals and households.

Estimated Number of Respondents: 60.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 60.

Estimated Time per Response: 15 minutes (Form 122), 45 minutes (Form 123).

Estimated Total Annual Burden Hours: 35.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2026–03987 Filed 2–26–26; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

United States Mint

Establish Prices for 2026 United States Mint Precious Metal Products

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing an update to its Numismatic Pricing Grid, which includes expanded ranges for Gold, Palladium, and Platinum and adding pricing for the Best of the Mint products.

An excerpt of the grid appears below:

2026 Pricing of Numismatic Gold, Commemorative Gold, Palladium, and Platinum Products

Average Price per Ounce	American Buffalo 1 oz 24K Gold Proof	American Eagle 1 oz Gold Uncirculated	American Eagle 1 oz Gold Proof	American Eagle 1/2 oz Gold Proof	American Eagle 1/4 oz Gold Proof	American Eagle 1/10 oz Gold Proof	Best of the Mint 1/10 oz Gold Coin & 1oz Silver Medal Set	Best of the Mint 1/4 oz Gold Coin & 1oz Silver Medal Set	Best of the Mint 1/2 oz Gold Coin & 1oz Silver Medal Set	Best of the Mint 1 oz Gold Coin & 1oz Silver Medal Set
$3,500.00 to $3,549.99	$4,440.00	$4,370.00	$4,400.00	$2,240.00	$1,160.00	$ 515.00	$ 715.00	$1,390.00	$2,500.00	$4,690.00
$3,550.00 to $3,599.99	$4,490.00	$4,420.00	$4,450.00	$2,265.00	$1,172.50	$ 520.00	$ 720.00	$1,402.50	$2,525.00	$4,740.00
$3,600.00 to $3,649.99	$4,540.00	$4,470.00	$4,500.00	$2,290.00	$1,185.00	$ 525.00	$ 725.00	$1,415.00	$2,550.00	$4,790.00
$3,650.00 to $3,699.99	$4,590.00	$4,520.00	$4,550.00	$2,315.00	$1,197.50	$ 530.00	$ 730.00	$1,427.50	$2,575.00	$4,840.00
$3,700.00 to $3,749.99	$4,640.00	$4,570.00	$4,600.00	$2,340.00	$1,210.00	$ 535.00	$ 735.00	$1,440.00	$2,600.00	$4,890.00
$3,750.00 to $3,799.99	$4,690.00	$4,620.00	$4,650.00	$2,365.00	$1,222.50	$ 540.00	$ 740.00	$1,452.50	$2,625.00	$4,940.00
$3,800.00 to $3,849.99	$4,740.00	$4,670.00	$4,700.00	$2,390.00	$1,235.00	$ 545.00	$ 745.00	$1,465.00	$2,650.00	$4,990.00
$3,850.00 to $3,899.99	$4,790.00	$4,720.00	$4,750.00	$2,415.00	$1,247.50	$ 550.00	$ 750.00	$1,477.50	$2,675.00	$5,040.00
$3,900.00 to $3,949.99	$4,840.00	$4,770.00	$4,800.00	$2,440.00	$1,260.00	$ 555.00	$ 755.00	$1,490.00	$2,700.00	$5,090.00
$3,950.00 to $3,999.99	$4,890.00	$4,820.00	$4,850.00	$2,465.00	$1,272.50	$ 560.00	$ 760.00	$1,502.50	$2,725.00	$5,140.00
$4,000.00 to $4,049.99	$4,940.00	$4,870.00	$4,900.00	$2,490.00	$1,285.00	$ 565.00	$ 765.00	$1,515.00	$2,750.00	$5,190.00
$4,050.00 to $4,099.99	$4,990.00	$4,920.00	$4,950.00	$2,515.00	$1,297.50	$ 570.00	$ 770.00	$1,527.50	$2,775.00	$5,240.00
$4,100.00 to $4,149.99	$5,040.00	$4,970.00	$5,000.00	$2,540.00	$1,310.00	$ 575.00	$ 775.00	$1,540.00	$2,800.00	$5,290.00
$4,150.00 to $4,199.99	$5,090.00	$5,020.00	$5,050.00	$2,565.00	$1,322.50	$ 580.00	$ 780.00	$1,552.50	$2,825.00	$5,340.00
$4,200.00 to $4,249.99	$5,140.00	$5,070.00	$5,100.00	$2,590.00	$1,335.00	$ 585.00	$ 785.00	$1,565.00	$2,850.00	$5,390.00
$4,250.00 to $4,299.99	$5,190.00	$5,120.00	$5,150.00	$2,615.00	$1,347.50	$ 590.00	$ 790.00	$1,577.50	$2,875.00	$5,440.00
$4,300.00 to $4,349.99	$5,240.00	$5,170.00	$5,200.00	$2,640.00	$1,360.00	$ 595.00	$ 795.00	$1,590.00	$2,900.00	$5,490.00
$4,350.00 to $4,399.99	$5,290.00	$5,220.00	$5,250.00	$2,665.00	$1,372.50	$ 600.00	$ 800.00	$1,602.50	$2,925.00	$5,540.00
$4,400.00 to $4,449.99	$5,340.00	$5,270.00	$5,300.00	$2,690.00	$1,385.00	$ 605.00	$ 805.00	$1,615.00	$2,950.00	$5,590.00
$4,450.00 to $4,499.99	$5,390.00	$5,320.00	$5,350.00	$2,715.00	$1,397.50	$ 610.00	$ 810.00	$1,627.50	$2,975.00	$5,640.00
$4,500.00 to $4,549.99	$5,440.00	$5,370.00	$5,400.00	$2,740.00	$1,410.00	$ 615.00	$ 815.00	$1,640.00	$3,000.00	$5,690.00
$4,550.00 to $4,599.99	$5,490.00	$5,420.00	$5,450.00	$2,765.00	$1,422.50	$ 620.00	$ 820.00	$1,652.50	$3,025.00	$5,740.00
$4,600.00 to $4,649.99	$5,540.00	$5,470.00	$5,500.00	$2,790.00	$1,435.00	$ 625.00	$ 825.00	$1,665.00	$3,050.00	$5,790.00
$4,650.00 to $4,699.99	$5,590.00	$5,520.00	$5,550.00	$2,815.00	$1,447.50	$ 630.00	$ 830.00	$1,677.50	$3,075.00	$5,840.00
$4,700.00 to $4,749.99	$5,640.00	$5,570.00	$5,600.00	$2,840.00	$1,460.00	$ 635.00	$ 835.00	$1,690.00	$3,100.00	$5,890.00
$4,750.00 to $4,799.99	$5,690.00	$5,620.00	$5,650.00	$2,865.00	$1,472.50	$ 640.00	$ 840.00	$1,702.50	$3,125.00	$5,940.00
$4,800.00 to $4,849.99	$5,740.00	$5,670.00	$5,700.00	$2,890.00	$1,485.00	$ 645.00	$ 845.00	$1,715.00	$3,150.00	$5,990.00
$4,850.00 to $4,899.99	$5,790.00	$5,720.00	$5,750.00	$2,915.00	$1,497.50	$ 650.00	$ 850.00	$1,727.50	$3,175.00	$6,040.00
$4,900.00 to $4,949.99	$5,840.00	$5,770.00	$5,800.00	$2,940.00	$1,510.00	$ 655.00	$ 855.00	$1,740.00	$3,200.00	$6,090.00
$4,950.00 to $4,999.99	$5,890.00	$5,820.00	$5,850.00	$2,965.00	$1,522.50	$ 660.00	$ 860.00	$1,752.50	$3,225.00	$6,140.00
$5,000.00 to $5,049.99	$5,940.00	$5,870.00	$5,900.00	$2,990.00	$1,535.00	$ 665.00	$ 865.00	$1,765.00	$3,250.00	$6,190.00
$5,050.00 to $5,099.99	$5,990.00	$5,920.00	$5,950.00	$3,015.00	$1,547.50	$ 670.00	$ 870.00	$1,777.50	$3,275.00	$6,240.00
$5,100.00 to $5,149.99	$6,040.00	$5,970.00	$6,000.00	$3,040.00	$1,560.00	$ 675.00	$ 875.00	$1,790.00	$3,300.00	$6,290.00

The complete 2026 Pricing of Numismatic Gold, Commemorative Gold, Palladium, and Platinum Products Grid will be available at United States Mint Pricing Grid.

Pricing can vary weekly dependent upon the London Bullion Market Association (LBMA) gold price weekly average. The pricing for all United States Mint numismatic gold, palladium, and platinum products is evaluated every Wednesday and modified, as necessary.

FOR FURTHER INFORMATION CONTACT: Derrick Griffin; United States Mint; 801 9th Street NW; Washington, DC 20220; or call (202) 354–7579.

Authority: 31 U.S.C. 5112 (i)(4)(C).

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2026–03952 Filed 2–26–26; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0745]

Agency Information Collection Activity: Request for Certificate of Veteran Status

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 28, 2026.

ADDRESSES: Comments must be submitted through *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT:

Program-Specific information: Kendra McCleave, 202–461–9760, *Kendra.Mccleave@va.gov.*

VA PRA information: Dorothy Glasgow, 202–461–1084, *VAPRA@va.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Certificate of Veteran Status.

OMB Control Number: 2900–0745. https://www.reginfo.gov/public/do/PRASearch (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

Type of Review: Revision of a currently approved collection.

Abstract: This form (26–8261a).is used to determine an applicant's eligibility for a possible reduced downpayment when obtaining a loan insured by FHA under the provisions of Section 203(b)(2) or 220(d)(a) of the National Housing Act as amended.

Affected Public: Individuals and households.

Estimated Annual Burden: 2 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One-time per loan.

Estimated Number of Respondents: 10 annually.

(Authority: 44 U.S.C. 3501 *et seq.*)

Lanea Haynes,

Acting VA PRA Clearance Officer, Office of Information Technology, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2026–03970 Filed 2–26–26; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 91 Friday,

No. 39 February 27, 2026

Part II

Department of Labor

Wage and Hour Division

29 CFR Parts 500, 795, and 825

Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act; Proposed Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 500, 795, and 825

[Docket No. WHD–2026–0001]

RIN 1235–AA46

Employee or Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice of proposed rule; request for comments.

SUMMARY: The Department is proposing to rescind the analysis for determining employee or independent contractor status under the Fair Labor Standards Act (FLSA) currently set forth in 29 CFR part 795 and replace it with the analysis that it published and adopted in a prior final rule dated January 7, 2021, with a few modifications. In addition, the Department proposes to apply this analysis to the Family and Medical Leave Act (FMLA) and Migrant and Seasonal Agricultural Worker Protection Act (MSPA), both of which incorporate the FLSA's scope of employment.

DATES: Comments must be received on or before April 28, 2026.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA46, by either of the following methods:

- *Electronic Comments:* Submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Address written submissions to: Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Response to this NPRM is voluntary. The Department requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this NPRM. Commenters submitting file attachments on *https://www.regulations.gov* are advised that uploading text-recognized documents—*i.e.,* documents in a native file format or documents which have undergone optical character recognition (OCR)—enable staff at the Department to more easily search and retrieve specific content included in your comment for consideration.

Anyone who submits a comment (including duplicate comments) should understand and expect that the comment, including any personal information provided, will become a matter of public record and will be posted without change to *https://www.regulations.gov.* The Department posts comments gathered and submitted by a third-party organization as a group under a single document ID number on *https://www.regulations.gov.* All comments must be received by 11:59 p.m. ET on April 28, 2026, for consideration in this rulemaking; comments received after the comment period closes will not be considered.

The Department recommends that commenters submit their comments electronically via *https://www.regulations.gov* to ensure timely receipt prior to the close of the comment period. Please submit only one copy of your comments by only one method.

Docket: For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *https://www.regulations.gov.* In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may also be found at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Daniel Navarrete, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division (WHD), U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1–866–487–9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Questions of interpretation or enforcement of the agency's existing regulations may be directed to the nearest WHD district office. Locate the nearest office by calling the WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's website at *https://www.dol.gov/agencies/whd/contact/local-offices* for a nationwide listing of WHD district and area offices.

SUPPLEMENTARY INFORMATION:

I. Background

A. Relevant FLSA, FMLA, and MSPA Definitions

Enacted in 1938, the FLSA requires that, among other things, covered employers pay their nonexempt employees at least the federal minimum wage for every hour worked and overtime pay for every hour worked over 40 in a workweek, and it mandates that employers keep certain records regarding their employees.[1] The FLSA does not define the term ''independent contractor,'' but defines ''employer'' in section 3(d) to ''include[ ] any person acting directly or indirectly in the interest of an employer in relation to an employee''; ''employee'' in section 3(e)(1) to mean, subject to certain exceptions, ''any individual employed by an employer''; and ''employ'' in section 3(g) to include ''to suffer or permit to work.'' [2] The Supreme Court has recognized that ''there is in the [FLSA] no definition that solves problems as to the limits of the employer-employee relationship under the Act.'' *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722, 728 (1947).

The Supreme Court has interpreted the phrase ''suffer or permit'' that defines FLSA employment to be broad and more inclusive than the common law standard. In *Nationwide Mutual Insurance Co.* v. *Darden,* the Court explained that section 3(g)'s ''suffer or permit'' language ''stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles.'' [3] However, the Court also recognized that the FLSA's ''statutory definition[s] . . . have [their] limits.'' *Tony & Susan Alamo Found.* v. *Sec'y of Labor,* 471 U.S. 290, 295 (1985) (internal citation omitted); *see also Walling* v. *Portland Terminal Co.,* 330 U.S. 148, 152 (1947) (''The definition 'suffer or permit to work' was obviously not intended to stamp all persons as employees[.]''). The Supreme Court specifically recognized that ''[t]here may be independent contractors who take part in production or distribution who would alone be responsible for the wages and hours of their own employees.'' *Rutherford Food,* 331 U.S. at 729. Accordingly, federal courts of appeals have uniformly held, and the Department has consistently maintained, that independent

[1] *See* 29 U.S.C. 206(a) (minimum wage requirements); 207(a) (overtime pay requirements); 29 U.S.C. 211(c) (recordkeeping requirements).

[2] 29 U.S.C. 203(d), (e), (g). The FLSA defines a ''person'' as ''an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.'' 29 U.S.C. 203(a).

[3] 503 U.S. 318, 326 (1992); *see also U.S.* v. *Rosenwasser,* 323 U.S. 360, 362–63 (1945) (explaining that ''[a] broader or more comprehensive coverage of employees within the stated categories would be difficult to frame'' in ruling that employees paid by piece rates may be covered by the FLSA's requirements).

contractors are not ''employees'' for purposes of the FLSA.[4]

Enacted in 1983, MSPA protects migrant and seasonal agricultural workers by establishing employment standards related to wages, housing, transportation, disclosures and recordkeeping.[5] Agricultural employers, agricultural associations, and farm labor contractors (as those terms are defined in MSPA) must comply with such applicable standards in their employment of migrant and seasonal agricultural workers.[6] MSPA also requires farm labor contractors to register with the Department and obtain a certificate of registration.[7] It is a violation of MSPA to threaten, discharge, or in any manner discriminate against any migrant or seasonal agricultural worker because such worker, with just cause, files a complaint, institutes a proceeding, testifies or is about to testify in a proceeding, or exercises any right under MSPA.[8] MSPA expressly adopts the FLSA's definition of ''employ'' as MSPA's definition of ''employ'' and thus incorporates the ''suffer or permit'' standard for determining the scope of employment relationships.[9]

Enacted in 1993, the FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.[10] Eligible employees who take such leave must generally be restored to the same or an equivalent position when they return to work after FMLA leave.[11] An employer cannot interfere with, restrain, or deny an employee's exercise of or attempt to exercise any rights under the FMLA.[12] The FMLA adopts the FLSA's definitions of ''employ'' and ''employee'' and thus incorporates the FLSA's standard for determining the scope of employment relationships.[13]

[4] *See, e.g., Saleem* v. *Corporate Transp. Grp., Ltd.,* 854 F.3d 131, 139–40 (2d Cir. 2017); *Karlson* v. *Action Process Serv. & Private Investigation, LLC,* 860 F.3d 1089, 1092 (8th Cir. 2017).

[5] *See generally* 29 U.S.C. 1801, *et seq.*

[6] *See* 29 U.S.C. 1821–1823, 1831–32, 1841–1844.

[7] *See* 29 U.S.C. 1811–1815.

[8] 29 U.S.C. 1855(a).

[9] 29 U.S.C. 1802(5) (''The term 'employ' has the meaning given such term under [the FLSA, 29 U.S.C. 203(g)].'').

[10] *See* 29 U.S.C. 2611–2614.

[11] *See* 29 U.S.C. 2614.

[12] *See* 29 U.S.C. 2615.

[13] 29 U.S.C. 2611(3) (providing that the terms ''employ'' and ''employee'' for purposes of the FMLA have the same meanings given such terms in 29 U.S.C. 203(e) and (g)). The FMLA has its own definitions for whether an employee is ''eligible'' for FMLA leave and whether his or her employer is covered by the FMLA. *See* 29 U.S.C. 2611(2), (4).

[14] *See* Dep't of Labor, Independent Contractor Status Under the Fair Labor Standards Act, Notice of Proposed Rulemaking, 85 FR 60600, 60601 (Sept. 25, 2020).

[15] *NLRB* v. *United Ins. Co. of Am.,* 390 U.S. 254, 256 (1968).

[16] *Silk,* 331 U.S. at 717–18 (finding that the employer ''was in a position to exercise all necessary supervision over their simple tasks'' and that the unloaders ''had no opportunity to gain or lose except from the work of their hands and the[ir] simple tools'').

[17] *Id.* at 719 (''They own their own trucks. They hire their own helpers. In one instance they haul for a single business, in the other for any customer. The distinction, though important, is not controlling. It is the total situation, including the risk undertaken, the control exercised, the opportunity for profit from sound management, that marks these driver-owners as independent contractors.'').

[18] For example, the Court noted that the slaughterhouse workers performed work on the ''premises and equipment of [the employer],'' indicating little investment by the workers. 331 U.S. at 730. The workers had a continuous relationship with the slaughterhouse, indicating a permanent work arrangement. *Id.* ''The managing official of the plant kept close touch on the operation,'' indicating

Continued

B. Economic Dependence and the Economic Reality Test

1. Supreme Court Development of the Economic Reality Test

Less than a decade after the FLSA was enacted, the U.S. Supreme Court explored the limits of the employer-employee relationship in a series of cases from 1944 to 1947 under three different federal statutes: the FLSA, the National Labor Relations Act (NLRA), and the Social Security Act (SSA). These cases established an ''economic reality'' test to distinguish between employees and independent contractors which is still used today in FLSA cases.[14] Although the longstanding ''economic reality'' descriptor is often repeated and is the lens through which the individual worker's relationship with the employer is viewed, the ultimate inquiry focuses on an individual's ''economic dependence'' for work.

In the first of these cases, *NLRB* v. *Hearst Publications, Inc.,* 322 U.S. 111 (1944), the Supreme Court held that the NLRA's definition of employment, which merely defined ''employee'' to ''include any employee,'' *id.* at 113 n.1, was broader than that of the common law. *Id.* at 123–25. Congress responded by amending the definition of employment under the NLRA on June 23, 1947, with the ''obvious purpose of . . . hav[ing] the [National Labor Relations] Board and the courts apply general agency principles in distinguishing between employees and independent contractors under the [NLRA].'' [15]

On June 16, 1947, 1 week before Congress amended the NLRA in response to *Hearst,* the Supreme Court decided *United States* v. *Silk,* 331 U.S. 704 (1947), which addressed the distinction between employees and independent contractors under the SSA (which did not define ''employee''). In that case, the Court relied on *Hearst* to hold that ''economic reality,'' as opposed to ''technical concepts'' of the common law, such as master and servant, determines workers' classification. *Id.* at 712–14. Although the Court found it to be ''quite impossible to extract from the [SSA] a rule of thumb to define the limits of the employer-employe[e] relationship,'' it identified five factors as ''important for decision'': ''degrees of control, opportunities for profit or loss, investment in facilities, permanency of relation[,] and skill required in the claimed independent operation.'' *Id.* at 716. The Court added that ''[n]o one [factor] is controlling nor is the list complete.'' *Id.* Nevertheless, based on the factors that it identified, the Court found that the coal unloaders were employees by referencing, among other things, the employer's supervision and the workers' lack of opportunity for profit based on initiative and investment.[16] In addition, the Court held that the truck drivers in that case were independent contractors by emphasizing facts related to control, opportunity for profit, initiative and investment.[17]

One week after *Silk* and on the same day Congress amended the NLRA, the Court reiterated these five factors in *Bartels* v. *Birmingham,* 332 U.S. 126 (1947), another case involving employee or independent contractor status under the SSA. In *Bartels,* the Court explained that under the SSA, employee status ''was not to be determined solely by the idea of control which an alleged employer may or could exercise over the details of the service rendered to his business by the worker''; instead, employees are ''those who as a matter of economic reality are dependent upon the business to which they render service.'' *Id.* at 130. The Court held that a dance hall's contractual right of control was insufficient to establish an employment relationship with a band leader that it hired. *Id.* at 132.

The same day as it decided *Silk,* the Court ruled in *Rutherford Food* that certain workers at a slaughterhouse were employees under the FLSA, and not independent contractors, by examining facts pertaining to most of the five factors identified in *Silk.*[18] The

Court also considered whether the work was ''a part of the integrated unit of production'' (meaning whether the putative independent contractors were integrated into the assembly line alongside the company's employees) to assess whether they were employees or independent contractors under the FLSA. *Id.* at 729–30.

In November 1947, 5 months after *Silk* and *Rutherford Food* were decided, the Department of the Treasury (Treasury) proposed regulations defining when an individual was an independent contractor or employee under the SSA, which used a test that balanced the following factors: (1) degree of control of the individual, (2) permanency of relation, (3) integration of the individual's work in the business to which he renders service, (4) skill required by the individual, (5) investment by the individual in facilities for work, and (6) opportunity of the individual for profit or loss.[19]

Factors one, two, and four through six corresponded directly with the five factors identified as being ''important for decision'' in *Silk,* 331 U.S. at 716, and the third factor corresponded with *Rutherford Food's* consideration of the fact that the workers were ''part of an integrated unit of production.'' 331 U.S. at 729. The Treasury proposal further relied on *Bartels,* 332 U.S. at 130, to apply these factors to determine whether a worker was ''dependent as a matter of economic reality upon the business to which he renders services.'' [20]

Congress rejected the interpretations of the definitions of ''employee'' adopted in *Hearst* for the NLRA and in *Silk* and *Bartels* for the SSA ''to demonstrate that the usual common-law principles were the keys to meaning.'' *Darden,* 503 U.S. at 324–25. Congress did not, however, similarly amend the FLSA following *Rutherford Food.*

In 1961, in *Goldberg* v. *Whitaker House Cooperative, Inc.,* the Supreme Court revisited independent contractor status under the FLSA and reaffirmed that ''the 'economic reality' rather than 'technical concepts' '' is the ''the test of employment'' under the FLSA.[21] It found that certain homeworkers were ''not self-employed . . . [or] independent, selling their products on the market for whatever price they can command,'' but instead were ''regimented under one organization, manufacturing what the organization desires and receiving the compensation the organization dictates,'' and thus employees.[22] Finally, in *Darden,* the Supreme Court reiterated that the FLSA's test for employee status comes from its definition of ''employ'' in 29 U.S.C. 203(g) as including to ''suffer or permit'' to work and is thus broader than the common law test.[23]

2. Application of the Economic Reality Test by WHD and Federal Courts of Appeals

a. WHD's Early Guidance Applying Economic Reality Test Under the FLSA

Since the *Silk, Rutherford Food,* and *Whitaker House* decisions, WHD has applied variations of the economic reality analysis when considering whether a worker is an employee under the FLSA or an independent contractor, with an eye to facilitating its real-world application by workers and businesses.

For example, on June 23, 1949, the Wage and Hour Division (WHD) issued an opinion letter distilling six ''primary factors which the Court considered significant'' in *Rutherford Food* and *Silk:* ''(1) the extent to which the services in question are an integral part of the 'employer[']s' business; (2) the amount of the so-called 'contractor's' investment in facilities and equipment; (3) the nature and degree of control by the principal; (4) opportunities for profit and loss; . . . (5) the amount of initiative judgment or foresight required for the success of the claimed independent enterprise[;] and [(6)] permanency of the relation.'' [24] The 1949 opinion letter cautioned that no single factor is controlling, and ''[o]rdinarily a definite decision as to whether one is an employee or an independent contractor under the [FLSA] cannot be made in the absence of evidence as to [the worker's] actual day-to-day working relationship with [their] principal. Clearly a written contract does not always reflect the true situation.'' [25]

Subsequent WHD opinion letters addressing employee or independent contractor status under the FLSA have provided similar recitations of the factors, sometimes omitting one or more of the six factors described in the 1949 opinion letter, and sometimes adding (or substituting) a seventh factor: the worker's ''degree of independent business organization and operation.'' [26] In 1964, WHD stated, ''The Supreme Court has made it clear that an employee, as distinguished from a person who is engaged in a business of his own, is one who as a matter of economic reality follows the usual path of an employee and is dependent on the business which he serves.'' [27] Indeed, the various factors are directed to evaluating the nature of an individual's ''dependence'' for work.

In 1962, the Department revised the regulations in 29 CFR part 788, which generally provides interpretive guidance on the FLSA's exemption for employees in small forestry or lumbering operations, and added a provision addressing the distinction between employees and independent contractors.[28] Citing to *Silk, Rutherford Food,* and *Bartels,* the regulation advised that ''an employee, as distinguished from a person who is engaged in a business of his own, is one who 'follows the usual path of an employee' and is dependent on the business which he serves.'' [29] To ''aid in assessing the total situation,'' the regulation then identified a partial list of ''characteristics of the two classifications which should be considered,'' including ''the extent to which the services rendered are an integral part of the principal's business; the permanency of the relationship; the opportunities for profit or loss; the initiative, judgment or foresight exercised by the one who performs the services; the amount of investment; and the degree of control which the principal has in the situation.'' [30]

In 1972, the Department added similar guidance on independent contractor status at 29 CFR 780.330(b), in a provision addressing the employment status of sharecroppers and tenant farmers under the FLSA.[31] This regulation was nearly identical to the

control by the alleged employer. *Id.* And ''[w]hile profits to the boners depended upon the efficiency of their work, it was more like piecework than an enterprise that actually depended for success upon the initiative, judgment or foresight of the typical independent contractor.'' *Id.*

[19] *See* 12 FR 7966.

[20] *Id.* The Treasury proposal was never finalized because Congress amended the SSA to foreclose the proposal.

[21] 366 U.S. 28, 33 (1961) (citing the FLSA's definition of ''employ,'' *Silk,* 331 U.S. at 713, and *Rutherford Food,* 331 U.S. at 729).

[22] *Id.* at 32.

[23] 503 U.S. at 326 (citing *Rutherford Food,* 331 U.S. at 728).

[24] WHD Op. Ltr. (June 23, 1949).

[25] *Id.*

[26] *See, e.g.,* WHD Op. Ltr. (Aug. 13, 1954) (applying six factors); WHD Op. Ltr. (Oct. 12, 1965) (discussing degree of independent business organization); WHD Op. Ltr. (Feb. 18, 1969) (same); WHD Op. Ltr. FLSA–314 (Dec. 21, 1982) (discussing three of the *Silk* factors); WHD Op. Ltr. FLSA–164 (Jan. 18, 1990) (discussing four of the *Silk* factors); WHD Op. Ltr., 2000 WL 34444352, at *1 (Jul. 5, 2000) (identifying seven factors); WHD Op. Ltr., 2000 WL 34444342, at *3–6 (Dec. 7, 2000) (discussing six factors); WHD Op. Ltr., 2002 WL 32406602, at *2–3 (Sept. 5, 2002) (same).

[27] WHD Op. Ltr. (Sept. 30, 1964).

[28] 27 FR 8032; *see* 29 U.S.C. 213(b)(28) (previously codified at 29 U.S.C. 213(a)(15)).

[29] 27 FR 8033 (29 CFR 788.16(a)).

[30] *Id.*

[31] *See* 37 FR 12084, 12102 (introducing 29 CFR 780.330(b)).

independent contractor guidance for the logging and forestry industry previously promulgated at 29 CFR 788.16(a), including an identical description of the same six economic reality factors.[32] Both provisions—29 CFR 780.330(b) and 788.16(a)—remained unchanged until 2021.

b. Federal Appellate Courts' Application of the Economic Reality Test

In the 1970s and 1980s, federal courts of appeals began to adopt versions of a multifactor ''economic reality'' test based on *Silk, Rutherford Food,* and *Bartels* and similar to WHD's early guidance to analyze whether a worker was an employee or an independent contractor under the FLSA. Drawing on the Supreme Court precedent discussed above, courts have recognized that the heart of the inquiry is whether ''as a matter of economic reality'' the workers are ''dependent upon the business to which they render service.'' *Usery* v. *Pilgrim Equip. Co.,* 527 F.2d 1308, 1311 (5th Cir. 1976) (quoting *Bartels,* 332 U.S. at 130); *see also Mednick* v. *Albert Enters., Inc.,* 508 F.2d 297, 299–300 (5th Cir. 1975). Courts have clarified that this question of economic dependence may be boiled down to asking ''whether, as a matter of economic reality, the workers depend upon someone else's business for the opportunity to render service or are in business for themselves.'' *Saleem,* 854 F.3d at 139 (internal quotation marks and citations omitted).[33] Courts have also explained that a non-exhaustive set of factors—derived from *Silk* and *Rutherford Food*—shape and guide this inquiry. *See, e.g., Usery,* 527 F.2d at 1311 (identifying ''[f]ive considerations [which] have been set out as aids to making the determination of dependence, vel non''); *Real* v. *Driscoll Strawberry Assocs., Inc.,* 603 F.2d 748, 754 (9th Cir. 1979) (articulating a six-factor test).

In *Driscoll,* the Ninth Circuit Court of Appeals described its six-factor test as follows: (1) the degree of the alleged employer's right to control the manner in which the work is to be performed, (2) the alleged employee's opportunity for profit or loss depending on his managerial skill, (3) the alleged employee's investment in equipment or materials required for his task, or his employment of helpers, (4) whether the service rendered requires a special skill, (5) the degree of permanency of the working relationship, and (6) whether the service rendered is an integral part of the alleged employer's business. 603 F.2d at 754.

Most courts of appeals articulate a similar test, but application between courts may vary. *Compare, e.g., Sec'y of Labor* v. *Lauritzen,* 835 F.2d 1529, 1534–35 (7th Cir. 1987) (applying six-factor economic reality test to hold that pickle pickers were employees under the FLSA), *with Donovan* v. *Brandel,* 736 F.2d 1114, 1117 (6th Cir. 1984) (applying the same six-factor economic reality test to hold that pickle pickers were not employees under the FLSA). Courts of appeal also vary somewhat in their articulation of the factors. For example, the Second Circuit has analyzed opportunity for profit or loss and investment (the second and third factors listed above) together as one factor. *See, e.g., Brock* v. *Superior Care, Inc.,* 840 F.2d 1054, 1058 (2d Cir. 1988). The Fifth Circuit has not adopted the sixth factor listed above, which analyzes the integrality of the work, as part of its standard, *see, e.g., Usery,* 527 F.2d at 1311, but has at times assessed integrality as an additional factor, *see, e.g., Hobbs* v. *Petroplex Pipe & Constr., Inc.,* 946 F.3d 824, 836 (5th Cir. 2020).

Some courts of appeals have made noteworthy modifications to the economic reality factors as originally articulated in 1947 by the Supreme Court.[34] First, the ''skill required'' factor identified in *Silk,* 331 U.S. at 716, is now articulated more expansively by some courts to include ''initiative.'' *See, e.g., Parrish,* 917 F.3d at 379 (considering ''the skill and initiative required in performing the job''); *Karlson,* 860 F.3d at 1093 (same); *Superior Care,* 840 F.2d at 1058–59 (considering ''the degree of skill and independent initiative required to perform the work'').

Second, *Silk* analyzed workers' investments, 331 U.S. at 717–19. However, the Fifth Circuit has revised the ''investment'' factor to instead consider ''the extent of the relative investments of the worker and the alleged employer.'' *Hopkins* v. *Cornerstone America,* 545 F.3d 338, 343 (5th Cir. 2008). Some other circuits also apply this ''relative investment'' approach but continue to use the phrase ''worker's investment'' to describe the factor. *See, e.g., Keller,* 781 F.3d at 810; *Snell,* 875 F.2d at 805, 810.

Third, although the permanence factor under *Silk* was understood to mean the continuity and duration of working relationships, *see* 12 FR 7967, some courts of appeals have expanded this factor to also consider the exclusivity of such relationships. *See, e.g., Scantland,* 721 F.3d at 1319; *Keller,* 781 F.3d at 807.

Finally, *Rutherford Food*'s consideration of whether work is ''part of an integrated unit of production,'' 331 U.S. at 729, has now been replaced by many courts of appeals by consideration of whether the service rendered is ''integral,'' which those courts have applied as meaning important or central to the potential employer's business. *See, e.g., Verma* v. *3001 Castor, Inc.,* 937 F.3d 221, 232 (3rd Cir. 2019) (concluding that workers' services were integral because they were the providers of the business's ''primary offering''); *Acosta* v. *Off Duty Police Servs., Inc.,* 915 F.3d 1050, 1055 (6th Cir. 2019) (concluding that services provided by workers were ''integral'' because the potential employer ''built its business around'' those services); *McFeeley* v. *Jackson Street Entertainment, LLC,* 825 F.3d 235, 244 (4th Cir. 2016) (considering ''the importance of the services rendered to the company's business'').

