

- (i) Naturally derived delta-9-tetrahydrocannabinols means those delta-9-tetrahydrocannabinols, except as in paragraphs (g)(2) and (3) of this section, that are naturally contained in a plant of the genus Cannabis (cannabis plant)..
- (ii) Naturally derived delta-9-tetrahydrocannabinols do not include any material, compound, mixture, or preparation that falls within the definition of hemp set forth in 7 U.S.C. 1639o..
- (iii) Naturally derived delta-9-tetrahydrocannabinols do not include any delta-9-tetrahydrocannabinols contained in substances excluded from the definition of marijuana as set forth in 21 U.S.C. 802(16)(B)(ii)..
- (5) [Reserved] .....

XXXX

\* \* \* \* \*

\* \* \* \* \*

**PART 1312—IMPORTATION AND EXPORTATION OF CONTROLLED SUBSTANCES**

■ 7. The authority citation for part 1312 continues to read as follows:

**Authority:** 21 U.S.C. 821, 871(b), 952, 953, 954, 957, 958.

■ 8. Amend § 1312.30 by:

■ a. Redesignating paragraph (b) as paragraph (e); and

■ b. Adding new paragraphs (b), (c), and (d).

The additions to read as follows:

**§ 1312.30 Schedule III, IV, and V non-narcotic controlled substances requiring an import and export permit.**

\* \* \* \* \*

(b) Marijuana, as defined in 21 U.S.C. 802(16), in a U.S. Food and Drug Administration approved product or subject to a state medical marijuana license.

(c) Marijuana extract, as defined in 21 CFR 1308.11(d)(58), in a U.S. Food and Drug Administration approved product or subject to a state medical marijuana license.

(d) Naturally derived delta-9-tetrahydrocannabinols in a U.S. Food and Drug Administration approved product or subject to a state medical marijuana license.

(1) Naturally derived delta-9-tetrahydrocannabinols means those delta-9-tetrahydrocannabinols, except as in paragraphs (g)(2) and (3) of this section, that are naturally contained in a plant of the genus Cannabis (cannabis plant).

(2) Naturally derived delta-9-tetrahydrocannabinols do not include any material, compound, mixture, or preparation that falls within the definition of hemp set forth in 7 U.S.C. 1639o.

(3) Naturally derived delta-9-tetrahydrocannabinols do not include any delta-9-tetrahydrocannabinols contained in substances excluded from the definition of marijuana as set forth in 21 U.S.C. 802(16)(B)(ii).

\* \* \* \* \*

Dated: April 22, 2026.  
**Todd Blanche,**  
*Acting Attorney General.*  
 [FR Doc. 2026–08176 Filed 4–27–26; 8:45 am]  
**BILLING CODE 4410–09–P**

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1917**

[Docket No. OSHA–2025–0007]

RIN 1218–AD51

**Open Fires in Marine Terminals**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Final rule.

**SUMMARY:** OSHA is finalizing the revocation of the agency’s Open Fires in Marine Terminals Standard.

**DATES:** The final rule is effective April 28, 2026.

**ADDRESSES:** *Docket:* The docket for this rulemaking (Docket No. OSHA–2025–0007) is available at <https://www.regulations.gov>, the Federal eRulemaking Portal. Most exhibits are available at <https://www.regulations.gov>; some exhibits (e.g., copyrighted material) are not available to download from that web page. However, all materials in the dockets are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2500 (TDY number 877–889–5627) for assistance in locating docket submissions.

**FOR FURTHER INFORMATION CONTACT:**

*For press inquiries:* Contact Frank Meilinger, Director, OSHA Office of Communications, Occupational Safety and Health Administration; telephone: (202) 693–1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*General information and technical inquiries:* Contact Andrew Levinson, Director, OSHA Directorate of Standards and Guidance, Occupational Safety and Health Administration; telephone: (202) 693–1950; email: [osha.dsg@dol.gov](mailto:osha.dsg@dol.gov).

