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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 921, 922, and 923

50 CFR Parts 217, 218, 222, 223, 224, 226, 229, 300, 600, 622, 635, and 697

[Docket No. 250731–0134]

RIN 0648–BN94

Gulf of America Name Change

AGENCY: National Marine Fisheries Service (NMFS) and National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: NMFS and NOS are amending their regulations to change the name of the “Gulf of Mexico” to the “Gulf of America,” consistent with a Presidential directive issued through Executive Order. The intended effect of this rule is to ensure consistency with the Executive Order and to provide clarity for the regulated and general public moving forward regarding the Gulf of America name change.

DATES: This final rule is effective August 7, 2025.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Ms. Jenni Wallace, NOAA Fisheries; telephone (301) 427–8544, email jenni.wallace@noaa.gov.

SUPPLEMENTARY INFORMATION: President Donald J. Trump issued Executive Order (E.O.) 14172, titled “Restoring Names That Honor American Greatness” (90 FR 8629) on January 20, 2025. E.O. 14172 directed that the area formerly known as the Gulf of Mexico be renamed as the Gulf of America.

The purpose of this rule is to update the NMFS and NOS regulations in the Code of Federal Regulations (CFR) to reflect the renaming. Specifically, this rule changes all “Gulf of Mexico”

references to “Gulf of America” and makes other consistency edits in existing regulations promulgated under the Coastal Zone Management Act (CZMA) (15 CFR parts 921, 923), National Marine Sanctuaries Act (15 CFR part 922), Marine Mammal Protection Act (50 CFR parts 217, 218, 229), Endangered Species Act (50 CFR parts 222–224, 226), Magnuson-Stevens Fishery Conservation and Management Act (MSA) (50 CFR parts 300, 600, 622, 635), and Atlantic Coastal Fisheries Cooperative Management Act (50 CFR part 697). The text of some statutes, such as the MSA and CZMA, contains explicit references to the “Gulf of Mexico.” In those cases, “Gulf of America” references in agency regulations mean the same geographic area as the “Gulf of Mexico,” as that term is used in the relevant statute. Note that the agency can make nomenclature changes in its regulations consistent with law, but cannot modify the text of statutes enacted by Congress.

This rule replaces the term “Gulf of Mexico” with “Gulf of America” where it appears in the above-referenced regulations. This change is consistent with E.O. 14172, and the name used by the Geographic Names Information System, which maintains standardized geographic names for Federal use. Under this rule, the name change in NMFS and NOS regulations does not result in any changes to, and has no effect on, the applicability or enforceability of the regulations. This rule will have no cost or substantive impact on the public, but will make consistent regulatory references to reflect the renamed Gulf of America.

In addition, for streamlining purposes, this rule removes 15 CFR part 922, subpart L, Appendix B, “Flower Garden Banks National Marine Sanctuary—Terms of Designation.” The terms of designation for a national marine sanctuary are not required to be in the CFR, and removal of the appendix does not change the terms of designation for Flower Garden Banks National Marine Sanctuary.

Classification

NOAA is issuing this rule pursuant to 16 U.S.C. 1855(d) of the Magnuson-Stevens Act (MSA), 16 U.S.C. 1382(a) of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1540(f) of the Endangered Species Act (ESA), 16

U.S.C. 5103(b) of the Atlantic Coastal Fisheries Cooperative Management Act (ACA), 16 U.S.C. 1439 of the National Marine Sanctuaries Act (NMSA), and 16 U.S.C. 1463 of the Coastal Zone Management Act (CZMA). The reason for using these general rulemaking authorities is that the rule makes nomenclature changes and related edits and does not substantively change regulations previously issued under the MSA, MMPA, ESA, ACA, NMSA, and CZMA. The Chief of Staff, exercising the Delegated Authority of the Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator, has determined that this final rule is consistent with the MSA, MMPA, ESA, ACA, NMSA, and CZMA, regulations issued pursuant to those statutes, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

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

This final rule contains no new information collection requirements under the Paperwork Reduction Act of 1995.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary.

Consistent with E.O. 14172, this final rule updates the name of Gulf of America in NMFS and NOS regulations and makes other related edits. This rule does not substantively change existing regulations and has no effect on the applicability or enforceability of the regulations. In addition, for streamlining purposes, this rule removes an appendix containing terms of designation for a national marine sanctuary. The terms of designation are not changed and are not required to be in the CFR. For the same reasons described above, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. It is unnecessary to provide time for the regulated community to adjust to this rule, as the rule makes no substantive changes to regulations with which they must already comply.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the

Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

NOAA has determined that this action would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes; therefore, consultation with Tribal officials under E.O. 13175 is not required, and the requirements of sections (5)(b) and (5)(c) of E.O. 13175 also do not apply. A tribal summary impact statement under section (5)(b)(2)(B) and section (5)(c)(2)(B) of E.O. 13175 is not required and has not been prepared.

List of Subjects

15 CFR Parts 921, 922, and 923

Coastal zone, Marine resources, Navigation (water), Recreation and recreation areas, Reporting and recordkeeping requirements, Research, Wildlife.

50 CFR Parts 217, 218, 222, 223, 224, 226, 229, 300, 600, 622, 635, and 697

Endangered and threatened species, Fisheries, Gulf, Gulf of America, Marine mammals.

Dated: August 1, 2025.

Laura Grimm,

Chief of Staff, Exercising the Delegated Authority of the Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator, Department of Commerce.

For the reasons set out in the preamble, NMFS amends 15 CFR parts 921, 922 and 923, and 50 CFR parts 217, 218, 222, 223, 224, 226, 229, 300, 600, 622, 635, and 697 as follows:

TITLE 15—COMMERCE AND FOREIGN TRADE

PART 921—NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM REGULATIONS

- 1. The authority citation for part 921 continues to read as follows:

Authority: Section 315 of the Coastal Zone Management Act, as amended (16 U.S.C. 1461).

§ 921.2 [Amended]

- 2. Amend § 921.2(c) by removing the words “Gulf of Mexico” and add, in their place, the words “Gulf of America”.

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

- 3. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

Appendix B to Subpart L—[Removed]

- 4. Remove appendix B to subpart L of part 922.

§§ 922.120, 922.121, 922.122, and 922.162 [Amended]

- 5. Amend 15 CFR part 922 by removing the words “Gulf of Mexico” and add, in their place, the words “Gulf of America” in the following places:
 - a. Section 922.120;
 - b. Section 922.121;
 - c. Section 922.122(a)(2)(iii); and
 - d. Section 922.162(a).

PART 923—COASTAL ZONE MANAGEMENT PROGRAM REGULATIONS

- 6. The authority citation for part 923 continues to read as follows:

Authority: 16 U.S.C. 1451 *et seq.*; 31 U.S.C. 6506; 42 U.S.C. 3334; Sections 923.92 and 923.94 are also issued under E.O. 12372, July 14, 1982, 3 CFR 1982 Comp. p. 197, as amended by E.O. 12416, April 8, 1983, 3 CFR 1983 Comp. p. 186.

§§ 923.2 and 923.32 [Amended]

- 7. Amend 15 CFR part 923 by removing the words “Gulf of Mexico” and add, in their place, the words “Gulf of America” in the following places:
 - a. Section 923.2(f); and
 - b. Section 923.32(a)(1).

TITLE 50—WILDLIFE AND FISHERIES

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

- 8. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

Subpart S and §§ 217.180 and 217.305—[Amended]

- 9. Amend 50 CFR part 217 by removing the words “Gulf of Mexico” and add, in their place, the words “Gulf of America” in the following places:
 - a. Subpart heading of subpart S;
 - b. First mention of “Gulf of Mexico” in § 217.180; and
 - c. Section 217.305(g)(14)(i).

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

- 10. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

§§ 218.60, 218.80, and 218.84 [Amended]

- 11. Amend 50 CFR part 218 by removing the words “Gulf of Mexico” and add, in their place, the words “Gulf of America” in the following places:
 - a. Section 218.60(b);
 - b. Section 218.80(b); and
 - c. Paragraph headings of § 218.84(b)(3) and (3)(i)(A).

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

- 12. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.* Section 222.403 also issued under 16 U.S.C. 1361 *et seq.*

§ 222.102 [Amended]

- 13. Amend § 222.102 by removing the words “Gulf of Mexico” and add, in their place, the words “Gulf of America”.

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

- 14. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

§ 223.206 [Amended]

- 15. Amend § 223.206(d)(1)(ii) by removing the words “Gulf of Mexico” and add, in their place, the words “Gulf of America”.

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

- 16. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

§ 224.104 [Amended]

- 17. Amend § 224.104(a) by removing the words “Gulf of Mexico” and add, in their place, the words “Gulf of America”.

PART 226—DESIGNATED CRITICAL HABITAT

- 18. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

§§ 226.214, 226.223, and 226.230 [Amended]

- 19. Amend 50 CFR part 226 by removing the words “Gulf of Mexico” and add, in their place, the words “Gulf of America” in the following places:
 - a. Section 226.214(g)(1), (k) paragraph heading and (k)(1) for Unit 11, (k) paragraph heading and (k)(1) for Unit 13, and (l)(1);
 - b. Section 226.223(a)(37) and (38); and
 - c. Section 226.230(b).

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

- 20. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361; § 229.32(f) also issued under 16 U.S.C. 1531.

§§ 229.3, 229.35, and 229.36 [Amended]

- 21. Amend 50 CFR part 229 by removing the words “Gulf of Mexico” and add, in their place, the words “Gulf of America” in the following places:
 - a. Section 229.3(t);
 - b. Section 229.35(a) and (b); and
 - c. Section 229.36(a), (d), and (d)(3).

PART 300—INTERNATIONAL FISHERIES REGULATIONS

- 22. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 5501 *et seq.*, 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

§ 300.122 [Amended]

- 23. Amend § 300.122(b) by removing the words “Gulf of Mexico” and add, in their place, the words “Gulf of America”.

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

- 24. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

- 25. Amend § 600.10 by adding the definition of “Gulf of America” in alphabetical order to read as follows:

§ 600.10 Definitions.

* * * * *

Gulf of America means the same geographic area as the Gulf of Mexico, as that term is used in the text of the Magnuson-Stevens Act. This name change in the Chapter VI regulations does not result in any changes to, and has no effect on the applicability or enforceability of, the regulations.

* * * * *

- 26. Revise § 600.105(c) to read as follows:

§ 600.105 Intercouncil boundaries.

* * * * *

(c) *South Atlantic and Gulf Councils.* The boundary coincides with the line of demarcation between the Atlantic Ocean and the Gulf of America, which begins at the intersection of the outer boundary of the EEZ, as specified in the Magnuson-Stevens Act, and 83°00' W. long., proceeds northward along that meridian to 24°35' N. lat., (near the Dry Tortugas Islands), thence eastward along that parallel, through Rebecca Shoal and the Quicksand Shoal, to the Marquesas Keys, and then through the Florida Keys to the mainland at the eastern end of Florida Bay, the line so running that the narrow waters within the Dry Tortugas Islands, the Marquesas Keys and the Florida Keys, and between the Florida Keys and the mainland, are within the Gulf of America.

§§ 600.215 and 600.725 [Amended]

- 27. Amend 50 CFR part 600 by removing the words, “of Mexico” in the following places:
 - a. Section 600.215(c) heading and (c)(1); and
 - b. Section IV and section heading in Table for § 600.725(v).

§§ 600.502, 600.1201, and 600.1417 [Amended]

- 28. Amend 50 CFR part 600 by removing the words “Gulf of Mexico” and add, in their place, the words “Gulf of America” in the following places:
 - a. In § 600.502, Table 2 to § 600.502;
 - b. Section 600.1201(a); and
 - c. Section 600.1417(b)(1)(ii);

§ 600.1310 [Amended]

- 29. In § 600.1310:
 - a. Amend § 600.1310 heading and § 600.1310(e)(4) by removing the words, “of Mexico;”
 - b. Revise § 600.1310(a) to read as follows:

(a) *Purpose and scope.* This section establishes procedures and guidelines for referenda to be conducted on Individual Fishing Quota (IFQ) program proposals developed by the New England Fishery Management Council (NEFMC) and the Gulf Fishery Management Council (GFMC). These procedures and guidelines also apply to IFQ program proposals developed by NMFS for fisheries under the jurisdiction of the NEFMC or GFMC, except for certain provisions that only apply to a fishery management council. This section provides guidance on developing voter eligibility and vote weighting, and establishes general

procedures to ensure referenda are conducted in a fair and equitable manner.

- c. Amend § 600.1310(b)(2)(vii) and (c)(1)(ii) by removing the words, “Gulf of Mexico” and add, in its place, the words “Gulf of America”; and
- d. Amend § 600.1310(b)(1), (b)(2)(vii), (c)(3) paragraph heading, (f)(1)(i)(B), and (h)(3) by removing the acronym, “GMFMC,” and add, in its place, the acronym, “GFMC”.

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF AMERICA, AND SOUTH ATLANTIC

- 30. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

- 31. Revise the part heading to read as shown above.
- 32. In § 622.1:
 - a. Amend Table 1 to § 622.1 by removing the acronym, “GMFMC” and add, in its place, the acronym, “GFMC”; and
 - b. Remove the words, “of Mexico”; and
 - c. Revise footnote 8 to Table 1 to § 622.1.

The revision reads as follows:

§ 622.1 Purpose and scope.

* * * * *

Hogfish in the Gulf EEZ are managed under the FMP from the South Atlantic and Gulf of America intercouncil boundary specified in § 600.105(c) and south of 25°09' N. lat. off the west coast of Florida. Hogfish in the remainder of the Gulf EEZ are managed under the FMP for the Reef Fish Resources of the Gulf.

* * * * *

- 33. In § 622.2, remove the definition of “GMFMC”, revise the definition of “Gulf”, add the definition of “Gulf Fishery Management Council (GFMC) or Gulf Council”, and revise the definition of “South Atlantic”, in alphabetical order, to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Gulf means the Gulf of America as defined in § 600.10. The line of demarcation between the Atlantic Ocean and the Gulf of America is specified in § 600.105(c) of this chapter.

Gulf Fishery Management Council (GFMC) or Gulf Council means the Council established under 16 U.S.C. 1852(a)(1)(E).

* * * * *

South Atlantic means the Atlantic Ocean off the Atlantic coastal states from the boundary between the MAFMC and the SAFMC, as specified in

§ 600.105(b) of this chapter, to the line of demarcation between the Atlantic Ocean and the Gulf of America, as specified in § 600.105(c) of this chapter.

* * * * *

§§ 622.21, 622.22, and 622.53 [Amended]

■ 34. Amend 50 CFR part 622 by removing the words, “Gulf of Mexico Fishery Management Council,” and add, in their place, the words “Gulf Council” in the following places:

- a. Section 622.21(a)(2);
- b. Section 622.22(a)(2); and
- c. Section 622.53(a)(2)(iv).

§§ 622.7, 622.23, 622.28, 622.42, 622.50, 622.77, 622.93, 622.109, and 622.412 and Appendix A [Amended]

■ 35. Amend 50 CFR part 622 by removing the words “of Mexico” in the following places:

- a. Section 622.7(g) and (h);
- b. Section 622.23(a)(1);
- c. Section 622.28 introductory paragraph and paragraph (a);
- d. Section 622.42;
- e. Section 622.50(b)(1);
- f. Section 622.77;
- g. Section 622.93;
- h. Section 622.109;
- i. Section 622.412; and
- j. Heading of Table 1 to Appendix A to Part 622.