Courts of appeals have cautioned against the ''mechanical application'' of the economic reality factors. *See, e.g., Saleem,* 854 F.3d at 139. ''Rather, each factor is a tool used to gauge the economic dependence of the alleged employee, and each must be applied with this ultimate concept in mind.'' *Hopkins,* 545 F.3d at 343. Further, courts of appeals make clear that the analysis should draw from the totality of circumstances, with no single factor being determinative by itself. *See, e.g., Keller,* 781 F.3d at 807 (''No one factor is determinative.''); *Baker* v. *Flint Eng'g & Constr. Co.,* 137 F.3d 1436, 1441 (10th Cir. 1998) (''None of the factors alone is dispositive; instead, the court must employ a totality-of-the-circumstances approach.'').

c. The Department's More Recent Application of the Economic Reality Test Under the FLSA, FMLA, and MSPA

In 1995, the Department promulgated a regulation at 29 CFR 825.105(a) addressing employee status under the FMLA and the distinction between employees and independent contractors.[35] The regulation currently explains that ''[t]he definition of employ for purposes of FMLA is taken from the Fair Labor Standards Act, § 3(g), 29 U.S.C. 203(g),'' meaning a broader scope

[32] *Id.*

[33] *See also Chavez-DeRemer* v. *Med. Staffing of Am., LLC,* 147 F.4th 371, 397 (4th Cir. 2025); *Parrish* v. *Premier Directional Drilling, L.P.,* 917 F.3d 369, 379 (5th Cir. 2019); *Keller* v. *Miri Microsystems LLC,* 781 F.3d 799, 807 (6th Cir. 2015); *Iontchev* v. *AAA Cab Serv., Inc.,* 685 F. App'x 548, 551 (9th Cir. 2017); *Dole* v. *Snell,* 875 F.2d 802, 804 (10th Cir. 1989); *Scantland* v. *Jeffry Knight, Inc.,* 721 F.3d 1308, 1311 (11th Cir. 2013).

[34] *See* 85 FR 60603–04.

[35] *See* 60 FR 2240.

of employment than at the common law.[36] The regulation further explains that determining employee status ''depends 'upon the circumstances of the whole activity' including the underlying 'economic reality.' '' [37] The regulation adds that: ''In general an employee, as distinguished from an independent contractor who is engaged in a business of his/her own, is one who 'follows the usual path of an employee' and is dependent on the business which he/she serves.'' [38] The regulation does not provide any specific economic reality factors to apply. A separate regulation, 29 CFR 825.102, defines various terms under the FMLA, and consistent with the FMLA's adoption of the FLSA's statutory definitions, defines ''employ'' to mean ''to suffer or permit to work'' and ''employee'' to generally mean ''any individual employed by an employer.''

In 1997, the Department promulgated a regulation applying a multifactor economic reality analysis for distinguishing between employees and independent contractors under MSPA, which—like the FMLA—statutorily adopts the FLSA's ''suffer or permit'' definition of employment by reference.[39] The regulation explains that ''[t]he definition of the term *employ* may include consideration of whether or not an *independent contractor* or *employment* relationship exists under the Fair Labor Standards Act.'' [40] The regulation advises that in determining if the farm labor contractor or worker is an employee or an independent contractor, the ultimate question is the economic reality of the relationship—whether there is economic dependence upon the agricultural employer/association or farm labor contractor, as appropriate.[41] The regulation elaborates that ''[t]his determination is based upon an evaluation of all of the circumstances, including the following: (i) The nature and degree of the putative employer's control as to the manner in which the work is performed; (ii) The putative employee's opportunity for profit or loss depending upon his/her managerial skill; (iii) The putative employee's investment in equipment or materials required for the task, or the putative employee's employment of other workers; (iv) Whether the services rendered by the putative employee require special skill; (v) The degree of permanency and duration of the working relationship; (vi) The extent to which the services rendered by the putative employee are an integral part of the putative employer's business.'' [42] This description of six economic reality factors is very similar to the earlier description of the six factors test to evaluate the economic reality, that is an individual's economic dependence for work, on a putative employer, provided in 29 CFR 780.330(b) and 788.16(a).

Also in 1997, WHD issued Fact Sheet #13, ''Employment Relationship Under the Fair Labor Standards Act (FLSA).'' [43] Like WHD opinion letters, Fact Sheet #13 advises that an employee, as distinguished from a person who is engaged in a business of their own, is one who, as a matter of economic reality, follows the usual path of an employee and is dependent on the business which he or she serves. The fact sheet identifies six familiar economic realities factors, as well as consideration of the worker's degree of independent business organization and operation.

On July 15, 2015, WHD issued Administrator's Interpretation No. 2015–1, ''The Application of the Fair Labor Standards Act's 'Suffer or Permit' Standard in the Identification of Employees Who Are Misclassified as Independent Contractors'' (AI 2015–1).[44] AI 2015–1 explained that, ''under the FLSA, courts use the multi-factorial 'economic realities' test, which focuses on whether the worker is economically dependent on the employer or in business for him or herself,'' and it identified and provided guidance regarding the application of six economic realities factors. AI 2015–1 further explained that its FLSA analysis ''should also be applied in determining whether a worker is an employee or an independent contractor in cases arising under [MSPA] and the [FMLA]'' because both statutes adopt the FLSA's definition of ''employ.''

In 2019, WHD issued an opinion letter, FLSA2019–6 (later redesignated as FLSA2025–2),[45] addressing whether service providers who used a ''virtual marketplace'' company to be referred to end-market consumers were employees or independent contractors of the virtual marketplace company under the FLSA. The opinion letter generally applied principles and factors similar to those described in the prior opinion letters and the 2008 version of Fact Sheet #13, but not the ''independent business organization'' factor because it did not add to the analysis as a separate factor and was ''[e]ncompassed within'' the other factors. WHD Opinion Letter FLSA2025–2 at 5. It also stated that the investment factor should focus on the ''amount of the worker's investment in facilities, equipment, or helpers.'' *Id.* Based on the facts provided, WHD concluded that the service providers at issue appeared to be independent contractors and not employees of the virtual marketplace company. WHD found that it was ''inherently difficult to conceptualize the service providers' 'working relationship' with [the virtual marketplace company], because as a matter of economic reality, they are working for the consumer, not [the company].'' *Id.* at 7–8. Because ''[t]he facts . . . demonstrate economic independence, rather than economic dependence, in the working relationship between [the virtual marketplace company] and its service providers,'' WHD opined that they were not employees of the company under the FLSA but rather were independent contractors. *Id.* at 11.

C. The 2021 Rule

On January 7, 2021, the Department published a final rule (2021 Rule) which—for the first time—organized and distilled the longstanding economic reality factors into practical regulatory guidance for workers and business to aid the proper classification of employees and independent contractors under the FLSA for use in any industry.[46] The Department explained that the 2021 Rule was intended to combine longstanding legal and judicial frameworks in a practicable package that could be broadly applied in workplaces across the nation—promoting certainty for stakeholders, reducing litigation, and encouraging innovation in the economy.

In the 2021 Rule, the Department affirmed the ''economic reality'' test under the FLSA to determine whether a worker is in business for himself or

[36] 29 CFR 825.105(a); *see also* 29 U.S.C. 2611(3).

[37] 29 CFR 825.105(a).

[38] *Id.*

[39] *See* 62 FR 11734, 11747; *see also* 29 U.S.C. 1802(5) (''The term 'employ' has the meaning given such term under section 3(g) of the [FLSA]'').

[40] 29 CFR 500.20(h)(4).

[41] *Id.*

[42] *Id.*

[43] *See* WHD Fact Sheet #13 (1997), *https://web.archive.org/web/19970112162517/http://www.dol.gov/dol/esa/public/regs/compliance/whd/whdfs13.htm.* WHD made minor revisions to Fact Sheet #13 in 2002 and 2008, before a more substantial revision in 2014. In 2018, WHD reverted back to the 2008 version of Fact Sheet #13, which the Department is currently applying (available at *https://www.dol.gov/sites/dolgov/files/WHD/fact-sheets/whdfs13.pdf*).

[44] AI 2015–1 was withdrawn on June 7, 2017, and is no longer in effect.

[45] WHD withdrew WHD Opinion Letter FLSA2019–6 on February 19, 2021, but reissued the opinion letter on May 2, 2025, redesignating it as Opinion Letter FLSA2025–2, available at *https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/FLSA/FLSA2019-6.pdf.*

[46] *See* Dep't of Labor, Independent Contractor Status Under the Fair Labor Standards Act, Final Rule, 86 FR 1168 (Jan. 7, 2021).

herself (an independent contractor) or is instead economically dependent on an employer for work, as an employee conventionally depends on his employer for work.[47] The Department framed five familiar ''factors,'' drawn from the longstanding approach articulated by the Supreme Court and courts of appeals, to ''guide the determination'' of workers' ''economic reality.'' Like the components of those tests, the Department explained that the ''factors are not exhaustive'' and ''no single factor is dispositive.''[48] Based on its experience and case law, the Department further identified two of those factors (the nature and degree of control over the work and the individual's opportunity for profit or loss) as ''core'' factors that, across a wide spectrum of work arrangements, are ''the most probative as to whether or not an individual is an economically dependent 'employee' '' and ''therefore typically carr[y] greater weight in the analysis than any other factor.''[49] The Department added that, ''[g]iven these two core factors' greater probative value, if they both point towards the same classification, whether employee or independent contractor, there is a substantial likelihood that is the individual's accurate classification.''[50] Similarly, the Department explained that other factors are ''less probative and, in some cases, may not be probative at all'' in answering the ultimate ''economic reality'' inquiry to which these tests are directed. Typically, these other factors ''are highly unlikely, either individually or collectively, to outweigh the combined probative value of the two core factors.''[51]

The Department provided guidance in the 2021 Rule on how to apply the control and opportunity for profit or loss factors, including that an individual's opportunity for profit or loss could be based on ''his or her exercise of initiative (such as managerial skill or business acumen or judgment) or management of his or her investment in or capital expenditure on, for example, helpers or equipment or material to further his or her work.''[52] The Department identified three other factors to be considered with the two core factors and provided guidance on each: the amount of skill required for the work, the degree of permanence of the working relationship between the individual and the potential employer, and whether the work is part of an integrated unit of production.[53] The Department added that ''[a]dditional factors may be relevant in determining whether an individual is an employee or independent contractor for purposes of the FLSA, but only if the factors'' are directly material to the ''economic reality'' inquiry that determines whether an individual's relationship with a potential employer is more akin to that of another business or an employee.[54] The Department further advised that, when applying the factors, ''the actual practice of the parties involved is more relevant than what may be contractually or theoretically possible.''[55] The Department also provided six ''illustrative examples'' of how the factors may be applied in certain factual situations.[56] And, the Department included a severability provision explaining that the Department would still give ''maximum effect'' to the rule in the event that any of its provisions are enjoined or invalidated.[57]

In the 2021 Rule, the Department also revised the industry-specific guidance provided at 29 CFR 780.330(b) (addressing the employment status of sharecroppers and tenant farmers) and 788.16(a) (workers in forestry or logging). The Department replaced the recitation of the six economic reality factors identified in those regulatory subsections with cross-references to the 2021 Rule's updated and generally applicable guidance.[58]

Finally, the 2021 Rule noted that the Department had received several comments addressing the possibility of applying that rule's analysis to determining employee or independent contractor status under MSPA, including by revising 29 CFR 500.20(h)(4).[59] The Department recognized in the 2021 Rule that ''MSPA adopts by reference the FLSA's definition of 'employ,' *see* 18 U.S.C. 1802(5), and that 29 CFR 500.20(h)(4) considers 'whether or not an independent contractor or employment relationship exists under the Fair Labor Standards Act' to interpret independent contractor status under MSPA.''[60] The Department added that ''the regulatory standard for determining an individual's classification status under MSPA is generally consistent with the FLSA guidance finalized in this rule.''[61] The Department determined at the time that it did ''not see a compelling need to revise'' the MSPA regulation because it was ''unsure whether application of the six factor economic reality test described in that regulation has resulted in confusion and uncertainty in the more limited MSPA context similar to that described in the FLSA context.''[62] The Department concluded that it ''prefers to proceed incrementally at this time by leaving the MSPA regulation at 29 CFR 500.20(h)(4) unchanged.''[63]

The effective date of the 2021 Rule was March 8, 2021.

D. Attempts To Delay and Withdraw the 2021 Rule

On March 4, 2021, the Department published a final rule (Delay Rule) delaying the effective date of the 2021 Rule until May 7, 2021—60 days after its original March 8, 2021, effective date.[64] The Delay Rule stated that it took effect immediately upon its publication in the **Federal Register**.[65] On May 6, 2021, the Department published a final rule withdrawing the 2021 Rule (Withdrawal Rule).[66] The Withdrawal Rule stated that it took effect immediately upon its publication in the **Federal Register**.[67]

On March 14, 2022, in a lawsuit challenging the Department's Delay and Withdrawal Rules under the Administrative Procedure Act (APA), a district court in the Eastern District of Texas issued a decision vacating the Department's Delay and Withdrawal Rules. *See Coalition for Workforce Innovation* v. *Walsh,* No. 1:21–CV–130, 2022 WL 1073346 (E.D. Tex. Mar. 14, 2022) (*CWI* Decision). While acknowledging that the Department engaged in separate notice-and-comment rulemakings in promulgating both of these rules, the district court concluded that the Department ''failed to provide a meaningful opportunity for comment in promulgating the Delay Rule,'' *id.* at *9,[68] failed to show ''good

[47] 86 FR 1246 (§ 795.105(b)).

[48] 86 FR 1246 (§ 795.105(c)).

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] 86 FR 1246–47 (§ 795.105(d)(1)(i)–(ii)).

[53] 86 FR 1247 (§ 795.105(d)(2)(i)–(iii)).

[54] 86 FR 1247 (§ 795.105(d)(2)(iv)).

[55] 86 FR 1247 (§ 795.110).

[56] 86 FR 1247–48 (§ 795.115).

[57] 86 FR 1248 (§ 795.120).

[58] 86 FR 1246.

[59] 86 FR 1177.

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *See* Dep't of Labor, Independent Contractor Status Under the Fair Labor Standards Act (FLSA): Delay of Effective Date, 86 FR 12535 (Mar. 4, 2021).

[65] *See id.* at 12537.

[66] *See* Dep't of Labor, Independent Contractor Status Under the Fair Labor Standards Act (FLSA): Withdrawal, 86 FR 24303 (May 6, 2021).

[67] *See id.* at 24320.

[68] The district court specifically faulted the Department's use of a shortened 19-day comment period (instead of 30 days) in its proposal to delay the 2021 Rule's original effective date, and for failing to consider comments beyond its proposal to delay the 2021 Rule's effective date. 2022 WL 1073346, at *7–10.

cause for making the [Delay Rule] effective immediately upon publication,'' *id.* at *11, and acted in an arbitrary and capricious manner in its Withdrawal Rule by ''fail[ing] to consider potential alternatives to rescinding the [2021] Rule,'' *id.* at *13. Accordingly, the district court vacated the Delay and Withdrawal Rules and ruled that the 2021 Rule ''became effective as of March 8, 2021, the rule's original effective date, and remains in effect.'' *Id.* at *20.

The Department filed a notice of appeal of the district court's decision to the Fifth Circuit Court of Appeals. *See Coal. for Workforce Innovation* v. *Su,* No. 22–40316 (5th Cir. appeal filed, May 13, 2022). The Fifth Circuit entered successive orders staying the appeal while the Department engaged in further rulemaking. Once the Department's further rulemaking concluded, the Fifth Circuit dismissed the appeal, vacated the district court's decision as moot, and remanded the case to the district court. *See* No. 22–40316, 2024 WL 2108472 (5th Cir. Feb. 19, 2024).

E. The 2024 Rule

On January 10, 2024, the Department published a final rule (2024 Rule) to rescind the 2021 Rule and replace it with a modified analysis for determining employee or independent contractor classification under the FLSA, which is currently set forth in 29 CFR part 795.[69] Like the 2021 Rule, the 2024 Rule advises that the FLSA's ''definitions are meant to encompass as employees all workers who, as a matter of economic reality, are economically dependent on an employer for work,'' elaborating that ''[a] worker is an independent contractor, as distinguished from an 'employee' under the [FLSA], if the worker is, as a matter of economic reality, in business for themself.'' [70] The 2024 Rule identifies six factors as ''tools or guides to conduct a totality-of-the-circumstances analysis'': (1) opportunity for profit or loss depending on managerial skill, (2) investments by the worker and the potential employer, (3) degree of permanence of the work relationship, (4) nature and degree of control, (5) extent to which the work performed is an integral part of the potential employer's business, and (6) skill and initiative.[71] The 2024 Rule does not identify any core factors or otherwise elaborate on the relative importance of these factors, advising instead that ''no one factor or subset of factors is necessarily dispositive'' and ''the weight to give each factor may depend on the facts and circumstances of the particular relationship.'' [72] The Department added that the six factors ''are not exhaustive'' and ''[a]dditional factors may be relevant in determining whether the worker is an employee or independent contractor for purposes of the FLSA, if the factors in some way indicate whether the worker is in business for themself, as opposed to being economically dependent on the potential employer for work.'' [73] The 2024 Rule advises that the outcome of its analysis ''does not depend on isolated factors but rather upon the circumstances of the whole activity to answer the question of whether the worker is economically dependent on the potential employer for work or is in business for themself.'' [74]

In addition, the Department made minor revisions to the industry-specific guidance provided at 29 CFR 780.330(b) and 788.16(a) by updating the cross-references to 29 CFR part 795 that the 2021 Rule had added.[75] Also, like the 2021 Rule, the Department included a severability provision in the 2024 Rule.[76]

Like in the 2021 Rule, the Department in the 2024 Rule ''did not propose to make any revisions to the MSPA regulation, which adopts by reference the FLSA's definition of 'employ,' and considers 'whether or not an independent contractor or employment relationship exists under the Fair Labor Standards Act' to interpret employee or independent contractor status under MSPA.'' [77] The Department explained that the guidance provided in the MSPA regulation is ''substantially similar'' to the economic reality test adopted by the 2024 Rule, the comments received did not address MSPA, and the Department ''is not revising the MSPA regulation at this time.'' [78]

Unlike the 2021 Rule, the 2024 Rule's regulatory text does not include any illustrative examples of how to apply the economic reality test or address the relevance of parties' actual practice as compared to what may be contractually or theoretically possible. However, the Department provided examples of how to apply each economic reality factor and addressed the actual practice issue in the 2024 Rule's preamble.[79]

The 2024 Rule took effect on March 11, 2024.

F. Litigation Challenging the 2024 Rule and WHD's 2025 Field Assistance Bulletin

Five lawsuits were filed challenging the legality of the 2024 Rule. Each lawsuit remains pending, although each has been stayed based on the Department's representation that it intends to reconsider the 2024 Rule, including whether to issue a notice of proposed rulemaking to rescind the rule.

In *Frisard's Transportation, L.L.C.* v. *Department of Labor,* the district court denied a motion for temporary restraining order and preliminary injunction that sought to enjoin the 2024 Rule because the trucking companies and business association challenging the 2024 Rule failed to meet their burden of showing irreparable harm. *See* Dkt. No. 19, No. 2:24–cv–00347–EEF–MBN (E.D. La. Mar. 8, 2024). The trucking companies and business association appealed the denial of preliminary injunction to the Fifth Circuit Court of Appeals, and the district court later stayed its proceedings. The Fifth Circuit has stayed the appeal.

In *Warren* v. *Department of Labor,* the district court ruled in favor of the Department without addressing the legality of the 2024 Rule, concluding that the freelancers challenging the 2024 Rule do not have standing to do so. *See* Dkt. No. 42, No. 2:24–CV–7–RWS (N.D. Ga. Oct. 7, 2024). The freelancers appealed to the Eleventh Circuit Court of Appeals, which has stayed the appeal.

In *Colt & Joe Trucking, LLC* v. *Department of Labor,* the district court ruled in favor of the Department, concluding that the trucking company challenging the 2024 Rule does not have standing to do so and also rejecting its various arguments that the 2024 Rule is unlawful. *See* No. 24–cv–00391–KWR–GBW, 2025 WL 56658 (D.N.M. Jan. 9, 2025). The trucking company appealed to the Tenth Circuit Court of Appeals, which has stayed the appeal.

In *Littman* v. *Department of Labor,* the district court ruled in favor of the Department without addressing the legality of the 2024 Rule, affirming the magistrate judge's report and recommendation that found that the

[69] *See* Dep't of Labor, Employee or Independent Contractor Classification Under the Fair Labor Standards Act, Final Rule, 89 FR 1638 (Jan. 10, 2024).

[70] 29 CFR 795.105(b).

[71] 29 CFR 795.110(a)(1), (b)(1)–(6).

[72] 29 CFR 795.110(a)(2).

[73] 29 CFR 795.110(a)(2), (b)(7).

[74] 29 CFR 795.110(a)(1).

[75] *See* 89 FR 1741.

[76] *See* 29 CFR 795.115.

[77] 89 FR 1664.

[78] *Id.*

[79] *See* 89 FR 1718–22 (discussing the relevance of actual practice); *see also* 89 FR 1722–24 (discussing commenter feedback on illustrative examples provided in the preamble of the Department's 2022 Notice of Proposed Rulemaking).

freelancers challenging the 2024 Rule do not have standing to do so. *See* No. 3:24–cv–00194, 2025 WL 763583 (M.D. Tenn. Mar. 11, 2025). The freelancers appealed to the Sixth Circuit Court of Appeals, and that appeal has been stayed by the court's Mediation Office.

In *Coalition for Workforce Innovation* v. *Walsh,* the business associations that had challenged the Delay and Withdrawal Rules amended their complaint following remand to challenge the 2024 Rule. Dkt. No. 40, No. 1:21–CV–130 (E.D. Tex. Mar. 5, 2024). In 2024, the business associations filed a motion for summary judgment arguing that the 2024 Rule is unlawful, and the Department filed a cross-motion arguing that the case should be dismissed for lack of standing and that it should be granted summary judgment because the 2024 Rule is lawful. The parties fully briefed the motions, and the district court later stayed the case.

On May 1, 2025, WHD published Field Assistance Bulletin (FAB) No. 2025–1, providing enforcement guidance in FLSA cases.[80] FAB No. 2025–1 explained that the Department has taken the position in the lawsuits challenging the 2024 Rule that it is reconsidering the rule, including whether to rescind it. The FAB added that ''WHD is currently reviewing and developing the appropriate standard for determining FLSA employee versus independent contractor status,'' and advised WHD staff that ''WHD will no longer apply the 2024 Rule's analysis when determining employee versus independent contractor status in FLSA investigations.'' In its place, ''WHD will enforce the FLSA in accordance with [the 2008 version of Fact Sheet #13], and as further informed by [WHD Opinion Letter FLSA2025–2] with respect to any matters for which no payment has been made, directly to individuals or to DOL, for back wages and/or civil money penalties as of May 1, 2025.'' FAB No. 2025–1 noted that, ''[u]ntil further action is taken, the 2024 Rule remains in effect for purposes of private litigation and nothing in this FAB changes the rights of employees or responsibilities of employers under the FLSA.''

II. Need for Rulemaking

The Department is concerned that the 2024 Rule broadens and generalizes a variation of the longstanding legal analysis in ways that complicate and frustrate its application by workers and businesses. Repeated emphasis on the ''whole activity'' and little direction regarding how its factors should be used to answer the ultimate question resulted in a rule that fails to provide an analysis for distinguishing between independent contractors and employees under the FLSA that is sufficiently clear and leads to predictable outcomes. The Department is separately concerned that the 2024 Rule's description of several economic reality factors could be viewed as setting a higher bar to find independent contractor status than the law requires. Among other harms, an open-ended balancing analysis of six ambiguous elements can deter businesses from engaging with bona fide independent contractors or induce them intentionally to unnecessarily classify such contractors as employees. Indeed, these and other concerns have been emphasized by many self-identified independent contractors who have participated in the Department's recent rulemakings on this topic. The Department believes that replacing the 2024 Rule with a modified and updated 2021 Rule would avoid this outcome and facilitate the more accurate and predictable classification of individuals, with a familiar and clear analysis drawn from established case law that is more amenable to the modern economy and fully effective in preventing the misclassification of employees. In particular, and as explained in greater detail in section III.E. of this NPRM, the Department believes that the 2021 Rule's elevation of control and opportunity as ''core'' factors in the analysis used to identify independent contractors better aligns with the Supreme Court's original application of the economic reality test, as well as the ordinary understanding of being in business for oneself. Accordingly, in this rulemaking, the Department is proposing to rescind the 2024 Rule and readopt the analysis provided in the 2021 Rule, with a few modifications, which the Department has successfully applied in WHD investigations.[81] For the reasons provided herein, the Department believes this proposed analysis represents the best construction of the FLSA with respect to whether an individual is an independent contractor or an employee.

A. Concerns That the 2024 Rule Fails To Provide Needed Clarity

The principal flaw of the 2024 Rule is its failure to provide effective guidance on how different factors in its multi-factor balancing test should be weighed or applied together. In the absence of such guidance, engaging individuals as independent contractors could be confusing and risky when different factors point to different classification outcomes. Imagine, for example, that a company is evaluating its longstanding relationship with an individual who works from home, has the ability to accept or decline any project without repercussion, sets her own schedule, and negotiates her compensation with the company as well as several other companies with which she works. Under the 2024 Rule, some economic reality factors in this scenario might indicate that the individual is an independent contractor—*i.e.,* the company's lack of control over her, her opportunity for profit and loss, and her skill and business-like initiative.[82] However, other factors might indicate an employment relationship—*i.e.,* her work may be an ''integral part'' of the company's business,[83] the parties have a ''continuous'' (though non-exclusive) relationship,[84] and the individual may lack significant investments (at least in comparison to the company's ''investments in its overall business'').[85] In this scenario, although the individual may well be an independent contractor under the 2024 Rule, that outcome may be uncertain because the factors point in different directions and ''the weight to give each factor may depend on the facts and circumstances of the particular relationship.'' [86] Accordingly, the company might believe that engagement of the individual would require classification of the individual as an employee under the FLSA (which may or may not be possible given both the business's and the individual's circumstances), given that the 2024 Rule lacks clear guidance on how to weigh the factors, repeatedly emphasizing the totality not only of the six factors but all potentially relevant considerations. One can point to a myriad of additional scenarios involving workers who are in business for themselves (and thus are bona fide independent contractors), but where two or more factors from the 2024 Rule arguably indicate an employment relationship, particularly in industries where those workers are ''integral'' to the businesses in those industries.

As Judge Frank Easterbrook noted in 1987, '''[economic] reality' encompasses millions of facts, and unless we have a

[80] The FAB is available at *https://www.dol.gov/sites/dolgov/files/WHD/fab/fab2025-1.pdf.*

[81] WHD began applying the 2021 Rule's analysis after the *CWI* Decision (issued on March 14, 2022) in its FLSA cases involving work performed by an alleged independent contractor from March 8, 2021, to March 10, 2024 (*i.e.,* from the 2021 Rule's intended effective date until its rescission by the 2024 Rule).

[82] *See* 29 CFR 795.110(b)(1), (4), (6).

[83] 29 CFR 795.110(b)(5).

[84] *See* 29 CFR 795.110(b)(3).

[85] *See* 29 CFR 795.110(b)(2).

[86] 29 CFR 795.110(a)(2).

legal rule with which to sift the material from the immaterial, we might as well examine the facts through a kaleidoscope. Which facts matter, and why? A legal approach calling on judges to examine all of the facts, and balance them, avoids formulating a rule of decision.'' [87] It is precisely this ambiguity that motivated the Department to initially propose regulatory guidance for analyzing employee or independent contractor status under the FLSA in 2020.[88] In that rulemaking, after reviewing decades of judicial decisions applying *Silk* and *Rutherford,* the Department determined that courts tended to focus on two economic reality factors—control and the opportunity for profit or loss. The Department determined that courts tended to treat the direction in which they pointed as a reliable indicator of employee or independent contractor status, effectively—if not formally—giving them more weight and an elevated status. As the Department explained, control and opportunity ''strike at the core of what it means to be in business for oneself.'' [89] It is logical that those factors would and should have more weight in assessing the legality of an independent contractor arrangement than the ancillary considerations regarding the skill of the individual worker at issue, the permanency of the individual's relationship with a particular business, and whether the work is an ''integral part'' of that business.[90]

In the Department's recent rulemakings on this topic, numerous self-identified independent contractors and businesses that engage independent contractors commented positively on the 2021 Rule for its identification of control and opportunity as ''core'' factors in the FLSA's multi-factor economic reality test.[91] As a policy matter, these commenters asserted that the Department's identification of core factors brought helpful clarity and assurance. In the 2024 Rule, the Department largely rejected such policy arguments, believing that identifying ''core'' and ''non-core'' factors ''would . . . likely [cause] confusion and uncertainty'' if left in place.[92] Upon reconsideration, the Department finds compelling the sentiment expressed by workers and businesses who did not share that view and sought added clarity in how different factors from the economic reality test should be balanced in predictable ways. As described in greater detail in section III of this NPRM, the Department can apply an economic reality test grounded in federal case law that provides more clarity to interested stakeholders than an unguided ''totality-of-the-circumstances analysis'' in which ''the weight to give each factor may depend on the facts and circumstances of the particular relationship.'' [93] In advising the public on how it intends to weigh different economic reality factors, the Department can and should do better than ''it depends.'' *Grossbaum* v. *Indianapolis-Marion Cnty. Bldg. Auth.,* 100 F.3d 1287, 1299 (7th Cir. 1996) (noting Judge Easterbrook's observation that real world actors need guidance ahead of time rather than critiques afterward).

The Department is additionally concerned that the 2024 Rule features numerous redundancies in its description of the different factors, which the 2021 Rule sought to eliminate to facilitate the proper, clear, and reliable application of the analysis. For example, the phrases ''managerial skill (including initiative or business acumen or judgment),'' ''business-like initiative,'' and ''independent business initiative'' appear in the guidance provided for three different factors in the 2024 Rule.[94] Both the ''control'' and the ''opportunity for profit or loss'' factors consider whether the worker determines or negotiates their pay.[95] The ''opportunity'' factor considers ''whether the worker makes decisions to hire others, purchase materials and equipment, and/or rent space,'' [96] despite a separate factor examining ''evidence of capital or entrepreneurial investment.'' [97] The control factor examines ''whether the potential employer . . . explicitly limits the worker's ability to work for others'' or ''places demands or restrictions on workers that do not allow them to work for others,'' [98] while the ''permanence'' factor separately inquires whether ''the work relationship is . . . exclusive of work for other employers.'' [99] Finally, the ''permanence'' factor states in circular fashion that an impermanent work arrangement is only indicative of independent contractor status if it is ''based on the worker being in business for themself,'' [100] which of course is the overarching inquiry of the economic reality test.[101] And, the factor further states that a worker must be ''marketing their services or labor to multiple entities'' for an impermanent relationship to be indicative of independent contractor status, when ''whether the worker engages in marketing, advertising, or other efforts to expand their business or secure more work'' is separately considered under the 2024 Rule's ''opportunity'' factor.[102]

The Department acknowledged in the preamble of the 2024 Rule that ''certain relevant facts may overlap among the factors,'' but explained that it ''does not wish to be overly prescriptive'' about such overlap for fear of establishing ''a formulaic or rote analysis'' that would not be ''flexible enough to apply to all kinds of work, and all kinds of workers.'' [103] While some degree of factual overlap may be inevitable in a multifactor analysis, the Department now believes that the 2024 Rule crosses the line from natural overlap into unhelpful repetition—particularly where the same concepts (such as ''business initiative'') are presented as required elements of multiple factors and are applied for different purposes. These redundancies risk confusing businesses and workers alike, creating uncertainty about whether the same considerations must be counted

[87] *Sec'y of Labor* v. *Lauritzen,* 835 F.2d 1529, 1539 (7th Cir. 1987) (Easterbrook, J., concurring).

[88] For example, Judge Easterbrook has generally observed that ''[u]nless some obstacle such as inexperience with the subject, a dearth of facts, or a vacuum in the statute books intervenes, we should be able to attach legal consequences to recurrent factual patterns. Courts have had plenty of experience with the application of the FLSA to migrant farm workers. Fifty years after the Act's passage is too late to say that we still do not have a legal rule to govern these cases.'' *Id.*

[89] 86 FR 1199. The 2021 Rule reflected thoughtful analysis of the caselaw that has situated the core of the employee vs. independent contractor analysis in the control and opportunity for profit and loss factors. The 2024 Rule does not cite a single case where these two core factors (when pointing to the same classification) were overridden.

[90] *See* 86 FR 1196–97.

[91] *See* 86 FR 1197 (2021 Rule); 86 FR 24308–09 (Withdrawal Rule); 89 FR 1650, 1666–67 (2024 Rule).

[92] 89 FR 1654.

[93] 29 CFR 795.110(a)(2).

[94] 29 CFR 795.110(b)(1), (3), and (6).

[95] *Compare* 29 CFR 795.110(b)(1) (examining ''whether the worker determines or can meaningfully negotiate the charge or pay for the work provided'') *with id.* at 795.110(b)(4) (examining ''control over prices or rates for services . . . provided by the worker'').

[96] 29 CFR 795.110(b)(1).

[97] 29 CFR 795.110(b)(2).

[98] 29 CFR 795.110(b)(4).

[99] 29 CFR 795.110(b)(3). The 2024 Rule also addressed ability to work for others in its preamble discussion of the ''investments'' factor. *See* 89 FR 1681 (''A worker's investments are most likely to be capital or entrepreneurial in nature if they create or further the worker's ability to work for multiple employers.'').