*Copies of this Federal Register notice:* Electronic copies are available at

<https://www.regulations.gov>. This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA’s web page at <https://www.osha.gov>.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Executive Summary
- II. Legal Authority
- III. Background
- IV. Explanation of the Revocation of the Open Fires in Marine Terminals Standard
- V. Final Economic Analysis
- VI. Additional Requirements
- VII. Authority and Signature

**I. Executive Summary**

This final rule revokes the Open Fires in Marine Terminals Standard, 29 CFR 1917.21 (“Open Fires Standard”). OSHA has determined that this standard is no longer necessary to protect employees working in marine terminals from occupational safety and health hazards. This is a deregulatory action per Executive Order 14192, “Unleashing Prosperity Through Deregulation” (90 FR 9065 (Feb. 6, 2025)).

**II. Legal Authority**

The purpose of the Occupational Safety and Health Act (29 U.S.C. 651 *et seq.*) (“the Act” or “the OSH Act”) is “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources” (29 U.S.C. 651(b)). To achieve this goal Congress authorized the Secretary of Labor (“the Secretary”) to promulgate standards to protect workers, including the authority “to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce” (29 U.S.C. 651(b)(3)); see also 29 U.S.C. 654(a)(2) (requiring employers to comply with OSHA standards), 29 U.S.C. 655(a) (authorizing summary adoption of existing consensus and established federal standards within two years of the Act’s enactment), and 29 U.S.C. 655(b) (authorizing promulgation, modification or revocation of standards pursuant to notice and comment)). An occupational safety and health standard is “. . . a standard which requires conditions, or

the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment” (29 U.S.C. 652(8)).

Before OSHA may promulgate a health or safety standard, it must find that a standard is reasonably necessary or appropriate within the meaning of section 652(8) of the OSH Act. As required by the OSH Act, OSHA originally determined that the Standards for Marine Terminals would substantially reduce a significant risk of material harm when promulgating those standards (see 48 FR 30886, 30887 (July 5, 1983)). Once OSHA makes a general significant risk finding in support of a standard, the next question is whether a particular requirement is reasonably related to the purpose of the standard as a whole. See *Asbestos Info. Ass’n/N. Am. v. Reich*, 117 F.3d 891, 894 (5th Cir. 1997); *Forging Indus. Ass’n v. Sec’y of Labor*, 773 F.2d 1436, 1447 (4th Cir. 1985); *United Steelworkers of Am., AFL-CIO-CLC v. Marshall*, 647 F.2d 1189, 1237–38 (D.C. Cir. 1980) (“*Lead P*”).<sup>1</sup>

The Administrative Procedure Act (APA) directs agencies to include in each rule adopted “a concise general statement of [the rule’s] basis and purpose” (5 U.S.C. 553(c); cf. 29 U.S.C. 655(e) (requiring the Secretary to publish a “statement of reasons” for any standard promulgated)). This notice satisfies this concise statement requirement.

The effective date of this final rule is its date of publication. It is exempt from the APA’s requirement for delay in effective date because the rule relieves a restriction (5 U.S.C. 553(d)(1)).

### III. Background

OSHA first adopted the Open Fires Standard in 1983, as part of its Marine Terminals rulemaking, to address serious occupational safety and health hazards in the marine terminals industry (see 48 FR 30886 (July 5, 1983)). The Open Fires Standard prohibits open fires and fires in drums and similar containers (29 CFR 1917.21). The standard is one of several intended to protect employees working in marine terminals from the occupational safety and health hazards to which they are exposed (see 29 CFR Pt. 1917). For example, in addition to containing the Open Fires Standard, the Marine Terminals Standards contain

standards protecting employees from slippery conditions (29 CFR 1917.12) and hazardous cargo (29 CFR 1917.22). The Marine Terminals Standards apply to work such as loading, unloading, movement or other handling of cargo in marine terminals (29 CFR 1917.1). Marine terminals are wharves, bulkheads, quays, piers, docks and other berthing locations and adjacent storage or adjacent areas and structures associated with the primary movement of cargo or materials from vessel to shore or shore to vessel including structures which are devoted to receiving, handling, holding, consolidating and loading or delivery of waterborne shipments or passengers, including areas dedicated to the maintenance of the terminal or equipment.