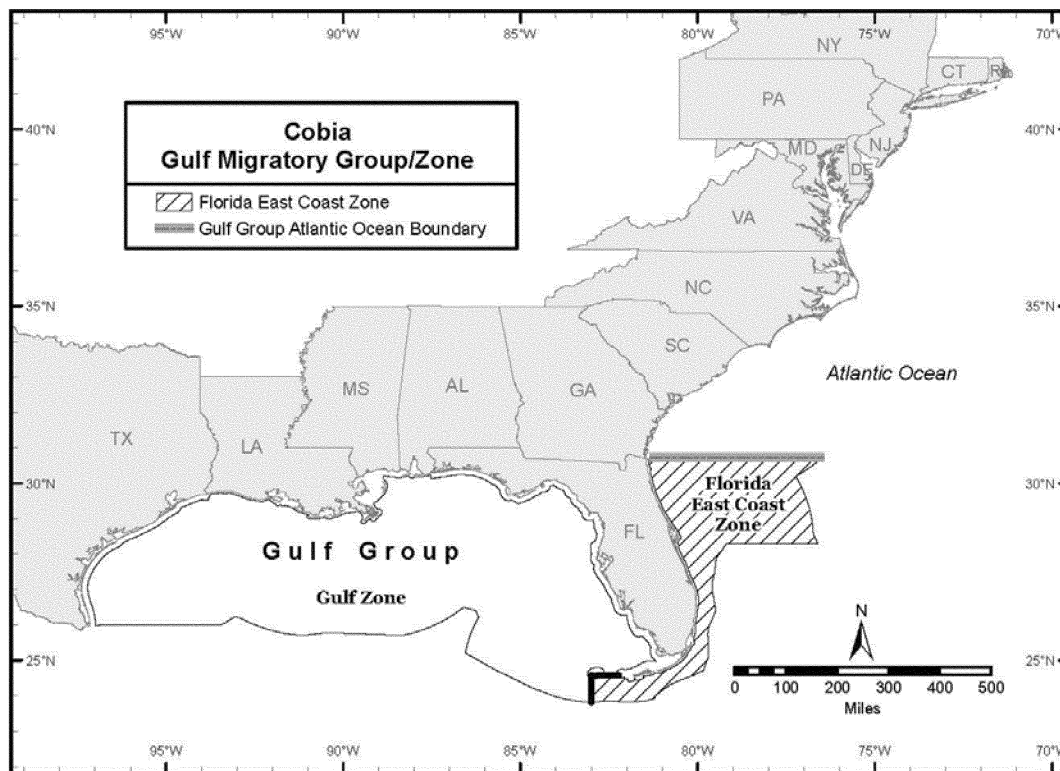
§§ 622.4 and 622.13, Subpart B, §§ 622.30 and 622.41, Subparts C, D, E, and F, § 622.272, Subpart Q, §§ 622.369 and 622.374, and Subpart R [Amended]

- 36. Amend 50 CFR part 622 by removing the words “Gulf of Mexico” and add, in their place, the words “Gulf of America” in the following places:
- a. Section 622.4;

- b. Section 622.13(p), (kk), (ll), (mm), (nn), (oo), (pp), and (qq);
- c. Subpart heading of subpart B;
- d. Section 622.30(a);
- e. Section 622.41(c)(1), (d)(1), (e)(1), (f)(1), (g)(1), and (q)(1);
- f. Subpart heading of subpart C;
- g. Subpart heading of subpart D;
- h. Subpart heading of subpart E;
- i. Subpart heading of subpart F;
- j. Section 622.272(a)(2);
- k. Subpart heading of subpart Q;
- l. Section 622.369(c)(1)(i) and (ii);
- m. Section 622.374(b)(1)(i) and (2)(i); and
- n. Subpart heading of subpart R.
- 37. Revise Figure 3 to Appendix G to Part 622

Figure 3 to Appendix G—Cobia Gulf Migratory Group/Zone

BILLING CODE 3510-22-P



BILLING CODE 3510-22-C

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 38. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

§§ 635.15 and 635.71 [Amended]

■ 39. Amend 50 CFR part 635 by removing the acronym “GOM” and add,

in its place, the word “Gulf” in the following places:

- a. Section 635.15(c)(3) introductory text, (c)(3)(i), (c)(3)(ii), (c)(3)(iii), (e) introductory text, (e)(1)(i), (f)(1), (f)(2)(i), and (f)(6)(ii); and
- b. Section 635.71(b)(51).

§§ 635.2, 635.15, 635.21, 635.22, 635.23, 635.24, 635.27, 635.28, 635.30, 635.31, and 635.71 and Appendix A [Amended]

■ 40. In addition to the amendments listed above, amend 50 CFR part 635 by removing the words “Gulf of Mexico”

and add, in their place, the words “Gulf of America” in the following places:

- a. Section 635.2;
- b. Section 635.15(c)(3) introductory text, (c)(3)(iii), (f)(1), and (f)(2)(i);
- c. Section 635.21(b)(1), (c)(3), (c)(4), (c)(5)(iii)(A), and (c)(5)(iii)(C)(3);
- d. Section 635.22(a)(1), and (c)(2);
- e. Section 635.23(b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), (c)(1), (c)(2), (c)(3), and (c)(4);
- f. Section 635.24(a)(4)(ii), (b)(4)(i), and (b)(4)(iii)(D);

- g. Section 635.27(a)(2)(iii), (a)(3), (b)(1) introductory text, (b)(1)(ii) introductory text, (b)(1)(ii)(A), (b)(1)(ii)(B), (b)(1)(ii)(C), (b)(1)(ii)(D), (b)(1)(ii)(E), (b)(1)(ii)(F), and (b)(1)(iii) introductory text;
- h. Section 635.28(b)(4)(ii), (b)(4)(iii), (b)(5) introductory text, and (b)(5)(i);
- i. Section 635.30(c)(3), and (c)(5)(i);
- j. Section 635.31(a)(1);
- k. Section 635.71(a)(32), (a)(54), (b)(50), and (b)(51); and
- l. Table 1 of Appendix A to Part 635.

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

- 41. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

§§ 697.2 and 697.7 [Amended]

- 42. Amend 50 CFR part 697 by removing the words, “of Mexico” in the following places:
- a. Section 697.2; and
- b. Section 697.7(f)(1).

[FR Doc. 2025–15051 Filed 8–6–25; 8:45 am]

BILLING CODE 3510–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2022–0536; FRL–11829–02–R8]

Air Plan Approval; Wyoming; Revisions to Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Wyoming on December 30, 2022, and supplemented on August 31, 2023, and November 16, 2023, addressing regional haze for Jim Bridger Units 1 and 2 (Wyoming 2022 SIP revision). Wyoming’s 2022 SIP revision provides oxides of nitrogen (NO_x) emission and heat input limits that collectively allow for identical reasonable progress as part of the long term strategy during the first implementation period as the associated emission limits in the existing SIP for Jim Bridger Units 1 and 2. The EPA is also approving monthly and annual NO_x and sulfur dioxide (SO₂) emission limits for Jim Bridger Units 1 through 4 that were included in Wyoming’s 2022 SIP revision. The EPA is taking this

action pursuant to the Clean Air Act (CAA or the Act).

DATES: This rule is effective on September 8, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2022–0536. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air and Radiation Division, EPA, Region 8, Mailcode 8P–ARD, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6252, email address: dobrahner.jaslyn@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. What is being addressed in this document?

The EPA is approving Wyoming’s 2022 SIP revision addressing regional haze long term strategy for the first implementation period at Jim Bridger Units 1 and 2. As required by section 169A of the CAA, the regional haze rule (RHR) calls for state and federal agencies to work together to improve visibility in 156 national parks and wilderness areas, known as mandatory Class I Federal areas.¹ The rule requires the states, in coordination with the EPA, the National Park Service (NPS), the Fish and Wildlife Service, the Forest Service, and other interested parties, to develop and implement air quality protection plans to reduce the pollution that causes visibility impairment in mandatory Class I Federal areas. 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., SO₂, NO_x, and, in some cases, volatile organic compounds (VOC) and ammonia (NH₃)). As discussed in further detail in our proposed rule, this document, and the accompanying Response to Comments

(RTC) document, the EPA finds that Wyoming submitted a regional haze SIP revision addressing long term strategy at Jim Bridger Units 1 and 2 that meets the regional haze requirements for the first implementation period. The State’s submission, the proposed rule, and the RTC document can be found in the docket for this action.

II. Background

On December 30, 2022, Wyoming submitted a revision to its SIP to address regional haze for the first implementation period for Jim Bridger, Units 1 through 4 in accordance with the requirements of the CAA’s regional haze program established by CAA sections 169A and 169B and 40 CFR 51.308.²

On April 10, 2024, the EPA proposed to approve Wyoming’s 2022 SIP revision which will replace the previously approved NO_x emission limit of 0.07 pounds per million British Thermal Units (lb/MMBtu) (30-day rolling average) at Jim Bridger Units 1 and 2 for Wyoming’s regional haze long-term strategy.³ Specifically, the Wyoming 2022 SIP revision amends the State’s previously approved long-term strategy for the first regional haze implementation period and requires Jim Bridger Units 1 and 2 to meet NO_x emission limits of 0.12 lb/MMBtu (30-day rolling average) and annual NO_x limits of 1,314 tons/year for each unit, and a heat input limit of 21,900,000 MMBtu/year per unit by January 1, 2024. Ultimately, the Wyoming 2022 SIP revision finds the modified NO_x emission and heat input limits to be sufficient for reasonable progress as part of the long-term strategy during the first implementation period in lieu of the existing emission limits associated with the installation of SCR controls approved and codified by EPA at 40 CFR 52.2636(c)(1).⁴ Wyoming also included in Wyoming’s 2022 SIP revision NO_x and SO₂ monthly and annual emission limits for Jim Bridger Units 1–4. The Wyoming 2022 SIP revision reflects changes to Chapters 7 and 8 of Wyoming’s regional haze SIP narrative⁵ and incorporates certain conditions of Wyoming air quality permits #P0025809 and #P0036941.

Our April 10, 2024, proposed rule provided background on the

² The State supplemented the SIP revision on August 31, 2023, and November 16, 2023.

³ 89 FR 25200 (April 10, 2024).

⁴ 79 FR 5032 (January 30, 2014).

⁵ State of Wyoming, “Addressing Regional Haze Visibility Protection For The Mandatory Federal Class I Areas Required Under 40 CFR 51.309,” Revised May 23, 2022 (“Wyoming 2022 SIP revision”).

¹ See 40 CFR part 81, subpart D.

requirements of the CAA and RHR, a summary of Wyoming's regional haze submittals and related EPA actions, and the EPA's rationale for its proposed action.⁶ That background and rationale will not be restated in full here; see the proposed rule preamble for details.⁷

III. Public Comments and EPA Responses

The public comment period on the proposal closed on May 10, 2024. During the public comment period, we received three comments on our proposal; two in support and one in opposition. The commenters were:⁸ Idaho Power Company,⁹ NPS,¹⁰ and PacifiCorp.¹¹ The full text of comments received is included in the publicly posted docket associated with this action at <https://www.regulations.gov>. Our RTC document, which is also included in the docket associated with this action, provides detailed responses to all significant comments received.

IV. Final Action

For the reasons stated in the proposed rule, we find that the Wyoming 2022 SIP revision requiring NO_x emission and heat input limits, are sufficient for reasonable progress during the first planning period and that the NO_x emission limits associated with the installation of SCR controls are no longer required. Therefore, we are approving Wyoming's 2022 SIP revision for the NO_x reasonable progress analysis and determination for Jim Bridger Units 1 and 2, including the associated emission and operational limitations,

compliance dates, and monitoring, recordkeeping and reporting requirements as well as the separate monthly and annual NO_x and SO₂ emission limits. Specifically, the EPA is approving the following as federally enforceable elements of the Wyoming 2022 SIP revision for Jim Bridger Units 1–4:

- The NO_x emission limits found in Wyoming air quality permit #P0036941 (Condition 9 for NO_x lb/MMBtu and tons/year emission limits) for Units 1 and 2.
- The NO_x and SO₂ emission limits found in Wyoming air quality permit #P0025809 (Condition 7 for pounds per hour (lb/hr) and Condition 9 for tons/year) for Units 1–4.
- The operational limit on annual heat input (based on a 12-month rolling average of hourly heat input values) found in Wyoming air quality permit #P0036941 (Condition 19).
- The compliance dates found in Wyoming air quality permit #P0036941 (Conditions 11 and 16) requiring that Units 1 and 2 comply with NO_x emission rates in lb/MMBtu (30-day rolling average) and tons/year as well as an annual heat input in MMBtu/year; and permit #P0025809 (Conditions 7 and 9) requiring that Units 1–4 comply with the NO_x and SO₂ emission limits in lb/hr and tons/year, respectively.
- The monitoring, recordkeeping and reporting requirements found in Wyoming air quality permit #P0036941 (Conditions 4, 5, 6, 10.i.1, 10.i.4, 17, 18, 19, 20, and 21) and permit #P0025809 (Condition 8.i and 9).

The approval of the above elements into the SIP will remove the 0.07 lb/MMBtu NO_x (30-day rolling average) long-term emission limits for Jim Bridger Units 1 and 2 from the SIP and add the 0.12 lb/MMBtu NO_x (30-day rolling average) reasonable progress emission limit and associated NO_x emission and heat input limits. The 0.07 lb/MMBtu (30-day rolling average) NO_x long-term strategy emission limits will remain for Units 3 and 4.

We are also approving the following non-enforceable narrative elements of the Wyoming 2022 SIP revision for:

- Jim Bridger Units 1 and 2, *Chapters 7.3.6 PacifiCorp Jim Bridger Electric Generating Station of Wyoming's regional haze narrative, Addressing Regional Haze Visibility Protection For The Mandatory Federal Class I Areas Required Under 40 CFR 51.309*, which contain a source-specific NO_x reasonable progress analysis.
- Jim Bridger Units 1–4, *Chapter 8.3.3 Long-Term Control Strategies for BART Facilities* (Jim Bridger Power Plant (Units 1 and 2) only) of Wyoming's regional haze narrative, *Addressing Regional Haze Visibility Protection For The Mandatory Federal Class I Areas Required Under 40 CFR 51.309*, which contains (1) monthly NO_x and SO₂ emission limits and an annual emissions cap for NO_x plus SO₂; ¹² and (2) a compliance date for Units 1 and 2 to meet a NO_x 30-day rolling average (lb/MMBtu), NO_x annual emission cap (tons/year), and annual heat input (MMBtu/year).

TABLE 1—LIST OF WYOMING SIP AMENDMENTS THAT THE EPA IS APPROVING

Conditions of Wyoming Air Quality Permit #P0036941 the EPA is Approving
Condition 9 for NO _x lb/MMBtu and tons/year emission limits; Condition 11 for fuel compliance date; Conditions 16, 19 for heat input limit and associated compliance date; and Conditions 4, 5, 6, 10.i.1, 10.i.4, 17, 18, 19, 20, and 21 for associated monitoring, recordkeeping, and reporting requirements.
Conditions of Wyoming Air Quality Permit #P0025809 the EPA is Approving
Condition 7 (lb/hr emission limits) and 9 (tons/year emission limits) for NO _x and SO ₂ monthly-block and annual emission limits and compliance dates, and Condition 8.i for associated monitoring, recordkeeping, and reporting requirements.
Amended Sections of Wyoming Regional Haze SIP Narrative the EPA is Approving ¹
Chapter 7.3.6, Chapter 8.3.3 (Jim Bridger Power Plant (Units 1 and 2) only).

¹ Wyoming 2022 SIP revision.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes

incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the

operating permits for Jim Bridger Units 1 and 2 and Jim Bridger Units 1–4 described in sections II. and IV. of this preamble and set forth below in the

⁶ 89 FR 25200 (April 10, 2024).

⁷ 89 FR 25200 (April 10, 2024).

⁸ We received one comment that was not related to the proposed rulemaking.

⁹ Letter dated May 10, 2024.

¹⁰ Letter dated May 7, 2024.

¹¹ Letter dated May 10, 2024.

¹² The revised text in Chapter 8 refers only to Jim Bridger Units 1 and 2. However, the monthly and annual NO_x and SO₂ emission limits contained within the permit referenced, #P0025809, apply to Units 1–4 (Wyoming 2022 SIP revision at 8).

amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹³

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 Act 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, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, the EPA is not required to submit a rule report regarding this action under section 801.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by October 6, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 1, 2025.

Cyrus M. Western,

Regional Administrator, Region 8.