[100] 29 CFR 795.110(b)(3).

[101] 29 CFR 795.110(a)(1) (advising that employee or independent contractor status turns on ''whether the worker is economically dependent on the potential employer for work or is in business for themself'').

[102] 29 CFR 795.110(b)(1). Marketing is also arguably an example of ''business-like initiative,'' a required element of the ''skill and initiative'' factor in 29 CFR 795.110(b)(6).

[103] 89 FR 1670.

multiple times or weighed differently depending on the factor in which they appear. The Department believes that a more concise articulation of each factor, with a clearer delineation of which considerations are most relevant to each, would enhance the clarity and utility of the Department's regulatory guidance on the economic reality test.

Ultimately, the Department is concerned that the framework set forth in the 2024 Rule was too general and expected that workers and businesses assess the notion of ''economic reality'' with six broad and vague factors, as well as any other information that might be relevant—or later deemed relevant—without any direction regarding how those factors should be applied. In this way, the 2024 Rule failed to facilitate proper classification of workers. Instead, the Department believes that the vagueness of the 2024 Rule, and its lack of predictable application, pressured businesses to unnecessarily classify bona fide independent contractors as employees. Although ''economic reality'' may be an imprecise concept, the Department believes that in most instances, the proper classification of workers under the law can—and should—be reasonably certain and predictable.

B. Concerns That the 2024 Rule's Description of the Factors May Have a Chilling Effect on Independent Contracting Arrangements and Departs From the Supreme Court's Application

In addition to concerns about the 2024 Rule's lack of clarity, the Department has concerns that the 2024 Rule could be viewed as more restrictive of independent contracting than the law requires. As explained below and consistent with comments received during the 2024 rulemaking, the Department is concerned that several of the economic reality factors in the 2024 Rule are described in ways (particularly by including additional considerations that must be met for the factor to indicate independent contractor status) that make proper classification of independent contractors more difficult than the law requires, pressures the unnecessary classification of such workers as employees, or tilts the analysis to make classification in one direction more difficult with more attendant legal risk than the other. In the 2024 Rule, the Department stated that it was attempting to reflect the ways in which a number of courts have viewed the various considerations within the factors. Upon further consideration, the Department believes that referencing a multitude of additional considerations within the factors not only departs from the Supreme Court's articulation of the factors, but also could have a chilling effect on independent contractor arrangements involving individuals who are, in fact, in business for themselves. Readopting the streamlined analysis in the 2021 Rule better aligns with the Court's precedent and reduces these risks.

The ''investments'' factor at 29 CFR 795.110(b)(2) is instructive. Before the 2024 Rule, when the Department would enumerate the multi-factor economic reality test for assessing independent contractor arrangements, the Department's description of the investments factor would generally focus on any investments (or lack thereof) made by the individual worker.[104] However, the 2024 Rule expanded this factor to examine ''investments by the worker *and the potential employer,*'' with guidance elaborating that ''the worker's investments should be considered on a relative basis with the potential employer's investments in its overall business.'' [105] The Department recognizes that this additional consideration of comparing the worker's investment to the potential employer's investment is applied by some courts, but that approach has no support in Supreme Court cases. This is notable given how close in time the key Supreme Court decisions were to the enactment of the FLSA. But as explained in section III.F.2. below, the Supreme Court has *never* compared investments and instead has focused exclusively on the worker when considering investments.

Moreover, comparing investments diminishes the probative value of the investment. An independent contractor's investments will almost invariably be smaller than any corporate client's ''investments in its overall business,'' and so counterfactually tends to indicate employee status.[106] In response to commenter concerns on this point, the Department recognized the problem and clarified in the final 2024 Rule regulatory text that the ''worker's investments need not be equal to the potential employer's investments and should not be compared only in terms of the dollar values of investments or the sizes of the worker and the potential employer.'' [107] Even with that clarification, however, the 2024 Rule's ''investments'' factor still undertakes this comparative approach, which is a departure from *Silk* and may obfuscate proper classification of workers.

The 2024 Rule's ''permanence'' factor, 29 CFR 795.110(b)(3), is another example. The operative text advises that ''[t]his factor weighs in favor of the worker being an employee when the work relationship is indefinite in duration, continuous, or exclusive of work for other employers,'' while it ''weighs in favor of the worker being an independent contractor when the work relationship is definite in duration, non-exclusive, project-based, or sporadic based on the worker being in business for themself and marketing their services or labor to multiple entities.'' [108] Here, the conditional language following the word ''sporadic'' seems to add further considerations than the law requires in order for an impermanent relationship to indicate independent contractor status. Adding to the perception that it could be more difficult to find that this factor weighs in favor of independent contractor status, the 2024 Rule additionally advises, as some courts have, that ''this [permanence] factor is not necessarily indicative of independent contractor status'' where ''a lack of permanence is due to operational characteristics that are unique or intrinsic to particular businesses or industries and the workers they employ . . . unless the worker is exercising their own independent business initiative.'' [109] There is no corresponding language in the other direction, categorically discounting industries where lengthy professional relationships between businesses and independent contractors might be commonplace. The result is a factor framed in a way that may indicate the existence of an FLSA employment relationship when permanence exists but unnecessarily require additional considerations to indicate independent contractor status when permanence does not exist.

The 2024 Rule's ''skill and initiative'' factor operates in a similar fashion and also deviates from Supreme Court

[104] *See* WHD Fact Sheet #13 (July 2008), *https://www.dol.gov/sites/dolgov/files/WHD/fact-sheets/whdfs13.pdf* (assessing ''[t]he amount of the alleged contractor's investment in facilities and equipment''); *see also, e.g.,* WHD Op. Ltr. (June 23, 1949) (examining ''the amount of the so-called 'contractor's' investment in facilities or equipment''); WHD Op. Ltr. (Aug. 13, 1954) (examining ''the amount of investment on the part of the one who performs the service''); WHD Op. Ltr. FLSA2019–6 (April 29, 2019) (considering ''the amount of the worker's investment in facilities, equipment, or helpers'').

[105] 29 CFR 795.110(b)(2) (emphasis added).

[106] *Id.; see* 89 FR 1683–84.

[107] 29 CFR 795.110(b)(2); *see also* 89 FR 1684 (explaining that the Department intended for the analysis to ''compar[e] the qualitative (rather than primarily the quantitative) value of the investments'').

[108] 29 CFR 795.110(b)(3).

[109] *Id.; see* 89 FR 1688 and n.330.

precedent. The operative regulatory text begins with straightforward guidance that a lack of skills indicates that a worker is an employee: ''This factor indicates employee status where the worker does not use specialized skills in performing the work or where the worker is dependent on training from the potential employer to perform the work.'' [110] However, the guidance does not correspondingly state that specialized skills indicate that the worker is an independent contractor and instead inserts an additional consideration that must be met for this factor to indicate that a worker with specialized skills is an independent contractor: ''Where the worker brings specialized skills to the work relationship, this fact is not itself indicative of independent contractor status because both employees and independent contractors may be skilled workers. It is the worker's use of those specialized skills in connection with business-like initiative that indicates that the worker is an independent contractor.'' [111] Here again, the Department recognizes that this approach is applied by some courts, but the 2024 Rule articulates this factor in a way that makes it more difficult than the law requires to establish that a worker might be an independent contractor rather than an employee. While it is true that ''both employees and independent contractors may be skilled workers,'' the converse is also true, as other workers who may not possess ''specialized skills'' are both employees and independent contractors. Moreover, although the 2024 Rule's consideration of initiative as part of the skill factor is supported by some courts, the Supreme Court has not considered initiative in terms of skill. Instead, and as discussed in section III.G.1, it has consistently analyzed whether initiative contributes to the success or profitability of the claimed independent business.[112]

The 2024 Rule's ''integral'' factor departs from *Rutherford Food*'s guidance to consider whether a worker is part of an integrated unit, and it may also unreasonably frustrate finding independent contractor status where appropriate, because this factor weighs in favor of employee status when his or her work is ''critical, necessary, or central to the potential employer's principal business.'' [113] In some sense, all work performed is in some way necessary to the employer's business. If not, the business would not pay for it to be performed.[114] Indeed, several commenters expressed concerns that the integral factor would ''effectively subsume'' all independent contractors into employment status because businesses do not pay employees or independent contractors to engage in work that is not in some sense critical or necessary to their operations.[115] Finally, in its descriptive guidance for the ''control'' factor, the 2024 Rule gives several examples of facts relevant to a potential employer's control over workers but does not provide similar examples of facts relevant to a worker's control, further implying that this factor is not a balanced aid in determining proper classification.[116]

Taken together, these aspects of the 2024 Rule appear to be misaligned with the Supreme Court's analysis and may have created the perception of an economic reality test with a number of considerations that would make it harder to conclude that an individual who is in business for him- or herself is an independent contractor. While the Department maintains that preventing the misclassification of FLSA-covered employees as independent contractors is an important policy goal, it is equally important that the Department's guidance not be viewed as chilling independent contracting arrangements that comply with the statute.

C. Concerns Over the 2024 Rule's Compatibility With the Modern Economy

In the 2021 Rule, the Department explained that certain technological and social changes have made the traditional articulation of the economic reality test more difficult to apply in the modern economy. For example, it highlighted the effects of several types of change, including societal transition from a predominantly industrial-based to a more knowledge-based economy and shorter job tenures among employees.[117] In 2024, the Department disagreed with its past statements and arguments from some commenters that the 2021 Rule was better suited to the modern economy, asserting that ''[m]odern work arrangements . . . are best addressed using the [2024 Rule's] economic reality test, which considers the totality of the circumstances in each working arrangement and offers a flexible, comprehensive, and appropriately nuanced approach which can be adapted to disparate industries and occupations.'' [118] However, as discussed earlier in section II.A., generalizing the legal analysis in ways that expand ''flexibility'' can undermine the utility of a rule—namely to clarify the proper application of statutory provisions, which provides regulated entities with the reasonable certainty and predictability they need to do business. This is particularly true for practices which might be novel and innovative. Moreover, in the 2024 Rule, the Department did not address, much less refute, the points made by the 2021 Rule that the predictive accuracy of certain economic reality factors (investments, permanence, and integrality) may be waning due to recent workplace trends. These trends are no less true today than they were in 2021, reinforcing the need for prioritization among the factors of the economic reality test.

D. Concerns Over Negative Effects if the 2024 Rule Is Left in Place

As a downstream consequence of all the risks described above, the Department is concerned that leaving the 2024 Rule in effect could lead to undesirable outcomes that are not required by, and may be inconsistent with, the law. Specifically, a classification analysis that amplifies ambiguity or is perceived as overly restrictive of independent contracting may deter bona fide independent contracting and related efficiencies and innovations in the broader economy. As the Department acknowledged in the 2024 Rule, ''independent contractors and small businesses play an important role in our economy.'' [119] Independent contracting offers individuals the ability to control when, where, and how they work, and it provides businesses—particularly small enterprises and new ventures—with access to specialized skills and scalable workforces.[120]

While independent contractors are not entitled to FLSA protections, they often prize the autonomy and flexibility their work affords; indeed, many pursue contracting arrangements as a preferred

[110] 29 CFR 795.110(b)(6).

[111] *Id.*

[112] *Silk,* 331 U.S. at 716 (finding that truck drivers ''depend upon their own initiative, judgment and energy for a large part of their success''); *Rutherford Food,* 331 U.S. at 730 (finding that workers' ''profits'' did not depend ''upon the initiative, judgment or foresight of the typical independent contractor'').

[113] 29 CFR 795.110(b)(5).

[114] *Lauritzen,* 835 F.2d at 1539 (Easterbrook, J., concurring) (''*Everything* the employer does is 'integral' to its business—why else do it?'').

[115] 89 FR 1710.

[116] 29 CFR 795.110(b)(4).

[117] *See* 86 FR 1175.

[118] 89 FR 1649.

[119] 89 FR 1646.

[120] *See, e.g.,* Liya Palagashvili, *Exploring How Regulations Shape Technology Startups,* Mercatus Research 23 (May 2021), *https://www.mercatus.org/media/74416/* (reporting that 57 percent of surveyed tech startups indicated that the use of independent contractors was ''an indispensable or essential part of their business models'').

mode of work.[121] A rule that operates to complicate or discourage these arrangements may inadvertently limit work opportunities for individuals seeking flexibility due to caregiving responsibilities, education, retirement, geographic constraints, or other personal circumstances. For businesses, unclear regulations can deter growth and investment. To the extent that the 2024 Rule curtails or discourages legitimate independent contracting, investment, and innovation, it may lead to negative effects on consumers, who may face higher prices and a reduced number of alternatives to meet their needs. These potential effects are discussed in greater detail in the preliminary regulatory impact analysis for this proposed rule in section IV of this NPRM.

In 2024, the Department explained that its rulemaking to rescind and replace the 2021 Rule was motivated, in part, by concerns that the 2021 Rule had ''increased the risk of worker misclassification'' by ''improperly narrow[ing] the focus of the inquiry in a way that may have led employers to believe the test no longer includes as many considerations,'' asserting that ''confusion and misapplication of [the 2021 Rule] could deprive many workers of protections they are entitled to under the FLSA.'' [122] However, apart from highlighting statements made by some commenters,[123] the Department did not present any evidence or otherwise demonstrate that the 2021 Rule was actually being misapplied in ways that resulted in the misclassification of FLSA-covered employees as independent contractors.[124] To the contrary, the Department issued numerous press releases contemporaneous to the 2022–2024 rulemaking announcing successful enforcement actions where WHD applied the 2021 Rule's analysis.[125] This suggests that the 2021 Rule was no impediment to the Department to appropriately identify, pursue, and remedy the unlawful misclassification of FLSA-covered employees as independent contractors, consistent with its duty to enforce the FLSA.

Correctly classifying workers, whether as employees or independent contractors, remains vitally important to the proper application and enforcement of the FLSA. One of the most effective ways to prevent misclassification is to clarify how workers and businesses may properly and reliably apply the appropriate analysis across a wide array of industries, companies, and individual working arrangements. The Department's role is not to incentivize or disincentivize companies from classifying workers as employees or independent contractors, either by placing a regulatory finger on one side of the scale or the other or by allowing legal ambiguity to discourage the correct classification of individuals. In this rulemaking, the Department proposes a rule that is more consistent with Supreme Court precedent, provides a more cogent synthesis of the over 80 years of case law since the FLSA's passage that have helped to define the relevant statutory terms, and also seeks to minimize potential negative effects on independent contractors and their business partners while still effectively addressing misclassification and abuse.

E. The Need for Uniformity and Consistency in the Analysis of Employee or Independent Contractor Status Under the FLSA, FMLA, and MSPA, Which Share the Same Statutory Definitions of Employment

As noted earlier, the FMLA and MSPA both incorporate the FLSA's broad definition of ''employ,'' including ''to suffer or permit to work.'' *See* 29 U.S.C. 2611(3) (FMLA); 29 U.S.C. 1802(5) (MSPA). Thus, it has been the Department's longstanding position that the analysis for determining whether a worker is an employee or an independent contractor should be the same under all three statutes—*i.e.,* the analysis which applies under the FLSA.

However, the Department's regulations do not currently reflect a single standard for the three statutes.[126] For example, the MSPA regulation currently notes that MSPA and the FLSA share the same employment definitions, *see* 29 CFR 500.20(h)(1)–(3), and advises that a determination of employee or independent contractor status ''may include consideration of whether'' there is an employee or independent contractor relationship under the FLSA, *see* 29 CFR 500.20(h)(4). However, the regulation also advises that determining whether agricultural workers or farm labor contractors are independent contractors ''should be resolved in accordance with the factors set out'' in 29 CFR 500.20(h)(4), ''based upon an evaluation of all of the circumstances.'' [127] Those factors are not exactly the same as the factors that the Department is proposing to adopt in this NPRM, and of particular relevance, the MSPA regulation does not—like this proposal—advise how to weigh the factors. There are also differences between the economic reality factors in the MSPA regulation and some of the factors described in the 2024 Rule and the analysis from FAB 2025–1 that the Department is currently applying. Thus, retaining the MSPA regulation's instruction to assess employee or independent contractor status ''in accordance with'' that regulation's enumerated factors could create uncertainty over whether the FLSA guidance issued by the Department on this topic—including the analysis proposed in this rulemaking—also applies in MSPA cases.

Failing to make conforming edits to the MSPA regulation risks confusing agricultural employers, agricultural associations, and farm labor contractors which might be subject to both the FLSA and MSPA, as well as the agricultural workers that such entities engage. Revising the MSPA regulation

[121] For example, in 2023, the Bureau of Labor Statistics reported that 80.3 percent of independent contractors prefer their work arrangement, compared to just 8.3 percent who would prefer a ''traditional work arrangement.'' Bureau of Labor Statistics, U.S. Department of Labor, *Contingent and Alternative Employment Arrangements—July 2023,* USDL–24–2267 (Nov. 8, 2024), *https://www.bls.gov/news.release/pdf/conemp.pdf.* The Department notes that to the extent the discussion herein could be interpreted to mean that individuals may choose whether to be an employee or an independent contractor as a matter of law under the FLSA, as discussed in the 2021 Rule, ''workers who are employees under the facts and law [may not] waive the FLSA's protections by classifying themselves as independent contractors.'' 86 FR 1179; *see also* 89 FR 1671 (similar discussion in 2024 Rule preamble).

[122] 89 FR 1658.

[123] 89 FR 1656–57.

[124] *See* 89 FR 1726 (suggesting in the 2024 Rule's regulatory impact analysis that the 2024 Rule ''*may* reduce misclassification of employees as independent contractors'' to the extent that ''confusion about how to apply the analysis in the 2021 IC Rule . . . *could* lead to misclassification'') (emphasis added).

[125] *See, e.g.,* US Department of Labor Recovers $168K in Back Wages for 51 Storm Recovery Workers Misclassified as Independent Contractors, Denied Overtime, WHD Press Release (Jan. 23, 2024), *https://www.dol.gov/newsroom/releases/whd/whd20240123*; US Department of Labor Recovers $532K in Back Wages for 67 Workers After Montgomery Home Care Employer Misclassifies Them as Contractors, WHD Press Release (Nov. 14, 2023), *https://www.dol.gov/newsroom/releases/whd/whd20231114-0*; Department of Labor Recovers $1.6M in Back Wages, Damages from North Carolina Contractor for 188 Workers Misclassified as Independent Contractors, WHD Press Release (Aug. 9, 2023), *https://www.dol.gov/newsroom/releases/whd/whd20230809.*

[126] The FMLA and MSPA both authorize the Department to issue regulations interpreting their provisions. *See* 29 U.S.C. 2654 (FMLA); 29 U.S.C. 1861 (MSPA).

[127] 29 CFR 500.20(h)(4) further advises that the determination should also be made in accordance with ''the principles articulated by the federal courts in'' five cited court decisions—*Rutherford Food,* 331 U.S. 722, and four appellate cases addressing the FLSA employment status of farm labor contractors or agricultural workers. *See Driscoll,* 603 F.2d 748; *Lauritzen,* 835 F.2d 1529; *Beliz* v. *McLeod & Sons Packing Co.,* 765 F.2d 1317 (5th Cir. 1985); and *Castillo* v. *Givens,* 704 F.2d 181 (5th Cir. 1983).

(29 CFR 500.20(h)(4)) to conform it to the Department's FLSA regulatory guidance would resolve these concerns and provide uniformity between MSPA and the FLSA on this issue.

The FMLA regulation's guidance for assessing employee or independent contractor status could be similarly unclear if conforming edits are not made. The regulation defines ''Employee'' in 29 CFR 825.102 as having the same meaning as that term has under the FLSA and notes that the ''definition of employ for purposes of FMLA is taken from the [FLSA],'' 29 CFR 825.105(a). However, the FMLA regulation does not mention the economic reality factors used to distinguish between employees and independent contractors under the FLSA or advise how the factors should be weighed. Instead, the regulation explains generally that ''courts have said that there is no definition that solves all problems as to the limitations of the employer-employee relationship.'' *Id.* It further advises that ''an employee, as distinguished from an independent contractor who is engaged in a business of his/her own, is one who 'follows the usual path of an employee' and is dependent on the business which he/she serves.'' *Id.* This language, although accurate in describing the overall analysis, could be misinterpreted as suggesting that—unlike the FLSA (and MSPA)—there is no set of factors for distinguishing between employees and independent contractors in FMLA cases. The Department did not intend to create or imply any discrepancy between the FMLA and FLSA when it added the language in 29 CFR 825.105(a) in 1995.[128] The Department believes that adding cross-references to part 795 in 29 CFR 825.102 (definition of ''Employee'') and 825.105(a) would address this concern and provide useful guidance when making the determination under the FMLA.

The risk that employee or independent contractor status under the FMLA could be assessed without applying FLSA principles is not merely theoretical. In *Alexander* v. *Avera St. Luke's Hospital,* 768 F.3d 756, 763–64 (8th Cir. 2014)—the only federal circuit-court-level case to decide such a dispute arising under the FMLA—the Eighth Circuit expressly declined to apply an FLSA economic reality test to determine whether the plaintiff was an employee or independent contractor. While acknowledging that the FMLA incorporates the FLSA's ''suffer or permit'' language, the Eighth Circuit concluded that ''simply applying'' an FLSA economic reality test in that FMLA case would ''not [be] appropriate,'' noting that the plaintiff's ''work in a 'professional capacity' was totally exempt from the FLSA's minimum standards.'' *Id.* at 763 (citing 29 U.S.C. 213(a)(1)). The Department believes that the Eighth Circuit's approach in *Alexander,* even if limited to cases where the worker would be exempt from the FLSA if an employee, is inconsistent with the FMLA's statutory text and the Department's regulations and guidance, as well as the approach taken by most federal district courts, which do apply an FLSA economic reality test to adjudicate employee or independent contractor disputes under the FMLA. *See, e.g., Hay* v. *ALH Admin. Servs.,* 283 F. Supp. 3d 1273, 1276 (M.D. Fla. 2017); *Nichols* v. *All Points Transp. Corp. of Mich., Inc.,* 364 F. Supp. 2d 621, 630 (E.D. Mich. 2005); *Edwards* v. *Cmty. Enters., Inc.,* 251 F. Supp. 2d 1089, 1103 (D. Conn. 2003).

Although the Department is not aware of any court that has declined to apply an economic reality test under MSPA, several courts have cited to the Department's MSPA regulation and applied its formulation of the economic reality test at 29 CFR 500.20(h)(4) to determine whether an individual is an independent contractor or employee under MSPA. *See, e.g., Fanette* v. *Steven Davis Farms, LLC,* 28 F. Supp. 3d 1243, 1255–56 (N.D. Fla. 2014); *Arredondo* v. *Delano Farms Co.,* 922 F. Supp. 2d 1071, 1075–82 (E.D. Cal. 2013); *Luna* v. *Del Monte Fresh Produce (Se.), Inc.,* No. 1:06–CV–2000–JEC, 2008 WL 754452, at *7–9 (N.D. Ga. Mar. 19, 2008). Of course, it is entirely appropriate for courts to apply the Department's MSPA regulation to adjudicate employee or independent contractor disputes under MSPA, as the Department's MSPA regulation is a legislative rule issued pursuant to an express delegation of rulemaking authority that is binding on regulated entities.[129] However, to the extent the MSPA regulation's specific articulation of the economic reality test differs in meaningful ways from the Department's FLSA guidance (including the analysis proposed in this rulemaking), the Department does not believe it is appropriate to have separate economic reality tests for employee or independent contractor status under laws which share the same statutory definitions for employment.

The Department declined to revise the MSPA regulations in the 2021 and 2024 Rules as it did not see a compelling need to do so at those times,[130] emphasizing in the 2021 Rule, for example, the Department's preference to ''proceed incrementally.'' [131] However, the Department recognizes that many stakeholders desire greater uniformity in the analysis for determining employee or independent contractor status across federal laws that explicitly share common statutory terms. As a result, the Department now agrees that it should make clear that the analysis is consistent under the FLSA, FMLA, and MSPA because these statutes share the same relevant FLSA provisions.

In sum, the Department's proposed edits to the FMLA and MSPA regulations are motivated by the fact that the analysis for distinguishing between employees and independent contractors should be the same under those statutes as it is under the FLSA. Workers and businesses alike would benefit from the simplicity and certainty of having a single uniform standard for assessing employee or independent contractor status under all three laws.

F. Request for Comments

The Department invites comments on the need for this rulemaking. The Department specifically welcomes comments on its preliminary reassessment of the 2024 Rule and of any consequences, positive or negative, which have occurred since the 2024 Rule took effect last year. The Department additionally seeks comments on whether any aspects of the 2024 Rule should be retained, and if there have been any significant economic or labor changes since 2021 that should inform this rulemaking. Further, the Department seeks comments on the impact and effects of the 2021 Rule during the period when

[128] *See* 60 FR 2186 (''If a particular arrangement in fact constitutes an employee-employer relationship within the meaning of the FLSA (and case law thereunder) as contemplated by the statutory definitions, and the 'employee' satisfies FMLA's eligibility criteria, the employee is entitled to FMLA's benefits. A true independent contractor relationship within the meaning of the FLSA would not constitute an employee-employer relationship.'').

[129] *See* 29 U.S.C. 1861. The Supreme Court has advised that legislative rules which carry the ''force and effect of law'' are those which: (1) ''affect[ ] individual rights and obligations''; (2) are ''rooted in a grant of [legislative] power by the Congress''; and (3) are ''promulgat[ed] . . . [in] conform[ity] with any procedural requirements imposed by Congress.'' *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302–03 (1979) (internal quotation marks omitted). Similarly, the Department's FMLA regulation is a legislative rule issued pursuant to express rulemaking authority. *See* 29 U.S.C. 2654.

[130] *See supra* sections I.C. and I.E. The Department did not address the FMLA in the 2021 or 2024 Rules.

[131] 86 FR 1177; *see also* 89 FR 1664 (explaining in the 2024 Rule that the Department was ''not revising the MSPA regulation *at this time*'') (emphasis added).

it was in effect, and how that may additionally inform the Department's proposal to readopt the 2021 Rule's analysis, as modified. Finally, the Department welcomes comments on its proposal to provide a uniform standard for employee or independent contractor status under the FLSA, FMLA, and MSPA.

III. Proposed Regulatory Provisions

For all of the reasons discussed in section II of this NPRM, the Department is proposing to rescind the 2024 Rule's regulatory guidance on employee or independent contractor classification (presently at 29 CFR part 795) and, separately, to readopt the 2021 Rule's regulatory guidance on independent contractor classification in part 795 with a few modifications. In the Department's view, rescission of the 2024 Rule would operate independently of any regulatory guidance adopted in its place, as the Department intends for its proposed rescission of the 2024 Rule to be independent and severable from its proposal to readopt guidance from the 2021 Rule.

As discussed in greater detail below, the proposal to readopt the 2021 Rule's FLSA guidance in part 795, with a few modifications, includes:

- An introductory provision at § 795.100 explaining the purpose of part 795;
- a provision at § 795.105(a) explaining that independent contractors are not employees under the FLSA;
- a provision at § 795.105(b) discussing the ''economic reality'' test for distinguishing FLSA employees from independent contractors, including that the ultimate inquiry of economic dependence turns on whether an individual is in business for him- or herself (independent contractor) or is economically dependent on an employer for work (employee) (the Department is additionally proposing to provide further context on the meaning of economic dependence, as explained below);
- provisions at § 795.105(c) and (d) describing factors examined as part of the economic reality test, including two ''core'' or primary factors—the nature and degree of the individual's control over the work and the individual's opportunity for profit or loss—which, as has been the case in many judicial decisions, here too typically carry greater weight in the analysis, as well as three other factors that may serve as additional guideposts in the analysis (although the Department is proposing one minor non-substantive change to the regulatory text at § 795.105(d)(2)(iii), as explained below);
- a provision at § 795.110 advising that the parties' actual practice is more relevant than what may be contractually or theoretically possible;
- fact-specific examples at § 795.115 (although the Department is proposing minor updates to one example from the 2021 Rule and to add two new examples, as explained below); and
- a severability provision at § 795.120.

Additionally, the Department is proposing to revise the regulations addressing employee or independent contractor status under MSPA and the FMLA so that the analysis in part 795 applies when determining employee or independent contractor status under those statutes too. Specifically, the Department is proposing to revise 29 CFR 500.20(h)(4) in the MSPA regulations to replace the analysis there with a cross-reference to the analysis in 29 CFR part 795, and to revise the definition of ''Employee'' in 29 CFR 825.102 and the language in 29 CFR 825.105(a) to incorporate into the FMLA regulations the analysis for determining employee or independent contractor classification in 29 CFR part 795.

The Department is not proposing to amend the existing versions of 29 CFR 780.330(b) and 788.16(a), which the 2024 Rule updated to include cross-references to the guidance at 29 CFR part 795.[132]

As noted above and for the reasons provided herein, the Department believes this proposed analysis represents the best construction of the FLSA—and by extension the FMLA and MSPA—with respect to whether an individual is an independent contractor or an employee.

A. Introductory Statement (Proposed § 795.100)

The Department is proposing to readopt the regulatory text of § 795.100 from the 2021 Rule, which provided an introductory statement at the beginning of the FLSA regulatory provisions. The introductory statement would advise that: part 795 contains the Department's ''general interpretations of the text governing individuals' classification as employees or independent contractors under the [FLSA]''; the WHD Administrator will use the interpretations ''to guide the performance of his or her duties under the [FLSA]'' and intends them ''to be used by employers, employees, and courts to understand employers' obligations and employees' rights under the [FLSA]''; any prior inconsistent or conflicting ''administrative rulings, interpretations, practices, or enforcement policies relating to classification as an employee or independent contractor under the [FLSA]'' are rescinded; and employers may rely on the interpretations to satisfy the good faith reliance defense in the Portal-to-Portal Act (29 U.S.C. 259), notwithstanding that after any such act or omission in the course of such reliance, any such interpretation is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

The Department believes that this introductory statement would provide clarity as to how WHD intends to use part 795 and how employers, businesses, workers, and courts should use part 795. The introductory statement would also address how part 795 relates to prior interpretations, providing further clarity to the public. Finally, the introductory statement would explain how employers can rely on part 795 for purposes of the good faith reliance defense in the Portal-to-Portal Act.

The Department's proposal that became the 2024 Rule stated that the Department was ''proposing only clarifying edits'' to the § 795.100 published in the 2021 Rule,[133] and the 2024 Rule adopted proposed § 795.100 as the introductory statement ''without change'' and described it as ''very similar to the 2021 IC Rule introductory statement, except to note that these regulations would be interpretive guidance.'' [134]

The Department believes that the version of the introductory statement in the 2021 Rule more clearly and concisely summarizes the purposes of part 795 and, therefore, is proposing to readopt that version. In any event, the Department reiterates that proposed § 795.100 (from the 2021 Rule) is very similar to current § 795.100 (from the 2024 Rule).

B. Determining Employee and Independent Contractor Classification Under the FLSA (Proposed § 795.105)

As explained in the following sections of this NPRM, the Department is proposing to readopt the analysis for determining employee or independent contractor classification under the FLSA that it published as § 795.105 of the 2021 Rule.

[132] *See* 89 FR 1725 (explaining changes to 29 CFR 780.330(b) and 788.16(a)).

[133] 87 FR 62233.

[134] 89 FR 1664.

C. Independent Contractors Are Not Employees Under the Act (Proposed § 795.105(a))

The Department is proposing to readopt the regulatory text of § 795.105(a) from the 2021 Rule, which explained that independent contractors are not employees under the FLSA. In the 2021 Rule, the Department explained that an individual who renders services to a person (a putative or potential employer) as an independent contractor is not an employee of that person under the FLSA, which means that the minimum wage, overtime pay, and recordkeeping obligations for employers under sections 6, 7, and 11 of the FLSA do not apply with respect to services received from the independent contractor.[135]

The 2024 Rule contained a similar provision (current 29 CFR 795.105(a)), explaining that the FLSA's minimum wage, overtime pay, and recordkeeping obligations apply only to workers who are covered employees under the FLSA, and that workers who are independent contractors are not covered by these protections.[136] The Department is therefore proposing in this section to adopt explanatory guidance that it has consistently provided across rulemakings.

D. Economic Dependence as the Ultimate Inquiry (Proposed § 795.105(b))

The Department is proposing to readopt, with a few modifications, the regulatory text of § 795.105(b) from the 2021 Rule, which explained, as the Supreme Court and courts of appeals have long held, that economic dependence is the ultimate inquiry when determining an individual's status under the FLSA. This section would reference the relevant statutory text, explaining that an ''employee'' under the FLSA is an individual whom an employer suffers, permits, or otherwise employs to work. *See* 29 U.S.C. 203(e)(1), (g). It would further explain that an employer suffers or permits an individual to work as an employee if, as a matter of economic reality, the individual is economically dependent on that employer for work, as distinguished from an independent contractor, who is in business for him- or herself.