#### IV. Explanation of the Revocation of the Open Fires in Marine Terminals Standard

OSHA proposed removing the Open Fires Standard from the CFR because that standard is no longer necessary to protect employees working in marine terminals from occupational safety and health hazards. When OSHA first promulgated the Marine Terminals Standards in 1983, affected employees made open fires in drums or similar containers to stay warm when they were exposed to the elements. In the Notice of Proposed Rulemaking for this rule, OSHA stated the agency’s understanding that this is no longer a typical practice and the agency belief that the practice is not likely to become prevalent again in the absence of OSHA’s prohibition. As OSHA stated, because of containerization and technology improvements in the marine terminals industry, employees today are not exposed to the elements as they once were, and to the extent employees are still exposed to the elements, they can wear heated jackets, which were not available when the Open Fires Standard was issued. OSHA also has no records of any citations for a violation of this standard (OSHA’s accessible records extend back to 2012, and OSHA did not receive any public comment or evidence suggesting earlier citations). Therefore, consistent with Executive Order (E.O.) 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative,” E.O. 14192, “Unleashing Prosperity Through Deregulation,” and the goal of significantly reducing the private expenditures required to comply with Federal regulations to secure America’s economic prosperity and national security and the highest possible quality

of life for each citizen, OSHA preliminarily found that removing the Open Fires Standard from the CFR would reduce the compliance burden on the regulated community without compromising worker safety.

OSHA received two comments in response to the proposal. Both opposed the revocation of the standard on the grounds that open fires could remain a hazard if employees are exposed, but neither provided evidence to suggest that these fires still occur (other than via vandalism) or that employees would be exposed to any such fires. The Occupational Safety and Health State Plan Association (“OSHSPA”) (OSHA–2025–0007–0004) stated that while open fires “may not be typical practice, they are still in use,” but did not provide any other explanation. A different commenter (OSHA–2025–0007–0003) agreed with OSHA that employees today are not exposed to the elements as they once were because of containerization and technology improvements. The commenter also agreed that, to the extent employees are still exposed to the elements, they can wear heated jackets, which are now “widely available and affordable” and “provide a safer and more effective way to manage cold stress for workers with outdoor exposure, eliminating the hazards of open flames.” In response to a question posed by OSHA in the NPRM, the commenter posited, without providing any supporting evidence, that employees might still want to make open fires for other reasons, including improper waste disposal, vandalism, cooking food, and if heated jackets malfunction. The commenter also emphasized the risks associated with open fires, including the risk of uncontrolled flames in areas potentially containing flammable materials, smoke inhalation, and toxic fumes. On the other hand, the commenter also acknowledged that “general fire prevention rules” would address fire hazards.

OSHA concludes that there is no persuasive evidence in the record that these fires still occur. If open fires were occurring, they would be in violation of the existing standard. Yet while work in marine terminals has continued for over four decades under this standard, OSHA has no record of any citation for violation of the Open Fires Standard (OSHA’s accessible records extend back to 2012, and OSHA did not receive any public comment or evidence suggesting earlier citations). The record lacks any evidence that, for example, employees at modern marine terminals are likely to resort to open flames to cook food or to dispose of trash. Moreover, the

<sup>1</sup> OSHA standards must also be both technologically and economically feasible. *Lead I*, 647 F.2d at 1264 (D.C. Cir. 1980). Because this final rule eliminates an existing standard, OSHA finds that it raises no feasibility concerns.

commenter corroborates OSHA's conclusion that employees are now far less likely to utilize fires for warmth, the primary concern that prompted OSHA to issue the standard. Finally, OSHA believes that open fires resulting from vandalism, if they were to occur, would occur with or without an applicable OSHA standard.