For the reasons stated in the preamble, the Environmental Protection Agency is amending title 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart ZZ—Wyoming

- 2. In § 52.2620:
 - a. The table in paragraph (d) is amended by adding the entries “Jim Bridger Units 1 and 2” and “Jim Bridger Units 1–4” at the end of the table.
 - b. The table in paragraph (e) is amended by revising the entry “(25) XXV”.

The additions and revision read as follows:

§ 52.2620 Identification of plan.

* * * * *

(d) * * *

¹³ 62 FR 27968 (May 22, 1997).

Regulation	Rule title	State effective date	EPA effective date	Final rule citation/ date	Comments
Jim Bridger Units 1 and 2.	Air Quality SIP Permit containing associated requirements, P0036941.	8/29/2023	9/8/2025	90 FR [insert Federal Register page where the document begins], 8/7/2025.	Only the following permit provisions: NO _x emission limits (P0036941, condition 9 for NO _x lb/MMBtu and tons/year emission limits); emission limit compliance date (P0036941, condition 11 for fuel compliance date); heat input limit and associated compliance date (P0036941, condition 16, 19); and associated monitoring, record-keeping, and reporting requirements (P0036941, conditions 4, 5, 6, 10.i.1, 10.i.4, 17, 18, 19, 20, and 21).
Jim Bridger Units 1–4.	Air Quality SIP Permit containing additional requirements, P0025809.	5/5/2020	9/8/2025	90 FR [insert Federal Register page where the document begins], 8/7/2025.	Only the following permit provisions: NO _x and SO ₂ monthly-block and annual emission limits (P0025809, condition 7 for lb/hr emission limits, and P0025809, condition 9 for tons/year emission limits); emission limit compliance dates (P0025809, conditions 7 and 9); and associated monitoring, recordkeeping, and reporting requirements (P0025809, Condition 8.i).

(e) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/ date	Comments
(25) XXV	Wyoming State Implementation Plan for Regional Haze for 309(g).	5/23/2022	9/8/2025	90 FR [insert Federal Register page where the document begins], 8/7/2025.	Excluding portions of the following: Chapters 6.4, 6.5.7, 6.5.8, and 7.5. EPA disapproved (1) the NO _x BART determinations for (a) Laramie River Units 1–3, (b) Dave Johnston Unit 3, and (c) Wyodak Unit 1; (2) the State's monitoring, recordkeeping, and reporting requirements for BART units; and (3) the State's reasonable progress goals.

- 3. In § 52.2636:
- a. Revise table 1 in paragraph (c)(1).
- b. Add tables 3 and 4 in numerical order in paragraph (c)(1).
- c. Revise paragraph (d)(1).

The revisions and additions read as follows:

§ 52.2636 Implementation plan for regional haze.

* * * * *

(c) * * *

(1) * * *

TABLE 1 TO § 52.2636(c)(1)

[Emission limits for BART units for which the EPA approved the state's BART and reasonable progress determinations]

Source name/BART unit	PM emission limits—lb/MMBtu	NO _x emission limits—lb/MMBtu (30-day rolling average)
FMC Westvaco Trona Plant/Unit NS–1A	0.05	0.35
FMC Westvaco Trona Plant/Unit NS–1B	0.05	0.35
TATA Chemicals Partners (General Chemical) Green River Trona Plant/Boiler C	0.09	0.28
TATA Chemicals Partners (General Chemical) Green River Trona Plant/Boiler D	0.09	0.28
Basin Electric Power Cooperative Laramie River Station/Unit 1	0.03	N/A
Basin Electric Power Cooperative Laramie River Station/Unit 2	0.03	N/A
Basin Electric Power Cooperative Laramie River Station/Unit 3	0.03	N/A
PacifiCorp Dave Johnston Power Plant/Unit 3	0.015	N/A
PacifiCorp Dave Johnston Power Plant/Unit 4	0.015	0.15
PacifiCorp Jim Bridger Power Plant/Unit 1 ^{1 2}	0.03	0.26/0.12
PacifiCorp Jim Bridger Power Plant/Unit 2 ^{1 2}	0.03	0.26/0.12
PacifiCorp Jim Bridger Power Plant/Unit 3 ^{1 2}	0.03	0.26/0.07
PacifiCorp Jim Bridger Power Plant/Unit 4 ^{1 2}	0.03	0.26/0.07

TABLE 1 TO § 52.2636(c)(1)—Continued

[Emission limits for BART units for which the EPA approved the state's BART and reasonable progress determinations]

Source name/BART unit	PM emission limits—lb/MMBtu	NO _x emission limits—lb/MMBtu (30-day rolling average)
PacifiCorp Naughton Power Plant/Unit 1	0.04	0.26
PacifiCorp Naughton Power Plant/Unit 2	0.04	0.26
PacifiCorp Wyodak Power Plant/Unit 1	0.015	N/A

¹ The owners and operators of PacifiCorp Jim Bridger Units 1, 2, 3, and 4 shall comply with the NO_x emission limit for BART of 0.26 lb/MMBtu and the PM emission limit for BART of 0.03 lb/MMBtu and other requirements of this section by March 4, 2019. The owners and operators of PacifiCorp Jim Bridger Units 1, 2, 3, and 4 shall comply with the NO_x emission limit for reasonable progress of 0.12 lb/MMBtu by January 1, 2024, for Jim Bridger Units 1 and 2 and 0.07 lb/MMBtu by December 31, 2015, for Unit 3, and December 31, 2016, for Unit 4.

² Additional NO_x and SO₂ emissions control measures and associated compliance dates for Jim Bridger Units 1–4, are found in § 52.2636(c) tables 3 and 4.

* * * * *

TABLE 3 TO § 52.2636(c)(1)

[NO_x and SO₂ emission limits for Jim Bridger units 1–4, effective January 1, 2022]

Month	Total units 1–4 NO _x emission limit (monthly average basis) ^{1 2} (lb/hour)	Total units 1–4 SO ₂ emission limit (monthly average basis) ^{1 2} (lb/hour)
January	2,050	2,100
February	2,050	2,100
March	2,050	2,100
April	2,050	2,100
May	2,200	2,100
June	2,500	2,100
July	2,500	2,100
August	2,500	2,100
September	2,500	2,100
October	2,300	2,100
November	2,030	2,100
December	2,050	2,100

¹ Effective January 1, 2022, through December 31, 2023.

² In addition to monthly NO_x and SO₂ emission limits, an annual, plant-wide NO_x plus SO₂ emissions cap of 17,500 tons per year is effective January 1, 2022, through December 31, 2023.

TABLE 4 TO § 52.2636(c)(1)

[NO_x Emission limits and heat input for Jim Bridger Units 1 and 2, effective January 1, 2024]

Unit	NO _x emission limit (tons/year)	Heat input (MMBtu/year)
Unit 1	1,314	21,900,000
Unit 2	1,314	21,900,000

* * * * *

(d) *Compliance date.* (1) The owners and operators of PacifiCorp Jim Bridger Units 1, 2, 3, and 4 shall comply with the NO_x emission limit of 0.26 lb/MMBtu and PM emission limit of 0.03 lb/MMBtu and other requirements of this section by March 4, 2019. The owners and operators of PacifiCorp Jim Bridger Units 1 and 2 shall comply with the NO_x emission limit of 0.12 lb/MMBtu by January 1, 2024. The owners and operators of PacifiCorp Jim Bridger Units 3 and 4 shall comply with the NO_x emission limit of 0.07 lb/MMBtu

by: December 31, 2015, for Unit 3, and December 31, 2016, for Unit 4. The owners and operators of PacifiCorp Jim Bridger Units 1, 2, 3, and 4 shall comply with the NO_x and SO₂ emission limits contained in § 52.2636(c) table 3 by January 1, 2022, through December 31, 2023. The owners and operators of PacifiCorp Jim Bridger Units 1 and 2 shall comply with NO_x emission and heat input limits contained in § 52.2636(c) table 4 by January 1, 2024.

* * * * *

[FR Doc. 2025–14983 Filed 8–6–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[EPA–R10–OAR–2024–0480; FRL–12783–01–R10]****Air Plan Approval; OR; Update to Materials Incorporated by Reference****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the Oregon State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by Oregon and approved by the EPA. In this final rule, the EPA is also notifying the public of corrections and clarifying changes in the Code of Federal Regulations (CFR) tables that identify the materials incorporated by reference into the Oregon SIP. This update affects the materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

DATES: This action is effective August 7, 2025.

ADDRESSES: The SIP materials for which incorporation by reference into 40 CFR part 52 is finalized through this action are available for inspection at the following locations: Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101; and www.regulations.gov. To view the materials at the Region 10 Office, the EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Claudia Vaupel, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at 206-553-6121, or vaupel.claudia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Each State has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution regulations, emissions inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms, among other elements. In developing the SIP, the State formally adopts the control measures and strategies used to attain and maintain the NAAQS and submits them to the EPA for review and approval.¹ The EPA approves the State's submitted regulatory provisions and codifies them in part 52, "Approval and Promulgation of Implementation Plans," of Title 40 of the Code of Federal Regulations (40 CFR part 52). In codifying the State regulatory provisions, the full text is not

reproduced in its entirety in 40 CFR part 52 but is "incorporated by reference" as of a specific effective date. The public is referred to the location of the full text version for the specifics of each State regulatory provision incorporated by reference into the SIP. The information provided allows the EPA and the public to monitor the extent to which a State implements and enforces the SIP.

The SIP is a living document that is revised by the State as necessary to address the unique air pollution problems in the State. A SIP revision may include changes to one or more regulations in their entirety, or portions of regulations. The State indicates the changes in the submitted SIP revision (such as by using redline/strikethrough text) and the EPA takes action on the requested changes. The EPA establishes a docket for each action using a unique Docket Identification Number, listed in each **Federal Register** document. The docket and complete submission are available for viewing on www.regulations.gov.

On May 22, 1997 (62 FR 27968), the EPA began implementing revised procedures for incorporating regulatory provisions by reference into the Code of Federal Regulations for each SIP. The revised procedures updated the format for the identification of each SIP in 40 CFR part 52, streamlined the mechanism for announcing EPA approval of SIP revisions, and streamlined the mechanism for updating the "IBR material" (the full text of the regulatory provisions and source-specific permits, etc.) incorporated by reference into each SIP in 40 CFR part 52. The revised procedures also called for the EPA to maintain a "SIP Compilation" of the IBR material for each State.

The EPA must update each SIP Compilation and periodically publish an informational document in the rules section of the **Federal Register** notifying the public that updates have been made to a SIP Compilation for a particular State. The EPA began applying the 1997 revised procedures to the Oregon SIP on December 10, 2013 (78 FR 74012). The EPA subsequently published updates to the Oregon SIP IBR materials on April 10, 2019 (84 FR 14272) and December 20, 2022 (87 FR 77720).

A. Approved and Incorporated by Reference Regulatory Materials

Since the last published update to the Oregon SIP IBR materials, the EPA took two actions, on July 23, 2024 (89 FR 59610) and October 8, 2024 (89 FR 81361), to approve and incorporate by reference a number of regulatory provisions into the Oregon SIP at 40

CFR 52.1970(c) and (d). The approval actions and associated regulatory provisions are described in the following paragraphs of this preamble.

1. Paragraph (c) EPA Approved Regulations and Statutes

a. Action on July 23, 2024 (89 FR 59610):

- OAR 340-200-0020 General Air Quality Definitions (defining terms used in the Oregon air quality regulations), State effective March 1, 2023;

- OAR 340-200-0025 Abbreviations and Acronyms (defining abbreviations and acronyms used in the Oregon air quality regulations), State effective March 1, 2023;

- OAR 340-200-0035 Reference Materials (specifying the title and version of each reference material used in the Oregon air quality regulations), State effective March 1, 2023;

- OAR 340-204-0300 Designation of Sustainment Areas (identifying the areas in Oregon designated as sustaining the relevant air quality standard), State effective March 1, 2023;

- OAR 340-204-0310 Designation of Reattainment Areas (identifying the areas in Oregon designated as reattaining the relevant air quality standard), State effective March 1, 2023;

- OAR 340-206-0010 Introduction (establishing significant harm levels for pollutants in areas based on priority level), State effective March 1, 2023;

- OAR 340-208-0110 Visible Air Contaminant Limitations (establishing limits and test methods for visible emissions), State effective March 1, 2023;

- OAR 340-209-0080 Issuance or Denial of a Permit (specifying procedures for issuing and denying permits, including how to request a hearing to contest a permit decision), State effective March 1, 2023;

- OAR 340-210-0100 Registration in General (identifying categories of sources that are required to register with the Oregon DEQ), State effective March 1, 2023;

- OAR 340-210-0205 Notice of Construction and Approval of Plans: Applicability and Requirements, except paragraph (3) (listing source types and activities that require notice to the Oregon DEQ prior to construction), State effective March 1, 2023;

- OAR 340-210-0225 Notice of Construction and Approval of Plans: Types of Construction/Modification Changes (establishing the activities that qualify for each type of notice of construction), State effective March 1, 2023;

- OAR 340-210-0230 Notice of Construction and Approval of Plans:

¹ See Clean Air Act section 110(a)(1) and (2).

Notice to Construct Application (requiring the specific information to be submitted in an application), State effective March 1, 2023;

- OAR 340–210–0240 Notice of Construction and Approval of Plans: Construction Approval (specifying what level of approval from Oregon DEQ is needed before a source may begin construction), State effective March 1, 2023;

- OAR 340–210–0250 Notice of Construction and Approval of Plans: Approval to Operate (specifying what is required of a source to obtain approval to operate), State effective March 1, 2023;

- OAR 340–214–0110 Reporting: Request for Information (requiring sources to respond to Oregon DEQ requests for information), State effective March 1, 2023;

- OAR 340–214–0114, Reporting: Records; Maintaining and Reporting (detailing when and how to record and report data), State effective March 1, 2023;

- OAR 340–214–0130 Reporting: Information Exempt from Disclosure (establishing that trade secrets and other eligible data may be exempt from disclosure), State effective March 1, 2023;

- OAR 340–216–0020 Applicability and Jurisdiction (identifying source categories subject to Division 216 regarding air contaminant discharge permits), State effective March 1, 2023;

- OAR 340–216–0025 Types and Permits (identifying the types of air contaminant discharge permits), State effective March 1, 2023;

- OAR 340–216–0040 Application Requirements (spelling out the information required to be included in permit applications), State effective March 1, 2023;

- OAR 340–216–0054 Short Term Activity ACDPs (listing the pilot and other time-limited activities that may be eligible for a short term activity ACDP), State effective March 1, 2023;

- OAR 340–216–0056 Basic ACDPs (identifying the contents of a basic ACDP), State effective March 1, 2023;

- OAR 340–216–0060 General Air Contaminant Discharge Permits (identifying the contents of a general ACDP), State effective March 1, 2023;

- OAR 340–216–0064 Simple ACDPs (identifying the contents of a simple ACDP), State effective March 1, 2023;

- OAR 340–216–0066 Standard ACDPs (identifying the contents of a standard ACDP), State effective March 1, 2023;

- OAR 340–216–0068 Simple and Standard ACDP Attachments (allowing Oregon DEQ to add requirements to

existing simple and standard ACDP permits), State effective March 1, 2023;

- OAR 340–216–0082 Expiration, Termination, Reinstatement or Revocation of an ACDP (regulating when and how ACDPs expire, are terminated, reinstated or revoked), State effective March 1, 2023;

- OAR 340–216–0084 Department Initiated Modification (establishing a means by which Oregon DEQ may modify an ACDP when needed), State effective March 1, 2023;

- OAR 340–216–8010 Table 1—Activities and Sources (listing which source categories and associated activities must obtain an ACDP), State effective March 1, 2023;

- OAR 340–216–8020 Table 2—Air Contaminant Discharge Permits, except paragraph (2) and Table 2 (requiring sources to pay ACDP fees to the Oregon DEQ), State effective March 1, 2023;

- OAR 340–222–0020 Applicability and Jurisdiction (requiring that plant site emission limits are included in most ACDPs and title V operating permits), State effective March 1, 2023;