In the 2021 Rule, the Department explained that the ''touchstone'' of the economic reality test is ''economic dependence,'' that is the nature or character of that dependence, as all workers, whether employees or independent contractors, are dependent on others. 86 FR 1178. As the 2021 Rule further explained: '''Economic dependence is *not* conditioned reliance on an alleged employer for one's primary source of income, for the necessities of life.' '' *Id.* (quoting *Brock* v. *Mr. W Fireworks, Inc.,* 814 F.2d 1042, 1054 (5th Cir. 1987)). Rather, courts have framed the question as '' 'whether, as a matter of economic reality, the workers depend upon someone else's business for the opportunity to render service or are in business for themselves.' '' *Id.* (quoting *Saleem,* 854 F.3d at 139). Moreover, the Department observed in the 2021 Rule that some courts have relied on a worker's entrepreneurship with respect to one type of work to conclude that the worker was also in business for him- or herself in a second, unrelated type of work, but that this ''approach is inconsistent with the Supreme Court's instruction that the economic reality analysis be limited to 'the claimed independent operation.' '' *Id.* (quoting *Silk,* 331 U.S. at 716). Thus, ''the relevant question in this context is whether the worker providing certain service to a potential employer is an entrepreneur 'in that line of business.' '' *Id.* (quoting *Mr. W Fireworks,* 814 F.2d at 1054). Otherwise, businesses would be required to make FLSA classification decisions based on facts outside of the working relationship. *Id.*

The 2024 Rule contained a similar provision (current 29 CFR 795.105(b)), explaining that economic dependence is the ultimate inquiry for determining whether a worker is an independent contractor or an employee and clarifying that economic dependence does not focus on the amount the worker earns or whether the worker has other sources of income. 89 FR 1665. The Department is therefore providing explanatory guidance that it has consistently provided across rulemakings that economic dependence for work rather than economic dependence for income is the proper inquiry. As the Third Circuit has explained, economic dependence ''does not concern whether the workers at issue depend on the money they earn for obtaining the necessities of life . . . . Rather, it examines whether the workers are dependent on a particular business or organization for their continued employment.'' *Donovan* v. *DialAmerica Mktg., Inc.,* 757 F.2d 1376, 1385 (3d Cir. 1985). As noted in the 2021 Rule, economic dependence does not mean that a worker who works for other employers, earns a very limited income from a particular employer, or is independently wealthy cannot nevertheless be economically dependent on any particular employer for purposes of the FLSA. *See* 86 FR 1173; *see also McLaughlin* v. *Seafood, Inc.,* 861 F.2d 450, 452 (5th Cir. 1988), *modified on reh'g,* 867 F.2d 875 (5th Cir. 1989) (reasoning that ''[l]aborers who work for two different employers on alternate days are no less economically dependent than laborers who work for a single employer''); *Halferty* v. *Pulse Drug Co.,* 821 F.2d 261, 267–68 (5th Cir. 1987) (rejecting the employer's argument that the worker's wages were too little to constitute dependence). As the Fifth Circuit has explained, ''it is not dependence in the sense that one could not survive without the income from the job that we examine, but dependence for continued employment.'' *Halferty,* 821 F.2d at 268.

Consistent with the explanations above, and to provide further context on the meaning of economic dependence, the Department is proposing the regulatory text of § 795.105(b) from the 2021 Rule with two modifications. The purpose of the first modification would be to clarify the nature and character of the economic dependence that an employee typically has on an employer for work, as distinct from the relationship that a business owner has to another business with which it works. The purpose of the second modification would be to reinforce the Department's consistent guidance that economic dependence for work rather than economic dependence for income is the proper inquiry. Specifically, the Department has added the following sentences to the end of the proposed § 795.105(b): ''Though both employees and independent contractors are dependent on others in some sense, economic dependence in this context means the dependence that a typical employee has on an employer for work, as opposed to an individual who has more of the nature and character of a business owner who has a separate business. Economic dependence does not focus on the amount of income the worker earns, or whether the worker has other sources of income.'' The Department welcomes comments on the inclusion of this additional context on economic dependence into § 795.105(b).

E. Determining Economic Dependence (Proposed § 795.105(c))

The Department is proposing to readopt the regulatory text of § 795.105(c) from the 2021 Rule, which explained that certain non-exhaustive ''economic reality'' factors are more probative to the determination of whether the relationship between an

[135] 86 FR 1177–78.

[136] 89 FR 1664–66.

individual and a potential employer is of the sort of economic dependence characteristic of an employee or of an independent contractor. 86 FR 1246 (§ 795.105(c)). As in the 2021 Rule, the Department is proposing that two primary, or ''core'' economic reality factors described in § 795.105(d)(1)—namely, the control and opportunity for profit or loss factors—are the most probative of whether an individual is an economically dependent ''employee,'' and that these two core factors will typically carry greater weight in the analysis than any other factor. Thus, these two factors should be considered first, and if both point toward the same classification (either employee or independent contractor), there is a substantial likelihood that is the accurate classification for the individual. The Department is also proposing that the three additional economic dependence, or economic reality, factors described in § 795.105(d)(2)—skill, permanence, and whether the work is part of an integrated unit of production—serve as additional guideposts but are less probative in the analysis (and, in some cases, may not be probative at all). As a result, these ''economic reality'' factors are very unlikely, either individually or collectively, to outweigh the combined probative value of the two core or primary factors when together they point toward the same classification. As in the 2021 Rule, the Department is proposing that this provision will also explain that all these economic reality factors are not exhaustive, and that no single factor is dispositive.

As the Department explained in the 2021 Rule, this provision is intended to improve the certainty and predictability of the multifactor economic reality test by focusing it, much in the way that many courts have effectively done, on two principal elements, which it labeled ''core'' factors. 86 FR 1179, 1196. Absent clear, generally applicable guidance about how to balance the broad and overlapping factors and facts encompassed in the multifactor economic reality test, there is an excessive amount of uncertainty as to ''which aspects of 'economic reality' matter, and why.'' *Lauritzen,* 835 F.2d at 1539 (Easterbrook, J., concurring); *see also* 86 FR 1173. As the Department explained when proposing the 2021 Rule, although the Department and courts historically analyzed ''the totality of the circumstances making up the economic reality of the relationship to determine a worker's classification'' without ''identifying which types of facts or factors are the most important,'' the significance of facts may sometimes be unclear or factors may point in opposite directions under this approach, exacerbating uncertainty in the application of the law. 85 FR 60606–07, 60620. And, as noted below, even within the totality of the circumstances and multifactor tests, some courts have tended to focus on the core factors as the primary indicators of whether an individual is an employee or independent contractor. The Department, taking its cue from the courts, sought in the 2021 Rule to provide greater clarity and focus by identifying the two factors it believed were most salient in determining relevant economic dependence, explaining that the two core factors ''drive at the heart of what is meant by being in business for oneself: Such a person typically controls the work performed in his or her business and enjoys a meaningful opportunity for profit or risk of loss through personal initiative or investment.'' 86 FR 1196. As such, even though no one test can perfectly harmonize the variations of factors, language, and emphasis between the tests of the Supreme Court and circuit courts of appeals, the Department has attempted to distill the central commonality in these approaches to a single framework that workers and employers alike may accurately apply and on which they may confidently rely.

As explained in the 2021 Rule, highlighting the combined probative value of the two core factors in the manner set forth in the regulatory text proposed in § 795.105(c) is supported by case law. The Supreme Court has never required a factor-by-factor analysis. Although the Court has applied the economic reality test only a handful of times, it has repeatedly resolved cases by focusing primarily on facts that concern the core factors identified in the 2021 Rule: control over the work and the worker's opportunity for profit or loss based on initiative and investment. In *Silk,* for example, the Court distinguished between truck drivers and coal unloaders: the truck drivers were deemed independent contractors because they owned their trucks, could hire helpers, assumed risk, and had an opportunity for profit; by contrast, the unloaders were employees because the putative employers ''were directors of their businesses,'' they provided only picks and shovels, and had no meaningful opportunity for profit based on initiative or investment.[137] In *Rutherford Food,* the Court likewise found meat boners to be employees because they lacked control over their work, could not or did not shift to other plants (and thus had a continuous relationship with the slaughterhouse), and were paid piece-rate wages dictated by the company rather than earnings tied to initiative or capital investment (as the premises and equipment belonged to the plant).[138] Similarly, in *Whitaker House,* the Supreme Court focused its analysis on facts related to control and opportunity for profit, and did not discuss other economic reality factors. It found that certain homeworkers were ''not self-employed . . . [or] independent, selling their products on the market for whatever price they can command,'' but instead were ''regimented under one organization, manufacturing what the organization desires and receiving the compensation the organization dictates,'' and thus employees.[139] In each case, the Court listed multiple relevant considerations but ultimately resolved the classification question by focusing on whether the worker exercised control and had a genuine opportunity for profit or loss based on initiative or investment—factors that go to the heart of whether an individual is truly in business for themself.

Moreover, the Department is not aware of any federal appellate case in which the court's ultimate conclusion as to an individual's classification under the FLSA—whether employee or independent contractor—was not in alignment with the court's analysis that the control and opportunity for profit or loss factors both favored that classification. 86 FR 1196–97.[140] The

[137] 331 U.S. at 716–19.

[138] 331 U.S. at 730–31.

[139] 366 U.S. at 32.

[140] The Department noted ''a remarkably consistent trend based on the Department's review of the results of appellate decisions since 1975 applying the economic reality test. Among those cases, the classification favored by the control factor aligned with the worker's ultimate classification in all except a handful where the opportunity factor pointed in the opposite direction. And the classification favored by the opportunity factor aligned with the ultimate classification in every case. These two findings imply that whenever the control and opportunity factors both pointed to the same classification—whether employee or independent contractor—that was the court's conclusion regarding the worker's ultimate classification.'' 86 FR 1196–97. *See also New Jersey* v. *Bessent,* 149 F.4th 127, 146 n.12 (2d Cir. 2025) (noting that where the text of a statute ''in isolation, provides very little for us . . . to go on,'' ''[m]uch of the settled understanding of'' the statute ''derives not from the four corners of the statute itself, but from the meaning imputed to that statute by our precedents''). Thus, the Department believes that the core factor structure is a veracious synthesis of the case law that better captures the ''settled understanding'' of who is an employee or independent contractor under the FLSA than does the 2024 Rule.

Department has further observed that ''courts of appeals have effectively been affording the control and opportunity factors greater weight, even if they did not always explicitly acknowledge doing so.'' 86 FR 1198.

The 2024 Rule did not include the guidance provided in this provision, opting instead to use a totality-of-the-circumstances analysis in which the economic reality factors were not assigned a predetermined weight. The Department explained in the 2024 Rule that it believed that this approach, which, as mentioned above, had been used by courts and the Department (prior to the 2021 Rule), would be less confusing and less prone to misapplication that could result in greater misclassification. 89 FR 1647, 1726. The 2024 Rule also identified further grounds for returning to the historical multifactor, totality-of-the-circumstances analysis, including that the 2021 Rule's analysis was not supported by judicial precedent or aligned with the FLSA's text as interpreted by courts because it elevated the control and opportunity for profit or loss factors, and in particular, elevating control was contrary to courts' determination that the common law control test should not be used to analyze independent contractor classification under the FLSA. 89 FR 1650–53.

In proposing to re-promulgate the 2021 Rule's ''core factor'' analysis in § 795.105(c), the Department recognizes that this presents a change with respect to the interpretation from the 2024 Rule. The Department believes that this change is warranted for significant and valid legal and policy reasons. Primarily, the Department believes that a clearer, more focused test distilled from overlapping judicial tests, that is easier for the regulated community to accurately apply will provide more certainty for employers, employees, and those who wish to engage with or as independent contractors. With greater clarity, all of these persons can gain efficiencies in their interactions, and there will likely be a reduced need for litigation in which a court must ultimately reach a conclusion years later about the proper classification of one or more individuals.

Additionally, the Department has reconsidered the concerns identified in the 2024 Rule and believes they are misplaced. First, in rescinding the 2021 Rule, the 2024 Rule relied in part on the assertion that the 2021 Rule improperly gave two ''core factors''—the nature and degree of control over the work and the worker's opportunity for profit or loss—invariable weight in the analysis. 89 FR 1651, 1692. Upon further consideration, the Department now concludes that this premise was mistaken.

The 2021 Rule did not assign invariable weight to any factor or combination of factors. Rather, it recognized that control and opportunity for profit or loss are, in most cases, more probative than other factors in determining whether a worker is in business for themself. It expressly acknowledged that even when both factors align, their combined weight could still be outweighed by other considerations, though it viewed such circumstances as ''highly unlikely.'' 86 FR 1246 (§ 795.105(c)).

Recognizing that certain factors are typically more probative than others is not the same as assigning them invariable weight. This mischaracterization in the 2024 Rule led the Department to conclude—incorrectly—that the framework was inconsistent with the FLSA's text and purpose, as interpreted by courts, and judicial precedent. Both decades of case law and common-sense understanding confirm the opposite, namely that whether a worker controls the manner of their work and has a meaningful opportunity for profit lies at the core of the employee–independent contractor distinction. For example, at the time the FLSA was enacted, the term ''self-employed'' was understood to mean ''earning income directly from one's own business, trade, or profession rather than as a specified salary or wages from an employer.'' [141] This understanding—which remains true today—suggests that an independent contractor is an independent business owner, someone who directs the manner and means of his or her own work and whose compensation depends on profit or loss, rather than on wages. Thus, when assessing the legitimacy of an independent contracting arrangement under the FLSA, facts germane to control and profit matter more than factors such as the worker's skill, the duration of their relationship with a particular business, or whether the work performed is important or ''integral'' to that business. Those factors may be relevant, but they are less directly tied to the ordinary understanding of independent business status and the central inquiry of whether a worker is truly in business for themselves.

The Department believes that the concerns identified in the 2024 Rule therefore should not preclude the Department from identifying those factors as the most reliable indicators of economic independence in most cases, nor do they preclude the Department from providing greater clarity in its interpretation of the economic reality analysis, including guidance on how to weigh the factors. For example, the 2024 Rule noted ''tension'' between elevating the control and opportunity for profit and loss factors and ''the longstanding judicial precedent, expressed by the Supreme Court and in appellate cases from across the circuits, that no single factor is determinative in the analysis of whether a worker is an employee or an independent contractor, nor is any factor or set of factors necessarily more probative of whether the worker is in fact economically dependent on the employer for work as opposed to being in business for themself.'' 89 FR 1650. Then as now, the Department expressly rejects the notion that any factor, core or otherwise, is determinative of the economic reality analysis. Likewise, the Department does not share the notion that the economic dependence, or economic reality, framework it proposes is in tension with the core commonality in decisions from federal appellate courts across the country. To the contrary, the Department believes that any tension between judicial precedent and the core factor analysis from the 2021 Rule was overstated in the 2024 Rule, and that the 2021 Rule's analysis does not run afoul of judicial precedent.

Specifically, the 2021 Rule and this proposal continue to affirm—consistent with judicial precedent—that no one factor is determinative. By identifying two factors that encompass the primary considerations that are relevant to determining economic dependence, the Department is certainly not implying that either one of these two core factors alone would be determinative. Instead, the Department is providing guidance (which, to the Department's knowledge, is consistent with the outcome of every single federal appellate case) that these two factors in combination and pointing to the same classification are rarely going to be outweighed by the probative value of the remaining economic reality factors. Further, the Department explained in the 2021 Rule that the core factor analysis provided in § 795.105(c) did not run afoul of the principle in FLSA case law that ''mechanical application'' of the economic reality test is not appropriate because the regulatory text recognizes that these two

[141] *See Self-employed,* Merriam-Webster Dictionary, *https://www.merriam-webster.com/dictionary/self-employed* (defining ''self-employed'' as ''earning income directly from one's own business, trade, or profession rather than as a specified salary or wages from an employer'' and noting that the first known use of the term as defined was in 1916); *see also Self-employed,* Webster's New Collegiate Dictionary (1977).

factors ''typically'' (but not necessarily) carry more weight. 86 FR 1198–99. The Department explained that there may be situations in which ''a core factor does not weigh very strongly toward a particular classification because considerations within that factor point in different directions,'' or where a ''core factor may even be at equipoise, in which case it would not weigh at all in favor of a particular classification.'' 86 FR 1199. Thus, ''the weight assigned to a factor in a particular case refers to how strongly specific facts within the factor, on balance, favor a particular classification.'' 86 FR 1199. Identifying two factors as core factors does not mean that the analysis is or should be applied mechanically, but rather just as carefully, as there are often a variety of relevant facts and concepts to consider within each individual factor before determining whether the factor points toward a particular classification.

The 2024 Rule also noted that the Supreme Court and federal appellate courts have emphasized that employment status under the economic reality test turns upon ''the circumstances of the whole activity'' rather than ''isolated factors,'' and that the Fifth Circuit Court of Appeals has stated that it ''is impossible to assign to each of these factors a specific and invariably applied weight.'' 89 FR 1651 & n. 127 (citing *Parrish,* 917 F.3d at 380). The Department believes that the guidance provided in § 795.105(c) does no such thing and would not be so rigid as to confine the analysis to any isolated factors, or that the core factors will necessarily always carry more weight. The guidance simply and helpfully provides a focus to the inquiry, while recognizing that the enumerated factors are ''not exhaustive.'' Further, the guidance does not stop at the two core factors, but rather identifies three other economic reality factors, and also provides for the possible consideration of additional factors. In other words, the Department's proposal, like the 2021 Rule, provides for the consideration of all material facts. Although the other factors are less probative, and in some cases, may not be probative at all, the proposal to readopt the analysis from the 2021 Rule would still require non-core factors to be considered as part of the circumstances of the whole activity when determining economic dependence. As the Department explained in the 2021 Rule, the ''other economic reality factors—skill, permanence, and integration—are also relevant as to whether an individual is in business for him- or herself,'' 86 FR 1196, and ''each factor should be analyzed,'' 86 FR 1201. Thus, ''[a]ssigning one factor less weight than another does not restrict the circumstances being considered because the very act of determining relative weight requires considering both factors.'' *Id.*

Though several commenters in the rulemaking that produced the 2024 Rule mistakenly believed that the analysis in § 795.105(c) in the 2021 Rule could be reduced to a ''two-factor test'' or one where the non-core factors were only considered when the two core factors pointed to opposite classification outcomes, 89 FR 1656, the Department reiterates that ''even when both of the core factors align, they are not 'controlling' because their combined weight can still be outweighed by other considerations'' and that ''it is necessary to consider both [core and non-core] factors.'' 86 FR 1201. In sum, the regulatory text that the Department is proposing to readopt does not state, and should not be interpreted, to apply in a mechanical way that precludes consideration of all relevant facts and factors.

Regarding the concern identified in the 2024 Rule that elevating control as one of the two core factors brings the analysis closer to the common law control test that courts have rejected when interpreting independent contractor classification under the FLSA, 89 FR 1652, the Department believes, upon reconsideration, that a multifactor analysis that recognizes the greater probative value of the control and opportunity for profit or loss factors and considers other factors is readily distinguishable from a control test. As discussed further below, the opportunity for profit or loss factor that the Department is proposing to readopt in § 795.105(d)(1)(ii) encompasses an individual's opportunity to earn profits or incur losses based on his or her initiative or management of investments, and as such, includes a number of critical considerations in evaluating economic dependence that go beyond the nature and degree of control over work. As a result, the Department believes that giving greater probative value to both the control and opportunity for profit or loss factors (especially given the considerations that comprise that factor) is not akin to adopting the common law control test, which specifically designates control as the overarching consideration. And importantly, the ''ultimate inquiry'' of the analysis proposed by the Department would remain the individual's economic dependence, 86 FR 1246 (§ 795.105(b)), which is different from the common law's inquiry into control.[142]

Finally, the Department explained in the 2021 Rule that courts and the Department had historically articulated the factors such that there was overlap among the factors (*i.e.,* some facts were considered under multiple factors), which could lead to inefficiency and confusion when attempting to apply the economic reality test. 86 FR 1174. Thus, the analysis the Department is proposing to readopt as set forth in this section is based on factors that have historically been used by the Department and most federal courts of appeals, while describing two factors as ''core'' or primary, and making certain reformulations within each factor for clarity, as discussed below with respect to each factor. Though the 2024 Rule expressed a concern that the 2021 Rule unduly narrowed the analysis and did not allow for full consideration of facts which might be relevant to determining whether a worker is economically dependent on the employer for work, 89 FR 1653, upon reconsideration, the Department believes that all relevant facts can be considered, as detailed below in the discussions of each factor.

The Department welcomes comments from the public regarding their experiences using the economic reality analyses provided in the 2021 and 2024 Rules, and why one may be preferable to the other.

Additionally, the Department seeks comment on whether further streamlining the ''two core factor'' analysis would provide even greater clarity and focus to the question whether an individual is an employee or independent contractor under the FLSA. Specifically, the Department could provide guidance that the control factor should be considered first, followed—if necessary—by the opportunity for profit or loss factor and the three other factors. In this further streamlined analysis, if the potential employer controls the worker based on the considerations for the control factor that the Department is proposing to readopt (see discussion of control factor below), there would be no need to consider any other factors and the worker would be an employee. If the control factor indicates independent contractor status, or if the control factor is neutral and does not indicate independent contractor status or employee status, then the analysis

[142] *See Cmty. for Creative Non-Violence* v. *Reid,* 490 U.S. 730, 751 (1989); *see also* section V.B.1, *infra* (discussing the common law control test as a regulatory alternative for this rulemaking).

would proceed as proposed in this NPRM.[143]

The Department offers this alternative for comment in the interest of bringing greater clarity to the analysis, but also in recognition of the fact that the ''suffer or permit'' language in the FLSA has been interpreted by the Supreme Court to provide a broader scope of employment than the common law control test, *see supra* sections I.A. and I.B.1. Yet, there are instances in which a worker could be an employee under the common law control test but not under the FLSA's economic reality test. For example, as discussed in the 2021 Rule, some workers subject to a potential employer's ''right to control'' and who would be employees under the common law test may nevertheless be independent contractors when all of the economic reality factors are applied. 86 FR 1204–05 (discussing, among other cases, *Bartels,* 332 U.S. at 132, where the Court held that a dance hall's contractual right of control was insufficient to establish an employment relationship with a band leader that it hired).

An alternative analysis that focuses first on whether the potential employer controls the individual and results in employee status if there is such control, but considers opportunity for profit or loss and other factors if there is not such control, could be responsive to language from Supreme Court decisions emphasizing that the FLSA extends the scope of employment beyond the common law control test.[144] Thus, it may be possible to streamline the economic reality analysis even further in a way that is consistent with the Supreme Court's interpretation of employment under the FLSA. The Department welcomes comments on this potential alternative application of the two core factors identified in the 2021 Rule.

Finally, the Department also welcomes comments about the most effective, reliable, and consistent circuit court analyses, or other appropriate analyses for determining employee or independent contractor status.

F. Economic Reality Factors—Core Factors (Proposed § 795.105(d)(1))

The Department is proposing to readopt as core factors the two factors that it identified in § 795.105(d)(1) of the 2021 Rule. As noted in proposed § 795.105(c), these factors constitute the primary elements of the analysis into the nature of an individual's economic dependence for work. These economic reality factors would be ''the most probative'' and ''typically carr[y] greater weight in the analysis than any other factor,'' and ''if they both point towards the same classification, whether employee or independent contractor, there is a substantial likelihood that is the individual's accurate classification.''

1. The Nature and Degree of Control Over the Work (Proposed § 795.105(d)(1)(i))

The Department is proposing to readopt the regulatory text of § 795(d)(1)(i) from the 2021 Rule, which discussed the first economic reality core factor—the nature and degree of control over work. This provision would explain that the control factor weighs toward the individual being an independent contractor where the individual, rather than the potential employer, exercises substantial control over key aspects of the performance of the work such as scheduling, selection of projects, and the ability to work for others (which may include the potential employer's competitors). 86 FR 1246–47 (§ 795.105(d)(1)(i)). By contrast, the control factor would weigh in favor of the individual being an employee where the potential employer, rather than the individual, exercises substantial control over key aspects of the performance of the work, such as by controlling the individual's schedule or workload, or by directly or indirectly requiring the individual to work exclusively for the potential employer. *Id.*

Additionally, the Department is proposing to readopt guidance from the 2021 Rule advising that when a potential employer places certain compliance requirements on an individual, it ''does not constitute control that makes the individual more or less likely to be an employee under the Act.'' 86 FR 1247 (§ 795.105(d)(1)(i)). These pertain to ''[r]equiring the individual to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses (as opposed to employment relationships).'' *Id.* For example, as illustrated in the example in § 795.115(b)(1) (which the Department is proposing to readopt from the 2021 Rule with an update to the scenario in the example, as explained below), where a logistics company contracts with an individual owner-operator of a tractor-trailer to provide transportation services and the logistics company requires the owner-operator to comply with federally-mandated transportation safety rules requiring drug and alcohol testing, and requires the owner-operator to meet certain contractually agreed-upon delivery deadlines, this does not constitute control that would make it more or less likely for the owner-operator to be an employee under the FLSA. Another example would be requiring all workers to complete anti-harassment training. Such training is intended to make the workplace safer, benefits everyone in the workplace, and is not control that makes an individual worker more or less likely to be an employee under the FLSA.

In the 2021 Rule, the Department explained that the control factor referenced both the individual's control and the potential employer's control, consistent with case law, which generally considers both the individual's control and the potential employer's control. 86 FR 1180 (noting that the Supreme Court referred to ''degrees of control'' in *Silk,* 331 U.S. at 716). The Department further explained that the three identified examples of control that may indicate employee or independent contractor status (setting schedules, selecting projects, and working exclusively for the employer or working for others) were non-exhaustive, and may or may not be probative in any particular case, depending on the facts. 86 FR 1180–81.

Where commenters viewed the 2021 Rule's regulatory text as limiting, the Department explained that ''the examples of types of control identified in the proposal were not an attempt to narrow or limit the control factor analysis. . . . Any type of control over the work by the individual worker or the potential employer may be considered.'' 86 FR 1181. The Department further noted that considerations within these examples may be nuanced—for example, even where an employer does not enforce an explicit bar on working for others, the employer may impose working conditions that make doing so

[143] In other words, if the opportunity for profit or loss factor and the control factor indicate independent contractor status, then the other three factors would be considered; however, because the two core factors would both point toward the same classification there is a substantial likelihood that is the accurate classification for the individual and it would be highly unlikely that the other factors would outweigh the combined probative value of these two core factors. And if the control and opportunity for profit or loss factors point toward different classifications or are neutral, the other factors would be considered to arrive at an overall determination as to the worker's status.

[144] *See Darden,* 503 U.S. at 326 (explaining that the FLSA ''stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles''); *Rosenwasser,* 323 U.S. at 362 (explaining that ''[a] broader or more comprehensive coverage of employees within the stated categories would be difficult to frame'').

impracticable, which is evidence of control. 86 FR 1181. Finally, recognizing that many commenters sought industry-specific guidance with respect to the control factor, the Department explained that ''it is not possible—and would be counterproductive—to identify in the regulatory text every type of control (especially industry-specific types of control) that can be relevant when determining under the FLSA whether a worker is an employee or independent contractor.'' 86 FR 1182. The Department reiterated that it had ''purposefully articulated the control analysis in a general manner to encompass various different types of control that the individual worker and the potential employer may exercise over the working relationship, and to avoid any unintended inferences regarding omitted types of control.'' 86 FR 1182.

The control factor in the 2024 Rule bears some similarities with the control factor in the 2021 Rule, as well as some differences. Overall, the Department explained that it continued to believe that issues related to scheduling, supervision over the performance of the work (including the ability to assign work), and the worker's ability to work for others were relevant considerations in evaluating the nature and degree of control. 89 FR 1690. Additionally, the 2024 Rule's regulatory text explains that ''[m]ore indicia of control by the potential employer favors employee status,'' whereas ''more indicia of control by the worker favors independent contractor status.'' 29 CFR 795.110(a)(4).

The control factor in the 2024 Rule identifies additional aspects of control in the regulatory text, including control mediated by technology and control over economic aspects of the work relationship, such as control over setting the prices or rates for services provided by the worker, as well as consideration of whether a potential employer places demands or restrictions on workers that do not allow them to work when they choose. 29 CFR 795.110(a)(4). The 2024 Rule also recognizes reserved control, including the right to supervise or discipline workers, as a consideration relevant to the potential employer's control, whereas the ''primacy of actual practice'' provision in the 2021 Rule (discussed below under proposed § 795.110) advised that ''a business' contractual authority to supervise or discipline an individual may be of little relevance if in practice the business never exercises such authority.'' Additionally, the regulatory text for the control factor in the 2024 Rule takes a modified approach to the probative value of requirements placed on individuals to comply with legal obligations, stating that ''[a]ctions taken by the potential employer for the sole purpose of complying with a specific'' law are not indicative of control, whereas ''[a]ctions taken by the potential employer that go beyond compliance with a specific'' law and ''instead serve the potential employer's own compliance methods, safety, quality control, or contractual or customer service standards may be indicative of control.'' 29 CFR 795.110(a)(4).

Upon reconsideration, the Department believes that the more straightforward and focused explanation of the control factor in the 2021 Rule provides clearer guidance on how to evaluate control for purposes of determining whether an individual is an employee or an independent contractor under the FLSA. It is simply not possible for the Department to describe all of the potentially-relevant considerations for the control factor, as the 2024 Rule may have attempted to do by adding other aspects of control for consideration. As the Department explained in the 2021 Rule, it ''purposefully articulated the control analysis in a general manner to encompass various different types of control,'' and ''any type of control over the work by the individual worker or the potential employer may be considered, although some types of control are not probative of economic dependence[.]'' 86 FR 1182. By proposing to readopt the regulatory text from the 2021 Rule, the Department would provide necessary additional guidance regarding the primacy of the parties' actual practices as compared to reserved control (discussed below under proposed § 795.110), as well as providing greater clarity regarding facts that are not indicative of control associated with an employment relationship.

To that end, the Department recognizes that a very large proportion of the comments received regarding the control factor during the Department's 2024 rulemaking on this topic objected to proposed guidance in the 2022 NPRM, 87 FR 62275, that ''[c]ontrol implemented by the employer for purposes of complying with legal obligations, safety standards, or contractual or customer service standards may be indicative of [an employment relationship]''—a significant change from guidance provided in the 2021 Rule, 86 FR 1247, which advised that such actions ''[would] not constitute control that makes the individual more or less likely to be an employee under the [FLSA].'' 89 FR 1691. Commenters were particularly concerned that this change would disincentivize legal compliance and discourage safety practices that benefit all individuals in the workplace as well as the public generally. 89 FR 1691.The Department explained in the preamble to the final 2024 Rule that such ''comments have persuaded the Department that the provision proposed may lead to unintended consequences due to stakeholder confusion and uncertainty.'' 89 FR 1694. Although the Department modified this guidance in the final 2024 Rule to take commenters' concerns into account—clarifying that ''[a]ctions taken by the potential employer for the sole purpose of complying with a specific, applicable Federal, State, Tribal, or local law or regulation are not indicative of [an employment relationship],'' 29 CFR 795.110(b)(4)—the Department believes the best course of action at this time is to return to the language in the 2021 Rule, which provides greater clarity and certainty regarding these considerations, and therefore supports the Department's policy objectives in proposing to readopt the 2021 Rule.

By proposing to readopt the language from the 2021 Rule, the Department would also be restoring the guidance addressing aspects of control taken for reasons other than legal compliance (including health and safety standards and requirements to carry insurance), which explain that requiring an individual to ''meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses (as opposed to employment relationships) does not constitute control that makes the individual more or less likely to be an employee under the Act.'' Though the final regulatory text in the 2024 Rule adopted a modified approach that takes into account ''[a]ctions taken by the potential employer that go beyond compliance with a specific'' law and ''instead serve the potential employer's own compliance methods, safety, quality control, or contractual or customer service standards,'' which may be indicative of control associated with an employment relationship, 29 CFR 795.110(b)(4), in the Department's experience, determining what ''goes beyond'' a law can be a hurdle when interpreting this guidance. Thus, the Department believes the guidance in the 2021 Rule is clearer, less burdensome, and consistent with the FLSA.

Finally, as this issue has generated a high number of comments in the past,

the Department further notes (as it did in both the 2021 and 2024 rulemakings) that although the case law is not uniform on this aspect of the control factor, the Department's proposed guidance is supported by case law, as discussed in both the 2021 and 2024 Rules. 86 FR 1183; 87 FR 62247–48; 89 FR 1693–94.[145]

The Department welcomes comments on all aspects of this proposed factor.

2. The Individual's Opportunity for Profit or Loss (Proposed § 795.105(d)(1)(ii))

The Department is proposing to readopt the regulatory text of § 795.105(d)(1)(ii) from the 2021 Rule, which discussed the second economic reality core factor—the individual's opportunity for profit or loss. This factor would weigh toward the individual being an independent contractor ''to the extent the individual has an opportunity to earn profits or incur losses based on his or her exercise of initiative (such as managerial skill or business acumen or judgment) or management of his or her investment in or capital expenditure on, for example, helpers or equipment or material to further his or her work.'' 86 FR 1247 (§ 795.105(d)(1)(ii)). The 2021 Rule elaborated on the ''capital'' nature of the investment, explaining that, ''[c]onsistent with the economic dependence inquiry, an investment must indicate an independent business by the worker, as opposed to merely being required by the potential employer, for it to indicate an opportunity for profit or loss.'' 86 FR 1187.

This section would further explain that, ''[w]hile the effects of the individual's exercise of initiative and management of investment are both considered under this factor, the individual does not need to have an opportunity for profit or loss based on both for this factor to weigh towards the individual being an independent contractor.'' 86 FR 1247 (§ 795.105(d)(1)(ii)). Thus, both the individual worker's exercise of initiative and management of investment would be considered under this factor even if the opportunity for profit or loss factor may indicate independent contractor classification based on only one. Providing that the worker must have an opportunity for profit or loss based on both initiative and investment for this factor to indicate independent contractor status would overemphasize initiative and investment and detract from this factor's ultimate focus on the worker's opportunity, as it is that opportunity which is a core or primary indicator of a worker's status as explained above.