For these reasons, OSHA finds that the Open Fires Standard, 29 CFR 1917.21, is no longer necessary to protect employees in marine terminals and is finalizing the revocation of the standard.

## V. Final Economic Analysis

Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)) require that OSHA estimate the benefits, costs, and net benefits of regulations, and analyze the impacts of certain rules that OSHA promulgates. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This final rule is not a “significant regulatory action” under Executive Order 12866 or UMRA, or a “major rule” under the Congressional Review Act (5 U.S.C. 801 *et seq.*). Neither the benefits nor the costs of this final rule will exceed \$100 million in any given year. This final rule will, however, result in a net cost savings for employers in marine terminal and longshoring operations, which are the only industries throughout OSHA's jurisdiction affected by the rescission of 29 CFR 1917.21.

Furthermore, as discussed below in Review Under the Regulatory Flexibility Act, because the final rule will not impose any costs, OSHA certifies that it will not have a significant economic impact on a substantial number of small entities.

OSHA estimates that there are currently 2,617 establishments in the maritime industry affected by OSHA standards addressing open fires (U.S. Census Bureau, 2024). These establishments are found in the following industries: Port and Harbor Operations (NAICS 488310), Marine Cargo Handling (NAICS 488320), Navigational Services to Shipping (NAICS 488330), and Other Support Activities for Water Transportation (NAICS 488390). The revocation of the Open Fires Standard will, among other things, eliminate the time necessary for new establishments and newly hired occupational health and safety specialists at existing establishments to familiarize themselves with the

requirements found in 29 CFR 1917.21. Based on an average annual establishment entry rate of 10 percent (U.S. Census Bureau, 2025), an average hire rate of 43.9 percent (BLS, 2025), and 10 minutes less time spent on regulatory familiarization at a loaded hourly wage rate for an occupational health and safety specialist of \$65.41, OSHA estimates that this deregulatory action will mean \$15,377 in cost savings annually.

OSHA also estimated the impacts under an alternative scenario where only new entrants into the industry would be affected by the revocation of 29 CFR 1917.21. This scenario assumes that for non-entrant (*i.e.*, existing) establishments within an industry, the familiarization time saved for newly hired occupational health and safety specialists is negligible due to knowledge of the requirements in section 1917.21 retained institutionally within the business entity by team leaders and other senior production staff. For this scenario, cost savings that result from rescinding section 1917.21 would be \$2,853 annually.

A third impact scenario, one that is likely closer to the real-world environment for the retention and communication of safety and health information in most workplaces, would be the midpoint of the two extreme cases described above. Under this mid-range scenario, approximately half of the affected establishments would retain staff whose complete knowledge of the rescinded standards would substitute for the familiarization time needed by the newly hired health and safety specialists. Viewed alternatively, under this mid-range scenario, all affected establishments retain veteran staff who can briefly inform the new safety and health specialist of the status of standards such as section 1917.21 in less time (roughly five minutes) than would be necessary in the absence of institutional knowledge (ten minutes). OSHA estimates that this would result in cost savings of \$9,115 annually.

OSHA's estimate of cost savings may underestimate total cost savings if the elimination of the labor burden for regulatory familiarization extends to the avoidance of unnecessary safety training of employees.

OSHA presented this analysis in its proposed rule and requested public comment on its analysis of the cost savings for marine terminal and longshoring operations from the revocation of the Open Fires Standard, 29 CFR 1917.21. No comments addressing the analysis were received. Therefore, OSHA's estimates of the costs

and benefits of this final rule remain unchanged from the proposal.