- OAR 340–222–0035 General Requirements for Establishing All PSELs (describing how plant site emission limits are established and how they are revised), State effective March 1, 2023;

- OAR 340–222–0041 Annual PSELs (prescribing how annual plant site emission limits are established on a source-specific basis), State effective March 1, 2023;

- OAR 340–222–0042 Short Term PSEL (establishing short term limits for sources located in areas with an established short term significant emission rate), State effective March 1, 2023;

- OAR 340–222–0046 Netting Basis (establishing netting basis requirements), State effective March 1, 2023;

- OAR 340–224–0030 New Source Review Procedural Requirements (establishing application and processing procedures for new source review permits), State effective March 1, 2023;

- OAR 340–224–0520 Net Air Quality Benefit Emission Offsets: Requirements for Demonstrating Net Air Quality Benefit for Ozone Areas (requiring certain sources to offset emissions in areas with ozone problems), State effective March 1, 2023;

- OAR 340–224–0530 Net Air Quality Benefit Emission Offsets: Requirements for Demonstrating Net Air Quality Benefit for Non-Ozone Areas (requiring sources to offset emissions in areas with particulate matter problems), State effective March 1, 2023;

- OAR 340–225–0030 Procedural Requirements (prescribing the

procedures for air quality analysis), State effective March 1, 2023;

- OAR 340–225–0050 Requirements for Analysis in PSD Class II and Class III Areas (establishing the modeling requirements for sources in PSD class II and III areas), State effective March 1, 2023;

- OAR 340–225–0070 Requirements for Demonstrating Compliance with Air Quality Related Values Protection (describing how to comply with limits established for national parks, wilderness, and other areas), State effective March 1, 2023;

- OAR 340–226–0100 Highest and Best Practicable Treatment and Control: Policy and Application (requiring appropriate conditions in permits to control and treat emissions to the highest extent), State effective March 1, 2023;

- OAR 340–226–0130 Highest and Best Practicable Treatment and Control: Typically Achievable Control Technology (TACT) (laying out when and how the Oregon DEQ will make typically achievable control technology determinations), State effective March 1, 2023;

- OAR 340–226–0140 Highest and Best Practicable Treatment and Control: Additional Control Requirements for Stationary Sources of Air Contaminants (providing that the Oregon DEQ will establish additional control requirements to protect the NAAQS, visibility, and other public health and environmental goals), State effective March 1, 2023;

- OAR 340–226–0210 Grain Loading Standards: Particulate Emission Limitations for Sources Other Than Fuel Burning Equipment, Refuse Burning Equipment and Fugitive Emissions (establishing particulate emission standards for non-fuel burning equipment), State effective March 1, 2023;

- OAR 340–228–0210 General Emission Standards for Fuel Burning Equipment: Grain Loading Standards (setting grain loading standards for fuel-burning equipment), State effective March 1, 2023;

- OAR 340–232–0030 Definitions (defining terms used in the rules establishing emission standards for VOC point sources), State effective March 1, 2023;

- OAR 340–232–0040 General Non-Categorical Requirements (spelling out general case-by-case RACT requirements for VOC point sources), State effective March 1, 2023;

- OAR 340–232–0090 Bulk Gasoline Terminals Including Truck and Trailer Loading (VOC emission limits for bulk

gasoline terminals), State effective March 1, 2023;

- OAR 340–232–0160 Surface Coating in Manufacturing (VOC emission limits for surface coating operations), State effective March 1, 2023;

- OAR 340–232–0170 Aerospace Component Coating Operations (VOC emission limits for component coating in the aerospace industry), State effective March 1, 2023;

- OAR 340–234–0010 Definitions except (8) and (10) (defining terms used in the rules establishing emission standards for the wood products industry), State effective March 1, 2023;

- OAR 340–234–0210 Kraft Pulp Mills: Emission Limitations, except references to total reduced sulfur (setting emission limits for kraft pulp mills), State effective March 1, 2023; and

- OAR 340–236–8010 Hot Mix Asphalt Plants: Table—Process Weight Table (requiring hot mix asphalt plants to comply with specific process weight discharge rates), State effective March 1, 2023.

b. Action on October 8, 2024 (89 FR 81361):

- OAR 340–223–0010 Purpose (for maintaining reasonable progress and other requirements associated with Oregon’s implementation of the Federal Regional Haze Rule), State effective July 26, 2021;

- OAR 340–223–0020 Definitions (updating this section to account for revised program requirements between the first regional haze implementation period and the second implementation period), State effective July 26, 2021;

- OAR 340–223–0100 Screening Methodology for Sources for Round II of Regional Haze (establishing the criteria for selecting sources for review under the regional haze program), State effective July 26, 2021;

- OAR 340–223–0110 Options for Compliance with Round II of Regional Haze (establishing requirements for sources and compliance options under the regional haze program), State effective July 26, 2021;

- OAR 340–223–0120 Four Factor Analysis (establishing the requirements for assessing potential controls for reasonable progress under the regional haze program), State effective July 26, 2021; and

- OAR 340–223–0130 Final Orders Ordering Compliance with Round II of Regional Haze (establishing unilateral order authority and procedures for contested case hearings under the regional haze program), State effective July 26, 2021.

2. Paragraph (d) EPA Approved State Source-Specific Requirements

a. Action on October 8, 2024 (89 FR 81361):

- Ash Grove Cement Company, Permit No. 01–0029–TV–01, permit conditions (3), (9) through (11), (14), (16) through (28), (42), (45) through (76), (84) through (97), (99), (100), and (102) only, State effective October 16, 2020;

- Biomass One, L.P., Order No. 15–0159, State effective August 9, 2021;

- Boise Cascade Wood Products, LLC—Elgin Complex, Order No. 31–0006, State effective August 12, 2021;

- Boise Cascade Wood Products, LLC—Elgin Complex, Permit No. 31–0006–TV–01, permit conditions (56), (59) through (75), (77), and (78) only, State effective December 5, 2016;

- Boise Cascade Wood Products, LLC—Medford, Order No. 15–0004, State effective August 9, 2021;

- Boise Cascade Wood Products, LLC—Medford, Permit No. 15–0004–TV–01, permit conditions (71), (72), and (74) through (88) only, State effective February 20, 2020;

- Cascade Pacific Pulp, LLC—Halsey Pulp Mill, Order No. 22–3501–A2, State effective August 25, 2023;

- Cascades Tissue Group: A Division of Cascades Holding US Inc., Order No. 05–1849, State effective August 18, 2021;

- Cascades Tissue Group: A Division of Cascades Holding US Inc., Permit No. 05–1849–TV–01, permit conditions (24), (25), (27), and (29) through (43) only, State effective April 6, 2018;

- Collins Products, L.L.C., Permit No. 18–0013–TV–01, permit conditions (3), (14) through (16), (19) through (24), (34) through (42), (63) through (75), and (77) only, State effective January 26, 2015;

- Columbia Forest Products, Inc., Permit No. 18–0014–TV–01, permit conditions (3), (8) through (20), (22), (23), (34) through (52), (58) through (66), (67—introductory paragraph), (67.a), (67.b.iii) through (67.b.v), and (68) through (70) only, State effective September 26, 2017;

- EVRAZ Inc, Order No. 26–1865, State effective August 9, 2021;

- Gas Transmission Northwest LLC—Compressor Station 12, Order No. 09–0084, State effective August 9, 2021;

- Gas Transmission Northwest LLC—Compressor Station 12, Permit No. 09–0084–TV–01, permit conditions (32) through (34) and (37) through (50) only, State effective August 10, 2017;

- Gas Transmission Northwest LLC—Compressor Station 13, Order No. OAH CASE NO. 2021–ABC–04835/DEQ CASE NO. AQ/RH–HQ–2021–140, State effective June 1, 2022;

- Gas Transmission Northwest LLC—Compressor Station 13, Permit No. 18–0096–TV–01, permit conditions (24) through (26), (32) through (35), and (37) through (44) only, State effective July 11, 2018;

- Georgia-Pacific—Toledo LLC, Order No. 21–0005, Amendment No. 21–005–A1, State effective December 5, 2022;

- Georgia Pacific—Wauna Mill, Order No. 04–0004, Amendment No. 04–004–A1, State effective December 5, 2022;

- Gilchrist Forest Products, Permit No. 18–0005–TV–01, permit conditions (4), (5), (9), (10), (12) through (19), (41) through (43), (45) through (59), and (61) only, State effective July 25, 2023;

- International Paper—Springfield, Order No. 208850, State August 9, 2021;

- International Paper—Springfield, Permit No. 208850, permit conditions (186) through (189), (192), and (198) only, State effective October 4, 2016;

- JELD–WEN, Permit No. 18–0006–TV–01, permit conditions (55) through (77) and (80) through (87) only, State effective December 01, 2021;

- JELD–WEN, Permit No. 18–0006–TV–01, Addendum No. 1, permit conditions 53 and 53b only, State effective August 11, 2022;

- Kingsford Manufacturing Company, Permit No. 204402, addendum No. 2, permit conditions (71) through (73) and (75) through (91) only, State effective November 15, 2021;

- Klamath Energy LLC—Klamath Cogeneration, Permit No. 18–0003–TV–01, permit conditions (10) through (16), (18), (24) through (28), (32) through (37), (39) through (49), (51), (52), and (54), and (56) only, State effective June 12, 2017;

- Klamath Energy LLC—Klamath Cogeneration, Permit No. 18–0003–TV–01, Addendum No. 1, permit conditions (3.a), (3.b), (61.l), and (66.b.xii), State effective December 8, 2020;

- Northwest Pipeline LLC—Baker Compressor Station, Order No. 01–0038, amendment 01–0038–A1, State effective February 1, 2022;

- Northwest Pipeline LLC—Baker Compressor Station, Permit No. 01–0038–TV–01, permit conditions (27) through (30) and (32) through (43) only, State effective January 12, 2017;

- Northwest Pipeline LLC—Oregon City Compressor Station, Order No. 03–2729, amendment 03–2729–A1, State effective February 1, 2022;

- Northwest Pipeline LLC—Oregon City Compressor Station, Permit No. 03–2729–TV–01, permit conditions (7), (19), (25) through (27), (38), (41), (45), and (50) through (65) only, State effective February 19, 2013;

- Ochoco Lumber Company, Permit No. 12–0032–ST–01, permit conditions

(1.1) through (1.3), (1.6), (2.1) through (2.5), (4.1) through (4.4), and (5.1) through (6.2) only, State effective June 25, 2019;

- Owens-Brockway Glass Container Inc., Order No. 26–1876, State effective August 9, 2021;
- Owens-Brockway Glass Container Inc., Permit No. 26–1876–TV–01, permit conditions (33) through (48) only, State effective December 10, 2019,
- Pacific Wood Laminates, Inc., Permit No. 08–0003–TV–01, permit conditions (3), (9), (10), (12) through (19), (26) through (41), (56) through (71), and (73) only, State effective December 30, 2019;
- PGE Beaver Plant/Port Westward I Plant, Order No. 05–2606, State effective August 10, 2021;
- PGE Beaver Plant/Port Westward I Plant, Permit No. 05–2520, permit conditions (62) through (66), (68) through (78), (79.a), (80) through (83), (85), (87), (88.a), (89.d), (89.f), and (89.i) only, State effective January 21, 2009;
- Roseburg Forest Products—Dillard, Order No. 10–0025, State effective August 9, 2021;
- Roseburg Forest Products—Medford MDF, Permit No. 15–0073–TV–01, permit conditions (44) through (46), (48) through (61), (63), and (64) only, State effective August 18, 2022;
- Roseburg Forest Products—Riddle Plywood, Permit No. 10–0078–TV–01, permit conditions (65), (66), (68) through (81) only, State effective July 31, 2019;
- Swanson Group Mfg. LLC, Permit No. 10–0045–TV–01, permit conditions (4), (10) through (24), (25—introductory paragraph), (25.a) through (25.c), (27) through (40), (50) through (64), and (66) only, State effective June 12, 2017;
- Timber Products Co. Limited Partnership, Permit No. 15–0025–TV–01, permit conditions (70) through (72) and (74) through (90) only, State effective June 23, 2022;
- Willamette Falls Paper Company, Order No. 03–2145, State effective August 9, 2021;
- Willamette Falls Paper Company, Permit No. 03–2145–TV–01, permit conditions (40) through (55) only, State effective February 24, 2016; and
- Woodgrain Millwork LLC—Particleboard, Permit No. 31–0002–TV–01, permit conditions (3), (12) through (21), (22—introductory paragraph), (22.a), (22.e), (22.f), (23), (25) through (28), (30) through (35), (37), (39) through (41), (43), (44), (46), (48), (49), (51) through (72), (80) through (94), and (96) only, State effective May 24, 2021.

B. Regulatory Materials Removed From Incorporation by Reference

Since the last published update to the Oregon SIP IBR materials, the EPA also removed regulatory materials from the Oregon SIP at 40 CFR 52.1970(c). The actions and associated regulatory provisions removed from incorporation by reference are described in the following paragraphs of this preamble. No IBR material was removed from paragraph (d).

1. Paragraph (c) EPA Approved Regulations and Statutes

- a. Action on July 23, 2024 (89 FR 59610):
 - OAR 340–210–0215, Notice of Construction and Approval of Plans: Requirement (requirements to notify the Oregon DEQ prior to constructing or modifying a subject source), State effective April 16, 2015;
 - OAR 340–222–0040, Generic Annual PSEL (establishing generic plant site emission limits for subject sources that emit less than the significant emission rate), State effective April 16, 2015;
 - OAR 340–021–200 Purpose (describing the purpose of contingency control requirements for existing industrial sources in coarse particulate matter nonattainment areas), State effective May 1, 1995;
 - OAR 340–021–205 Relation to Other Rules (describing the relation of contingency control requirements to other regulations), State effective March 10, 1993;
 - OAR 340–021–210 Applicability (stating that contingency control requirements shall apply if the EPA determines an area has failed to attain the PM₁₀ standard by the applicable attainment date), State effective March 10, 1993;
 - OAR 340–021–215 Definitions (establishing definitions used in the contingency control requirements), State effective March 10, 1993;
 - OAR 340–021–220 Compliance Schedule for Existing Sources (setting the compliance schedule for sources to install emissions control systems as a contingency control requirement), State effective March 10, 1993;
 - OAR 340–021–225 Wood-Waste Boilers (limiting emissions from wood-waste boilers to a specific rate as a contingency control requirement), State effective March 10, 1993;
 - OAR 340–021–230 Wood Particle Dryers at Particleboard Plants (limiting emissions from wood particle dryers to a specific rate as a contingency control requirement), State effective March 10, 1993;

- OAR 340–021–235 Hardboard Manufacturing Plants (limiting emissions from hardboard manufacturing plants to a specific rate as a contingency control requirement), State effective March 10, 1993;

- OAR 340–021–240, Air Conveying Systems (limiting emissions from air conveying systems to a specific rate as a contingency control requirement), State effective March 10, 1993; and

- OAR 340–021–245, Fugitive Emissions (requiring wood products manufacturing plants to limit fugitive emissions as a contingency control requirement), State effective March 10, 1993.

2. Action on October 8, 2024 (89 FR 81361):

- OAR 340–223–0030 BART and Additional Regional Haze Requirements for the Foster-Wheeler Boiler at the Boardman Coal-Fired Power Plant (Federal Acid Rain Program Facility ORISPL Code 6106 (establishing nitrogen oxide and sulfur dioxide emission limits, retrofit control technology and fuel requirements for the Foster-Wheeler Boiler), State effective December 10, 2010;
- OAR 340–223–0040 Federally Enforceable Permit Limits (requirements for sources that accept a federally enforceable limit to avoid specific best available retrofit technology requirements), State effective December 10, 2010;
- OAR 340–223–0050 Alternative Regional Haze Requirements for the Foster-Wheeler Boiler at the Boardman Coal-Fired Power Plant (Federal Acid Rain Program Facility ORISPL Code 6106 (regional haze compliance options and dates for the Foster-Wheeler Boiler), State effective December 10, 2010; and
- OAR 340–223–0080 Alternative Requirements for the Foster-Wheeler Boiler at the Boardman Coal-Fired Power Plant (Federal Acid Rain Program Facility ORISPL Code 6106) Based Upon Permanently Ceasing the Burning of Coal Within Five Years of EPA Approval of the Revision to the Oregon Clean Air Act State Implementation Plan Incorporating OAR Chapter 340, Division 223 (regional haze compliance options and dates for the Foster-Wheeler Boiler if it ceases to burn coal), State effective December 10, 2010.