This factor would weigh toward the individual being an employee ''to the extent the individual is unable to affect his or her earnings or is only able to do so by working more hours or faster.'' 86 FR 1247 (§ 795.105(d)(1)(ii)). One of the examples from the 2021 Rule that the Department is proposing to readopt (*see* proposed § 795.115(b)(3)) illustrates this point in the context of a construction worker who ''is paid a fixed hourly rate'' for a company that ''determines how many and which tasks she performs.'' The example would explain that the worker ''does not have a meaningful opportunity for profit or loss based on her exercise of initiative or investment, indicating employee status,'' because she ''is unable to profit, *i.e.,* increase her earnings, by exercising initiative or managing investments because she is paid a fixed hourly rate and the company determines the assignment of work.''

The 2024 Rule describes this factor as the ''opportunity for profit or loss depending on managerial skill'' and explains that it ''considers whether the worker has opportunities for profit or loss based on managerial skill (including initiative or business acumen or judgment) that affect the worker's economic success or failure in performing the work.'' 29 CFR 795.110(b)(1). The 2024 Rule identifies the ''following facts, among others,'' as ''relevant: whether the worker determines or can meaningfully negotiate the charge or pay for the work provided; whether the worker accepts or declines jobs or chooses the order and/or time in which the jobs are performed; whether the worker engages in marketing, advertising, or other efforts to expand their business or secure more work; and whether the worker makes decisions to hire others, purchase materials and equipment, and/or rent space.'' *Id.* The 2024 Rule explains that ''[i]f a worker has no opportunity for a profit or loss, then this factor suggests that the worker is an employee,'' and added that ''[s]ome decisions by a worker that can affect the amount of pay that a worker receives, such as the decision to work more hours or take more jobs when paid a fixed rate per hour or per job, generally do not reflect the exercise of managerial skill indicating independent contractor status under this factor.'' *Id.*

The primary difference between the proposed opportunity for profit or loss factor (from the 2021 Rule) and the opportunity for profit or loss factor from the 2024 Rule is that the proposal considers the individual's investment as a consideration within the opportunity factor, while the 2024 Rule describes investments as a separate factor in the analysis. The 2021 Rule explained that, although *Silk* articulated opportunity for profit and loss and investment as separate factors, it analyzed the two together. 86 FR 1174 and 1186 (both citing 331 U.S. at 719). In particular, the Court found that the coal unloaders were employees because they had ''no opportunity to gain or lose except from the work of their hands and [ ] simple tools,'' while the truck drivers who invested in their own vehicles had ''opportunity for profit from sound management'' of that investment by, for instance, hauling for different customers. 331 U.S. at 718–19. Thus, it framed the analysis as whether workers are more like unloaders whose profits were based solely on ''the work of their hands and [ ] simple tools'' or the drivers whose profits depended on their initiative and investments. *Id.* Considering investment as part of opportunity for profit or loss is thus consistent with the Supreme Court's decision in *Silk.*

In addition, the Second Circuit considers opportunity for profit or loss and investment as one factor. *See Saleem,* 854 F.3d at 144 n.29 (''Economic investment, by definition, creates the opportunity for loss, but investors take such a risk with an eye to profit.''); *Franze* v. *Bimbo Bakeries USA, Inc.,* 826 F. App'x 74, 76 (2d Cir. 2020); *Superior Care,* 840 F.2d at 1058–59. The D.C. Circuit has adopted the Second Circuit's consideration of opportunity

[145] For example, some courts have viewed employer requirements on workers in order to comply with applicable legal obligations or meet quality control standards as not indicative of control. *See Parrish,* 917 F.3d at 382; *Iontchev,* 685 F. App'x at 550; *Chao* v. *Mid-Atl. Installation Servs., Inc.,* 16 F. App'x 104, 106 (4th Cir. 2001). Other courts have rejected employers' arguments that, because they were exerting control over workers only to comply with legal obligations imposed by the government or quality control standards, their actions could not be viewed as evidence of control. *See Scantland,* 721 F.3d at 1316; *Hopkins,* 545 F.3d at 343; *Schultz* v. *Mistletoe Express Serv., Inc.,* 434 F.2d 1267, 1271 (10th Cir. 1970). Still other courts have recognized that where the employer goes beyond compliance with specific legal requirements and exerts control to serve its own purposes, this may indicate control. *See Hart* v. *Rick's Cabaret Int'l, Inc.,* 967 F. Supp. 2d 901, 916 (S.D.N.Y. 2013) (''[W]here a club implements regulations to assure compliance with law, those regulations are not evidence of the club's control over its dancers,'' but where the majority of the rules are aimed at ''achiev[ing] [the employer's] business ends'' rather than ''providing a safe and law-abiding venue,'' the rules ''compellingly indicate'' control.); *Ferguson* v. *Tex. Farm Bureau,* No. 6:17–CV–00111–ADA–JCM, 2021 WL 2349340, at *4 (W.D. Tex. May 19, 2021) (ruling that ''the exercise of requisite control should not be indicative one way or another if regulations demand it'' but where the employer took actions beyond what the regulations required, the employer was ''in control of Plaintiffs'').

for profit or loss and investment as one factor. *See Morrison* v. *Int'l Programs Consortium,* 253 F.3d 5, 11 (D.C. Cir. 2001) (citing *Superior Care,* 840 F.2d at 1058–59). Although a majority of circuit courts articulate opportunity for profit or loss and investment as separate factors, some have acknowledged that the two concepts are related. *See McFeeley,* 825 F.3d at 243 (explaining that the two factors ''relate logically to one other'' and considering them together); *Lauritzen,* 835 F.2d at 1537 (''The capital investment factor is interrelated to the profit and loss consideration.'').

The Department believes that proposing to consider the individual's investment as part of the opportunity for profit or loss factor is consistent with its intent to articulate a legal framework comprised of commonality between the Supreme Court and federal appellate courts that may be applied by workers and businesses accurately and reliably. This approach provides greater explanation and clarity, including in terms of how the factors relate to each other and what considerations comprise each factor. Understanding the relationship between opportunity for profit or loss and investment and considering them together would make the analysis clearer to apply and avoid duplication. Considering investment as part of opportunity for profit or loss would also prevent an investment by the individual that is unrelated to, and outside of, the business from becoming the focus of the analysis. *See, e.g., Parrish,* 917 F.3d at 384 (considering consultant's investment in, and losses relating to, a goat farm that was unrelated to his work for an oil drilling company that was the issue in the case). As the 2021 Rule explained, the economic reality factors are limited to the individual's ''claimed independent operation.'' 86 FR 1178 (citing *Silk,* 331 U.S. at 716). The example from the 2021 Rule discussed above that the Department is proposing to readopt (*see* proposed § 795.115(b)(3)) illustrates this point in the context of an individual who ''works full time performing home renovation and repair services for a residential construction company.'' The individual also ''earns substantial profits'' from a food truck that she operates on weekends. However, ''that is a separate business from her work in the construction industry, and therefore is not relevant to the question of whether she is an employee of the construction company or in business for herself in the construction industry.''

By proposing to readopt the opportunity for profit or loss factor from the 2021 Rule, this factor would consider the individual worker's investment only and not the relative investments of both the individual and the potential employer. As the 2021 Rule explained, ''comparing the relative investments does not illuminate the worker's economic dependence or independence,'' which is the ultimate inquiry. 86 FR 1188. Indeed, ''[c]omparing their respective investments does little more than compare their respective sizes and resources.'' *Id.* The potential employer in almost all (if not all) cases is larger and has greater resources than the individual. That relative comparison thus sheds little, if any, light on the individual's economic dependence or independence and is not probative. The 2024 Rule considers the relative investments but does not take an approach that simply compares ''the dollar values of investments or the sizes of the worker and the potential employer,'' explaining that, instead, ''the focus should be on comparing the investments to determine whether the worker is making similar types of investments as the potential employer (even if on a smaller scale) to suggest that the worker is operating independently, which would indicate independent contractor status.'' 29 CFR 795.110(b)(2). Even with this additional guidance, however, the Department believes upon further consideration that the 2024 Rule's consideration of relative investments is not probative of the economic dependence or independence of the individual worker at issue, as explained above, and unnecessarily introduces the potential employer's size and resources into the analysis.

The Department believes that this approach is more consistent with the Supreme Court's articulation of the economic reality test. The Court has never compared a worker's investment to that of the potential employer. To the contrary, in *Silk,* the Court recognized that the truck drivers' ownership of their vehicles supported independent contractor status even though the coal companies that engaged them undoubtedly had far greater overall capital investments. 331 U.S. at 719. The Department understands that this approach is different from how some (but not all) circuit courts have since considered investment, but the Department believes application of the Supreme Court's analysis takes precedence.

Another example from the 2021 Rule that the Department is proposing to readopt (*see* proposed § 795.115(b)(2)) illustrates how only the individual worker's investment should be considered. In the example, the individual ''is able to meaningful[ly] increase his earnings by exercising initiative and business acumen and by investing in his own equipment,'' and the potential employer ''has invested millions of dollars'' in its business. The example would explain that the opportunity for profit or loss factor indicates independent contractor status under those facts ''despite the substantial difference in the monetary value of the investments made by each party'' because the value of the potential employer's ''investment is not relevant in determining whether the individual has a meaningful opportunity for profit or loss through his initiative, investment, or both.''

Finally, it is well-settled that an individual worker's initiative should be considered as part of opportunity for profit or loss. The 2021 Rule explained that ''a worker's initiative, such as managerial skill or business acumen or judgment, is an appropriate measure of a worker's opportunity to earn profits or incur losses.'' 86 FR 1189 (collecting cases). And the 2024 Rule describes this factor as considering ''whether the worker has opportunities for profit or loss based on managerial skill (including initiative or business acumen or judgment) that affect the worker's economic success or failure in performing the work.'' 29 CFR 795.110(b)(1). Consistent with the 2021 Rule and contrary to the 2024 Rule, however, the Department is proposing to consider the individual's initiative only as part of the opportunity for profit or loss factor and not as part of the skill or permanence factors. The Department is addressing this further in the discussions of the skill and permanence factors below, but notes that this approach would avoid duplication and overlapping considerations among factors and ensure that the key concept of entrepreneurial initiative is considered in a core factor.

The Department welcomes comments on all aspects of this proposed factor.

G. Economic Reality Factors—Other Factors (Proposed § 795.105(d)(2))

The Department is proposing to readopt the other factors that it identified in § 795.105(d)(2) of the 2021 Rule that also guide the economic reality analysis. 86 FR 1176. As noted in proposed § 795.105(c), the Department believes that these factors would be less probative than the proposed core or primary factors. In some cases, they may not be probative at all. Nevertheless, as the 2021 Rule explained, they would be considered in every case for whatever value they bring to analyzing the character of an individual's economic

dependence for work, namely whether it is more in the nature and character of a business owner or a typical employee.[146]

1. The Amount of Skill Required for the Work (Proposed § 795.105(d)(2)(i))

The Department is proposing to readopt the regulatory text of § 795.105(d)(2)(i) from the 2021 Rule, which discussed the first other economic reality factor—the amount of skill required for the work. This factor would indicate independent contractor status ''to the extent the work at issue requires specialized training or skill that the potential employer does not provide.'' 86 FR 1247 (§ 795.105(d)(2)(i)). This factor would indicate employee status ''to the extent the work at issue requires no specialized training or skill and/or the individual is dependent upon the potential employer to equip him or her with any skills or training necessary to perform the job.'' *Id.* This factor would thus focus on training and skill because an individual ''who is in business for him- or herself typically brings his or her own skills to the job rather than relying on the client to provide training.'' 86 FR 1191.

The individual worker's exercise of initiative would not be considered under this factor. The Department explained in the 2021 Rule that ''the Supreme Court articulated the factor as 'skill required' in *Silk,* 331 U.S. at 716, and multiple courts of appeals continue to consider [it] as 'the degree of skill required to perform the work.''' 86 FR 1191 (citing cases). As explained in the 2021 Rule, sharpening this factor to consider only skill and not include initiative would clarify the overall analysis and reduce overlapping considerations among the factors given that the individual's exercise of initiative would be considered under the opportunity for profit or loss factor (a core factor). *See id.* This would be consistent with the proposed analysis' focus on economic dependence because the presence or absence of initiative is usually more probative of an individual's economic dependence or independence than the skill required for the work. *See id.*

The 2024 Rule articulates this factor as skill and initiative and explains that it ''considers whether the worker uses specialized skills to perform the work and whether those skills contribute to business-like initiative.'' 29 CFR 795.110(b)(6). Similar to the 2021 Rule, the 2024 Rule explains that ''[t]his factor indicates employee status where the worker does not use specialized skills in performing the work or where the worker is dependent on training from the potential employer to perform the work.'' *Id.* But when the individual worker has specialized skills, the 2024 Rule advises that this is not itself indicative of independent contractor status ''because both employees and independent contractors may be skilled workers''; instead, ''[i]t is the worker's use of those specialized skills in connection with business-like initiative that indicates that the worker is an independent contractor.'' *Id.*

The Department's proposal, like the 2024 Rule, would advise that the lack of specialized skills or an individual being dependent on the potential employer for training necessary to do the job indicates employee status. However, the 2024 Rule incorporates an additional consideration (compared to the 2021 Rule) when applying the skill factor by stating that, if specialized skills are present, then this factor does not necessarily indicate independent contractor status and whether the individual worker uses the specialized skills in connection with the business-like initiative is determinative for the factor.

Upon further consideration, refocusing this factor on skill and training and excluding initiative (like the 2021 Rule) would be consistent with the Department's overall goal in this proposal to provide a clearer analysis whereby facts are relevant to a particular factor rather than overlappingly considered under multiple factors. The proposed skill factor would also eliminate the additional consideration from the 2024 Rule of whether the individual uses those specialized skills in connection with business-like initiative—another reason why it would provide greater clarity. The individual's exercise of initiative would of course still be considered in the overall analysis. Initiative would be considered as part of the opportunity for profit or loss factor (a core factor), reflecting the 2021 Rule's explanation that the individual's initiative is usually more probative of the individual's economic dependence or independence than the skill required for the work.

The Department believes that considering initiative as part of the opportunity for profit or loss factor is more consistent with the Supreme Court's application of the economic reality test. In *Silk,* the Court considered the truck drivers' initiative and judgment in the context of their opportunity for profit, finding that they ''depend upon their own initiative, judgment and energy for a large part of their success'' in concluding that they were independent contractors. 331 U.S. at 716. Likewise, the Court in *Rutherford Food* found it highly probative that ''profits to the boners'' did not actually depend ''for success upon the initiative, judgment or foresight of the typical independent contractor.'' 331 U.S. at 730. The Supreme Court has treated the probative value of the worker's initiative as being tied to the success or profitability of the worker's claimed independent business, and the Department is proposing to adopt the same approach. The Department understands that this approach is different from how some (but not all) circuit courts have articulated the skill factor, but it believes application of the Supreme Court's analysis takes precedence.

The Department welcomes comments on all aspects of this proposed factor.

2. The Degree of Permanence of the Working Relationship Between the Individual and the Potential Employer (Proposed § 795.105(d)(2)(ii))

The Department is proposing to readopt the regulatory text of § 795.105(d)(2)(ii) from the 2021 Rule, which discussed the second other economic reality factor—the degree of permanence of the working relationship between the individual and the potential employer. This factor would weigh in favor of the individual being an independent contractor to the extent the work relationship is ''by design definite in duration or sporadic, which may include regularly occurring fixed periods of work, although the seasonal nature of work by itself would not necessarily indicate independent contractor classification.'' 86 FR 1247 (§ 795.105(d)(2)(ii)). It would weigh in favor of the individual being an employee ''to the extent the work relationship is instead by design indefinite in duration or continuous.'' *Id.*

The 2021 Rule explained that ''this factor will not always be probative,'' but noted that ''courts and the Department routinely consider this factor when applying the economic reality analysis under the FLSA to determine employee or independent contractor status.'' 86 FR 1192–93. In general, the Department noted that the regulatory text ''indicates that a long-term relationship points toward an employment relationship,'' but that ''a long-term relationship may not always indicate an employee relationship.'' 86 FR 1193. Further, the Department explained that the short-term or seasonal nature of work would not necessarily indicate independent contractor status. 86 FR 1192. For

[146] *See* 86 FR 1202.

example, seasonal work (which could be viewed as short-term or sporadic and definite in duration, and therefore weighing toward independent contractor status) ''would not indicate independent contractor status where the worker's position is permanent for the duration of the relevant season and where the worker has done the same work for multiple seasons.'' *Id.* (citing *Acosta* v. *Paragon Contractors Corp.,* 884 F.3d 1225, 1236–37 (10th Cir. 2018)). Additionally, the Department noted that ''in certain industries where employees are often employed for short periods, a short term of employment would not indicate independent contractor status.'' 86 FR 1193. These concepts are illustrated in one of the examples from the 2021 Rule that the Department is proposing to readopt (*see* proposed § 795.115(b)(6)), where a housekeeper works for a ski resort every winter and returns to his position each new season, and therefore has a long-term and indefinite relationship with the ski resort under the permanence factor, which weighs in favor of classification as an employee.

The 2021 Rule also explained that, although some courts consider the exclusivity of a work relationship as part of the permanence factor, the Department believed that exclusivity is more directly related to the control factor, which considers whether the individual has the ability to work for others, rather than the permanence factor. 86 FR 1192. The Department explained that, similar to the Department's analysis of the concept of initiative, ''the Department believes analysis of exclusivity as part of the permanence factor dilutes the significance of actual permanence within that factor, blurs the lines between the economic reality factors, and creates confusion by incorporating a concept that is distinct from permanence.'' 86 FR 1193.

The permanence factor in the 2024 Rule retains many of the same considerations as the permanence factor in the 2021 Rule that the Department is proposing to readopt, including that a work relationship that is sporadic and definite in duration favors independent contractor status, while a work relationship that is indefinite in duration and continuous favors employee status. 29 CFR 795.110(b)(3). Additionally, the 2024 Rule includes virtually identical language as the 2021 Rule recognizing that ''regularly occurring fixed periods of work'' may be considered to be definite in duration and sporadic, but that ''the seasonal or temporary nature of work by itself would not necessarily indicate independent contractor classification.'' *Id.*

The primary differences between the permanence factor in the 2021 Rule and the 2024 Rule are that the 2024 Rule incorporates the concepts of exclusivity and initiative, whereas the 2021 Rule, as explained earlier, sought to minimize blurring between the factors through use of the same concepts in multiple factors. For example, the regulatory text for the permanence factor in the 2024 Rule explains that, ''[w]here a lack of permanence is due to operational characteristics that are unique or intrinsic to particular businesses or industries and the workers they employ, this factor is not necessarily indicative of independent contractor status unless the worker is exercising their own independent business initiative.'' 29 CFR 795.110(b)(3). And, the 2024 Rule recognized exclusivity as an aspect of permanence that courts and the Department had viewed as relevant, making a policy choice to include ''all facts that may be relevant to a particular factor.'' 89 FR 1688.

Upon further consideration, the Department is proposing to provide greater clarity and efficiency by placing certain concepts—like exclusivity and initiative—in the factor for which they are most relevant (control and opportunity for profit or loss, respectively), rather than using a confusing and redundant analysis that considers facts related to these concepts in multiple factors. Moreover, the Department has consistently noted throughout the 2021 and 2024 independent contractor rulemakings that it is important for the Department to provide clear guidance on the fact that the ultimate inquiry of economic dependence is a ''dependence-for-work'' analysis rather than a ''dependence-for-income'' analysis. *See* 86 FR 1172–73; 89 FR 1690. Removing consideration of whether individuals have an exclusive relationship with one employer or more than one job or source of income from the permanence factor helps to clarify that a ''dependence-for-income'' approach is not indicative of whether an employment relationship exists. Finally, because control and opportunity for profit or loss are ''core'' factors, the concepts of exclusivity and initiative will be given their appropriate probative value, as opposed to the limited probative value of the permanence factor overall in the proposed analysis. Thus, by proposing to readopt the more streamlined permanence factor from the 2021 Rule, the Department believes it will better retain key concepts relevant to the permanence factor within the broader analysis.

The Department welcomes comments on all aspects of this proposed factor.

3. Whether the Work Is Part of an Integrated Unit of Production (Proposed § 795.105(d)(2)(iii))

The Department is proposing to readopt the regulatory text of § 795.105(d)(2)(iii) from the 2021 Rule, which discussed the third other economic reality factor—whether the work is part of an integrated unit of production. The Department is proposing to make one non-substantive change to the regulatory text, to align the description of this factor with the descriptions of the other factors, all of which begin by explaining how the factor weighs in favor of independent contractor status before explaining how the factor weighs in favor of employee status. *See* 86 FR 1246–47 (§ 795.105(d)(1), (d)(2)(i)–(ii)). This factor would weigh in favor of the individual being an independent contractor ''to the extent his or her work is segregable from the potential employer's production process'' and would weigh in favor of the individual being an employee ''to the extent his or her work is a component of the potential employer's integrated production process for a good or service.'' 86 FR 1247 (§ 795.105(d)(2)(iii)). This provision would clarify that this factor is different from the concept of the importance or centrality of the individual's work to the potential employer's business. *Id.*

In the 2021 Rule, the Department explained that the ''integrated unit'' factor derives from *Rutherford Food,* in which the workers ultimately determined to be employees were ''part of an integrated unit of production'' who worked ''alongside admitted employees of the plant operator at their tasks.'' 86 FR 1194 (citing 331 U.S. at 729). As the Department acknowledged and many commenters noted, the 2021 Rule's ''integrated unit'' formulation of the factor differed from the way the Department's prior guidance and most courts articulated this factor using an ''integral part'' analysis. 86 FR 1193. That formulation considers ''the extent to which services rendered are an integral part of the potential employer's business.'' *Id.*

Under an ''integral part'' analysis, courts focus on the importance or centrality of the work to the potential employer's business. In the 2021 Rule, the Department reasoned that asking whether a worker is a part (integral or otherwise) of the potential employer's business ''simply restates the ultimate inquiry: If a worker were part of the potential employer's business, then he

or she could not be in business for him- or herself and therefore would be economically dependent.'' 86 FR 1194.

In the 2021 Rule, the Department also explained that the ''integral part'' factor used by courts has limited probative value and may be misleading in some instances. 86 FR 1193. As the Department observed, everything the employer does could be considered ''integral'' in the sense of ''important.'' 86 FR 1194; *see Lauritzen,* 835 F.2d at 1541 (Easterbrook, J., concurring) (''*Everything* the employer does is 'integral' to its business—why else do it?''). The Department concluded that an analysis based on importance or centrality could favor employee status even for individuals who are independent contractors, rather than being probative of economic dependence.

The 2024 Rule returned to the ''integral part'' analysis, articulating the relevant inquiry as whether the work is ''critical, necessary, or central to the potential employer's principal business.'' 29 CFR 795.110(b)(5). In the 2024 Rule, the Department asserted that ''courts continue to find the integral [part] factor useful.'' 89 FR 1708. Responding to commenters' concerns that this formulation of the integral factor would point to employee status in virtually all cases, the 2024 Rule emphasized that the ''key limiting word'' is ''principal,'' which would distinguish work that is critical or necessary in a general sense—*e.g.,* an accountant hired to manage a business's tax obligations—from work that is critical or necessary to the potential employer's principal business—*e.g.,* picking tomatoes for a tomato farm. 89 FR 1710–11.

Upon reconsideration, the Department believes that the ''integrated unit'' formulation of this factor is more probative of whether an individual is economically dependent on the potential employer for work than the ''integral part'' analysis. It is also more consistent with the Supreme Court's consideration in *Rutherford Food* of whether a worker is part of an ''integrated unit.'' [147] The Department believes that an individual who is integrated into the potential employer's production process is more likely to be an employee. Conversely, an individual who performs services that are segregable from the potential employer's production process is more likely to be an independent contractor. The difference is illustrated by the examples that the Department is proposing to readopt from the 2021 Rule (*see* proposed §§ 795.115(b)(7)–(8)), which contrast a newspaper editor, who is involved in the entire production process of the newspaper, with a freelance journalist, whose work is limited to article submissions and is segregated from the rest of the newspaper's production process.

The Department believes that the ''integral part'' analysis departs from how it was intended to apply in *Silk.* While the 2024 Rule asserted that *Silk* considered whether coal unloaders were an ''integral part'' of the coal business as a relevant factor,[148] on reexamination, the Department now believes the Court merely discussed ''integral part'' in the context of the control factor. After listing the economic reality factors—which began with ''degrees of control'' and did not include integrality—the *Silk* Court stated: ''These unloaders and truckers and their assistants are from one standpoint an integral part of the businesses of retailing coal or transporting freight. Their energy, care and judgment may conserve their equipment or increase their earnings but Greyvan and Silk are the directors of their businesses'' [149] As the 2021 Rule explained, to the extent that a company directs the performance of integral work, that is already captured under the control factor.[150]

The Department believes its approach best supports the policy objective of providing greater clarity to business owners, workers, and independent contractors. The Department further believes that the 2024 Rule's emphasis on the potential employer's principal business lacks sufficient precision for the modern economy, in which, for example, modern manufacturers commonly assemble critical parts and components produced by wholly separate companies.

The Department welcomes comments from the public regarding their experiences applying the ''integrated unit'' analysis of the 2021 Rule and the ''integral part'' analysis of the 2024 Rule, as well as any other aspect of this proposed factor.

4. Additional Factors (Proposed § 795.105(d)(2)(iv))

The Department is proposing to readopt the regulatory text of § 795.105(d)(2)(iv) from the 2021 Rule, which provided: ''Additional factors may be relevant in determining whether an individual is an employee or independent contractor for purposes of the FLSA, but only if the factors in some way indicate whether the individual is in business for him- or herself, as opposed to being economically dependent on the potential employer for work.'' 86 FR 1247 (§ 795.105(d)(2)(iv)).

The Department and courts have consistently stated that the identified factors are not exhaustive and additional factors may be considered. *See, e.g., Silk,* 331 U.S. at 716 (explaining that its list of factors is not ''complete''); WHD Opinion Letter FLSA 2025–2 at 5 (explaining that ''[o]ther factors may also be relevant'' in addition to the identified factors); *see also, supra,* discussion of proposed § 795.105(c) (which would state that the identified ''factors are not exhaustive''). Of course, such additional factors are relevant only to the extent that they help answer the ultimate inquiry (*see* proposed § 795.105(b)): whether the individual is in business for him- or herself or is economically dependent on the employer for work. For example, the ''integral part'' factor considered by most circuit courts could still be analyzed as an ''other factor'' to the extent it is probative as to this question.

The preamble to the 2021 Rule advised that factors that do not bear on this ultimate inquiry, ''such as whether an individual has alternate sources of wealth or income and the size of the hiring company,'' are not relevant. *See* 86 FR 1196. The Department welcomes comments on whether it should identify in any final rule certain facts or factors (in addition to or in lieu of the individual's alternate sources of wealth or income and the size of the employer) as not relevant because they do not bear on the individual's economic dependence.

Finally, consistent with the emphasis in the 2021 Rule's analysis and the analysis being proposed here that two factors are ''core'' factors that typically carry greater weight than other factors, any additional factors would be less probative than the core factors listed in § 795.105(d)(1). *See* 86 FR 1196. The precise weight of any additional factors would depend on the circumstances of each case and would be unlikely to outweigh either of the core factors. *See id.*

The 2024 Rule adopted § 795.105(d)(2)(iv) of the 2021 Rule with only minor editorial changes, although it was renumbered and moved to § 795.110(b)(7). *See* 87 FR 62257; 89 FR 1715–18; 29 CFR 795.110(b)(7). Making

[147] 331 U.S. at 729.

[148] 89 FR 1709 (citing *Silk,* 331 U.S. at 716).

[149] *Silk,* 331 U.S. at 716.

[150] 86 FR 1194. To the extent that *Silk* can be read as introducing the ''integral part'' analysis as a separate factor, the outcome demonstrates that it is not highly probative and may even be misleading. Both unloaders and drivers performed work that was integral to the potential employer's business, yet one group was deemed employees and the other independent contractors.

the additional factors section the seventh numbered subparagraph after six numbered paragraphs discussing the identified factors, as the 2024 Rule did, may have inadvertently caused confusion by suggesting that additional factors had to be considered in every case. To the contrary, the Department expects that additional factors will not be considered in many cases because the identified factors will be more than sufficient to make the determination. As the Department explained in the 2024 Rule, ''in many instances, consideration of additional factors will not be necessary because the relevant factual considerations can and will be considered under one or more of the enumerated factors.'' 89 FR 1717.

Because it is well-settled that additional factors may be considered if they are relevant to the ultimate inquiry of the individual's economic dependence and for the other reasons explained above, the Department is proposing to readopt § 795.105(d)(2)(iv) of the 2021 Rule.

H. Primacy of Actual Practice (Proposed § 795.110)

The Department is proposing to readopt the regulatory text of § 795.110 from the 2021 Rule, which explained that when ''evaluating the individual's economic dependence on the potential employer, the actual practice of the parties involved is more relevant than what may be contractually or theoretically possible.'' 86 FR 1247 (§ 795.110). As an example, an individual's ''theoretical abilities to negotiate prices or to work for competing businesses are less meaningful if, as a practical matter, the individual is prevented from exercising such rights.'' *Id.* As another example, a potential employer's ''contractual authority to supervise or discipline an individual may be of little relevance if in practice the business never exercises such authority.'' *Id.*

In the 2021 Rule, the Department explained that the primacy of actual practice is derived from the Supreme Court's holding that '' 'economic reality' rather than 'technical concepts' is to be the test of employment'' under the FLSA. 86 FR 1203 (quoting *Whitaker House,* 366 U.S. at 33). The Department also explained that ''prioritizing substance over form is consistent with the Department's general interpretation and enforcement of the FLSA.'' 86 FR 1204. For example, a ''skillfully devised'' contract may suggest that a worker is an independent contractor, while the actual practices of the parties establish the existence of an employment relationship. 86 FR 1204. In such a case, the economic reality of the working relationship, as shown by actual practices, is an employment relationship. At the same time, the Department observed that an emphasis on actual practices ''is not a one-way ratchet, applying selectively either for or against a finding of independent contractor status.'' 86 FR 1205. The actual practices of the parties may suggest that an individual is an employee, or they may suggest an individual is an independent contractor. *See id.* (comparing *Donovan* v. *Sureway Cleaners,* 656 F.2d 1368, 1371 (9th Cir. 1981), and *DialAmerica,* 757 F.2d at 1387, with *Saleem,* 854 F.3d at 143).

The 2024 Rule similarly recognized that actual practices are ''often more relevant to the economic dependence inquiry than contractual possibilities.'' 89 FR 1721. The 2024 Rule departed from the 2021 Rule in stating that ''reserved contractual rights, like reserved control, may in certain cases be equally as, or more, indicative of the economic reality than the actual practice of the parties.'' 89 FR 1720. The 2024 Rule provided as an example that a potential employer's reserved rights to control ''may strongly influence the behavior of the worker in their performance of the work even absent the employer actually exercising its contractual rights.'' *Id.* In removing this provision, the 2024 Rule characterized it as a ''bright line rule'' and a ''predetermined elevation of actual practice above unexercised or reserved rights'' in an ''overly mechanical'' manner that was inconsistent with the totality-of-the circumstances economic reality analysis. 89 FR 1718, 1720, 1721.

The 2021 Rule did not, however, categorically disregard reserved rights. In response to various stakeholders' comments, the Department declined both to entirely disregard unexercised contractual rights (as suggested by some commenters generally supportive of the 2021 Rule) and to afford equal relevance to reserved control and control that is actually exercised (as suggested by some commenters generally opposed to the 2021 Rule). 86 FR 1204 and n.56. The Department emphasized that ''unexercised powers, rights, and freedoms are not irrelevant'' but ''merely *less* relevant than powers, rights, and freedoms which are actually exercised under the economic reality test.'' 86 FR 1204. Evaluating ''the circumstances of the whole activity'' in a work arrangement, *Rutherford Food,* 331 U.S. at 730, requires consideration of both actual practices and contractual rights, but the ''reality'' of the work arrangement, *Silk,* 331 U.S. at 713, lies more in what actually happens than what a contract suggests may happen. This principle is illustrated in *Bartels,* in which the Supreme Court concluded that the dance hall's contractual right of control was not as probative as the band leader's actual exercise of control over band members.[151]

Upon further consideration, the Department is proposing to readopt the 2021 Rule's provision confirming the primacy of actual practice. The Department believes that the 2024 Rule's removal of this provision produced uncertainty among stakeholders regarding how to weigh evidence of actual practices against unexercised contractual provisions or theoretical possibilities. This confusion was evident in numerous comments the Department received from parties who viewed the removal of the actual practice provision as a disavowal of longstanding FLSA case law that has consistently focused on the reality of a work relationship rather than assuming that formalities like a title or contractual arrangement are dispositive of whether an individual is an employee or an independent contractor. *See* 89 FR 1718–20. Though the Department explained in the preamble to the 2024 Rule that it did ''not intend to in any way minimize or disregard the longstanding case law that considers the actual behavior of the parties in order to determine the economic reality,'' 89 FR 1719–20, having a regulatory text provision in place would provide greater certainty. In re-affirming that actual practice is more relevant than what may be contractually or theoretically possible, the Department believes that, contrary to the 2024 Rule's characterization, this provision does not create a bright-line rule but provides greater clarity on the respective roles that actual practice and contractual provisions play in determining the economic reality of the working relationship.