## Sources

- Bureau of Labor Statistics (BLS). (2025). Occupational Employment and Wage Statistics—May 2024 (Released April 2, 2025). Available at <https://www.bls.gov/oes/tables.htm> (Accessed April 11, 2025)
- U.S. Census Bureau. (2024). County Business Patterns 2022 (Released June 27, 2024). Available at <https://www.census.gov/programs-surveys/cbp.html> (Accessed July 17, 2024)
- U.S. Census Bureau. (2025). Business Dynamics Statistics. Available at [https://bds.explorer.ces.census.gov/?xaxis-id=year&xaxis-selected=2018,2019,2020,2021,2022&group-id=none&measure-id=estabs\\_entry\\_rate&chart-type=bar](https://bds.explorer.ces.census.gov/?xaxis-id=year&xaxis-selected=2018,2019,2020,2021,2022&group-id=none&measure-id=estabs_entry_rate&chart-type=bar) (Accessed June 6, 2025)

## Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

OSHA reviewed this rescission under the provisions of the Regulatory Flexibility Act. This rule eliminates a burdensome regulation. Therefore, OSHA certifies that the rescission will not have a “significant economic impact on a substantial number of small entities,” and that the preparation of a FRFA is not warranted. OSHA will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

## VI. Additional Requirements

### A. Requirements for States With OSHA-Approved State Plans

Under section 18 of the OSH Act (29 U.S.C. 651 *et seq.*), Congress expressly provides that States may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards that are “at least as effective” as the Federal standards in providing safe and healthful employment and places of employment (29 U.S.C. 667). OSHA refers to these OSHA-approved,

State-administered occupational safety and health programs as “State Plans.”<sup>2</sup>

When Federal OSHA promulgates a new standard or a more stringent amendment to an existing standard, State Plans must either amend their standards to be identical to or “at least as effective as” the new Federal standard or amendment to show that an existing State Plan standard covering this issue is “at least as effective” as the new Federal standard or amendment (29 CFR 1953.5(a)). However, when OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State Plans do not have to amend their standards, although they may opt to do so.

In the proposed rule, OSHA preliminarily determined this rule would not impose additional or more stringent requirements than the existing standard, and therefore State Plans would not be required to amend their standards in response. OSHA received one comment related to this determination. The comment was from the OSHSPA, which agreed with OSHA’s determination that State Plans should not be required to amend their standards to adopt this rule. OSHA received no other comments disputing OSHA’s preliminary conclusion that this proposed rule does not impose additional or more stringent requirements than the existing standard. Therefore, OSHA is finalizing its determination that State Plans are not required to amend their standards. OSHA agrees with OSHSPA that the OSH Act requires State Plans to have standards that are “at least as effective” as OSHA’s but allows State Plans to be more stringent than OSHA in protecting the safety and health of workers in their respective jurisdictions. This rulemaking does not change that authority. Consequently, State Plans are not obligated to make any changes to their existing standards in response to this final rule.

#### B. OMB Review Under the Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) defines

<sup>2</sup>Of the 29 States and U.S. territories with OSHA-approved State Plans, 22 cover public and private-sector employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. The remaining six States and one U.S. territory cover only State and local government employees: Connecticut, Illinois, Maine, Massachusetts, New Jersey, New York, and the Virgin Islands.

“collection of information” to mean “the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format” (44 U.S.C.

3502(3)(A)). Under the PRA, a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA and the agency displays a currently valid OMB control number (44 U.S.C. 3507). Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512(a)(1)). The process for OMB approval is found in 5 CFR part 1320. This final rule imposes no new information collection requirements and does not affect the currently approved information collections in Marine Terminals (29 CFR Pt. 1917) and Longshoring (29 CFR Pt. 1918) (OMB Control Number 1218–0196). Accordingly, OMB approval of information collections is not required for this final rule.

#### C. Review Under Executive Order 12866

E.O. 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits; (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

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

this final rule was not submitted to OIRA for review under E.O. 12866.