II. EPA Action

In this action, the EPA is providing notification of an update to the materials incorporated by reference into the Oregon SIP as of June 1, 2025, and identified in 40 CFR 52.1970(c) and (d). This update includes SIP materials submitted by Oregon and approved by

the EPA since the last IBR update. *See* 87 FR 77720 (December 20, 2022).

In addition, the EPA is providing notification of the following corrections:

40 CFR 52.1970(c): correcting entry “629–048–0110” to reflect that a revision to this regulation was approved in the EPA action on May 25, 2021 (86 FR 27976); and

40 CFR 52.1970(e): correcting the entry for “ODEQ Continuous Emissions Monitoring Manual” in Table 5 to include the statewide applicable geographic area, which was inadvertently left blank in the action on October 11, 2017 (82 FR 47122).

III. Good Cause Exemption

The EPA has determined that this action falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs, makes corrections and clarifying changes to the tables in the CFR, and makes ministerial changes to the prefatory heading to the tables in the CFR. Under section 553 of the APA, an agency may find good cause where procedures are “impracticable, unnecessary, or contrary to the public interest.” Public comment for this administrative action is “unnecessary” and “contrary to the public interest” since the codification (and corrections) only reflect existing law. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notification of the updated Oregon SIP Compilation and notification of corrections to the Oregon “Identification of Plan” portion of the CFR. Further, pursuant to section 553(d)(3), making this action immediately effective benefits the public by immediately updating both the SIP Compilation and the CFR “Identification of plan” section (which includes table entry corrections).

IV. Incorporation by Reference

In this document, The EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, The EPA is finalizing the incorporation by reference of regulations promulgated by Oregon, previously approved by the EPA and

federally effective before June 1, 2025, contained in Volume I, 40 CFR 52.1970(c), *EPA approved regulations and statutes*, and Volume II, 40 CFR 52.1970(d) *EPA approved state source-specific requirements*, described in section II. of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the Clean Air Act. 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 Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 6, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 18, 2025.

Emma Pokon,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart MM—Oregon

- 2. In § 52.1970, paragraphs (b), (c), (d) and (e) are revised to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(b) *Incorporation by reference.*

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to June 1, 2025, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval and notification of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after June 1, 2025, will

be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 10 certifies that the rules/regulations provided by the EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of the dates referenced in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference may be

inspected at the Region 10 EPA Office at 1200 Sixth Avenue, Suite 155, Seattle, WA 98101. To obtain the material, please call (206) 553-6357. You may inspect the material with an EPA approval date prior to June 1, 2025, for Oregon at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA email fedreg.legal@nara.gov or go to www.archives.gov/federal-register/cfr/ibr-locations.

(c) EPA approved regulations and statutes.

TABLE 1—EPA APPROVED OREGON STATE STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
ORS 477.515	Permits	1971	11/1/2001, 66 FR 55105	Permits required for fires on forestlands; waiver, permit conditions, smoke management plan; restricted areas, rules and excepted areas.

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) ¹

State citation	Title/subject	State effective date	EPA approval date	Explanations
Chapter 340—Department of Environmental Quality				
Division 200—General Air Pollution Procedures and Definitions				
200–0010	Purpose and Application	4/16/2015	10/11/2017, 82 FR 47122.	
200–0020	General Air Quality Definitions	3/1/2023	7/23/2024, 89 FR 59610.	
200–0025	Abbreviations and Acronyms	3/1/2023	7/23/2024, 89 FR 59610.	
200–0030	Exceptions	4/16/2015	10/11/2017, 82 FR 47122.	
200–0035	Reference Materials	3/1/2023	7/23/2024, 89 FR 59610.	
Division 202—Ambient Air Quality Standards and PSD Increments				
202–0010	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	
202–0020	Applicability and Jurisdiction	4/16/2015	10/11/2017, 82 FR 47122.	
Ambient Air Quality Standards				
202–0050	Purpose and Scope of Ambient Air Quality Standards.	4/16/2015	10/11/2017, 82 FR 47122.	
202–0060	Suspended Particulate Matter	10/16/2015	5/24/2018, 83 FR 24034.	
202–0070	Sulfur Dioxide	4/16/2015	10/11/2017, 82 FR 47122.	
202–0080	Carbon Monoxide	7/1/2011	1/22/2003, 68 FR 2891.	
202–0090	Ozone	7/13/2017	5/24/2018, 83 FR 24034.	
202–0100	Nitrogen Dioxide	4/16/2015	10/11/2017, 82 FR 47122.	
202–0130	Lead	4/16/2015	10/11/2017, 82 FR 47122.	
Prevention of Significant Deterioration Increments				
202–0200	General	4/16/2015	10/11/2017, 82 FR 47122.	
202–0210	Ambient Air PSD Increments	4/16/2015	10/11/2017, 82 FR 47122.	
202–0220	Ambient Air Ceilings	4/16/2015	10/11/2017, 82 FR 47122.	
202–0225	Ambient Air Quality Impact Levels for Maintenance Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
Division 204—Designation of Air Quality Areas				
204–0010	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	
204–0020	Designation of Air Quality Control Regions	4/16/2015	10/11/2017, 82 FR 47122.	
204–0030	Designation of Nonattainment Areas	4/16/2015	10/11/2017, 82 FR 47122.	
204–0040	Designation of Maintenance Areas	4/16/2015	10/11/2017, 82 FR 47122.	
204–0050	Designation of Prevention of Significant Deterioration Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
204–0060	Redesignation of Prevention of Significant Deterioration Areas.	4/16/2015	10/11/2017, 82 FR 47122.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) ¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
204–0070	Special Control Areas	4/16/2015	10/11/2017, 82 FR 47122.	
204–0080	Motor Vehicle Inspection Boundary Designations	4/16/2015	10/11/2017, 82 FR 47122.	
204–0090	Oxygenated Gasoline Control Areas	4/16/2015	10/11/2017, 82 FR 47122.	
Designation of Areas				
204–0300	Designation of Sustainment Areas	3/1/2023	7/23/2024, 89 FR 59610.	
204–0310	Designation of Reattainment Areas	3/1/2023	7/23/2024, 89 FR 59610.	
204–0320	Priority Sources	4/16/2015	10/11/2017, 82 FR 47122.	
Division 206—Air Pollution Emergencies				
206–0010	Introduction	3/1/2023	7/23/2024, 89 FR 59610.	
206–0020	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	
206–0030	Episode State Criteria for Air Pollution Emergencies	4/16/2015	10/11/2017, 82 FR 47122.	
206–0040	Special Conditions	4/16/2015	10/11/2017, 82 FR 47122.	
206–0050	Source Emission Reduction Plans	4/16/2015	10/11/2017, 82 FR 47122.	
206–0060	Regional Air Pollution Authorities	4/16/2015	10/11/2017, 82 FR 47122.	
206–0070	Operations Manual	4/16/2015	10/11/2017, 82 FR 47122.	
206–8010	Air Pollution Episode ALERT Conditions Source Emission Reduction Plan Emissions Control Actions to be Taken as Appropriate in Alert Episode Area.	4/16/2015	10/11/2017, 82 FR 47122.	
206–8020	Air Pollution Episode WARNING Conditions Emission Reduction Plan.	4/16/2015	10/11/2017, 82 FR 47122.	
206–8030	Air Pollution Episode EMERGENCY Conditions Emission Reduction Plan.	4/16/2015	10/11/2017, 82 FR 47122.	
206–8040	Air Pollution Episode Conditions Due to Particulate Which is Primarily Fallout from Volcanic Activity or Windblown Dust.	4/16/2015	10/11/2017, 82 FR 47122.	
Division 208—Visible Emissions and Nuisance Requirements				
208–0005	Applicability and Jurisdiction	4/16/2015	10/11/2017, 82 FR 47122.	
208–0010	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	
Visible Emissions				
208–0110	Visible Air Contaminant Limitations	3/1/2023	7/23/2024, 89 FR 59610.	
Fugitive Emission Requirements				
208–0210	Requirements for Fugitive Emissions	4/16/2015	10/11/2017, 82 FR 47122.	
Division 209—Public Participation				
209–0010	Purpose	4/16/2015	10/11/2017, 82 FR 47122.	
209–0020	Applicability	11/16/2018	10/31/2019, 84 FR 58324.	
209–0030	Public Notice Categories and Timing	11/16/2018	10/31/2019, 84 FR 58324.	
209–0040	Public Notice Information	11/16/2018	10/31/2019, 84 FR 58324.	
209–0050	Public Notice Procedures	11/16/2018	10/31/2019, 84 FR 58324.	
209–0060	Persons Required to be Notified	4/16/2018	10/11/2017, 82 FR 47122.	
209–0080	Issuance or Denial of a Permit	3/1/2023	7/23/2024, 89 FR 59610.	
Division 210—Stationary Source Notification Requirements				
210–0010	Applicability and Jurisdiction	4/16/2015	10/11/2017, 82 FR 47122.	
210–0020	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	
Registration				
210–0100	Registration in General	3/1/2023	7/23/2024, 89 FR 59610.	
210–0110	Registration Requirements	4/16/2015	10/11/2017, 82 FR 47122.	
210–0120	Re-Registration and Maintaining Registration	4/16/2015	10/11/2017, 82 FR 47122.	
Notice of Construction and Approval of Plans				
210–0205	Applicability	3/1/2023	7/23/2024, 89 FR 59610 ..	Except paragraph (3).
210–0225	Types of Construction/Modification Changes	3/1/2023	7/23/2024, 89 FR 59610.	
210–0230	Notice to Construct	3/1/2023	7/23/2024, 89 FR 59610.	
210–0240	Construction Approval	3/1/2023	7/23/2024, 89 FR 59610.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) ¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
210–0250	Approval to Operate	3/1/2023	7/23/2024, 89 FR 59610.	
Division 212—Stationary Source Testing and Monitoring				
212–0005	Applicability and Jurisdiction	4/16/2015	10/11/2017, 82 FR 47122.	
212–0010	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	
Sampling, Testing and Measurement				
212–0110	Applicability	4/16/2015	10/11/2017, 82 FR 47122.	
212–0120	Program	4/16/2015	10/11/2017, 82 FR 47122.	
212–0130	Stack Heights and Dispersion Techniques	4/16/2015	10/11/2017, 82 FR 47122.	
212–0140	Methods	4/16/2015	10/11/2017, 82 FR 47122.	
212–0150	Department Testing	4/16/2015	10/11/2017, 82 FR 47122.	
Division 214—Stationary Source Reporting Requirements				
214–0005	Applicability and Jurisdiction	4/16/2015	10/11/2017, 82 FR 47122.	
214–0010	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	
Reporting				
214–0100	Applicability	4/16/2015	10/11/2017, 82 FR 47122.	
214–0110	Request for Information	3/1/2023	7/23/2024, 89 FR 59610.	
214–0114	Records; Maintaining and Reporting	3/1/2023	7/23/2024, 89 FR 59610.	
214–0120	Enforcement	10/14/1999	1/22/2003, 68 FR 2891.	
214–0130	Reporting: Information Exempt from Disclosure	3/1/2023	7/23/2024, 89 FR 59610.	
Emissions Statements for VOC and NO_x Sources				
214–0200	Purpose and Applicability	4/16/2015	10/11/2017, 82 FR 47122.	
214–0210	Requirements	4/16/2015	10/11/2017, 82 FR 47122.	
214–0220	Submission of Emission Statement	4/16/2015	10/11/2017, 82 FR 47122.	
Excess Emissions and Emergency Provision				
214–0300	Purpose and Applicability	11/8/2007	12/27/2011, 76 FR 80747.	
214–0310	Planned Startup and Shutdown	11/8/2007	12/27/2011, 76 FR 80747.	
214–0320	Scheduled Maintenance	11/8/2007	12/27/2011, 76 FR 80747.	
214–0330	All Other Excess Emissions	11/8/2007	12/27/2011, 76 FR 80747.	
214–0340	Reporting Requirements	11/8/2007	12/27/2011, 76 FR 80747.	
214–0350	Enforcement Action Criteria	11/8/2007	12/27/2011, 76 FR 80747.	
214–0360	Emergency as an Affirmative Defense	11/8/2007	12/27/2011, 76 FR 80747.	
Division 216—Air Contaminant Discharge Permits				
216–0010	Purpose	4/16/2015	10/11/2017, 82 FR 47122.	
216–0020	Applicability and Jurisdiction	3/1/2023	7/23/2024, 89 FR 59610.	
216–0025	Types of Permits	3/1/2023	7/23/2024, 89 FR 59610.	
216–0030	Definitions	11/16/2018	10/31/2019, 84 FR 58324.	
216–0040	Application Requirements	3/1/2023	7/23/2024, 89 FR 59610.	
216–0052	Construction ACDPs	4/16/2015	10/11/2017, 82 FR 47122.	
216–0054	Short-Term Activity ACDPs	3/1/2023	7/23/2024, 89 FR 59610.	
216–0056	Basic ACDPs	3/1/2023	7/23/2024, 89 FR 59610.	
216–0060	General Air Contaminant Discharge Permits	3/1/2023	7/23/2024, 89 FR 59610.	
216–0062	General ACDP Attachments	4/16/2015	10/11/2017, 82 FR 47122.	
216–0064	Simple ACDPs	3/1/2023	7/23/2024, 89 FR 59610.	
216–0066	Standard ACDPs	3/1/2023	7/23/2024, 89 FR 59610.	
216–0068	Simple and Standard ACDP Attachments	3/1/2023	7/23/2024, 89 FR 59610.	
216–0070	Permitting a Source with Multiple Activities or Processes at a Single Adjacent or Contiguous Site.	4/16/2015	10/11/2017, 82 FR 47122.	
216–0082	Expiration, Termination, Reinstatement or Revocation of an ACDP.	3/1/2023	7/23/2024, 89 FR 59610.	
216–0084	Department-Initiated Modification	3/1/2023	7/23/2024, 89 FR 59610.	
216–0090	Sources Subject to ACDPs and Fees	11/16/2018	10/31/2019, 84 FR 58324.	
216–0094	Temporary Closure	4/16/2015	10/11/2017, 82 FR 47122.	
216–8010	Table 1—Activities and Sources	3/1/2023	7/23/2024, 89 FR 59610.	
216–8020	Table 2—Air Contaminant Discharge Permits	3/1/2023	7/23/2024, 89 FR 59610 ..	Except paragraph (2) and Table 2.