As the Department explained in the 2021 Rule, recognizing the primacy of actual practice does not mean that facts regarding unexercised contractual rights and authorities are never relevant. 86 FR 1204. Two circuit court cases that considered evidence of both actual practices and reserved rights are illustrative. In *Saleem,* the Second Circuit's focus on actual practices led to the conclusion that black-car drivers were independent contractors, and that conclusion was also supported by evidence of reserved rights. 854 F.3d at 142. The court found that the drivers were not only permitted to but actually did drive for competitors and personal

[151] 332 U.S. at 128, 132.

clients, hire helpers in some cases, set their own schedules, and decline assignments without meaningful repercussions. *Id.* at 142–43, 146–47. While the court's overall inquiry was focused on actual practices, it also considered reserved rights in the parties' contracts. *Id.* at 135–36, 141. In particular, the court found that a provision that permitted drivers to terminate the contracts at any time ''constituted a significant restriction on the ability of [the potential employers] to exercise control.'' *Id.* at 141.

In *Brant* v. *Schneider National, Inc.,* 43 F.4th 656, 665 (7th Cir. 2022), the Seventh Circuit applied the ''well established'' principle that ''the terms of a contract do not control the employer-employee issue under the [FLSA]'' to a truck driver who hauled freight for a freight company. In considering several provisions in the parties' contract that theoretically indicated independent contractor status, the court repeatedly emphasized that the relevant inquiry is ''economic reality, not just contractual terms.'' *Id.* at 672. The driver's theoretical abilities to control the manner of his work, hire helpers, own his own truck, and choose his own routes did not indicate that he was an independent contractor where he was not, as a practical matter, able to exercise those abilities. *Id.* at 666–68. The court also considered a contractual provision under which the potential employer ''retained the right to gather remotely and to monitor huge quantities of data'' and to use that data ''for any reason [it] deems advisable,'' including as a basis to terminate the contract. *Id.* at 666–67. ''This allegedly high degree of scrutiny,'' coupled with ''the constant threat of termination,'' weighed in favor of employee status. *Id.* at 667. As *Saleem* and *Brant* demonstrate, centering the focus on actual practice does not preclude consideration of reserved contractual rights and authorities where they are relevant.

In readopting the 2021 Rule's ''actual practice'' provision, the Department acknowledges that, in certain situations where it is well established that either an employer and/or a worker engages in actual practice that is consistent with the relevant provision of a clear and binding contractual agreement between them, that provision would be more probative than a provision for which actual practice is not so well established. Indeed, where contractual provisions between workers and putative employers reflect actual practice, they may even have substantial probative value.

The Department welcomes comments on any aspect of the proposed readoption of the primacy of actual practice provision.

I. Examples of Analyzing Economic Reality Factors (Proposed § 795.115)

The Department is proposing to readopt the regulatory text of § 795.115 from the 2021 Rule, which provided six illustrative examples demonstrating ''how the factors listed in § 795.105(d) may be analyzed under the facts presented'' in the examples, and is also proposing to update one of those examples and add two new examples.

The example from the 2021 Rule that the Department is proposing to update is the one in § 795.115(b)(1). In the 2021 Rule, that example provided that a logistics company ''installed, at its own expense, a device that limits the maximum speed of the owner-operator's vehicle and monitors the speed through GPS'' and that ''[t]he company limits the owner-operator's speed in order to comply with federally mandated motor carrier safety regulations and to ensure that she complies with local traffic laws.'' 86 FR 1247 (§ 795.115(b)(1)(i)). The example advised that, in that scenario, the fact that the company ''installed a device that limits and monitors the speed of the owner-operator's vehicle does not change'' the conclusion that the ''owner-operator exercises substantial control over key aspects of her work, indicating independent contractor status.'' 86 FR 1247 (§ 795.115(b)(1)(ii)).

However, the Department is concerned that, although the Department of Transportation may have previously considered a regulation requiring speed limiting devices in trucks, it has not issued a specific regulation implementing such a requirement. To avoid any unintended confusion, the Department is proposing to revise this example so that the scenario instead addresses a different transportation requirement. The revised example (proposed § 795.115(b)(1)) would provide that ''the logistics company requires the owner-operator to comply with federally-mandated transportation safety rules requiring drug and alcohol testing'' and that the ''fact that the company requires the owner-operator to complete certain drug and alcohol testing does not change'' the conclusion that the owner-operator exercises substantial control over key aspects of her work, indicating independent contractor status.

In addition, the Department is proposing to add two new examples addressing the ''amount of skill required for the work'' factor. The 2021 Rule did not contain examples addressing the ''amount of skill required for the work'' factor. Adding these two new examples would ensure that the examples section provides guidance on all of the factors identified in § 795.105(d). The two new examples would be located at § 795.115(b)(4) and (5), and other examples in § 795.115(b) from the 2021 Rule would be renumbered. Finally, the Department is proposing to make a minor edit to one other example from the 2021 Rule (changing ''rewrites'' to ''revises'' in the example that would be located at § 795.115(b)(7)).

Each example would provide a set of facts followed by an ''Application'' section discussing how a particular factor would apply to those facts and whether the factor would indicate employee or independent contractor status under those facts. 86 FR 1247–48 (§ 795.115(b)); *see also* 86 FR 1208 (''[E]ach illustrative example focuses on the classification favored by a specific economic reality factor within the context of the fact-specific scenario.''). The discussion in each ''Application'' section would be ''limited to substantially similar factual situations.'' 86 FR 1247 (§ 795.115(a)).

The Department stated in the 2024 Rule that ''examples are helpful to workers and businesses alike.'' 89 FR 1724. Like the 2021 Rule, the 2024 Rule provides examples ''to illustrate the application of each factor of the economic reality test as applied to various factual scenarios.'' 89 FR 1722. Unlike the 2021 Rule, the 2024 Rule provides the examples in the preamble rather than in the regulatory text; following the discussion in the preamble of each factor are examples applying the factor. The 2024 Rule explains that the examples ''provide the greatest value by residing in the preamble to the final rule following the detailed discussion of the relevant factor'' because such ''examples can provide a capstone for each section's discussion of the relevant economic reality factor, rather than being disconnected from that discussion and appearing only in regulatory text.'' 89 FR 1724. And of course, the examples in the 2024 Rule illustrate how the 2024 Rule's economic reality factors apply, while the examples in the 2021 Rule illustrated how the 2021 Rule's economic reality factors applied.

There is no question that the public appreciates examples of how the economic reality factors apply. The 2024 Rule's concern about examples in the regulatory text ''being disconnected'' from the preamble discussion of each factor appears to be overstated, however. Upon further consideration, the Department believes that including the examples in the regulatory text

would make them more accessible to the public, which is more likely to refer to the regulatory text than the preamble. The regulatory text—not the preamble—is what is published in the Code of Federal Regulations. The examples would constitute a clearly delineated section in that regulatory text following the discussion of the factors in the regulatory text and would therefore not be meaningfully ''disconnected.''

Accordingly, the Department is proposing to readopt as § 795.115 of the regulatory text the six illustrative examples that were in the 2021 Rule (with updates to one example, the addition of two new examples, and a minor edit to another example, all as explained above) demonstrating how the proposed factors in § 795.105(d) would apply. The Department welcomes comments on additional illustrative examples, including those addressing common general working arrangements that are more likely to be deemed employment or contractor.

J. Proposed Changes to FMLA and MSPA Regulations

The Department is proposing to revise the regulations addressing employee or independent contractor status under the FMLA and MSPA to clarify that the analysis in part 795 applies when determining employee or independent contractor status under those statutes too.

Both MSPA and the FMLA statutorily incorporate FLSA definitions regarding the scope of employment. *See* 29 U.S.C. 1802(5) (providing that the term ''employ'' for the purposes of MSPA has the meaning given such term under section 3(g) of the FLSA); 29 U.S.C. 2611(3) (providing that the terms ''employee'' and ''employ'' for purposes of the FMLA have the same meanings given such terms in sections 3(e) and (g) of the FLSA).[152]

In addition, the Department's MSPA and FMLA regulations recognize that the scope of employment under those statutes is determined by the FLSA. The MSPA regulations state that ''employ,'' ''employer'', and ''employee'' are each given the meaning set forth in the FLSA. 29 CFR 500.20(h)(1)–(3) (citing 29 U.S.C. 203(d), (e), and (g)). The MSPA regulations add that ''[t]he definition of the term *employ* may include consideration of whether or not an *independent contractor* or *employment* relationship exists under the Fair Labor Standards Act.'' 29 CFR 500.20(h)(4). The FMLA regulations reiterate that the definitions of ''employ'' and ''employee'' come from the FLSA. 29 CFR 825.102, 825.105(a). And in AI 2015–1 (which was later rescinded as explained above), the Department advised that the FLSA analysis that it provided ''should also be applied in determining whether a worker is an employee or an independent contractor in cases arising under [MSPA] and the [FMLA]'' because both statutes adopt the FLSA's definition of ''employ.''

Both MSPA and the FMLA thus support applying to those statutes the same analysis that the Department applies for determining employee or independent contractor status under the FLSA. In addition, applying one analysis across the three statutes will encourage consistent results and will provide a simpler approach for employers, businesses, and workers in determining their rights and obligations under the statutes. In the 2021 and 2024 rulemakings, the Department received comments supporting a uniform analysis for determining employee or independent contractor status across federal laws. Although only Congress can achieve that, where a uniform analysis is consistent with the statutes, as it would be with the FLSA, MSPA, and FMLA here, the Department believes that regulations adopting a uniform analysis would not only be beneficial, but also consistent with Congressional intent.

For the MSPA regulations, the Department is proposing to revise 29 CFR 500.20(h)(4) to remove the six economic reality factors (as well as references to the factors and several case citations) and replace them with a cross-reference providing that questions of employee or independent contractor status under MSPA ''should be resolved in accordance with the criteria set forth in §§ 795.105 through 795.110 of this chapter.'' The Department would retain much of 29 CFR 500.20(h)(4), including the guidance on the impact of the employee versus independent contractor inquiry in agriculture. The Department welcomes comments on all aspects of its proposed revisions to 29 CFR 500.20(h)(4).

For the FMLA regulations, the Department is proposing to revise the definition of ''Employee'' in 29 CFR 825.102. Paragraph (1) of that definition provides: ''The term *employee* means any individual employed by an employer[.]'' The Department is proposing to revise paragraph (1) so that it would read: ''The term *employee* means any individual employed by an employer, and the criteria set forth in §§ 795.105 through 795.110 of this chapter apply to any determination of whether an individual is an employee or independent contractor[.]'' The Department is also proposing to revise 29 CFR 825.105(a) by adding the following sentence to the end of the general guidance currently located in that provision: ''The criteria set forth in §§ 795.105 through 795.110 of this chapter apply to any determination of whether an individual is an employee or independent contractor.'' These revisions would incorporate into the FMLA regulations the analysis for determining employee or independent contractor classification in part 795.

In addition, the Department is proposing to delete the sentence in 29 CFR 825.105(a) advising that ''[m]ere knowledge by an employer of work done for the employer by another is sufficient to create the employment relationship.'' The Department added this sentence in the 1995 FMLA final rule as part of ''a more general discussion'' of the employment relationship in the context of counting employees for determining coverage.[153] The purpose of this NPRM's proposed revisions to the FMLA regulations is to confirm that the multi-factor analysis in 29 CFR part 795 would apply when determining an individual's classification as an employee or independent contractor under the FMLA. The Department is concerned that retaining a statement in 29 CFR 825.105(a) that mere knowledge may create an employment relationship could be viewed as inconsistent with considering ''the circumstances of the whole activity'' when determining employee or independent contractor status, *Rutherford,* 331 U.S. at 730, as well as the multi-factor analysis set forth herein in proposed 29 CFR part 795, and thus could cause parties to not apply the analysis as the Department intends. Deleting the sentence from 29 CFR 825.105(a) would help to ensure that the analysis in 29 CFR part 795 applies under the FMLA.

The Department welcomes comments on all aspects of its proposed revisions to 29 CFR 825.102 and 825.105(a).

[152] *See also Garcia-Celestino* v. *Ruiz Harvesting, Inc.,* 843 F.3d 1276, 1287 (11th Cir. 2016) (noting that when Congress enacted MSPA, ''it adopted the same sweeping statutory 'suffer or permit to work' definition of the term 'employ,' incorporating the FLSA definition by reference'' (citing 29 U.S.C. 1802(5))); *Mendel* v. *City of Gibraltar,* 727 F.3d 565, 569 (6th Cir. 2013) (''To answer the question of whether [workers] fall within the scope of the FMLA's definition of an 'employee,' we must turn to the section of the FLSA that addresses this issue.'' (citing 29 U.S.C. 2611(3))).

[153] 60 FR 2184; *see* 29 U.S.C. 2611(4)(A)(i) (defining ''employer'' as any person ''who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year'').

K. Severability

The Department is proposing to readopt as § 795.120 the regulatory text from the 2021 Rule which provided that any provision of part 795 found to be invalid or unenforceable ''shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this part and shall not affect the remainder thereof.'' 86 FR 1248 (§ 795.120).

The 2021 Rule noted that the Department did not receive any comments on the severability provision that it had proposed and adopted that provision as proposed. 86 FR 1209. The 2024 Rule adopted the same severability provision, noting that ''[n]o commenter questioned the well-settled legal principle that one portion of a rule may remain operative if another portion is deemed impermissible as long as the agency would independently adopt the remaining portion and the remaining portion can operate sensibly without the impermissible portion.'' 89 FR 1725. Accordingly, the Department's proposal contains the same severability provision at § 795.120.

Relatedly, the Department is proposing in this rulemaking to both rescind the 2024 Rule and readopt the regulatory provisions of the 2021 Rule by revising 29 CFR part 795 to incorporate those provisions. In other words, rescission of the 2024 Rule would be separate from readoption of the regulations regarding employee or independent contractor status promulgated in the 2021 Rule. Thus, the Department intends that, if the regulations that it finally adopts as 29 CFR part 795 at the culmination of this rulemaking are thereafter invalidated, enjoined, or otherwise not put into effect, then the 2024 Rule and its regulations would nonetheless be rescinded for all the reasons set forth by the Department in this rulemaking. The Department recognizes that, in such a case, it would have no generally-applicable regulations addressing employee or independent contractor status under the FLSA (which was the case for 83 years following the FLSA's enactment until the 2021 Rule). If that were the case, the Department would provide subregulatory guidance for stakeholders. Additionally, the Department notes that the 2024 Rule expressed a similar intent for its rescission of the 2021 Rule then to be separate from the affirmative regulations that it promulgated at 29 CFR part 795. *See* 89 FR 1725 (explaining that ''the rescission of the 2021 IC Rule set forth in this final rule is separate and severable from the new part 795 regulations for determining employee or independent contractor status under the FLSA set forth in this final rule'').

Finally, the Department's proposed changes to the FMLA and MSPA regulations are separate from its proposed changes to the FLSA regulations in 29 CFR part 795. Thus, if the Department's proposed changes to the FLSA regulations in 29 CFR part 795 are finalized but thereafter invalidated, enjoined, or otherwise not put into effect, in whole or in part, then the Department intends that its proposed changes to the FMLA and MSPA regulations would remain in effect.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The PRA typically requires an agency to provide notice and seek public comments on any proposed collection of information contained in a proposed rule. *See* 44 U.S.C. 3506(c)(2)(B); 5 CFR 1320.8.

This NPRM does not contain a collection of information subject to OMB approval under the Paperwork Reduction Act. The Department welcomes comments on this determination.

V. Review Under Executive Orders 12866, 13563, and 14192

Among other requirements, Executive Order 12866 requires agencies to submit ''significant regulatory actions'' to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) for review. Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OIRA has determined that this rule is economically significant under section 3(f)(1) of Executive Order 12866.

Executive Order 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. *See* 76 FR 3821 (Jan. 21, 2011). E.O. 13563 recognizes that some costs and benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. *Id.*

Executive Order 14192, titled ''Unleashing Prosperity Through Deregulation,'' was issued on January 31, 2025. This rule, if finalized as proposed, is expected to be an E.O. 14192 deregulatory action, as the Department estimates that perpetual cost savings attributable to the rule—including reduced compliance costs and reduced litigation costs—would exceed one-time regulatory familiarization costs. The analysis provided below outlines the impacts that the Department anticipates may result from this proposed rule and was prepared pursuant to the above-mentioned Executive orders.

A. Need for Rulemaking

As explained more fully in section II of this notice, the Department is concerned that the 2024 Rule fails to provide an analysis for distinguishing between independent contractors and employees under the FLSA that is sufficiently clear and leads to predictable outcomes. The Department is separately concerned that the 2024 Rule's description of several economic reality factors could be viewed as setting a higher bar to find independent contractor status than required under the law. Among other harms, an analysis which is ambiguous or perceived as too restrictive of independent contracting can deter businesses from engaging with bona fide independent contractors or induce them to unnecessarily classify such individuals as employees—concerns emphasized by many self-identified independent contractors who have

participated in the Department's recent rulemakings on this topic.

Accordingly, in this rulemaking, the Department is proposing to rescind the 2024 Rule and largely readopt the 2021 Rule,[154] which the Department has successfully applied in WHD investigations.[155] Additionally, the Department is proposing to revise the regulations addressing employee or independent contractor status under MSPA and the FMLA so that the analysis in part 795 applies when determining employee or independent contractor status under those statutes too.

B. Overview of Estimated Effects

The Department believes that replacing the 2024 Rule with the 2021 Rule is likely to improve the welfare of both workers and businesses on the whole. With respect to businesses, the Department believes that the improved clarity offered by the rule would increase the efficiency of the labor market, allowing businesses to be more productive and decreasing their litigation burden. With respect to workers, broadly speaking, this rule would likely have three categories of potential effects.

First, this rulemaking would make it easier for the millions of individuals who currently work as independent contractors and those who hire them to comply with the law. Compliance cost savings would be shared between the independent contractors and businesses for which they work.

Second, legal clarity may encourage firms to create independent contractor arrangements for roles that did not previously exist, which may attract workers who otherwise would not work in that field. Such job creation would benefit workers and firms alike.[156]

Third, as a result of the improved clarity of the proposed rule, businesses might convert some existing positions from employee status to independent contractor status. Although the Department maintains that the streamlined core factor analysis proposed in this rule is neither more nor less permissive of independent contractor relationships as compared to the analysis that the Department is currently applying,[157] the Department expects that this proposed rule could reduce any ''voluntary'' employment classification. This refers to situations where businesses classify workers who may be in business for themselves (and thus independent contractors) as employees to avoid legal risk (in the event that the business does not satisfy the FLSA's requirements).[158] This rule would provide the greatest legal certainty to employers classifying a worker as an independent contractor if the worker substantially controls the work and has a meaningful opportunity for profit or loss based on initiative or investment—a scenario that, to the Department's knowledge, no federal appellate court has ever found to be an FLSA employment relationship.

Businesses would only be expected to reclassify workers classified as employees into independent contractors upon a determination that the clarity provided by this rule materially shifts the balance of tradeoffs, including legal risk. Any benefit to businesses of modified classifications would need to outweigh the costs, including any autonomy they cede to workers in such arrangements and any costs associated with implementation or modifying the classification itself, and such a relationship would need to be compatible with their business models. Further, generally speaking, workers would have a choice of whether to agree to the new independent contractor arrangement. The overall effect of job conversion on workers would be ambiguous and could vary from worker to worker, but the Department expects that any reclassification of workers classified as employees into independent contractors attributable to this rulemaking would be minimal, as the Department is not aware of significant reclassification which occurred following publication of the 2021 Rule. The Department welcomes feedback from commenters on the extent of any worker reclassification which occurred as a result of or following publication of the 2021 Rule.

The Department has attempted to place the magnitude of these potential impacts into context. Drawing on the best available evidence from the Contingent Worker Supplement (CWS), labor market studies of flexible work (Mas and Pallais, 2017; Chen et al., 2019),[159] and a recent evaluation of a 2019 California law that changed the standard for determining independent contractor classification in a manner that restricted independent contracting[160] (Palagashvili et al., 2024),[161] the Department estimates that the number of independent contractors could increase by 1 to 3 percentage points if this proposal were finalized. On today's labor force of approximately 25 million workers who rely on independent contracting as their primary or secondary job, this would represent between 0.25 million and 0.75 million additional independent contracting relationships, with a central estimate of 0.5 million.[162] The rationale for this estimate is explained in greater detail in section V.E.3.

The Department assumes that this increase would occur through new labor force entry rather than through the reclassification of existing employees. This assumption reflects Palagashvili et

[154] As explained in section III, the Department proposes to readopt the 2021 Rule's FLSA guidance with a substantive edit to proposed § 795.105(b), one non-substantive edit to proposed § 795.105(d)(2)(iii), and a few small modifications to the illustrative examples in proposed § 795.115.

[155] *See supra,* n. 81.

[156] *See* L. Palagashvili, *Consequences of Restricting Independent Work and the Gig Economy,* Mercatus Center (2022), available at *https://www.mercatus.org/research/policy-briefs/consequences-restricting-independent-work-and-gig-economy.*

[157] As explained in section I.F. of this NPRM, the Department is currently enforcing its pre-2021 guidance on employee and independent contractor status, which it has previously characterized as ''neither more nor less permissive of independent contractor relationships as compared to'' the 2021 Rule. *See* 86 FR 1240.

[158] *See* Richard J. Reibstein, Lisa B. Petkun & Andrew J. Rudolph, *How Companies Can Minimize the Risks of Independent Contractor Misclassification,* 40 Tax Mgmt. Comp. Plan. J. 207 (Aug. 3, 2012), republished at *https://www.jdsupra.com/legalnews/how-companies-can-minimize-the-risks-of-35626/* (discussing the ''voluntary reclassification'' of independent contractors and noting that ''some lawyers and legal commentators routinely advise businesses to cease using ICs or to reclassify all of their ICs as employees to avoid the potential for misclassification liability''); *see also* Daniel P. O'Meara, *A Preventative Approach To Using Independent Contractors,* J. Accountancy (Sept. 1, 1997), *https://www.journalofaccountancy.com/issues/1997/sep/prevent* (advising companies to ''resolve close cases by concluding the workers are employees'' to avoid legal risk).

[159] Alexandre Mas & Amanda Pallais, ''Valuing Alternative Work Arrangements,'' 107 Am. Econ. Rev. 3722 (2017); Keith Chen et al., ''The value of flexible work: Evidence from Uber drivers,'' 127 J. of Political Econ. 2735 (2019).

[160] *See* Assembly Bill No. 5 (''AB 5''), Ch. 296, 2019–2020 Reg. Sess. (Cal. 2019) (codifying the ''ABC'' test articulated in *Dynamex Operations W., Inc.* v. *Superior Court,* 416 P.3d 1 (Cal. 2018)). California's ABC test presumes an individual worker is an employee unless the potential employer can satisfy three elements: absence of control of the worker, that the worker performs work outside the employer's usual course of business, and that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

[161] Liya Palagashvili et al., ''Assessing the Impact of Worker Reclassification: Employment Outcomes Post–California AB5,'' Mercatus Working Paper (2024), *https://www.mercatus.org/research/working-papers/assessing-impact-worker-reclassification-employment-outcomes-post.*

[162] The Department believes that this 0.5 million figure represents an appropriate estimate of the total number of new independent contractor arrangements that could be created by this proposed rule, in part because some individuals and businesses operating in states with analyses that are more restrictive of independent contracting, such as the ''ABC'' tests used in California or Massachusetts, are unlikely to be affected by this rulemaking.

al.'s findings that, while AB 5 reduced independent contracting, there was no statistically significant evidence that it increased traditional employment, contrary to the impact that may have been anticipated as the law discouraged independent contractor classification.[163] This suggests few independent contractors were ''switched'' to traditional employees as a result of California's law. The Department believes the converse would be true here—that the reclassification of employees to independent contractors would remain small while new entry of independent contractors would be more significant (though lower, in terms of magnitude, than the converse impact under AB 5). Indeed, the proposed rule's effect on reclassification should be even smaller than under AB 5 because, unlike AB 5, it would not change the underlying classification standard (*i.e.,* the economic reality test); it would merely clarify the test. As such, permissible reclassification would be limited to workers who already possess the characteristics of being in business for themselves but are classified as employees due to perceived legal uncertainty. Meanwhile, employers who are holding back from engaging independent contractors would have the clarity to expand opportunities, creating genuine new participation.

The Department acknowledges that these estimates are subject to significant uncertainty. The precise number of new entrants, the distribution of reclassified positions across industries and firm sizes, and the demographic characteristics of affected workers cannot be reliably projected. Nevertheless, by presenting order-of-magnitude estimates, the Department seeks to provide transparency about the potential scope of impacts while inviting public comment to refine underlying assumptions.

The Department estimates that the regulatory familiarization costs of this proposed rule would be $488.2 million in the first year. However, the Department estimates that this proposed rule would yield $682.7 million dollars in cost savings per year.[164] Over a 10-year analytic time horizon, this results in an annualized net cost savings of $627.2 million and $617.2 million using a 3 percent and 7 percent discount rate respectively. In addition, and as discussed below, the Department estimates that the total undiscounted benefits to workers from new labor force entry could amount to $17.6 billion over 10 years, with an additional $14.9 billion accruing to broader society in the form of taxes collected on the earnings of the new labor These earnings are estimated at $87.79 billion over 10 years as described in section V.E.3 below. On an annualized basis, the Department estimates that the benefits from increased labor force participation could amount to $3.25 billion at a 7 percent discount rate, depending on the number of new entrants and their characteristics.

C. Current Number of Independent Contractors

The Department has estimated that there were 11.9 million independent contractors in the United States in 2023, the most recent year of data available.[165] As explained above, the Department believes the number of independent contractors for purposes of the FLSA, MSPA, and FMLA would increase as a result of this rule. There are a variety of estimates of the number of independent contractors, and these span a wide range based on methodologies and how the population is defined. The Department believes that the Current Population Survey (CPS) Contingent Worker Supplement (CWS) is the most appropriate estimate of the number of independent contractors; however, there are potential biases in these data as noted. Additionally, estimates from other sources are presented to demonstrate the potential range.

1. Department of Labor Estimate

The CPS is conducted by the U.S. Census Bureau and published monthly by the Bureau of Labor Statistics (BLS). The sample includes approximately 60,000 households and is nationally representative. Periodically since 1995, and most recently in 2023, the CPS has included a supplement to collect data on contingent and alternative employment arrangements. Based on the CWS, there were 11.9 million independent contractors in 2023, amounting to 7.4 percent of workers.[166]

The BLS's estimate of independent contractors includes workers ''who are identified as independent contractors, independent consultants, or freelance workers, regardless of whether they are identified as wage and salary workers or self-employed.'' Two questions are asked to identify independent contractors.

1. Workers reporting that they are self-employed are asked: ''Are you self-employed as an independent contractor, independent consultant, freelance worker, or something else (such as a shop or restaurant owner)?''

2. Workers reporting that they are wage and salary workers are asked: ''Last week, were you working as an independent contractor, an independent consultant, or a freelance worker?''

The Department believes that the Current Population Survey (CPS) Contingent Worker Supplement (CWS) offers an appropriate lower bound for the number of independent contractors. However, there are several possible limitations in this data. It is important to note that independent contractors are identified in the CWS in the context of the respondent's main job (*i.e.,* the job with the most hours).[167] Therefore, the estimate of independent contractors does not include those who may be employees for their primary jobs, but also work as independent contractors. This is likely the largest limiting factor in the data when trying to estimate the population of workers doing any work as an independent contractor. For example, Lim et al. (2019) estimates that for 48 percent of independent contractors, such work is their primary source of income.[168] Applying this estimate to the 11.9 million independent contractors estimated from the CWS results in 24.8 million independent contractors.[169]

The CPS CWS's large sample size results in small sampling error. However, the questionnaire's design may result in some non-sampling errors. For example, one potential limitation of the data is that the CWS includes information to calculate estimates of the prevalence of independent contractors at a single point in time, that is, during a specified week (generally the week prior to the interview). These numbers will thus underestimate the prevalence of independent contracting over a longer timeframe, which may better capture the size of the population.[170] For example,

[163] Palagashvili et al., *supra* n.161.

[164] The Department notes that this might be an overestimate of the effects of this rulemaking to the extent that some workers and businesses in certain states might not be affected by this rulemaking.

[165] U.S. Bureau of Labor Statistics, *Contingent and Alternative Employment Arrangements—July 2023,* USDL–24–2267 (Nov. 8, 2024), *https://www.bls.gov/news.release/pdf/conemp.pdf.*

[166] *Id.*

[167] While self-employed independent contractors are identified by the worker's main job, other independent contractors answered yes to the CWS question about working as an independent contractor last week. Although the survey question does not ask explicitly about the respondent's main job, it follows questions asked about the respondent's main job.

[168] Lim et al., *Independent Contractors in the U.S.: New Trends from 15 Years of Administrative Tax Data* (2019), *https://www.irs.gov/pub/irs-soi/19rpindcontractorinus.pdf.*

[169] 11.9 million independent contractors * (1 + (52 ÷ 48)).

[170] In any given week, the total number of independent contractors would have been roughly the same, but the identity of the individuals who do it for less than the full year would likely vary.

Farrell and Greig (2016) used a randomized sample of 1 million Chase customers to estimate prevalence of the Online Platform Economy.[171] They found that ''[a]lthough 1 percent of adults earned income from the Online Platform Economy in a given month, more than 4 percent participated over the three-year period.'' However, a factor of four is likely too large of an adjustment because a 3-year period does not represent the current workforce any more than does a 1-week period, and because there is likely more week-to-week volatility in participation in the Online Platform Economy than among independent contractors.

The CWS also uses proxy responses, which may underestimate the number of independent contractors. The RAND American Life Panel (ALP) survey conducted a supplement in 2015 to mimic the CPS CWS questionnaire. The results of the survey were summarized by Katz and Krueger (2018).[172] This survey found that independent contractors comprise 7.2 percent of workers.[173] Katz and Krueger identified two primary factors to explain the 0.5 percentage point difference in magnitude between the 2017 CWS and the ALP: (1) cyclical conditions and (2) differences in survey methods (*e.g.,* the use of self-responses only in the ALP supplement). The first factor does not reflect a bias in either survey or estimate, whereas the second factor *may* reflect an underestimate in the CWS estimate. Therefore, the Department believes a reasonable upper-bound on the potential bias due to the use of proxy responses in the CWS is 0.5 percentage points (7.2 versus 6.7).[174]

Another potential source of bias in the CWS data is that some respondents may not self-identify as independent contractors. In the CWS, one person answers the survey questions about everyone living in the household. Thus, respondents provide data about themselves and others living with them. People who report about other household members may not be able to answer all questions about others' employment arrangements.[175]

Conversely some workers misclassified as independent contractors may answer in the affirmative, despite not truly being independent contractors. The prevalence of misclassification is unknown, but it is generally agreed to be common. The National Employment Law Project conducted a literature review of state-level audits estimating misclassification of employees as independent workers and found that the share of employers misclassifying workers ranged from 10 percent to 30 percent.[176]

Because reliable data on the potential magnitude of these biases are unavailable, the Department has not calculated any estimates of how these biases may impact the estimated number of independent contractors.

2. Range of Estimates in the Literature

To further consider the range of estimates available, the Department conducted a literature review, the findings of which are presented in Table 1. Other studies were also considered but are excluded from this table because the study population was much broader than just independent contractors or because they are limited to one state.[177] The RAND ALP[178] and the General Social Survey's (GSS's) Quality of Worklife (QWL)[179] supplement are widely cited alternative estimates. The W.E. Upjohn Institute for Employment Research conducted large-scale telephone surveys to obtain their estimates on the independent contractor population.[180] However, the Department chose to use the CWS as our primary estimate over these other sources primarily because of the significantly larger sample sizes.

Jackson et al. (2017)[181] and Lim et al. (2019)[182] use tax information to estimate the prevalence of independent contracting. In general, studies using tax data tend to show an increase in prevalence of independent contracting over time whereas survey data do not. The use of tax data has some advantages

Thus, the number of unique individuals who are independent contractors would exceed the one-week estimate.

[171] D. Farrell & F. Greig, *Paychecks, Paydays, and the Online Platform* (2016), JPMorgan Chase Institute, *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2911293.* The authors define the Online Platform Economy as ''economic activities involving online intermediaries.'' This includes ''labor platforms'' that ''connect customers with freelance or contingent workers'' and ''capital platforms'' that ''connect customers with individuals who rent assets or sell goods peer-to-peer.'' As such, this study encompasses data on income sources that the Department acknowledges might not be a one-to-one match with independent contracting and could also include work that is part of an employment relationship. However, the Department believes that including data on income earned through online platforms is useful when discussing the potential magnitude of independent contracting.

[172] L. Katz & A. Kreuger, *The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015* (2018), *https://scholar.harvard.edu/lkatz/publications/rise-and-nature-alternative-work-arrangements-united-states-1995-2015.*

[173] The estimate is 9.6 percent without correcting for overrepresentation of self-employed workers or multiple job holders. *Id.* at 31.

[174] In addition to the use of proxy responses, this difference is also due to cyclical conditions. The impacts of these two are not disaggregated for independent contractors, but if we applied the relative sizes reported for all alternative work arrangements, we would get 0.36 percentage point difference due to proxy responses. Additionally, it should be noted that this may not entirely be a bias. It stems from differences in independent contracting reported by proxy respondents and actual respondents. As Katz and Krueger explain, this difference may be due to a ''mode'' bias or proxy respondents may be less likely to be independent contractors.