#### D. Environmental Impacts/National Environmental Policy Act (NEPA)

OSHA has reviewed this final rule according to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), as amended by the Fiscal Responsibility Act of 2023 (Pub. L. 118–5, 321, 137 Stat. 10), and the Department of Labor’s NEPA procedures (29 CFR part 11).

Pursuant to 29 CFR 11.10, the promulgation, modification, or revocation of any OSHA safety standard is categorically excluded from the requirement to prepare an environmental assessment under NEPA absent extraordinary circumstances indicating the need for such an assessment. OSHA finds that this final rule presents no such extraordinary circumstances.

#### E. Other Statutory and Executive Order Considerations

OSHA has considered its obligations under the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*) and the Executive Orders on Consultation and Coordination With Indian Tribal Governments (E.O. 13175, 65 FR 67249 (Nov. 6, 2000)), Federalism (E.O. 13132, 64 FR 43255 (Aug. 10, 1999)), and Protection of Children From Environmental Health Risks and Safety Risks (E.O. 13045, 62 FR 19885 (Apr. 23, 1997)). Given that this is a final deregulatory action that involves the removal of requirements, that OSHA does not foresee economic impacts of \$100 million or more, and that the action does not constitute a policy that has federalism or tribal implications, OSHA has determined that no further agency action or analysis is required to comply with these statutes and executive orders. Furthermore, OSHA has determined that this final rule is consistent with the policies and directives outlined in E.O. 14192, “Unleashing Prosperity Through Deregulation” and is an Executive Order 14192 deregulatory action.

#### List of Subjects in 29 CFR 1917

Health, Longshore and Harbor workers, Occupational safety and health.

#### VII. Authority and Signature

This document was prepared under the direction of David Keeling, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under the authority of sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657);

section 41 of the Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 7–2025 (90 FR 27878, June 30, 2025); and 29 CFR part 1911.

Dated: April 23, 2026.

**David Keeling,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

**Final Regulatory Text**

For the reasons set forth in the preamble, OSHA amends 29 CFR part 1917 as follows:

**PART 1917—MARINE TERMINALS**

■ 1. The authority for part 1917 is revised to read as follows:

**Authority:** 33 U.S.C. 941; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), 1–2012 (77 FR 3912), 8–2020 (85 FR 58393), or 7–2025 (90 FR 27878), as applicable; and 29 CFR part 1911.

Sections 1917.28 and 1917.31 also issued under 5 U.S.C. 553.

Section 1917.29 also issued under 49 U.S.C. 1801–1819 and 5 U.S.C. 553.

**Subpart B—Marine Terminal Operations**

**§ 1917.21 [Reserved]**

■ 2. Remove and reserve § 1917.21.

\* \* \* \* \*

[FR Doc. 2026–08260 Filed 4–27–26; 8:45 am]

BILLING CODE 4510–26–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 209**

[Docket No. FRA–2025–0077; Notice No. 2]

RIN 2130–AD11

**Prosecutorial Discretion of Enforcement Attorneys**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule clarifies that FRA's Office of the Chief Counsel has discretion to decline or dismiss a violation, such as a technical violation where challenged conduct does not raise a practical safety issue.

**DATES:** This rule is effective May 28, 2026.

**FOR FURTHER INFORMATION CONTACT:** Amanda Maizel, Attorney Adviser, FRA,

telephone: (202) 308–3753, email: [Amanda.Maizel@dot.gov](mailto:Amanda.Maizel@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Consistent with Executive Order (E.O.) 14192, Unleashing Prosperity Through Deregulation (90 FR 9065, Feb. 6, 2025), and E.O. 14219, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative (90 FR 10583, Feb. 25, 2025), FRA is reviewing its regulatory requirements in parts 200 through 299 of title 49, Code of Federal Regulations (CFR) and updating requirements to reduce unnecessary burdens without compromising transportation safety.