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) ¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Division 222—Stationary Source Plant Site Emission Limits				
222–0010	Policy	4/16/2015	10/11/2017, 82 FR 47122.	
222–0020	Applicability and Jurisdiction	3/1/2023	7/23/2024, 89 FR 59610.	
222–0030	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	
Criteria for Establishing Plant Site Emission Limits				
222–0035	General Requirements for Establishing All PSELS	3/1/2023	7/23/2024, 89 FR 59610.	
222–0041	Source Specific Annual PSEL	3/1/2023	7/23/2024, 89 FR 59610.	
222–0042	Short Term PSEL	3/1/2023	7/23/2024, 89 FR 59610.	
222–0046	Netting Basis	3/1/2023	7/23/2024, 89 FR 59610.	
222–0048	Baseline Period and Baseline Emission Rate	4/16/2015	10/11/2017, 82 FR 47122.	
222–0051	Actual Emissions	4/16/2015	10/11/2017, 82 FR 47122.	
222–0055	Unassigned Emissions	4/16/2015	10/11/2017, 82 FR 47122.	
222–0080	Plant Site Emission Limit Compliance	4/16/2015	10/11/2017, 82 FR 47122.	
222–0090	Combining and Splitting Sources and Changing Primary SIC Code.	4/16/2015	10/11/2017, 82 FR 47122.	
Division 223—Regional Haze Rules				
223–0010	Purpose	7/26/2021	10/8/2024, 89 FR 81361.	
223–0020	Definitions	7/26/2021	10/8/2024, 89 FR 81361.	
223–0100	Screening Methodology for Sources for Round II of Regional Haze.	7/26/2021	10/8/2024, 89 FR 81361.	
223–0110	Options for Compliance with Round II of Regional Haze.	7/26/2021	10/8/2024, 89 FR 81361.	
223–0120	Four Factor Analysis	7/26/2021	10/8/2024, 89 FR 81361.	
223–0130	Final Orders Ordering Compliance with Round II of Regional Haze.	7/26/2021	10/8/2024, 89 FR 81361.	
Division 224—New Source Review				
224–0010	Applicability, General Prohibitions, General Requirements and Jurisdiction.	4/16/2015	10/11/2017, 82 FR 47122.	
224–0020	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	
224–0025	Major Modification	4/16/2015	10/11/2017, 82 FR 47122.	
224–0030	New Source Review Procedural Requirements	3/1/2023	7/23/2024, 89 FR 59610.	
224–0034	Exemptions	4/16/2015	10/11/2017, 82 FR 47122.	
224–0038	Fugitive and Secondary Emissions	4/16/2015	10/11/2017, 82 FR 47122.	
224–0040	Review of Sources Subject to Major NSR or Type A State NSR for Compliance with Regulations.	4/16/2015	10/11/2017, 82 FR 47122.	
Major New Source Review				
224–0045	Requirements for Sources in Sustainment Areas	4/16/2015	10/11/2017, 82 FR 47122.	
224–0050	Requirements for Sources in Nonattainment Areas ...	4/16/2015	10/11/2017, 82 FR 47122.	
224–0055	Requirements for Sources in Reattainment Areas	4/16/2015	10/11/2017, 82 FR 47122.	
224–0060	Requirements for Sources in Maintenance Areas	4/16/2015	10/11/2017, 82 FR 47122.	
224–0070	Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
State New Source Review				
224–0245	Requirements for Sources in Sustainment Areas	4/16/2015	10/11/2017, 82 FR 47122.	
224–0250	Requirements for Sources in Nonattainment Areas ...	4/16/2015	10/11/2017, 82 FR 47122.	
224–0255	Requirements for Sources in Reattainment Areas	4/16/2015	10/11/2017, 82 FR 47122.	
224–0260	Requirements for Sources in Maintenance Areas	4/16/2015	10/11/2017, 82 FR 47122.	
224–0270	Requirements for Sources in Attainment and Unclassified Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
Net Air Quality Benefit Emission Offsets				
224–0500	Net Air Quality Benefit for Sources Locating within or Impacting Designated Area.	4/16/2015	10/11/2017, 82 FR 47122.	
224–0510	Common Offset Requirements	4/16/2015	10/11/2017, 82 FR 47122	Except paragraph (3).
224–0520	Requirements for Demonstrating Net Air Quality Benefit for Ozone Areas.	3/1/2023	7/23/2024, 89 FR 59610.	
224–0530	Requirements for Demonstrating Net Air Quality Benefit for Non-Ozone Areas.	3/1/2023	7/23/2024, 89 FR 59610.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) ¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
224–0540	Sources in a Designated Area Impacting Other Designated Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
Division 225—Air Quality Analysis				
225–0010	Purpose and Jurisdiction	4/16/2015	10/11/2017, 82 FR 47122.	
225–0020	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	
225–0030	Procedural Requirements	3/1/2023	7/23/2024, 89 FR 59610.	
225–0040	Air Quality Models	4/16/2015	10/11/2017, 82 FR 47122.	
225–0045	Requirements for Analysis in Maintenance Areas	4/16/2015	10/11/2017, 82 FR 47122.	
225–0050	Requirements for Analysis in PSD Class I and Class III Areas.	3/1/2023	7/23/2024, 89 FR 59610.	
225–0060	Requirements for Demonstrating Compliance with Standards and Increments in PSD Class I Areas.	4/16/2015	10/11/2017, 82 FR 47122.	
225–0070	Requirements for Demonstrating Compliance with Air Quality Related Values Protection.	3/1/2023	7/23/2024, 89 FR 59610.	
Division 226—General Emission Standards				
226–0005	Applicability and Jurisdiction	4/16/2015	10/11/2017, 82 FR 47122.	
226–0010	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	
Highest and Best Practicable Treatment and Control				
226–0100	Policy and Application	3/1/2023	7/23/2024, 89 FR 59610.	
226–0110	Pollution Prevention	4/16/2015	10/11/2017, 82 FR 47122.	
226–0120	Operating and Maintenance Requirements	4/16/2015	10/11/2017, 82 FR 47122.	
226–0130	Typically Achievable Control Technology (TACT)	3/1/2023	7/23/2024, 89 FR 59610.	
226–0140	Additional Control Requirements for Stationary Sources of Air Contaminants.	3/1/2023	7/23/2024, 89 FR 59610.	
Grain Loading Standards				
226–0210	Particulate Emission Limitations for Sources Other Than Fuel Burning Equipment, Refuse Burning Equipment and Fugitive Emissions.	3/1/2023	7/23/2024, 89 FR 59610.	
Particulate Emissions from Process Equipment				
226–0310	Emission Standard	4/16/2015	10/11/2017, 82 FR 47122.	
226–0320	Determination of Process Weight	4/16/2015	10/11/2017, 82 FR 47122.	
Alternative Emission Controls				
226–0400	Alternative Emission Controls (Bubble)	4/16/2015	10/11/2017, 82 FR 47122.	
226–0810	Particulate Matter Emissions Standards for Process Equipment.	4/16/2015	10/11/2017, 82 FR 47122.	
Division 228—Requirements for Fuel Burning Equipment and Fuel Sulfur Content				
228–0010	Applicability and Jurisdiction	4/16/2015	10/11/2017, 82 FR 47122.	
228–0020	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	
Sulfur Content of Fuels				
228–0100	Residual Fuel Oils	4/16/2015	10/11/2017, 82 FR 47122.	
228–0110	Distillate Fuel Oils	4/16/2015	10/11/2017, 82 FR 47122.	
228–0120	Coal	4/16/2015	10/11/2017, 82 FR 47122.	
228–0130	Exemptions	4/16/2015	10/11/2017, 82 FR 47122.	
General Emission Standards for Fuel Burning Equipment				
228–0200	Sulfur Dioxide Standards	4/16/2015	10/11/2017, 82 FR 47122.	
228–0210	General Emission Standards for Fuel Burning Equipment: Grain Loading Standards.	3/1/2023	7/23/2024, 89 FR 59610.	
Division 232—Emission Standards for VOC Point Sources				
232–0010	Introduction	4/16/2015	10/11/2017, 82 FR 47122.	
232–0020	Applicability	4/16/2015	10/11/2017, 82 FR 47122.	
232–0030	Definitions	3/1/2023	7/23/2024, 89 FR 59610.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) ¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
232–0040	General Non-Categorical Requirements	3/1/2023	7/23/2024, 89 FR 59610.	
232–0050	Exemptions	4/16/2015	10/11/2017, 82 FR 47122.	
232–0060	Compliance Determination	4/16/2015	10/11/2017, 82 FR 47122.	
232–0080	Bulk Gasoline Plants Including Transfer of Gasoline	4/16/2015	10/11/2017, 82 FR 47122.	
232–0085	Gasoline Delivery Vessel(s)	4/16/2015	10/11/2017, 82 FR 47122.	
232–0090	Bulk Gasoline Terminals Including Truck and Trailer Loading.	3/1/2023	7/23/2024, 89 FR 59610.	
232–0100	Testing Vapor Transfer and Collection Systems	4/16/2015	10/11/2017, 82 FR 47122.	
232–0110	Loading Gasoline and Volatile Organic Liquids Onto Marine Tank Vessels.	4/16/2015	10/11/2017, 82 FR 47122.	
232–0120	Cutback and Emulsified Asphalt	4/16/2015	10/11/2017, 82 FR 47122.	
232–0130	Petroleum Refineries	4/16/2015	10/11/2017, 82 FR 47122.	
232–0140	Petroleum Refinery Leaks	4/16/2015	10/11/2017, 82 FR 47122.	
232–0150	VOC Liquid Storage	4/16/2015	10/11/2017, 82 FR 47122.	
232–0160	Surface Coating in Manufacturing	3/1/2023	7/23/2024, 89 FR 59610.	
232–0170	Aerospace Component Coating Operations	3/1/2023	7/23/2024, 89 FR 59610.	
232–0180	Degreasers	4/16/2015	10/11/2017, 82 FR 47122.	
232–0190	Open Top Vapor Degreasers	4/16/2015	10/11/2017, 82 FR 47122.	
232–0200	Conveyorized Degreasers	4/16/2015	10/11/2017, 82 FR 47122.	
232–0210	Asphaltic and Coal Tar Pitch Used for Roofing Coating.	4/16/2015	10/11/2017, 82 FR 47122.	
232–0220	Flat Wood Coating	4/16/2015	10/11/2017, 82 FR 47122.	
232–0230	Rotogravure and Flexographic Printing	4/16/2015	10/11/2017, 82 FR 47122.	
Division 234—Emission Standards for Wood Product Industries				
234–0005	Applicability and Jurisdiction	4/16/2015	10/11/2017, 82 FR 47122.	
234–0010	Definitions	3/1/2023	7/23/2024, 89 FR 59610 ..	Except (8) and (10).
Wigwam Waste Burners				
234–0100	Wigwam Waste Burners	4/16/2015	10/11/2017, 82 FR 47122.	
234–0140	Existing Administrative Agency Orders	4/16/2015	10/11/2017, 82 FR 47122.	
Kraft Pulp Mills				
234–0200	Statement of Policy and Applicability	4/16/2015	10/11/2017, 82 FR 47122.	
234–0210	Emission Limitations	3/1/2023	7/23/2024, 89 FR 59610 ..	Except references to total reduced sulfur.
234–0220	More Restrictive Emission Limits	4/16/2015	10/11/2017, 82 FR 47122	Except (2).
234–0240	Monitoring	4/16/2015	10/11/2017, 82 FR 47122	Except (1).
234–0250	Reporting	4/16/2015	10/11/2017, 82 FR 47122	Except (1) and (2).
234–0270	Chronic Upset Conditions	4/16/2015	10/11/2017, 82 FR 47122.	
Board Products Industries (Veneer, Plywood, Particleboard, Hardboard)				
234–0500	Applicability and General Provisions	4/16/2015	10/11/2017, 82 FR 47122.	
234–0510	Veneer and Plywood Manufacturing Operations	4/16/2015	10/11/2017, 82 FR 47122.	
234–0520	Particleboard Manufacturing Operations	4/16/2015	10/11/2017, 82 FR 47122.	
234–0530	Hardboard Manufacturing Operations	4/16/2015	10/11/2017, 82 FR 47122.	
234–0540	Testing and Monitoring	4/16/2015	10/11/2017, 82 FR 47122.	
Division 236—Emission Standards for Specific Industries				
236–0005	Applicability and Jurisdiction	4/16/2015	10/11/2017, 82 FR 47122.	
236–0010	Definitions	7/19/2019	6/9/2020, 85 FR 35198.	
Hot Mix Asphalt Plants				
236–0400	Applicability	4/16/2015	10/11/2017, 82 FR 47122.	
236–0410	Control Facilities Required	4/16/2015	10/11/2017, 82 FR 47122.	
236–0420	Other Established Air Quality Limitations	4/16/2015	10/11/2017, 82 FR 47122.	
236–0440	Ancillary Sources of Emission—Housekeeping of Plant Facilities.	4/16/2015	10/11/2017, 82 FR 47122.	
236–8010	Process Weight Table	3/1/2023	7/23/2024, 89 FR 59610.	
Division 240—Rules for Areas with Unique Air Quality Needs				
240–0010	Purpose	4/16/2015	10/11/2017, 82 FR 47122.	
240–0020	Emission Limitations	4/16/2015	10/11/2017, 82 FR 47122.	
240–0030	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) ¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
240–0050	Compliance Testing Requirements	4/16/2015	10/11/2017, 82 FR 47122.	
The Medford-Ashland Air Quality Maintenance Area and the Grants Pass Urban Growth Area				
240–0100	Applicability	4/16/2015	10/11/2017, 82 FR 47122.	
240–0110	Wood Waste Boilers	4/16/2015	10/11/2017, 82 FR 47122.	
240–0120	Veneer Dryer Emission Limitations	4/16/2015	10/11/2017, 82 FR 47122.	
240–0130	Air Conveying Systems (Medford-Ashland AQMA Only).	4/16/2015	10/11/2017, 82 FR 47122.	
240–0140	Wood Particle Dryers at Particleboard Plants	4/16/2015	10/11/2017, 82 FR 47122.	
240–0150	Hardboard Manufacturing Plants	4/16/2015	10/11/2017, 82 FR 47122.	
240–0160	Wigwam Waste Burners	4/16/2015	10/11/2017, 82 FR 47122.	
240–0180	Control of Fugitive Emissions (Medford-Ashland AQMA Only).	4/16/2015	10/11/2017, 82 FR 47122.	
240–0190	Requirement for Operation and Maintenance Plans (Medford-Ashland AQMA Only).	4/16/2015	10/11/2017, 82 FR 47122.	
240–0210	Continuous Monitoring	4/16/2015	10/11/2017, 82 FR 47122.	
240–0220	Source Testing	4/16/2015	10/11/2017, 82 FR 47122.	
240–0250	Open Burning	4/16/2015	10/11/2017, 82 FR 47122.	
La Grande Urban Growth Area				
240–0300	Applicability	4/16/2015	10/11/2017, 82 FR 47122.	
240–0320	Wood-Waste Boilers	4/16/2015	10/11/2017, 82 FR 47122.	
240–0330	Wood Particle Dryers at Particleboard Plants	4/16/2015	10/11/2017, 82 FR 47122.	
240–0340	Hardboard Manufacturing Plants	4/16/2015	10/11/2017, 82 FR 47122.	
240–0350	Air Conveying Systems	4/16/2015	10/11/2017, 82 FR 47122.	
240–0360	Fugitive Emissions	4/16/2015	10/11/2017, 82 FR 47122.	
The Lakeview Urban Growth Area				
240–0400	Applicability	4/16/2015	10/11/2017, 82 FR 47122.	
240–0410	Control of Fugitive Emissions	4/16/2015	10/11/2017, 82 FR 47122.	
240–0420	Requirement for Operation and Maintenance Plans ..	4/16/2015	10/11/2017, 82 FR 47122.	
240–0430	Source Testing	4/16/2015	10/11/2017, 82 FR 47122.	
240–0440	Open Burning	4/16/2015	10/11/2017, 82 FR 47122.	
Klamath Falls Nonattainment Area				
240–0500	Applicability	12/11/2012	8/25/2015, 80 FR 51470.	
240–0510	Opacity Standard	4/16/2015	10/11/2017, 82 FR 47122.	
240–0520	Control of Fugitive Emissions	12/11/2012	8/25/2015, 80 FR 51470.	
240–0530	Requirement for Operation and Maintenance Plans ..	12/11/2012	8/25/2015, 80 FR 51470.	
240–0540	Compliance Schedule for Existing Industrial Sources	12/11/2012	8/25/2015, 80 FR 51470.	
240–0550	Requirements for New Sources When Using Residential Wood Fuel-Fired Device Offsets.	4/16/2015	10/11/2017, 82 FR 47122.	
Real and Permanent PM_{2.5} and PM₁₀ Offsets				
240–0560	Real and Permanent PM _{2.5} and PM ₁₀ Offsets	4/16/2015	10/11/2017, 82 FR 47122.	
Klamath Falls Nonattainment Area Contingency Measures				
240–0570	Applicability	12/11/2012	6/6/2016, 81 FR 36176.	
240–0580	Existing Industrial Sources Control Efficiency	12/11/2012	6/6/2016, 81 FR 36176.	
240–0610	Continuous Monitoring for Industrial Sources	4/16/2015	10/11/2017, 82 FR 47122.	
240–0620	Contingency Measures: New Industrial Sources	12/11/2012	6/6/2016, 81 FR 36176.	
240–0630	Contingency Enhanced Curtailment of Use of Solid Fuel Burning Devices and Fireplaces.	12/11/2012	6/6/2016, 81 FR 36176.	
Division 242—Rules Applicable to the Portland Area				
242–0010	What is the Employee Commute Options Program?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0020	Who is Subject to ECO?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0030	What Does ECO Require?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0040	How Does the Department Enforce ECO?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0050	Definitions of Terms Used in These Rules	4/12/2007	12/19/2011, 76 FR 78571.	
242–0060	Should All Employees at a Work Site be Counted? ..	10/14/1999	1/22/2003, 68 FR 2891.	
242–0070	What are the Major Requirements of ECO?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0080	What are the Registration Requirements?	4/12/2007	12/19/2011, 76 FR 78571.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) ¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
242–0090	What are the Requirements for an Employee Survey?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0100	Special Requirements for Employers Intending to Comply Without an Approved Plan.	10/14/1999	1/22/2003, 68 FR 2891.	
242–0110	What if an Employer Does Not Meet the Target Auto Trip Rate?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0120	How Will Employers Demonstrate Progress Toward the Target Auto Trip Rate?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0130	What is the Schedule Employers Must Follow to Implement ECO?	10/14/1999	1/22/2003, 68 FR 2891.	
242–0140	How Should Employers Account for Changes in Work Force Size?	10/14/1999	1/22/2003, 68 FR 2891.	
242–0150	How Can an Employer Reduce Auto Commute Trips to a Work Site?	10/14/1999	1/22/2003, 68 FR 2891.	
242–0160	What Should be Included in an Auto Trip Reduction Plan?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0170	When Will the Department Act on a Submitted Auto Trip Reduction Plan?	10/14/1999	1/22/2003, 68 FR 2891.	
242–0180	What is a Good Faith Effort?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0190	How Does the ECO Program Affect New Employers, Expanding Employers and Employers Relocating Within the Portland AQMA?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0200	Can a New or Relocating Employer Comply with ECO Through Restricted Parking Ratios?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0210	Can an Existing Employer Comply with ECO Through Restricted Parking Ratios?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0220	What if an Employer Has More Than One Work Site Within the Portland AQMA?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0230	Can Employers Submit a Joint Plan?	10/14/1999	1/22/2003, 68 FR 2891.	
242–0240	Are There Alternatives to Trip Reduction?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0250	What Alternatives Qualify as Equivalent Emission Reductions?	10/14/1999	1/22/2003, 68 FR 2891.	
242–0260	Can Employers Get Credit for Existing Trip Reduction Programs?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0270	Are Exemptions Allowed if an Employer is Unable to Reduce Trips or Take Advantage of Alternate Compliance Options?	4/12/2007	12/19/2011, 76 FR 78571.	