[175] U.S. Bureau of Labor Statistics, *Electronically mediated work: new questions in the Contingent Worker Supplement,* Monthly Labor Review (Sept. 2018), *https://www.bls.gov/opub/mlr/2018/article/electronically-mediated-work-new-questions-in-the-contingent-worker-supplement.htm.*

[176] National Employment Law Project, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries* (2020), *https://www.nelp.org/wp-content/uploads/Independent-Contractor-Costs.pdf.*

[177] *See, e.g.,* McKinsey Global Institute, *Independent Work: Choice, Necessity, and the Gig Economy* (2016), *https://www.mckinsey.com/featured-insights/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy;* Kelly Services, *Agents of Change* (2015), *https://www.kellyservices.com/global/siteassets/3-kelly-global-services/uploadedfiles/3-kelly_global_services/content/sectionless_pages/kocg1047720freeagent20whitepaper20210x21020final2.pdf;* Robles & McGee, *Exploring Online and Offline Informal Work: Findings from the Enterprising and Informal Work Activities (EIWA) Survey* (2016), *https://doi.org/10.17016/FEDS.2016.089;* Upwork, *Freelancing in America* (2019); Washington Department of Commerce, *Independent Contractor Study* (2019), *https://deptofcommerce.app.box.com/v/independent-contractor-study;* Farrell & Greig, *supra* n. 171; MBO Partners, *State of Independence in America* (2016), *https://www.mbopartners.com/state-of-independence/mbo-partners-state-of-independence-in-america-2016/;* Abraham et al., *Measuring the Gig Economy: Current Knowledge and Open Issues* (2018), *https://www.nber.org/papers/w24950;* Collins et al., *Is Gig Work Replacing Traditional Employment? Evidence from Two Decades of Tax Returns* (2019), *https://www.russellsage.org/research/outputs/gig-work-replacing-traditional-employment-evidence-two-decades-tax-returns;* Gitis et al., *The Gig Economy: Research and Policy Implications of Regional, Economic, and Demographic Trends,* American Action Forum (2017), *https://www.americanactionforum.org/research/gig-economy-research-policy-implications-regional-economic-demographic-trends/;* Dourado & Koopman, *Evaluating the Growth of the 1099 Workforce,* Mercatus Center (2015), *https://www.mercatus.org/publication/evaluating-growth-1099-workforce.*

[178] L. Katz & A. Kreuger, *The Rise and Nature of Alternative Work Arrangements in the United States, 1995–2015* (2018), *https://scholar.harvard.edu/lkatz/publications/rise-and-nature-alternative-work-arrangements-united-states-1995-2015.*

[179] Abraham et al., *Measuring the Gig Economy: Current Knowledge and Open Issues* (2018), *https://www.nber.org/papers/w24950.*

[180] K.G. Abraham et al., *The Independent Contractor Workforce: New Evidence on Its Size and Composition and Ways to Improve Its Measurement in Household Surveys* (2023), *https://www.nber.org/papers/w30997.*

[181] Jackson, Looney & Ramnath, *The Rise of Alternative Work Arrangements: Evidence and Implications for Tax Filing and Benefit Coverage* (2017), *https://home.treasury.gov/system/files/131/WP-114.pdf.*

[182] Lim et al., *supra* n.168.

and disadvantages over survey data. Advantages include large sample sizes, the ability to link information reported on different records, the reduction in certain biases such as recall bias, and records of all activity throughout the calendar year (the CWS only references one week). Disadvantages are that independent contractor status needs to be inferred; there is likely an underreporting bias (*i.e.,* some workers do not file taxes); researchers are generally trying to match the IRS definition of independent contractor; and the estimates include misclassified independent contractors. A major disadvantage of using tax data for this NPRM is that the data are not publicly available and thus cannot be verified or adjusted as necessary.

TABLE 1—SUMMARY OF ESTIMATES OF INDEPENDENT CONTRACTING

Source	Method	Definition	Percent of workers (%)	Sample size	Year
CPS CWS	Survey	Independent contractor, consultant or freelance worker.	7.4	~60,000	2023
ALP	Survey	Independent contractor, consultant or freelance worker.	7.2	6,028	2015
GSS QWL	Survey	Independent contractor, consultant or freelancer.	14.10	2,538	2014
Jackson et al	Tax data	Independent contractor, household worker.	[a] 3.3	~5.9 million [b]	2014
Lim et al	Tax data	Independent contractor	8.1	1% of 1099–MISC and 5% of 1099–K.	2016
W.E. Upjohn Institute for Employment Research.	Survey	Independent contractor	15	~61,000	2023

[a] Summation of (1) 2,132,800 filers with earnings from both wages and sole proprietorships and expenses less than $5,000, and (2) 4,125,200 primarily sole proprietorships with less than $5,000 in expenses.
[b] Estimate based on a 10 percent sample of self-employed workers and a 1 percent sample of W2 recipients.

D. Costs

1. Regulatory Familiarization Costs

Regulatory familiarization costs represent direct costs to businesses associated with reviewing a new regulation. To estimate the total regulatory familiarization costs imposed if this proposal is finalized, the Department used (1) the number of establishments and government entities; (2) the wage rate for the employees reviewing the rule; and (3) the number of hours that it estimates employers would spend reviewing the rule. This section presents the calculation for establishments first and then the calculation for independent contractors.

Regulatory familiarization costs may be a function of the number of establishments or the number of firms.[183] Presumably, the headquarters of a firm would conduct the regulatory review for businesses with multiple locations and may also require some locations to familiarize themselves with the regulation at the establishment level. Other firms may either review a rule to consolidate key takeaways for their affiliates or they may rely entirely on outside experts to evaluate a rule and relay the relevant information to their organization (*e.g.,* a chamber of commerce). The Department used the number of establishments to estimate the fundamental pool of regulated entities—which is larger than the number of firms. This assumes that regulatory familiarization occurs at both the headquarters and establishment levels.

To estimate the number of establishments incurring regulatory familiarization costs, the Department used the Statistics of U.S. Businesses (SUSB).[184] In 2021, the most recent year available, there were 8.3 million establishments. These data were supplemented with the 2022 Census of Government that reports 90,888 local government entities, and 51 state and federal government entities.[185] The number of establishments and governments was 8,389,450.

This universe is then restricted to the subset of establishments that engage independent contractors. In 2019, Lim et al. used extensive IRS data to model the independent contractor market and found that 34.7 percent of firms hire independent contractors.[186] These data are based on annual tax filings, so the dataset includes firms that may contract for only parts of a year. Multiplying the universe of establishments and governments by 35 percent results in 2.91 million entities.

The Department assumes that a Compensation, Benefits, and Job Analysis Specialist (SOC 13–1141) (or a staff member in a similar position) would review the rule.[187] According to the most recent Occupational Employment and Wage Statistics (OEWS) estimates, these workers had a mean wage of $39.86 per hour. Given the proposed clarification to the Department's interpretation of who is an employee and who is an independent contractor, the Department assumes that it would take on average about 1 hour to review a final rule. Based on prior rulemakings, the Department believes that an hour, on average, is appropriate. Assuming benefits are paid at a rate of 46 percent of the base wage, and overhead costs are 17 percent of the

[183] An establishment is commonly understood as a single economic unit, such as a farm, a mine, a factory, or a store, that produces goods or services. Establishments are typically at one physical location and engaged in one, or predominantly one, type of economic activity for which a single industrial classification may be applied. An establishment contrasts with a firm, or a company, which is a business and may consist of one or more establishments. *See* BLS, ''Quarterly Census of Employment and Wages: Concepts,'' *https://www.bls.gov/opub/hom/cew/concepts.htm.*

[184] U.S. Census Bureau, 2021 SUSB Annual Data Tables by Establishment Industry, *https://www.census.gov/data/tables/2021/econ/susb/2021-susb-annual.html.*

[185] U.S. Census Bureau, *2022 Census of Governments, https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html.*

[186] *See* Lim et al., *supra* n.168, at 66 (Table 10: Firm sample summary statistics by year (2001–2015)).

[187] A Compensation/Benefits Specialist ensures company compliance with federal and state laws, including reporting requirements; evaluates job positions, determining classification, exempt or non-exempt status, and salary; plans, develops, evaluates, improves, and communicates methods and techniques for selecting, promoting, compensating, evaluating, and training workers. *See* BLS, *Occupational Employment and Wage Statistics Query System, https://data.bls.gov/oes/#/industry/000000* (last updated May 2024).

base wage, the reviewer's effective hourly rate would be $64.97; thus, the average cost per establishment would be $64.97.[188] Therefore, the undiscounted regulatory familiarization costs for establishments in Year 1 if the proposed rule is finalized are estimated to be $189.1 million ($64.97 × 2,911,139). Regulatory familiarization costs in future years are assumed to be de minimis. This amounts to a 10-year annualized cost of $19.9 million at a discount rate of 7 percent.

For regulatory familiarization costs for independent contractors, the Department used its estimate of up to 24.8 million independent contractors and assumed each independent contractor would spend an average of 30 minutes to review the regulation. The average time spent by independent contractors is estimated to be shorter than for establishments and governments. This difference is in part because the Department believes independent contractors would likely rely on summaries of the key elements of a rule published by the Department, worker advocacy groups, media outlets, and accountancy and consultancy firms, as has occurred with other rulemakings. This time is valued at $24.12, which is the median hourly wage rate for independent contractors in the CWS of $23.94 updated to 2024 dollars using the gross domestic product (GDP) deflator.[189] [190] Therefore, the undiscounted regulatory familiarization costs to independent contractors in Year 1 are estimated to be $299.01 million ($24.12 × 0.5 hour × 24.8 million). The total one-time undiscounted regulatory familiarization costs for establishments, governments, and independent contractors are estimated to be $488.2 million. Regulatory familiarization costs in future years are assumed to be de minimis. Employers and independent contractors would continue to familiarize themselves with the applicable legal framework even if this proposal is not finalized, so this rulemaking is not expected to impose costs after the first year. This amounts to a 10-year annualized cost of $50.3 million at a discount rate of 3 percent or $52.2 million at a discount rate of 7 percent.

2. Other Costs

There may be other costs associated with this NPRM that have not been quantified due to uncertainties or data limitations. The Department invites public comments and data to address this issue.

E. Benefits and Cost Savings

This NPRM, if finalized, is expected to result in cost savings to firms, including increased clarity, reduced misclassification, reduced litigation, and increased efficiency. A final rule adopting the proposal in this NPRM could increase clarity concerning whether a worker is an independent contractor under the FLSA, reducing burden on firms to classify workers, misclassification, and litigation costs. Firms could spend less time analyzing independent contractor status, saving internal administrative costs. Additionally, workers may benefit from having more clarity about their rights related to their work status. Finally, due to increased clarity, there could be a reduction in FLSA litigation involving alleged misclassification.

1. Increased Clarity

This proposed rule, if finalized, would increase clarity concerning whether a worker is classified as an employee or as an independent contractor under the FLSA. This would reduce the burden faced by employers, potential employers, and workers in understanding the distinction and how the working relationship should be classified. It is unclear exactly how much time would be saved, but the Department provides some quantitative estimates to provide a sense of the magnitude. The importance of increased clarity is noted by an article authored by Caitlin Kapolas on behalf of Lift HCM which notes that misclassification due to lack of clarity can result in fines, back taxes, and potential lawsuits—all consequences businesses can avoid with proper worker classification.[191]

The Department expects that a final rule adopting this proposal would produce beneficial cost savings by clarifying the classification process. To quantify this benefit, the following variables need to be defined and estimated: (1) the number of new employer-worker relationships being assessed to determine the appropriate classification; (2) the amount of time saved per assessment; and (3) an average wage rate for the time spent. The Department estimates this will result in an undiscounted annual cost savings of $682.7 million. The Department began with its estimate of the number of independent contractors as the basis for estimating the number of new relationships. As discussed above, according to the CWS, there were 11.9 million workers in 2023 who were independent contractors in their primary job. Adjusting this figure to account for independent contractors in their secondary job results in 24.8 million independent contractors. According to Lim et al. (2019), in 2016 the average number of 1099–MISC forms issued per independent contractor was 1.43.[192] Therefore, the Department assumes the average independent contractor has 1.43 jobs per year. This number does not account for the workers who do not file taxes, a recognized limitation in the cited study. Because it is unclear whether those who do not file taxes would have a higher or lower number of jobs per year, the Department does not believe that this limitation biases the estimate in either direction. Multiplying these two numbers (1.43 jobs per year × 24.8 million independent contractors) results in an estimated 35.5 million new independent contractor relationships which would be assessed by the Department's clearer analysis. A subset of new independent contractor relationships may have time savings associated with the proposed rule if finalized. Such a reduction would be difficult to quantify because it is unclear how many establishments and independent contractors will realize benefits of increased clarity. It is also possible that the increased clarity of the classification process would lead to compound effects that generate far greater benefits over time. Nonetheless, because it is possible that only a subset of contracts would receive the cost savings associated with increased clarity, the Department has preliminarily reduced the number of contracts in the estimates by 25 percent. This would result in 26.6 million contracts with cost savings to both the engaging firm and the independent

[188] BLS, Employer Costs for Employee Compensation—September 2025, Employer Costs for Employee Compensation Summary—2025 Q02 Results [Benefits rate based on compensation rates for civilian workers].

[189] The Department's calculation of the median hourly wage is based on the July 2023 Contingent and Alternative Employment Arrangements release, where the median weekly earnings for full-time contingent workers is $838 and the definition of fulltime work status is 35 hours or more per week ($838 ÷ 35 hours = $23.94).

[190] In the 2021 Rule the Department included an additional 45 percent for benefits and 17 percent for overhead. These adjustments have been removed here, because independent contractors do not usually receive employer-provided benefits and generally have overhead costs built into their hourly rate.

[191] Caitlin Kapolas, Lift HCM, *Independent Contractor vs. Employee: Key Differences and Compliance Tips* (2025), *https://lifthcm.com/article/independent-contractor-vs-employees.*

[192] Lim et al., *supra* n.168, at 61.

contractor.[193] The Department requests comment on: (a) how many of the 35.5 million independent contractor relationships (or the 26.6 million subset or another subset that acknowledges that independent contractor relationships in some states may still be assessed under state laws notwithstanding the clearer analysis in this rulemaking) undergo assessments per year, and (b) if these point-in-time estimates overstate or possibly even understate the number of annual assessments, how the savings per assessment should be adjusted from the preliminary estimates to be discussed next.

Following a similar methodology to the one used in the 2021 final rule, the Department has assumed that employers would save 20 minutes of time and independent contractors would save 10 minutes per each new contract.[194] These numbers are small because they represent the marginal time savings for each contract, not the entire time necessary to identify whether an independent contractor relationship holds.

To estimate the cost savings due to the increased clarity that the proposed rule would provide, the Department applies the following estimates. For employers, this time is valued at a loaded hourly wage rate of $64.97. This is the mean hourly rate of Compensation, Benefits & Job Analysis Specialists (13–1141) from the OEWS multiplied by 1.63 to account for benefits and overhead. For independent contractors, this time is valued at $24.12 per hour (median wage rate for independent contractors in the CWS of $23.46 adjusted to present value using the GDP deflator). Using these numbers, the Department estimates that contracting firms would save $575.8 million annually and independent contractors would save $106.9 million annually due to increased clarity. In sum, this is estimated to be an undiscounted annualized cost savings of $682.7 million. The Department assumes the parameters used in this cost savings estimate would remain constant over time. This assumes no growth in independent contracting, no real wage growth, and no subsequent innovation in the employer-worker relationship. These assumptions facilitate simplicity of calculation.

TABLE 2—COST SAVINGS FOR INCREASED CLARITY TO EMPLOYERS AND INDEPENDENT CONTRACTORS

Parameter	Value
Number of new relationships (per year):	
Independent Contractors	24,791,667
Number of jobs per contractor	1.43
New independent contractor jobs to assess using clearer analysis	35,452,083
Adjustment factor	75%
Total	26,589,063
Time savings per job (minutes):	
Employers	20
Independent contractors	10
Value of time:	
Employers	$64.97
Independent contractors	$24.12
Total Savings:	
Employers	$575,846,417
Independent contractors	$106,869,807
Total	$682,743,224

2. Reduced Litigation

This proposal, if finalized, could result in decreased litigation due to increased clarity and reduced misclassification. This proposal would clarify to stakeholders how to distinguish between employees and independent contractors. The increased clarity would result in fewer independent contractor misclassification legal disputes, and lower litigation costs. The Department welcomes feedback on how to quantify the potential reduction in litigation due to increased clarity.

3. Increased Labor Force Entry

The Department anticipates that most benefits of this proposal would arise from new labor force entry. A recent assessment of a 2019 California law (AB 5) that changed the standard for determining independent contractor classification in a manner that restricted independent contracting found that self-employment fell by 10.5 percent in affected occupations and overall employment fell by 4.4 percent in affected occupations.[195] The Department believes this proposed rule would have an effect in the opposite direction because it would be viewed as less restrictive of independent contracting than the 2024 Rule. However, this labor force effect would be smaller in magnitude because the change to California's independent contractor analysis codified under AB 5 was more substantial than the change to the Department's guidance regarding the analysis under federal wage and hour law that could occur as a consequence of this rulemaking, which would not change the underlying classification standard (*i.e.,* the economic reality test) and would primarily add clarity. Additionally, this rulemaking would not likely impact some individuals operating in states that have more stringent independent contractor tests, though the exact offsetting impact of such state laws is difficult to determine

[193] As noted earlier, this might be an overestimate of the effects of this rulemaking to the extent that some workers and businesses in certain states might not be affected by this rulemaking. *See supra,* n.164.

[194] These time savings are based on a 33 percent assumed reduction in the estimated familiarization time per contract for both independent contractors discussed above in section V.D.1. (reduced from 30 minutes to 20 minutes) and employers (reduced from 1 hour to 40 minutes).

[195] Palagashvili et al., *supra* n.161. The occupations affected by the California law exclude the approximately 109 occupations for which a statutory exemption from the ABC test exists. *Id.,* Appendix Table A1.

because of significant variation in state laws' exemptions and applications.[196] Accordingly, the Department estimates that the number of independent contractors could increase by 1 to 3 percent if this proposal were finalized.

As explained above, the Department assumes this increase results from independent contractors entering the workforce. That assumption is based on Palagashvili et al.'s finding that there was no statistically significant evidence that AB 5 increased traditional employment—suggesting that few independent contractors switched to traditional employment—but that AB 5 did result in a statistically significant decrease of independent contractors in the labor force.[197] The converse effect would be an increase in independent contractors in the labor force without significant reclassification of employees to independent contractors. The Department acknowledges that, due to data limitations and complexities involving the interpretation of different state labor laws, the Department might be overestimating or underestimating the potential impact of this rulemaking on the number of independent contractors and the overall labor force. Also, Palagashvili et al. admit a lack of parallel trends for the pre-treatment period—which raises questions about the reliability of their difference-in-difference identification strategy. The Department requests public comments and data on the potential labor force impact of this rulemaking, including any alternative methods, inputs, or assumptions.

Using the above estimate of 24.8 million independent contractors, the Department's assumption results in between 248,000 and 744,000 (1 and 3 percent of all independent contractors respectively) new workers entering independent contracting, with half being full-time and half being part-time independent contractors.[198] Using the above hourly wage estimate of $24.12 for full-time independent contractor and assuming that each works full-time (40 hours per week for 52 weeks per year), the Department estimates that each new full-time worker would have the opportunity to earn $50,170 per year. Using the median wage estimate of $400 weekly for part-time independent contractors and assuming they work year-round,[199] the Department estimates that each new part-time independent contractor would have the opportunity to earn $20,800 per year. Earnings is an intermediate result toward the goal of estimating worker surplus, which is a net value amount that accounts for the opportunity cost of time and effort. Bartik (2015)[200] estimates such net value to range from 8 to 32 percent of earnings. Based on this finding, we assign a midpoint value of 20 percent to total earnings to quantify the social benefit derived from increased earnings. Assuming that the number of independent contractors increases by the central estimate of 2 percent, if this proposal were finalized, this results in estimated additional undiscounted total earnings of approximately $87.79 billion. Applying the 20 percent estimate of societal value to this finding yields a societal benefit attributable to those additional earnings of $17.59 billion (for 248,000 new entries evenly split between full-time and part-time workers) over 10 years or an annualized increase of $1.76 billion at a 7 percent discount rate. Moreover, a benefit accruing to broader society, in the form of taxes collected on the additional earnings, is estimated as 17 percent of those earnings, or $1.49 billion annually.[201] The Department seeks public comment and input on the likely magnitude of new labor force entry, and the quantification of worker surplus and other societal benefits under this proposal.

Along the same lines, a substantial body of evidence demonstrates that workers derive significant benefit from flexible work arrangements. Using administrative data on Uber drivers, Chen et al. (2019) estimate that the ability to choose when to work yields more than twice the surplus that drivers would obtain in less flexible alternatives.[202] The Department, however, is not proposing to quantify the economic value of additional flexibility at this time (except insofar as it is embedded in the worker surplus quantification above).

4. Consumer Surplus

Qualitatively, expanded participation in independent contracting also increases service availability in sectors such as ridesharing, delivery, personal services, and creative/professional contracting. Evidence from ride-hailing markets indicates that greater supply reduces wait times and rationing, generating consumer surplus.[203] While the Department does not attempt to quantify these gains in the base case, such benefits are conceptually distinct from transfers and may be material. The Department seeks public comment on evidence of consumer surplus gains from expanded service availability that could support quantification.

5. Broader Labor Market Benefits

Additional benefits may arise from expanding labor force participation among groups that highly value flexibility (*e.g.,* caregivers, students, older workers); supporting continued labor market attachment during periods when traditional employment is infeasible; and enhancing efficiency by better aligning heterogeneous worker preferences with available work arrangements. These effects are difficult to quantify but represent genuine improvements in worker welfare and economic efficiency.

F. Potential Transfer Effects

The substantive effect of the proposed rule is not intended to favor independent contractor or employee classification relative to the status quo. However, the Department assumes in this RIA that the increased legal certainty associated with this proposed rule could lead to an increase in the

[196] The FLSA does not preempt or ''excuse noncompliance with'' state laws that establish stricter standards based on the state's own law and definitions. 29 U.S.C. 218(a). In states that use an ABC test, there is significant variation in the number of occupations and/or industries that are exempt from the test. Furthermore, some states apply the test for purposes of unemployment insurance, for example, but not wage and hour law.

[197] Palagashvili et al., *supra* n.161. The impact of AB 5 on affected occupations was estimated across four occupation subsamples using data on the percentage of employed workers who were self-employed by occupation: (1) Occupations in the lowest quartile of prevalence of self-employment, (2) Occupations in the second quartile of prevalence of self-employment, (3) Occupations in the third quartile of prevalence of self-employment, and (4) Occupations in the highest quartile of prevalence of self-employment.

[198] Based on the 2023 Contingent Worker Supplement (CWS), the Department's estimate of an even distribution of full-time and part-time works entering the labor force may underestimate the actual distribution of full-time Independent Contractors and the potential economic impact of new labor force participants. *See Contingent and Alternative Employment Arrangements—July 2023, supra* n.165. Additionally, as noted earlier, this might be an overestimate of the effects of this rulemaking to the extent that some workers and businesses in certain states might not be affected by this rulemaking. *See supra* n.164.

[199] Annual wage estimate for part-time Independent Contractors is based on the 2023 CWS estimate for the median usual weekly earnings of part-time workers ($400 per week × 52 weeks = $20,800). *See Contingent and Alternative Employment Arrangements—July 2023, supra* n.165.

[200] Bartik, T., ''The Social Value of Job Loss and Its Effect on the Costs of U.S. Environmental Regulations,'' Review of Environmental Economics and Policy 9, no 2 (2015).

[201] The source for the 17 percent input is *https://aspe.hhs.gov/sites/default/files/documents/639756a60fbe7e51786bcec176ad52f1/Standard-RIA-Values-2025.pdf.*

[202] Chen et al., *supra* n.159, at 2769.

[203] Juan Camilo Castillo et al., *Matching and Pricing in Ride Hailing: Wild Goose Chases and How to Solve Them* (February 13, 2024), *https://ssrn.com/abstract=2890666* or *http://dx.doi.org/10.2139/ssrn.2890666.*

number of independent contractor arrangements due to some degree of reclassification. To be sure, as explained above, Palagashvili, et al. did not find that AB 5 resulted in a significant increase in traditional employment, suggesting that few independent contractors switched to traditional employment as a result of California's law.[204] The implication is that reclassification due to this proposed rule would likewise remain small, especially since the Department does not propose changing the underlying legal standard and merely clarifies the analysis. Nonetheless, the Department believes that some reclassification may occur where workers are functionally in business for themselves but are currently being classified as employees due to legal uncertainty that the proposed rule dispels.

Potential transfers may result from differences in employer-provided benefits, tax liabilities, and earnings between employees and independent contractors. Although employer-provided benefits could decrease, and tax liabilities could increase, independent contractors also tend to receive higher gross earnings than employees to offset tax, benefits, and other expenses, thus making much of the transfer impact intrapersonal (in other words, an individual worker may receive remuneration in a different form).[205] Overall, the Department believes the net impact on total compensation should be small in either direction.

To the extent that employers currently provide employees benefits such as health insurance, retirement contributions, and paid time off, these would likely decrease with an increase in the use of independent contractors because independent contractors generally do not receive these benefits directly (although independent contractors are able to purchase at least some of these benefits for themselves).

As self-employed workers, independent contractors are legally obligated to pay both the employee and employer shares of the Federal Insurance Contributions Act (FICA) taxes. Thus, if workers' classifications change from employees to independent contractors, there may be a transfer in federal tax liabilities from employers to workers (regardless of whether this affects the actual cost of these taxes to the worker).

Furthermore, in order to attract qualified workers, companies must offer competitive compensation whether they are employees or independent contractors. Therefore, in a competitive labor market, any reduction in benefits and increase in taxes is likely to be offset by higher gross earnings. An Upjohn Institute study of CWS data from 1995 to 2017 finds that independent contractors and contract workers who report being self-employed have weekly earnings of 3 percent and 8 percent more, on average, than wage and salary workers with the same observable job characteristics.[206] By contrast, some sources warn employers that classifying a worker as an independent contractor can cost between 25 and 40 percent more in hourly terms.[207] The Department believes this apparent gap reflects at least two dynamics: within a firm, when comparing truly equivalent positions, shifting an employee to independent contractor status is costly because the firm must compensate for lost benefits, payroll taxes, and other expenses. Across the broader economy, however, the Department assumes that the pool of independent contractors skews towards lower-tenure workers who perform qualitatively different tasks from employees, which can compress the measured earnings premium in survey data to only a few percentage points. Such differences in specific job tasks may not be observable in CWS data upon which the Upjohn study relied. The Department invites comments on how best to reconcile these figures.

The Department invites further comments on its assumption that use of independent contractors will increase if the proposed rule is finalized. The Department also welcomes comments and data from companies looking to increase their use of independent contractors, specifically on whether their classifications of workers as employees would change to independent contractor status, consistent with this proposed rule and their other contractual and legal obligations, or whether they would instead hire new workers as independent contractors.

G. Alternatives Considered

The Department considered three alternatives to the proposed rule, listed below from least to most restrictive of independent contracting: [208]

(1) adoption of the common law control test, which applies in distinguishing between employees and independent contractors under various other federal laws;

(2) adoption of WHD's current enforcement policy, which is comprised of sub-regulatory guidance and provides a multifactor ''economic reality'' balancing test; and

(3) adoption of an ''ABC'' test (which a number of states have adopted).

The Department previously considered and rejected the first and third alternatives—*i.e.,* a common law control test or an ABC test—on legal viability grounds in the 2021 Rule and 2024 Rule.[209] The Department continues to believe that legal limitations prevent the Department from adopting either of those alternatives, but has included them in this analysis to the extent that an analysis might be helpful in providing greater context on the merits of legislative proposals in Congress.[210]

1. Adopting a Common Law Control Test

The least restrictive (of independent contracting) alternative considered to the proposed rule's streamlined ''economic reality'' test would be to adopt a common law control test, as is generally used to determine employee or independent contractor classification questions arising under the Internal Revenue Code and various other federal

[204] Palagashvili et al., *supra* n.161.

[205] *See generally* Stephen Fishman, *Working for Yourself: Law & Taxes for Independent Contractors, Freelancers & Consultants* (6th ed. 2006). Scholarly literature relevant to substitution among forms of remuneration includes: A. Mas and A. Pallais, ''Alternative Work Arrangements,'' *Annual Review of Economics* 12, pp. 631–58 (2020); S.J. Hong, J.M. Bauer, K. Lee and N.F. Granados, ''Drivers of Supplier Participation in Ride-Hailing Platforms,'' *Journal of Management Information Systems* 37(3), pp. 602–30 (2020); Hagiu and J. Wright, ''The Status of Workers and Platforms in the Sharing Economy,'' *Journal of Economics & Management Strategy* 28(1), pp. 97–108 (2019); M.J. Bidwell and F. Briscoe, ''Who Contracts? Determinants of the Decision to Work as an Independent Contractor Among Information Technology Workers,'' *Academy of Management Journal* 52(6), pp. 1148–68 (2009); R. Gibbons, ''Incentives in Organizations,'' *Journal of Economic Perspectives* 12(4), pp. 115–32 (1998); B. Holmstrom and P. Milgrom, ''The Firm as an Incentive System,'' *American Economic Review* 84(4), pp. 972–91 (1994).

[206] *See* Katharine G. Abraham & Susan N. Houseman, *Contingent and Alternative Employment: Lessons From the Contingent Worker Supplement, 1995–2017,* W.E. Upjohn Inst. (2020), *https://research.upjohn.org/cgi/viewcontent.cgi?article=1274&context=reports.*

[207] *See* Barbara Weltman, *How Much Does an Employee Cost You?,* U.S. Small Business Administration (2019), *https://www.sba.gov/blog/how-much-does-employee-cost-you.*

[208] OMB guidance advises that, where possible, agencies should analyze at least one ''more stringent option'' and one ''less stringent option'' to the proposed approach. OMB Circular A–4 at 16.

[209] *See* 86 FR 1238–43; 89 FR 1660–63.

[210] OMB Circular A–4 advises that agencies should ''discuss the statutory requirements that affect the selection of regulatory approach. If legal constraints prevent the selection of a regulatory action that best satisfies the philosophy and principles of Executive Order 12866, [agencies] should identify these constraints and estimate their opportunity cost. Such information may be useful to Congress under the Regulatory Right-to-Know Act.''

laws.[211] The overarching focus of the common law control test is ''the hiring party's right to control the manner and means by which [work] is accomplished,'' *Reid,* 490 U.S. at 751, but the Supreme Court has explained that ''other factors relevant to the inquiry [include] the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.'' *Id.* at 751–52 (footnotes omitted).

Although the common law control test considers many of the same factors as those identified in the proposed rule's ''economic reality'' test (*e.g.,* skill, duration of the working relationship, investments in equipment and hiring helpers, *etc.*), courts generally recognize that, because of its focus on control, the common law test is more permissive of independent contracting arrangements than the economic reality test, which more broadly examines the economic dependence of the worker. *See, e.g., Diggs* v. *Harris Hospital-Methodist, Inc.,* 847 F.2d 270, 272 n.1 (5th Cir. 1988) (observing that ''[t]he 'economic realities' test is a more expansive standard for determining employee status'' than the common law control test). Thus, if a common law control test determined independent contractor status under the FLSA, it is possible that some workers presently classified as employees could be reclassified as independent contractors, increasing the overall number of independent contractors and reducing the overall number of employees. The Department is unable to estimate the exact magnitude of such a reclassification effect, but believes that the vast majority of FLSA employees would remain FLSA employees under a common law control test.

Adopting a common law control test would create a simpler legal regime for regulated entities interested in receiving services from an independent contractor, thereby reducing confusion, compliance costs, and legal risk for entities interested in doing business with independent contractors. Entities would not, for example, have to understand and apply one employment classification analysis for tax purposes and a different employment classification analysis for FLSA purposes. Thus, adopting the common law control test would likely increase perpetual cost savings for regulated entities attributable to improved clarity and reduced litigation as compared to the proposed rule. It could, on the other hand, impose burdens on workers who might prefer to be employees subject to FLSA protections.

The Department notes that the Supreme Court has interpreted the ''suffer or permit'' language in section 3(g) of the FLSA as demanding a broader definition of employment than that which exists under the common law. *See, e.g., Darden,* 503 U.S. at 326; *Portland Terminal Co.,* 330 U.S. at 150–51. Accordingly, the Department believes it is legally constrained from adopting the common law control test unless the Supreme Court revisits its precedent or if Congress passes legislation that alters the applicable analysis under the FLSA.

2. Adopting WHD's Current Enforcement Policy

On May 1, 2025, WHD issued Field Assistance Bulletin (FAB) No. 2025–1,[212] directing WHD field staff to no longer apply the analysis from the 2024 Rule when determining employee or independent contractor status in FLSA investigations. Instead, FAB 2025–1 instructs WHD field staff to use the analysis from the July 2008 version of Fact Sheet #13, as further informed by Opinion Letter FLSA2025–2, in WHD enforcement matters. This is WHD's current enforcement policy regarding FLSA independent contractor or employee status. Opinion Letter FLSA2025–2 applies a six-factor economic reality analysis derived from the July 2008 version of Fact Sheet #13 that focuses on how the factors relate to the worker's economic dependence or independence and emphasizes the degree to which the worker could choose between work opportunities, work for others including competitors, and pursue external economic opportunities.

The Department believes that this multifactor balancing test that WHD is currently applying per FAB 2025–1 is neither materially more nor less permissive of independent contractor relationships as compared to the streamlined, core factors analysis set forth in the 2021 Rule,[213] which the Department is proposing to readopt. Both tests describe the ''economic dependence'' of the worker at issue as the essential inquiry of the test; both emphasize the importance of actual practice over contractual or theoretical possibilities (*i.e.,* the ''economic reality'' of the work arrangement); and both evaluate the same set of underlying factors, notwithstanding an emphasis and consolidation of certain factors under the streamlined test.