As part of this effort, on April 3, 2025, DOT issued a request for information in which it asked the public to assist in identifying existing regulations, guidance, paperwork requirements, and other regulatory obligations that can be modified or repealed, consistent with law, to ensure that DOT administrative actions do not undermine the national interest and that DOT achieves meaningful burden reduction while continuing to meet statutory obligations and ensure the safety of the U.S. transportation system.<sup>1</sup> DOT received 955 comments, including some that were rail-related and specifically received a comment from the Association of American Railroads (AAR). In addition to other proposals, AAR requested that FRA clarify in 49 CFR part 209 that FRA's Office of the Chief Counsel has discretion to dismiss a technical violation where the challenged conduct does not raise a practical safety issue.

On July 1, 2025, FRA published a notice of proposed rulemaking (NPRM) that proposed to adopt this AAR comment and to clarify that attorneys in the Office of the Chief Counsel have enforcement discretion in all phases of a potential enforcement action.<sup>2</sup> FRA has broad discretion to enforce the Federal railroad safety laws and regulations, including determining the appropriate method of addressing any violation it finds.<sup>3</sup> Accordingly, similar to the discretion that FRA has in determining whether to transmit or

decline an enforcement action, FRA also has discretion to dismiss a violation, such as a technical violation, where the challenged conduct does not raise a practical safety issue. Even where FRA has transmitted a violation and decides not to dismiss it, FRA continues to have the discretion to reduce the civil penalty, but not below the respective statutory minimum amount, adjusted annually for inflation.<sup>4</sup> In the NPRM, FRA noted that this clarification would streamline the enforcement process, relieve enforcement burdens on regulated entities, and promote due process and fairness. In addition, FRA noted the proposal was consistent with the Mar. 11, 2025 DOT Memorandum, *Procedural Requirements for Enforcement Actions*.<sup>5</sup>

FRA received three comments. The American Short Line and Regional Railroad Association (ASLRRA) submitted a comment in support of this proposal<sup>6</sup> but requests that FRA add a reference to its Small Entity Enforcement Policy, found in FRA's Policy Statement Concerning Small Entities at 49 CFR part 209, appendix C. The Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART–TD) and Brotherhood of Locomotive Engineers and Trainmen (BLET) submitted comments both in opposition to this proposal. Concerned that increased Office of the Chief Counsel discretion could diminish worker safety as Class I carriers could "argue away infractions as 'not a practical safety issue,'" SMART–TD strongly recommended that FRA provide a clear, narrow definition of a technical violation and publicly report each dismissal, and that rail labor should be permitted to review violation categories considered for dismissal.<sup>7</sup> Recognizing that FRA has discretion in determining and enforcing violations, BLET is concerned that using the term "practical safety issue" as a test of when expanded discretion may be utilized will create unnecessary confusion and

<sup>4</sup> See Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Public Law 114–74, 129 Stat. 599, codified at 28 U.S.C. 2461 note.

<sup>5</sup> See *Procedural Requirements for Enforcement Actions*, Mar. 11, 2025, available at <https://www.transportation.gov/sites/dot.gov/files/2025-03/Procedural%20Requirements%20for%20DOT%20Enforcement%20Actions.Cote%20Memo.Signed.03-11-2025.pdf>.

<sup>6</sup> <https://www.regulations.gov/comment/FRA-2025-0077-0004>.

<sup>7</sup> <https://www.regulations.gov/comment/FRA-2025-0077-0002>.

<sup>1</sup> 90 FR 14593 (Apr. 3, 2025).

<sup>2</sup> 90 FR 28609 (July 1, 2025).

<sup>3</sup> *Railway Labor Executives Ass'n v. Dole*, 760 F.2d 1021, 1025 (9th Cir. 1985) (finding "nothing in the railroad safety legislation to indicate Congress intended to make prosecutorial discretion subject to judicial review," and upholding the dismissal of a challenge to the Secretary of Transportation's safety plan that stressed cooperation with railroads in finding and remedying safety problems).