242–0280	Participation in the Industrial Emission Management Program.	4/12/2007	12/19/2011, 76 FR 78571.	
242–0290	What Kind of Records Must be Kept and for How Long?	4/12/2007	12/19/2011, 76 FR 78571.	
Voluntary Maximum Parking Ratio Program				
242–0300	What is the Voluntary Parking Ratio Program?	10/14/1999	1/22/2003, 68 FR 2891.	
242–0310	Who can Participate in the Voluntary Parking Ratio Program?	10/14/1999	1/22/2003, 68 FR 2891.	
242–0320	Definitions of Terms and Land Uses	10/14/1999	1/22/2003, 68 FR 2891.	
242–0330	How Does a Property Owner Comply with the Voluntary Parking Ratio Program?	10/14/1999	1/22/2003, 68 FR 2891.	
242–0340	What are the Incentives for Complying with the Voluntary Parking Ratio Program?	10/14/1999	1/22/2003, 68 FR 2891.	
242–0350	Why Do I Need a Parking Ratio Permit?	10/14/1999	1/22/2003, 68 FR 2891.	
242–0360	What is Required to Obtain a Parking Ratio Permit?	10/14/1999	1/22/2003, 68 FR 2891.	
242–0370	How is the Parking Ratio Program Enforced?	10/14/1999	1/22/2003, 68 FR 2891.	
242–0380	When Will the Department Act on a Submitted Permit Application?	10/14/1999	1/22/2003, 68 FR 2891.	
242–0390	What are the Applicable Parking Ratios?	10/14/1999	1/22/2003, 68 FR 2891.	
Industrial Emission Management Program				
242–0400	Applicability	4/16/2015	10/11/2017, 82 FR 47122.	
242–0410	Definition of Terms	4/16/2015	10/11/2017, 82 FR 47122.	
242–0420	Unused PSEL Donation Program	4/16/2015	10/11/2017, 82 FR 47122.	
242–0430	Industrial Growth Allowances	4/16/2015	10/11/2017, 82 FR 47122.	
242–0440	Industrial Growth Allowance Allocation	4/16/2015	10/11/2017, 82 FR 47122.	
Gasoline Vapors from Gasoline Transfer and Dispensing Operations				
242–0500	Purpose and Applicability	4/16/2015	10/27/2015, 80 FR 65655.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) ¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
242–0510	Definitions	4/16/2015	10/27/2015, 80 FR 65655.	
242–0520	General Provisions	4/16/2015	10/27/2015, 80 FR 65655.	
Motor Vehicle Refinishing				
242–0600	Applicability	4/16/2015	10/11/2017, 82 FR 47122.	
242–0610	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	
242–0620	Requirements for Motor Vehicle Refinishing in Portland AQMA.	4/16/2015	10/11/2017, 82 FR 47122.	
242–0630	Inspecting and Testing Requirements	4/16/2015	10/11/2017, 82 FR 47122.	
Division 244—Oregon Federal Hazardous Air Pollutant Program ^{2,3}				
General Provisions for Stationary Sources				
244–0030	Definitions	1/21/2021	8/11/2021, 86 FR 43954.	
Emission Standards for Gasoline Dispensing Facilities				
244–0232	Purpose	4/16/2015	10/27/2015, 80 FR 65655.	
244–0234	Affected Sources	4/16/2015	10/27/2015, 80 FR 65655.	
244–0236	Affected Equipment or Processes	4/16/2015	10/27/2015, 80 FR 65655.	
244–0238	Compliance Dates	4/16/2015	10/27/2015, 80 FR 65655.	Except (1)(a) and (2)(c).
Emission Limitations and Management Practices				
244–0239	General Duties to Minimize Emissions	4/16/2015	10/27/2015, 80 FR 65655.	
244–0240	Work Practice and Submerged Fill Requirements	4/16/2015	10/27/2015, 80 FR 65655.	Except (1)(b) and (c).
244–0242	Vapor Balance Requirements	4/16/2015	10/27/2015, 80 FR 65655.	Including tables 2 and 3. Except (4)(c) and (d).
Testing and Monitoring Requirements				
244–0244	Testing and Monitoring Requirements	4/16/2015	10/27/2015, 80 FR 65655.	
Notifications, Records, and Reports				
244–0246	Notifications	4/16/2015	10/27/2015, 80 FR 65655.	
244–0248	Recordkeeping Requirements	4/16/2015	10/27/2015, 80 FR 65655.	
244–0250	Reporting Requirements	4/16/2015	10/27/2015, 80 FR 65655.	
244–0252	General Provision Applicability	12/31/2008	10/27/2015, 80 FR 65655.	
Division 250—General Conformity				
250–0010	Purpose	10/14/1999	1/22/2003, 68 FR 2891.	
250–0020	Applicability	10/14/1999	1/22/2003, 68 FR 2891.	
250–0030	Definitions	10/16/2015	5/24/2018, 83 FR 24034.	
250–0040	Conformity Analysis	10/14/1999	1/22/2003, 68 FR 2891.	
250–0050	Reporting Requirements	10/14/1999	1/22/2003, 68 FR 2891.	
250–0060	Public Participation	10/14/1999	1/22/2003, 68 FR 2891.	
250–0070	Frequency of Conformity Determinations	10/14/1999	1/22/2003, 68 FR 2891.	
250–0080	Criteria for Determining Conformity of General Federal Actions.	10/14/1999	1/22/2003, 68 FR 2891.	
250–0090	Procedures for Conformity Determinations of General Federal Actions.	10/14/1999	1/22/2003, 68 FR 2891.	
250–0100	Mitigation of Air Quality Impacts	10/14/1999	1/22/2003, 68 FR 2891.	
Division 252—Transportation Conformity				
252–0010	Propose	10/14/1999	1/22/2003, 68 FR 2891.	
252–0030	Definitions	3/5/2010	10/4/2012, 77 FR 60627.	
252–0060	Consultation	3/5/2010	10/4/2012, 77 FR 60627.	
252–0070	Timeframe of Conformity Determinations	3/5/2010	10/4/2012, 77 FR 60627 ..	Except last two sentences.
252–0230	Written Comments	3/5/2010	10/4/2012, 77 FR 60627.	
Division 256—Motor Vehicles				
256–0010	Definitions	11/19/2020	7/12/2022, 87 FR 41256.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) ¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Visible Emissions				
256–0100	Visible Emissions—General Requirements, Exclusions.	7/12/2005	12/19/2011, 76 FR 78571.	
256–0130	Motor Vehicle Fleet Operation	11/19/2020	7/12/2022, 87 FR 41256.	
Certification of Pollution Control Systems				
256–0200	County Designations	11/19/2020	7/12/2022, 87 FR 41256.	
Emission Control System Inspection				
256–0300	Scope	11/19/2020	7/12/2022, 87 FR 41256.	
256–0310	Government-Owned Vehicle, Permanent Fleet Vehicle and United States Government Vehicle Testing.	11/19/2020	7/12/2022, 87 FR 41256.	
256–0330	Department of Defense Personnel Participating in the Privately Owned Vehicle Import Control Program.	10/14/1999	11/24/2004, 69 FR 67819.	
256–0340	Light Duty Motor Vehicle Emission Control Test Method for Enhanced Program.	11/19/2020	7/12/2022, 87 FR 41256.	
256–0355	Emissions Control Test Method for OBD Test Program.	11/19/2020	7/12/2022, 87 FR 41256.	
256–0356	Emissions Control Test Method for On-Site Vehicle Testing for Automobile Dealerships.	11/19/2020	7/12/2022, 87 FR 41256.	
256–0370	Renewal of Registration for Light Duty Motor Vehicles and Heavy Duty Gasoline Motor Vehicles Temporarily Operating Outside of Oregon.	11/19/2020	7/12/2022, 87 FR 41256.	
256–0380	Light Duty Motor Vehicle Emission Control Test Criteria for Basic Program.	11/19/2020	7/12/2022, 87 FR 41256.	
256–0390	Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria.	11/19/2020	7/12/2022, 87 FR 41256.	
256–0400	Light Duty Motor Vehicle Emission Control Standards for Basic Program.	11/19/2020	7/12/2022, 87 FR 41256.	
256–0420	Heavy-Duty Gasoline Motor Vehicle Emission Control Standards.	11/19/2020	7/12/2022, 87 FR 41256.	
256–0440	Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates.	11/19/2020	7/12/2022, 87 FR 41256.	
256–0450	Gas Analytical System Licensing Criteria for Basic Program.	11/19/2020	7/12/2022, 87 FR 41256.	
256–0465	Test Equipment Licensing Criteria for OBD Test Program.	11/19/2020	7/12/2022, 87 FR 41256.	
256–0470	Agreement with Independent Contractor; Qualifications of Contractor; Agreement Provisions.	11/19/2020	7/12/2022, 87 FR 41256.	
Division 258—Motor Vehicle Fuel Specifications				
258–0010	Definitions	10/14/1999	1/22/2003, 68 FR 2891.	
Oxygenated Gasoline				
258–0100	Policy	10/14/1999	1/22/2003, 68 FR 2891.	
258–0110	Purpose and General Requirements	10/14/1999	1/22/2003, 68 FR 2891.	
258–0120	Sampling and Testing for Oxygen Content	10/14/1999	1/22/2003, 68 FR 2891.	
258–0130	Compliance Options	10/14/1999	1/22/2003, 68 FR 2891.	
258–0140	Per Gallon Oxygen Content Standard	10/14/1999	1/22/2003, 69 FR 2891.	
258–0150	Average Oxygen Content Standard	10/14/1999	1/22/2003, 68 FR 2891.	
258–0160	Minimum Oxygen Content	10/14/1999	1/22/2003, 68 FR 2891.	
258–0170	Oxygenated Gasoline Blending	10/14/1999	1/22/2003, 68 FR 2891.	
258–0180	Registration	10/14/1999	1/22/2003, 68 FR 2891.	
258–0190	CAR, Distributor and Retail Outlet Operating Permits	10/14/1999	1/22/2003, 68 FR 2891.	
258–0200	Owners of Gasoline and Terminals, Distributors and Retail Outlets Required to Have Indirect Source Operating Permits.	10/14/1999	1/22/2003, 68 FR 2891.	
258–0210	Recordkeeping	10/14/1999	1/22/2003, 68 FR 2891.	
258–0220	Reporting	10/14/1999	1/22/2003, 68 FR 2891.	
258–0230	Prohibited Activities	10/14/1999	1/22/2003, 68 FR 2891.	
258–0240	Inspection and Sampling	10/14/1999	1/22/2003, 68 FR 2891.	
258–0250	Liability for Violation of a Prohibited Activity	10/14/1999	1/22/2003, 68 FR 2891.	
258–0260	Defenses for Prohibited Activities	10/14/1999	1/22/2003, 68 FR 2891.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) ¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
258–0270	Inability to Produce Conforming Gasoline Due to Extraordinary Circumstances.	10/14/1999	1/22/2003, 68 FR 2891.	
258–0280	Quality Assurance Program	10/14/1999	1/22/2003, 68 FR 2891.	
258–0290	Attest Engagements Guidelines When Prohibited Activities Alleged.	10/14/1999	1/22/2003, 68 FR 2891.	
258–0300	Dispenser Labeling	10/14/1999	1/22/2003, 68 FR 2891.	
258–0310	Contingency Provision for Carbon Monoxide Non-attainment Areas.	10/14/1999	1/22/2003, 68 FR 2891.	
Standard for Automotive Gasoline				
258–0400	Reid Vapor Pressure for Gasoline	10/14/1999	1/22/2003, 68 FR 2891.	
Division 262—Heat Smart Program for Residential Woodstoves and Other Solid Fuel Heating Devices				
262–0400	Purpose and Applicability of Rules	3/15/2011	6/20/2013, 78 FR 37124.	
262–0450	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	
262–0500	Certification of Solid Fuel Burning Devices for Sale and New.	3/15/2011	6/20/2013, 78 FR 37124.	
262–0600	New and Used Solid Fuel Burning Devices	5/17/2012	6/20/2013, 78 FR 37124.	
262–0700	Removal and Destruction of Used Solid Fuel Burning Devices.	3/15/2011	6/20/2013, 78 FR 37124.	
262–0800	Wood Burning and Other Heating Devices Curtailment Program.	3/15/2011	6/20/2013, 78 FR 37124.	
262–0900	Materials Prohibited from Burning	3/15/2011	6/20/2013, 78 FR 37124.	
262–1000	Wood Burning Contingency Measures for PM _{2.5} Nonattainment Areas.	12/11/2012	6/6/2016, 81 FR 36176.	
Division 264—Rules for Open Burning				
264–0010	How to Use These Open Burning Rules	4/16/2015	10/11/2017, 82 FR 47122.	
264–0020	Policy	4/16/2015	10/11/2017, 82 FR 47122.	
264–0030	Definitions	4/16/2015	10/11/2017, 82 FR 47122.	
264–0040	Exemptions, Statewide	4/16/2015	10/11/2017, 82 FR 47122.	
264–0050	General Requirements Statewide	4/16/2015	10/11/2017, 82 FR 47122.	
264–0060	General Prohibitions Statewide	4/16/2015	10/11/2017, 82 FR 47122.	
264–0070	Open Burning Conditions	4/16/2015	10/11/2017, 82 FR 47122.	
264–0075	Delegation of Authority	4/16/2015	10/11/2017, 82 FR 47122.	
264–0078	Open Burning Control Areas	4/16/2015	10/11/2017, 82 FR 47122.	
264–0080	County Listing of Specific Open Burning Rules	4/16/2015	10/11/2017, 82 FR 47122.	
Open Burning Requirements				
264–0100	Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties.	4/16/2015	10/11/2017, 82 FR 47122.	
264–0110	Benton, Linn, Marion, Polk, and Yamhill Counties	4/16/2015	10/11/2017, 82 FR 47122.	
264–0120	Clackamas County	4/16/2015	10/11/2017, 82 FR 47122.	
264–0130	Multnomah County	4/16/2015	10/11/2017, 82 FR 47122.	
264–0140	Washington County	4/16/2015	10/11/2017, 82 FR 47122.	
264–0150	Columbia County	4/16/2015	10/11/2017, 82 FR 47122.	
264–0160	Lane County	4/16/2015	10/11/2017, 82 FR 47122.	
264–0170	Coos, Douglas, Jackson and Josephine Counties	4/16/2015	10/11/2017, 82 FR 47122.	
264–0175	Klamath County	4/16/2015	10/11/2017, 82 FR 47122.	
264–0180	Letter Permits	4/16/2015	10/11/2017, 82 FR 47122.	
Division 266—Field Burning Rules (Willamette Valley)				
266–0010	Introduction	10/14/1999	1/22/2003, 68 FR 2891.	
266–0020	Policy	10/14/1999	1/22/2003, 68 FR 2891.	
266–0030	Definitions	10/14/1999	1/22/2003, 68 FR 2891.	
266–0040	General Requirements	10/14/1999	1/22/2003, 68 FR 2891.	
266–0050	Registration, Permits, Fees, Records	10/14/1999	1/22/2003, 68 FR 2891.	
266–0060	Acreage Limitations, Allocations	10/14/1999	1/22/2003, 68 FR 2891.	
266–0070	Daily Burning Authorization Criteria	10/14/1999	1/22/2003, 68 FR 2891.	
266–0080	Burning by Public Agencies (Training Fires)	10/14/1999	1/22/2003, 68 FR 2891.	
266–0090	Preparatory Burning	10/14/1999	1/22/2003, 68 FR 2891.	
266–0100	Experimental Burning	10/14/1999	1/22/2003, 68 FR 2891.	
266–0110	Emergency Burning Cessation	10/14/1999	1/22/2003, 68 FR 2891.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) ¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations	
266–0120	Propane Flaming	10/14/1999	1/22/2003, 68 FR 2891.		
266–0130	Stack Burning	10/14/1999	1/22/2003, 68 FR 2891.		
Division 268—Emission Reduction Credits					
268–0010	Applicability	4/16/2015	10/11/2017, 82 FR 47122.		
268–0020	Definitions	4/16/2015	10/11/2017, 82 FR 47122.		
268–0030	Emission Reduction Credits	4/16/2015	10/11/2017, 82 FR 47122.		
Chapter 629—Oregon Department of Forestry					
629–24–301	Maintenance of Productivity and Related Values	8/1/1987	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.	
629–048–0001 ..	Title, Scope and Effective Dates	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0005 ..	Definitions	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0010 ..	Purpose	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0020 ..	Necessity of Prescribed Burning	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0021 ..	Necessity of Safeguarding Public Health	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0100 ..	Regulated Areas	1/1/2008	8/22/2012, 77 FR 50611.		
629–048–0110 ..	Characterization and Response to Smoke Incidents, Smoke Intrusions, and National Ambient Air Quality Standards (NAAQS) Exceedances.	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0120 ..	Air Quality Maintenance Objectives	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0130 ..	Visibility Objectives	7/11/2014	5/25/2021, 86 FR 27976.		
629–048–0135 ..	Special Protection Zone Requirements	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0137 ..	SPZ Contingency Plan Requirements	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0140 ..	Smoke Sensitive Receptor Areas	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0150 ..	Criteria for Future Listing of Smoke Sensitive Receptor Areas.	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0160 ..	Bear Creek/Rogue River Valley SSRA	1/1/2008	8/22/2012, 77 FR 50611.		
629–048–0180 ..	Communication, Community Response Plans, and Exemption Requests.	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0200 ..	Regulated Areas	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0210 ..	Best Burn Practices; Emission Reduction Techniques.	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0220 ..	Forecast Procedures	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0230 ..	Burn Procedures	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0300 ..	Registration of Intent to Burn	1/1/2008	8/22/2012, 77 FR 50611.		
629–048–0310 ..	Fees for Prescribed Burning	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0320 ..	Reporting of Accomplishments	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0330 ..	Emission Inventories	1/1/2008	8/22/2012, 77 FR 50611.		
629–048–0400 ..	Coordination with Other Regulating Jurisdictions and for Other Pollutants.	1/1/2008	8/22/2012, 77 FR 50611.		
629–048–0450 ..	Periodic Evaluation and Adaptive Management	3/1/2019	5/25/2021, 86 FR 27976.		
629–048–0500 ..	Enforcement	3/1/2019	5/25/2021, 86 FR 27976.		
Department of State Police					
Chapter 837—Office of State Fire Marshall					
Division 110—Field Burning and Propaning Rules					
837–110–0010 ..	Field Preparation	2/7/1994	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.	
837–110–0020 ..	Firefighting Water Supplies	2/7/1994	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.	
837–110–0030 ..	Firefighting Equipment	2/7/1994	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.	
837–110–0040 ..	Ignition Criteria	2/7/1994	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.	
837–110–0050 ..	Prohibited Use	2/7/1989	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.	
837–110–0060 ..	Communication	2/7/1989	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.	
837–110–0070 ..	Fire Safety Watch	2/7/1994	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.	
837–110–0080 ..	Fire Safety Buffer Zones	2/7/1994	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.	
837–110–0090 ..	Ban on Burning	2/7/1994	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.	
Propaning					
837–110–0110 ..	Field Preparation	2/7/1994	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.	
837–110–0120 ..	Firefighting Water Supplies	2/7/1994	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.	
837–110–0130 ..	Firefighting Equipment	2/7/1994	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.	
837–110–0140 ..	Communication	2/7/1989	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.	
837–110–0150 ..	Fire Safety Watch	2/7/1994	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.	