While Opinion Letter FLSA2025–2, for example, sought to refine each factor in a focused way, it did not expressly recognize any ''core'' factors and instead stated that ''the appropriate weight to give to each factor depends on the facts.'' [214] Although it provides some additional instruction, WHD's current enforcement policy lacks specific guidance on how to weigh the factors when applying the multi-factor economic reality analysis and leaves stakeholders without clearer guidance to determine independent contractor or employee status under the FLSA, especially in today's modern economy. For these reasons, the Department is not proposing to adopt its current enforcement policy on independent contractor or employee status.

3. Adopting an ''ABC'' Test

The third and most restrictive (of independent contracting) regulatory alternative considered to the Department's proposed rule would be to adopt an ''ABC'' test like the ones enacted in a number of states to distinguish between employee and

[211] *See* 26 U.S.C. 3121(d)(2) (generally defining the term ''employee'' under the Internal Revenue Code as ''any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee''); 42 U.S.C. 410(j)(2) (similarly defining ''employee'' under the Social Security Act). The Supreme Court has explained that the common law standard of employment applies by default under Federal law ''unless [Congress] clearly indicates otherwise.'' *Darden,* 503 U.S. at 325 (holding that ''a common-law test'' should resolve employee/independent contractor disputes under Employee Retirement Income Security Act); *see also Reid,* 490 U.S. at 739–40, 751 (explaining that ''when Congress has used the term 'employee' without defining it, we have concluded that Congress intended to describe the conventional master-servant relationship as understood by common-law agency doctrine'' and applying ''principles of general common law of agency'' to determine ''whether . . . work was prepared by an employee or an independent contractor'' under the Copyright Act of 1976).

[212] *https://www.dol.gov/sites/dolgov/files/WHD/fab/fab2025-1.pdf.*

[213] *See* 86 FR 1240 (explaining that the Department's pre-2021 guidance was ''neither more nor less permissive of independent contractor relationships as compared to'' the 2021 Rule).

[214] *See* WHD Op. Ltr. FLSA2025–2 at 5.

independent contractor status.[215] Generally, an ABC test presumes an individual is an employee unless the potential employer can satisfy all three requirements in order to classify the individual as an independent contractor. The three requirements of an ABC test typically are: (A) the individual is free from the potential employer's control or direction in performing his work, both under a contract for the performance of such work and in fact; (B) the work performed by the individual is outside the usual course of the potential employer's business; and (C) the individual is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the potential employer.[216]

On its face, an ABC test is more restrictive of independent contracting arrangements than any formulation of an ''economic reality'' test, including the proposed rule. Whereas no single factor necessarily disqualifies a worker from independent contractor status under an economic reality test, *each* of an ABC test's three factors may alone disqualify the worker from independent contractor status. The Department believes adopting an ABC test as the FLSA's generally applicable analysis for distinguishing employees from independent contractors would be too restrictive.

In any event, the Department believes it is legally constrained from adopting an ABC test because the Supreme Court has instituted the economic reality test as the relevant standard for determining workers' classification under the FLSA as an employee or independent contractor. *See Tony & Susan Alamo,* 471 U.S. at 301 (''The test of employment under the Act is one of 'economic reality.' ''); *Whitaker House,* 366 U.S. at 33 (holding that '' 'economic reality' rather than 'technical concepts' is . . . the test of employment'' under the FLSA) (citing *Silk,* 331 U.S. at 713; *Rutherford Food,* 331 U.S. at 729)).

Moreover, the Supreme Court has stated that the existence of employment relationships under the FLSA ''does not depend on such isolated factors'' as the three independently determinative factors in an ABC test would constitute, ''but rather upon the circumstances of the whole activity.'' *Rutherford Food,* 331 U.S. at 730. Because an ABC test is therefore inconsistent with Supreme Court precedent interpreting the FLSA, the Department concludes it could not adopt an ABC test unless the Supreme Court revisits its precedent or if Congress passes legislation that alters the applicable analysis under the FLSA.

VI. Initial Regulatory Flexibility Act Analysis (IRFA)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), requires Federal agencies engaged in rulemaking to consider the impact of their rules on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. Accordingly, the Department examined the regulatory requirements of this NPRM, if finalized, to determine whether they would have a significant economic impact on a substantial number of small entities.

The Department believes that rescinding the 2024 Rule and replacing it with regulations that provide greater clarity and predictable outcomes would be helpful for both workers and employers. The Department believes this NPRM, if finalized, would likely improve the welfare of both workers and businesses on the whole, including those who wish to work as independent contractors.

A. Reasons Why Action by the Agency Is Being Considered and Statement of Objectives and Legal Basis for the Proposed Rule

As explained more fully in section II of this notice, the Department is concerned that the 2024 Rule fails to provide an analysis for distinguishing between independent contractors and employees under the FLSA that is sufficiently clear and leads to predictable outcomes. The Department is separately concerned that the 2024 Rule's description of several economic reality factors could be viewed as setting a higher bar to find independent contractor status than the law requires. Among other harms, an analysis which is ambiguous or perceived as too restrictive of independent contracting can deter businesses from engaging with bona fide independent contractors or induce them to unnecessarily classify such individuals as employees—concerns emphasized by many self-identified independent contractors who have participated in the Department's recent rulemakings on this topic.

Accordingly, in this rulemaking, the Department is proposing to rescind the 2024 Rule and largely readopt the 2021 Rule,[217] which the Department has successfully applied in WHD investigations.[218] Additionally, the Department is proposing to revise the regulations addressing employee or independent contractor status under MSPA and the FMLA so that the analysis in part 795 applies when determining employee or independent contractor status under those statutes too.

The Department's authority to interpret the FLSA comes with its authority to administer and enforce it. *See* 29 U.S.C. 204; *Herman* v. *Fabri-Centers of Am., Inc.,* 308 F.3d 580, 592–93 & n.8 (6th Cir. 2002) (noting that ''[t]he Wage and Hour Division of the Department of Labor was created to administer the Act'' while agreeing with the Department's interpretation of one of the FLSA's provisions); *Dufrene* v. *Browning-Ferris, Inc.,* 207 F.3d 264, 267 (5th Cir. 2000) (''By granting the Secretary of Labor the power to administer the FLSA, Congress implicitly granted him the power to interpret.''); *Condo* v. *Sysco Corp.,* 1 F.3d 599, 603 (7th Cir. 1993) (same). The Department's authority to interpret the FMLA and MSPA is expressly delegated by statute. 29 U.S.C. 2654 (FMLA); 29 U.S.C. 1861 (MSPA).

B. Description of the Number of Small Entities Potentially Affected by the Proposed Rule

The Department used the Small Business Administration size standards, which determine whether a business qualifies for small-business status, to estimate the number of small entities.[219] The Department then applied these thresholds to the U.S. Census Bureau's 2022 Economic Census to obtain the

[215] *See e.g.,* Cal. Lab. Code sec. 2775(b)(1)(A)–(C) (2025); Mass. Gen. Laws ch. 149, sec. 148B(a)(1)–(3) (2025); N.J. Stat. 43:21–19(i)(6)(A)–(C) (2025); Vt. Stat. Ann. Tit. 21, sec. 341(1) (2025); *see also* Keith Cunningham-Parmeter, *Gig-Dependence: Finding the Real Independent Contractors of Platform Work,* 39 N. Ill. U. L. Rev. 379, 408–11 (2019) (discussing the origins and expansion of the ABC test).

[216] Jon O. Shimabukuro, Cong. Rsch. Serv., R46765, *Worker Classification: Employee Status Under the National Labor Relations Act, the Fair Labor Standards Act, and the ABC Test* (2021).

[217] As explained in section III, the Department proposes to readopt the 2021 Rule's FLSA guidance with a substantive edit to proposed § 795.105(b), one non-substantive edit to proposed § 795.105(d)(2)(iii), and a few small modifications to the illustrative examples in proposed § 795.115.

[218] *See supra,* n. 81.

[219] SBA, Summary of Size Standards by Industry Sector, 2022, *https://www.sba.gov/document/support-table-size-standards.*

number of establishments with employment or sales/receipts below the small business threshold in the industry.[220] [221] Next, the Department estimated the number of small governments, defined as having population less than 50,000, from the 2022 Census of Governments.[222] In total, the Department estimated there are 6.4 million small establishments or governments.

C. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

As explained more fully in section V.D. of this NPRM, the only direct costs to affected entities would be rule familiarization costs. This proposed rule lays out the framework for assessing employee or independent contractor status under the FLSA. It does not create any new reporting or recordkeeping requirements for businesses.

The Department assumes that a Compensation, Benefits, and Job Analysis Specialist (SOC 13–1141) (or a staff member in a similar position) would review any final rule.[223] According to the OEWS, these workers had a mean wage of $39.86 per hour. Given the proposed clarification to the Department's interpretation of who is an employee and who is an independent contractor, the Department assumes that it would take on average about 1 hour to review the rule if adopted as proposed. The Department believes that an hour, on average, is appropriate, because while some establishments would spend longer than one hour to review a rule, many establishments may rely on third-party summaries of the changes or spend little or no time reviewing the rule. Assuming benefits are paid at a rate of 46 percent of the base wage, and overhead costs are 17 percent of the base wage, the reviewer's effective hourly rate is $64.97; thus, the average cost per establishment conducting regulatory familiarization would be $64.97. The per-entity rule familiarization cost for independent contractors, some of whom would be small businesses, would be $12.06, median hourly wage of independent contractors in the CWS ($24.12) multiplied by 0.5 hour. The Department believes that 30 minutes, on average, is appropriate, because while some independent contractors would spend longer than 30 minutes to review a rule, many will spend little or no time reviewing it.

As discussed above in section V.D.3, the Department calculated cost savings for 8.3 million establishments that will experience cost savings due to increased clarity from the proposed rule. Among those establishments, 6.37 million were identified as small businesses with under 500 employees.[224] Annual payroll estimates for these small business establishments totaled $3,465 million which is approximately 39 percent of total payroll across all businesses regardless of size.[225] The Department applied this figure to the total cost savings for all employers to derive an estimated 10-year cost savings of $2,225 million for small business employers ($0.39 \times \$5{,}758$ million). This yields $373.59 in cost savings per small employer at a 7 percent discount rate, and an annualized cost savings of $37.24 per employer at a 7 percent discount rate. The undiscounted cost savings due to increased clarity for each independent contractor, some of whom would be a small business, is $4.31. The Department calculated this cost savings by dividing the total annualized cost savings for independent contractors ($106,869,807) by the number of independent contractors (24,791,667). Over a 10-year period the cost savings per independent contractor is $46.14 at a 7 percent discount rate, or $4.61 annualized at a 7 percent discount rate. Based on this evaluation, presented below in table 3, the Department estimates that the total 10-year cost savings for small business employers and independent contractors is $3,525 million at a 7 percent discount rate, or $352.52 million annualized at a 7 percent discount rate.

Type of entity	Total cost savings with 7% discount	Per entity	Annualized with 7% discount	Per entity
Sm. Employers	*$2,381,485,217*	*$373.59*	*$238,148,522*	*$37.24*
Contractors	1,143,795,834	*46.14*	*114,379,583*	*4.61*
Combined	*3,525,281,050*	.....	352,528,10	.....

Because regulatory familiarization is a one-time cost and the cost savings from clarity recur each year, the Department expects cost savings to outweigh regulatory familiarization costs in the long run. Because both costs and cost savings are minimal for small business entities, and well below one percent of their gross annual revenues, which is typically at least $100,000 per year for the smallest businesses, the Department expects that this proposal, if finalized, would not have a significant economic impact on a substantial number of small entities.

Potential transfers may be attributed to the reclassification from employee to independent contractor due to reduced payroll taxes and benefit costs while workers assume increased tax liabilities and the loss of employer-provided benefits. The Department believes that these transfers are largely offsetting since workers are expected to receive higher gross earnings that compensate for the lost benefits and increased taxes. Small firms may benefit disproportionately since they use independent contractors more than large firms.[226] Additional transfers occur between competing small businesses, where independent contractor model firms gain advantages over traditional employers, and their service providers. Market imperfections may generate deadweight losses through incomplete wage compensation, higher costs for individually-purchased benefits, and increased tax compliance burdens. Because the overall, net impact on worker compensation is expected to be small, the Department does not expect

[220] The 2022 data are the most recently available with revenue data.

[221] For this analysis, the Department excluded independent contractors who are not registered as small businesses, and who are generally not captured in the Economic Census, from the calculation of small establishments.

[222] U.S. Census Bureau, *2022 Census of Governments, https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html.*

[223] A Compensation/Benefits Specialist ensures company compliance with Federal and state laws, including reporting requirements; evaluates job positions, determining classification, exempt or non-exempt status, and salary; plans, develops, evaluates, improves, and communicates methods and techniques for selecting, promoting, compensating, evaluating, and training workers. See BLS, BLS, *Occupational Employment and Wage Statistics Query System, https://data.bls.gov/oes/#/industry/000000* (last updated May 2024).

[224] *See* SUSB, *supra* n.184.

[225] 2022 SUSB total payroll across all establishments is $8,965,035,263. Across establishments with fewer than 500 employees the total payroll was $3,465,049,519 [$8{,}965{,}035{,}263 \times 0.3865 = \$3{,}465{,}049{,}519$].

[226] Lim et al., supra n.168, at 51.

that the proposed rule should create undue hardship for small businesses since benefits and cost savings outweigh costs.

D. Relevant Federal Rules Duplicating, Overlapping, or Conflicting With the Proposed Rule

The Department is unaware of any Federal rules which duplicate, overlap, or conflict with the proposed rule.

E. Discussion of Regulatory Alternatives

The RFA requires agencies to discuss ''any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.'' [227] As discussed earlier in section V.G., the Department does not believe that it has the legal authority to adopt either a common law or ''ABC'' test to determine employee or independent contractor status under the FLSA, foreclosing the consideration of these alternatives for purposes of the RFA.

The Department also considered adopting WHD's current enforcement policy as a regulatory alternative. As noted in section V.G.2., since May 1, 2025, WHD has been applying the analysis from the July 2008 version of Fact Sheet #13, as further informed by Opinion Letter FLSA2025–2, in its enforcement matters.[228] The Department believes that this multifactor balancing test that WHD is currently applying per FAB 2025–1 is neither materially more nor less permissive of independent contractor relationships as compared to the streamlined, core factors analysis set forth in the 2021 Rule,[229] which the Department is proposing to readopt. However, WHD's current enforcement policy lacks specific guidance on how to weigh the factors when applying the multi-factor economic reality analysis and leaves stakeholders without clearer guidance to determine independent contractor or employee status under the FLSA, especially in today's modern economy.[230] For these reasons, the Department is not proposing to adopt its current enforcement policy on independent contractor or employee status.

In addition to the alternatives discussed above, section 603(c) of the RFA describes four categories of regulatory alternatives that might be appropriate for consideration in an IRFA analysis. The Department does not believe that the FLSA is best interpreted to encompass these categories of regulatory alternatives or that they are necessarily applicable to this proposal.

1. Differing Compliance or Reporting Requirements That Take Into Account the Resources Available to Small Entities

Nothing in the FLSA or the decades of court decisions interpreting it suggest that a worker's status as an employee or independent contractor should turn on the size of the entity that benefits from their labor. As described earlier, one of the primary goals of the FLSA is to curtail ''unfair method[s] of competition in commerce'' by establishing minimum labor standards that all covered employers must observe.[231] Providing differing compliance or reporting requirements for small businesses would undermine this important purpose of the FLSA. The Department makes available a variety of resources to employers for understanding their obligations and achieving compliance and, if this proposed rule is finalized, will prepare a small entity compliance guide, as required by the Small Business Regulatory Enforcement Fairness Act (SBREFA).[232] Therefore, the Department has not proposed differing compliance or reporting requirements for small businesses.

2. The Clarification, Consolidation, or Simplification of Compliance and Reporting Requirements for Small Entities

This proposed rule does not impose any new reporting requirements, and the Department makes available a variety of resources to employers for understanding their obligations and achieving compliance.

3. The Use of Performance Rather Than Design Standards

This proposed rule provides guidance regarding the factors that should be considered regarding a worker's employment status under the FLSA, FMLA, and MSPA, consistent with Supreme Court precedent interpreting statutory language which is common to all three laws. It is unclear whether any performance standards could appropriately determine a worker's status as an employee or independent contractor, and such an approach is foreclosed in any event by judicial precedent.

4. An Exemption From Coverage of the Rule, or Any Part Thereof, for Such Small Entities

Creating an exemption from coverage of this proposed rule for businesses with as many as 500 employees, those defined as small businesses under SBA's size standards, would be inconsistent with the FLSA, which applies to all employers that satisfy the enterprise coverage threshold or employ individually covered employees, regardless of the employer's number of employees. Further, as described above, case law interpreting the distinction between employees and independent contractors under the FLSA does not support such an exemption.

The Department welcomes comments on this IRFA's analysis of regulatory alternatives.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or tribal governments in the aggregate, or on the private sector, in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately $206 million. This rulemaking will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

G. Federalism

This rule 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 preparation of a Federalism Assessment.

List of Subjects

29 CFR Part 500

Administrative practice and procedure, Aliens, Employment, Housing, Insurance, Intergovernmental relations, Investigations, Licensing and registration, Migrant labor, Motor vehicle safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Wages, Whistleblowing.

[227] 5 U.S.C. 603(c).

[228] *See* FAB No. 2025–1 (May 1, 2025).

[229] *See* 86 FR 1240.

[230] *See* WHD Op. Ltr. FLSA2025–2 at 5 (advising that ''the appropriate weight to give to each factor depends on the facts'').

[231] 29 U.S.C. 202(a)(3).

[232] Small Business Regulatory Enforcement Fairness Act, Public Law 104–121 sec. 212.

29 CFR Part 795

Employment, Wages.

29 CFR Part 825

Administrative practice and procedure, Airmen, Employee benefit plans, Health, Health insurance, Labor management relations, Maternal and child health, Penalties, Pensions, Reporting and recordkeeping requirements, Teachers.

For the reasons set out in the preamble, the Department of Labor is proposing to amend 29 CFR parts 500, 795, and 825 as follows:

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

■ 1. The authority citation for part 500 continues to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74, 129 Stat 584.

■ 2. Amend § 500.20 by revising paragraph (h)(4) to read as follows:

(4) The definition of the term *employ* may include consideration of whether or not an *independent contractor* or *employment* relationship exists under the Fair Labor Standards Act. Under MSPA, questions will arise whether or not a farm labor contractor engaged by an agricultural employer/association is a bona fide independent contractor or an employee. Questions also arise whether or not the worker is a bona fide independent contractor or an employee of the farm labor contractor and/or the agricultural employer/association. These questions should be resolved in accordance with the criteria set forth in §§ 795.105 through 795.110 of this chapter. If it is determined that the farm labor contractor is an *employee* of the agricultural employer/association, the agricultural workers in the farm labor contractor's crew who perform work for the agricultural employer/association are deemed to be employees of the agricultural employer/association and an inquiry into joint employment is not necessary or appropriate. In determining if the farm labor contractor or worker is an employee or an independent contractor, the ultimate question is the economic reality of the relationship—whether there is economic dependence upon the agricultural employer/association or farm labor contractor, as appropriate.

PART 795—EMPLOYEE OR INDEPENDENT CONTRACTOR CLASSIFICATION UNDER THE FAIR LABOR STANDARDS ACT

■ 3. The authority citation for part 795 continues to read as follows:

Authority: 52 Stat. 1060, as amended; 29 U.S.C. 201–219.

■ 4. Revise part 795 to read as follows:

§ 795.100 Introductory statement.

This part contains the Department of Labor's general interpretations of the text governing individuals' classification as employees or independent contractors under the Fair Labor Standards Act (FLSA or Act). *See* 29 U.S.C. 201–19. The Administrator of the Wage and Hour Division will use these interpretations to guide the performance of his or her duties under the Act, and intends the interpretations to be used by employers, employees, and courts to understand employers' obligations and employees' rights under the Act. To the extent that prior administrative rulings, interpretations, practices, or enforcement policies relating to classification as an employee or independent contractor under the Act are inconsistent or in conflict with the interpretations stated in this part, they are hereby rescinded. The interpretations stated in this part may be relied upon in accordance with section 10 of the Portal-to-Portal Act, 29 U.S.C. 251–262, notwithstanding that after any such act or omission in the course of such reliance, any such interpretation in this part ''is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.'' 29 U.S.C. 259.

§ 795.105 Determining employee and independent contractor classification under the FLSA.

(a) *Independent contractors are not employees under the Act.* An individual who renders services to a potential employer—*i.e.,* a putative employer or alleged employer—as an independent contractor is not that potential employer's employee under the Act. As such, sections 6, 7, and 11 of the Act, which impose obligations on employers regarding their employees, are inapplicable. Accordingly, the Act does not require a potential employer to pay an independent contractor either the minimum wage or overtime pay under sections 6 or 7. Nor does section 11 of the Act require a potential employer to keep records regarding an independent contractor's activities.

(b) *Economic dependence as the ultimate inquiry.* An ''employee'' under the Act is an individual whom an employer suffers, permits, or otherwise employs to work. 29 U.S.C. 203(e)(1), (g). An employer suffers or permits an individual to work as an employee if, as a matter of economic reality, the individual is economically dependent on that employer for work. *Rutherford Food Corp.* v. *McComb,* 331 U.S. 722, 727 (1947); *Bartels* v. *Birmingham,* 332 U.S. 126, 130 (1947). An individual is an independent contractor, as distinguished from an ''employee'' under the Act, if the individual is, as a matter of economic reality, in business for him- or herself. Though both employees and independent contractors are dependent on others in some sense, economic dependence in this context means the dependence that a typical employee has on an employer for work, as opposed to an individual who has more of the nature and character of a business owner who has a separate business. Economic dependence does not focus on the amount of income the worker earns, or whether the worker has other sources of income.

(c) *Determining economic dependence.* The economic reality factors in paragraph (d) of this section guide the determination of whether the relationship between an individual and a potential employer is one of economic dependence and therefore whether an individual is properly classified as an employee or independent contractor. These factors are not exhaustive, and no single factor is dispositive. However, the two core factors listed in paragraph (d)(1) of this section are the most probative as to whether or not an individual is an economically dependent ''employee,'' 29 U.S.C. 203(e)(1), and each therefore typically carries greater weight in the analysis than any other factor. Given these two core factors' greater probative value, if they both point towards the same classification, whether employee or independent contractor, there is a substantial likelihood that is the individual's accurate classification. This is because other factors are less probative and, in some cases, may not be probative at all, and thus are highly unlikely, either individually or collectively, to outweigh the combined probative value of the two core factors.

(d) *Economic reality factors*—(1) *Core factors*—(i) *The nature and degree of control over the work.* This factor weighs towards the individual being an independent contractor to the extent the individual, as opposed to the potential employer, exercises substantial control over key aspects of the performance of the work, such as by setting his or her own schedule, by selecting his or her projects, and/or through the ability to

work for others, which might include the potential employer's competitors. In contrast, this factor weighs in favor of the individual being an employee under the Act to the extent the potential employer, as opposed to the individual, exercises substantial control over key aspects of the performance of the work, such as by controlling the individual's schedule or workload and/or by directly or indirectly requiring the individual to work exclusively for the potential employer. Requiring the individual to comply with specific legal obligations, satisfy health and safety standards, carry insurance, meet contractually agreed-upon deadlines or quality control standards, or satisfy other similar terms that are typical of contractual relationships between businesses (as opposed to employment relationships) does not constitute control that makes the individual more or less likely to be an employee under the Act.

(ii) *The individual's opportunity for profit or loss.* This factor weighs towards the individual being an independent contractor to the extent the individual has an opportunity to earn profits or incur losses based on his or her exercise of initiative (such as managerial skill or business acumen or judgment) or management of his or her investment in or capital expenditure on, for example, helpers or equipment or material to further his or her work. While the effects of the individual's exercise of initiative and management of investment are both considered under this factor, the individual does not need to have an opportunity for profit or loss based on both for this factor to weigh towards the individual being an independent contractor. This factor weighs towards the individual being an employee to the extent the individual is unable to affect his or her earnings or is only able to do so by working more hours or faster.

(2) *Other factors*—(i) *The amount of skill required for the work.* This factor weighs in favor of the individual being an independent contractor to the extent the work at issue requires specialized training or skill that the potential employer does not provide. This factor weighs in favor of the individual being an employee to the extent the work at issue requires no specialized training or skill and/or the individual is dependent upon the potential employer to equip him or her with any skills or training necessary to perform the job.

(ii) *The degree of permanence of the working relationship between the individual and the potential employer.* This factor weighs in favor of the individual being an independent contractor to the extent the work relationship is by design definite in duration or sporadic, which may include regularly occurring fixed periods of work, although the seasonal nature of work by itself would not necessarily indicate independent contractor classification. This factor weighs in favor of the individual being an employee to the extent the work relationship is instead by design indefinite in duration or continuous.

(iii) *Whether the work is part of an integrated unit of production.* This factor weighs in favor of an individual being an independent contractor to the extent his or her work is segregable from the potential employer's production process. This factor weighs in favor of the individual being an employee to the extent his or her work is a component of the potential employer's integrated production process for a good or service. This factor is different from the concept of the importance or centrality of the individual's work to the potential employer's business.

(iv) *Additional factors.* Additional factors may be relevant in determining whether an individual is an employee or independent contractor for purposes of the FLSA, but only if the factors in some way indicate whether the individual is in business for him- or herself, as opposed to being economically dependent on the potential employer for work.

§ 795.110 Primacy of actual practice.

In evaluating the individual's economic dependence on the potential employer, the actual practice of the parties involved is more relevant than what may be contractually or theoretically possible. For example, an individual's theoretical abilities to negotiate prices or to work for competing businesses are less meaningful if, as a practical matter, the individual is prevented from exercising such rights. Likewise, a business' contractual authority to supervise or discipline an individual may be of little relevance if in practice the business never exercises such authority.

§ 795.115 Examples of analyzing economic reality factors.

(a) The following illustrative examples demonstrate how the factors listed in § 795.105(d) may be analyzed under the facts presented and are limited to substantially similar factual situations.

(b)(1)(i) *Example.* An individual is the owner and operator of a tractor-trailer and performs transportation services for a logistics company. The owner-operator substantially controls the key aspects of the work. However, the logistics company requires the owner-operator to comply with federally-mandated transportation safety rules requiring drug and alcohol testing. The company also requires the owner-operator to meet certain contractually agreed-upon delivery deadlines, and her contract includes agreed-upon incentives for meeting, and penalties for missing, the deadlines.

(ii) *Application.* The owner-operator exercises substantial control over key aspects of her work, indicating independent contractor status. The fact that the company requires the owner-operator to complete certain drug and alcohol testing does not change the above conclusion. This measure is implemented in order to comply with specific legal obligations and to ensure safety, and thus under § 795.105(d)(1)(i) would not constitute control that makes the owner-operator more or less likely to be an employee under the Act. The contractually agreed-upon delivery deadlines, incentives, and penalties are typical of contractual relationships between businesses and likewise would not constitute control that makes the owner-operator more or less likely to be an employee under the Act.

(2)(i) *Example.* An individual accepts assignments from a company that provides an app-based service linking those who need home-repair work with those who perform home-repair work. The individual is able to meaningful increase his earnings by exercising initiative and business acumen and by investing in his own equipment. The company, however, has invested millions of dollars in developing and maintaining the app, marketing itself, maintaining the security of information submitted by actual and prospective customers and workers, and monitoring customer satisfaction with the work performed.

(ii) *Application.* The opportunity for profit or loss factor favors independent contractor status for the individual, despite the substantial difference in the monetary value of the investments made by each party. While the company may have invested substantially more in its business, the value of that investment is not relevant in determining whether the individual has a meaningful opportunity for profit or loss through his initiative, investment, or both.

(3)(i) *Example.* An individual worker works full time performing home renovation and repair services for a residential construction company. She is also the part owner of a food truck, which she operates on weekends. In performing the construction work, the worker is paid a fixed hourly rate, and the company determines how many and

which tasks she performs. Her food truck recently became very popular and has generated substantial profits for her.

(ii) *Application.* With regard to the construction work, the worker does not have a meaningful opportunity for profit or loss based on her exercise of initiative or investment, indicating employee status. She is unable to profit, *i.e.,* increase her earnings, by exercising initiative or managing investments because she is paid a fixed hourly rate and the company determines the assignment of work. While she earns substantial profits through her food truck, that is a separate business from her work in the construction industry, and therefore is not relevant to the question of whether she is an employee of the construction company or in business for herself in the construction industry.

(4)(i) *Example.* An individual worker works for a commercial construction company and is assigned to the crew that installs roofs on buildings. The company required no roofing skills when he started working for it, and he had no roofing skills when he started. Over his time working for the company, the individual has developed skills through on-the-job experience and training provided by the company.

(ii) *Application.* The work performed by this individual requires no specialized training or skill, and the individual relies on the construction company to provide any training necessary to perform the work. Accordingly, the skill factor weighs in favor of the individual being an employee. The fact that the individual has developed skills over his time at the company does not change that outcome because those skills resulted from on-the-job experience and training provided by the company.

(5)(i) *Example.* An individual performs roofing work for a commercial construction company. He has specialized training in roofing and relies on his own skills to perform the work. The construction company provides him with no training and hired him based on his roofing skills and expertise. The individual touted his roofing skills when securing roofing work from the company and similarly relies on those skills when seeking work from other companies.

(ii) *Application.* This individual brings his own skills to the work and does not rely on the construction company to provide training. Accordingly, the skill factor weighs in favor of the individual being an independent contractor. The fact that the individual used his specialized skills to secure the work would not be considered under this factor, although it could be indicative of initiative to consider under the opportunity for profit or loss factor.

(6)(i) *Example.* A housekeeper works for a ski resort every winter. At the end of each winter, he stops working for the ski resort because the resort shuts down. At the beginning of each of the past several winters, the housekeeper returned to his prior position at the ski resort without formally applying or interviewing.

(ii) *Application.* The housekeeper has a long-term and indefinite work relationship with the ski resort under the permanence factor, which weighs in favor of classification as an employee. That his periods of working for the ski resort end at the end of each winter is a result of the seasonal nature of the ski industry and is thus not indicative of a sporadic relationship. The fact that the housekeeper returns to his prior position each new season indicates that his relationship with ski resort does not end and is indefinite as a matter of economic reality.

(7)(i) *Example.* An editor works part-time for a newspaper. The editor works from home and is responsible for assigning and reviewing many articles published by the newspaper. Sometimes she also writes or revises articles. The editor is responsible for determining the layout and order in which all articles appear in the newspaper's print and online editions. She makes assignment and layout decisions in coordination with several full-time editors who make similar decisions with respect to different articles in the same publication and who are employees of the newspaper.

(ii) *Application.* The editor is part of an integrated unit of production of the newspaper because she is involved in the entire production process of the newspaper, including assigning, reviewing, drafting, and laying out articles. This factor points in the direction of her being an employee of the newspaper. This conclusion is further supported by the fact that the editor performs the same work as employees of the newspaper in coordination with those employees. The fact that she does not physically work at the newspaper's office does not outweigh these more probative considerations of the integrated unit factor.

(8)(i) *Example.* A journalist writes articles for a newspaper on a freelance basis. The journalist does not have an office and generally works from home. He submits an article to the newspaper once every 2 to 3 weeks, which the newspaper may accept or reject. The journalist sometimes corresponds with the newspaper's editor regarding what to write about or regarding revisions to the articles that he submits, but he does not otherwise communicate or work with any of the newspaper's employees. The journalist never assigns articles to others nor does he review or revise articles that others submit. He is not responsible for determining where his article or any other articles appear in the newspaper's print and online editions.

(ii) *Application.* The journalist is not part of an integrated unit of production of the newspaper, indicating independent contractor status. His work is limited to the specific articles that he submits and is completely segregated from other parts of the newspaper's processes that serve its specific, unified purpose of producing newspapers. It is not relevant in analyzing this factor that the writing of articles is an important part of producing newspapers. Likewise, the fact that he works at home does not strongly indicate either status, because the nature of the journalist's work is such that the physical location where it is performed is largely irrelevant.

§ 795.120 Severability.

If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this part and shall not affect the remainder thereof.

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

■ 5. The authority citation for part 825 continues to read as follows:

Authority: 29 U.S.C. 2654; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at sec. 701.

■ 6. Amend § 825.102 by revising paragraph (1) of the definition of ''Employee'' to read as follows:

The term *employee* means any individual employed by an employer, and the criteria set forth in §§ 795.105 through 795.110 of this chapter apply to any determination of whether an individual is an employee or independent contractor;

■ 7. Amend § 825.105 by revising paragraph (a) to read as follows:

(a) The definition of employ for purposes of FMLA is taken from the Fair Labor Standards Act, § 3(g), 29 U.S.C.

203(g). The courts have made it clear that the employment relationship under the FLSA is broader than the traditional common law concept of master and servant. The difference between the employment relationship under the FLSA and that under the common law arises from the fact that the term ''employ'' as defined in the Act includes ''to suffer or permit to work.'' The courts have indicated that, while ''to permit'' requires a more positive action than ''to suffer,'' both terms imply much less positive action than required by the common law. The courts have said that there is no definition that solves all problems as to the limitations of the employer-employee relationship under the Act; and that determination of the relation cannot be based on isolated factors or upon a single characteristic or technical concepts, but depends ''upon the circumstances of the whole activity'' including the underlying ''economic reality.'' In general an employee, as distinguished from an independent contractor who is engaged in a business of his/her own, is one who ''follows the usual path of an employee'' and is dependent on the business which he/she serves. The criteria set forth in §§ 795.105 through 795.110 of this chapter apply to any determination of whether an individual is an employee or independent contractor.

Dated: February 25, 2026.

Andrew B. Rogers,

Administrator, Wage and Hour Division.

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