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) ¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
837–110–0160 ..	Ban on Burning	8/11/1993	11/1/2001, 66 FR 55105 ..	Statewide Visibility Plan.

¹ The EPA approves the requirements in Table 2 of this paragraph (c) only to the extent they apply to (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under Part C of Title I of the CAA, but only for the purposes of meeting or avoiding the requirements of Part C of Title I of the CAA.

² Only for the Portland-Vancouver, Medford-Ashland, and Salem-Keizer Area Transportation Study air quality management areas, as well as all of Clackamas, Multnomah, and Washington counties.

³ The EPA approves Division 244 only to the extent needed to implement the requirements for gasoline dispensing facilities that are approved into the SIP for the purpose of regulating VOC emissions.

TABLE 3—EPA APPROVED CITY AND COUNTY ORDINANCES

Agency and ordinance	Title or subject	Date	EPA approval date	Explanations
City of Grants Pass Ordinance No. 4671.	Bans Open Burning	7/23/1990 (city approved).	12/17/1993, 58 FR 65934.	Grants Pass PM–10 Attainment Plan.
City of Eugene Ordinance No. 19731.	An Ordinance Restricting the Use of Solid Fuel Space Heating Devices During Air Pollution Episodes.	11/5/1990 (city approved).	8/24/1994, 59 FR 43483.	Eugene-Springfield PM–10 Attainment Plan.
Lane County Ordinance No. 9–90 (Alternative 2).	Restricts Use of Solid Fuel Space Heating Devices During Air Pollution Episodes.	12/19/1990 (county enacted).	8/24/1994, 59 FR 43483.	Eugene-Springfield PM–10 Attainment Plan.
City of Springfield Ordinance No. 5546.	Restricts Use of Solid Fuel Space Heating Devices During Air Pollution Episodes.	12/17/1990 (city approved).	8/24/1994, 59 FR 43483.	Eugene-Springfield PM–10 Attainment Plan.
Union County Ordinance 1991–6.	Field Burning Smoke Management Program.	6/5/1991 (county passed).	2/15/1995, 60 FR 8563.	La Grande PM–10 Attainment Plan.
City of Klamath Falls Ordinance 6630.	An Ordinance Consenting to the Application of the Klamath County Air Quality Program Ordinance Within City Limits.	9/16/1991 (city approval).	4/14/1997, 62 FR 18047.	Klamath Falls PM–10 Attainment Plan.
City of Oakridge Ordinance 815.	Restricts Use of Solid Fuel Space Heating Devices During Air Pollution Episodes.	8/15/1996 (city approved).	3/15/1999, 64 FR 12751.	Oakridge PM–10 Attainment Plan.
Town of Lakeview Resolution No. 402.	Establishes a Lakeview Air Quality Improvement Program.	2/28/1994 (town passed).	9/21/1999, 64 FR 51051.	Lakeview PM–10 Attainment Plan.
Lake County Commissioners Resolution.	Establishment of a Lakeview Urban Growth Boundary Air Quality Improvement Program.	3/15/1995 (county passed).	9/21/1999, 64 FR 51051.	Lakeview PM–10 Attainment Plan.
Town of Lakeview Ordinance No. 748.	Prohibits Use of Solid Fuel Burning Devices, Provides Certain Exemptions and Establishes Enforcement Controls.	2/28/1995 (town adopted).	9/21/1999, 64 FR 51051.	Lakeview PM–10 Attainment Plan.
Town of Lakeview Ordinance No. 749.	Prohibits Waste Burning; Restricts Open Burning, Repeals Ordinance No. 581.	2/28/1995 (town adopted).	9/21/1999, 64 FR 51051.	Lakeview PM–10 Attainment Plan.
Lake County Ordinance No. 29.	Prohibits Use of Solid Fuel Burning Devices, Provides Certain Exemptions and Establishes Enforcement Controls.	3/15/1995 (county adopted).	9/21/1999, 64 FR 51051.	Lakeview PM–10 Attainment Plan.
Lake County Ordinance No. 30.	Prohibits Waste Burning and Restricts Open Burning.	3/15/1995 (county adopted).	9/21/1999, 64 FR 51051.	Lakeview PM–10 Attainment Plan.
Medford Ordinance No. 6484	Woodstove Curtailment	11/03/1989 (city approved).	7/24/2002, 67 FR 48388.	Medford Carbon Monoxide (CO) Maintenance Plan.
Union County Ordinance No. 1992–4.	Management and Control of Field Burning.	7/1/1992 (county effective).	11/01/2001, 66 FR 55105.	Statewide Visibility Plan.
Jefferson County Ordinance No. 0–58–89.	Management and Control of Field Burning.	5/31/1989 (county passed).	11/01/2001, 66 FR 55105.	Statewide Visibility Plan.
Codified Ordinances of Jackson County 1810.01.	Definitions	5/2/1990 (county passed).	6/19/2006, 71 FR 35163.	Medford-Ashland PM–10 Attainment Plan.
Codified Ordinances of Jackson County 1810.02.	Exceptions to chapter	8/22/2001 (county passed).	6/19/2006, 71 FR 35163.	Medford-Ashland PM–10 Attainment Plan.
Codified Ordinances of Jackson County 1810.03.	Requirements for solid fuel heating device installation.	12/20/1989 (county passed).	6/19/2006, 71 FR 35163.	Medford-Ashland PM–10 Attainment Plan.
Codified Ordinances of Jackson County 1810.04.	Solid fuel burning device omission standard.	5/02/1990 (county passed).	6/19/2006, 71 FR 35163.	Medford-Ashland PM–10 Attainment Plan.
Codified Ordinances of Jackson County 1810.05.	Restriction of woodburning and emissions on high pollution days.	5/02/1990 (county passed).	6/19/2006, 71 FR 35163.	Medford-Ashland PM–10 Attainment Plan.

TABLE 3—EPA APPROVED CITY AND COUNTY ORDINANCES—Continued

Agency and ordinance	Title or subject	Date	EPA approval date	Explanations
Codified Ordinances of Jackson County 1810.06.	Trackout	12/04/1985 (county passed).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
Codified Ordinances of Jackson County 1810.07.	Open burning	8/22/2001 (county passed).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
Codified Ordinances of Jackson County 1810.08.	Burning of material emitting dense smoke or noxious odors in solid fuel burning devices.	12/20/1989 (county passed).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
Codified Ordinances of Jackson County Exhibit A.	[Map 1]	5/02/1990 (county passed).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
Codified Ordinances of Jackson County Exhibit B.	Proposed Curtailment Boundary Jackson County.	5/02/1990 (county passed).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
Codified Ordinances of Jackson County Exhibit C.	[Map 2]	5/02/1990 (county passed).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
Codified Ordinances of Jackson County Exhibit D.	Boundary Description Medford-Ashland Air Quality Maintenance Area.	5/02/1990 (county passed).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
Code of the City of Medford, Oregon: 5.550.	Outside Burning	3/16/2000 (city effective).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
Code of the City of Medford, Oregon: 7.220.	Definitions	9/17/1998 (city effective).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
Code of the City of Medford, Oregon: 7.222.	Operation of Solid Fuel Burning Device Prohibition.	9/17/1998 (city effective).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
Code of the City of Medford, Oregon: 7.224.	Exemptions	9/17/1998 (city effective).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
Code of the City of Medford, Oregon: 7.240.	Installation of Solid-Fuel Heating Devices.	8/02/1990 (city effective).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
Code of the City of Medford, Oregon: 7.242.	Prohibited Materials	9/17/1998 (city effective).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Central Point Municipal Code: 8.01.010.	Definitions	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Central Point Municipal Code: 8.01.012.	Requirements for solid fuel burning device installation.	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Central Point Municipal Code: 8.01.014.	Solid fuel burning device emission standard.	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Central Point Municipal Code: 8.01.020.	Operation of solid fuel device prohibition.	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Central Point Municipal Code: 8.01.030.	Exemptions	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Central Point Municipal Code: 8.01.032.	Prohibited materials	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Central Point Municipal Code: 8.04.040 H.	Penalty and abatement	1979 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Central Point Municipal Code: 8.04.095.	Trackout prohibited	1994 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Ashland Municipal Code: 10.30.005.	Definitions	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Ashland Municipal Code: 10.30.010.	Outdoor and Indoor Burning Restricted.	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Ashland Municipal Code: 10.30.020.	Period When Outdoor Burning is Authorized.	2000 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Ashland Municipal Code: 10.30.030.	Requirements for Permitted Fires	1993 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Ashland Municipal Code: 10.30.040.	Permits Required	1993 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Ashland Municipal Code: 9.24.010.	Definitions	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Ashland Municipal Code: 9.24.020.	Requirements for Solid Fuel Heating Device Installation.	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Ashland Municipal Code: 9.24.030.	Solid Fuel Burning Device Emission Standard.	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Ashland Municipal Code: 9.24.040.	Restriction of Woodburning an Emissions on High Pollution Days.	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Ashland Municipal Code: 9.24.050.	Prohibited Materials	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Talent Ordinance #565.	An ordinance of the city of Talent adopting a uniform fire code.	8/20/1992 (city effective).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Talent Ordinance #98–635–0.	An ordinance regulating the use of solid fuel burning devices within the city of Talent, Oregon.	3/04/1998 (city approved).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Phoenix Code: 8.16.050.	Burn days	1982 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.

TABLE 3—EPA APPROVED CITY AND COUNTY ORDINANCES—Continued

Agency and ordinance	Title or subject	Date	EPA approval date	Explanations
City of Phoenix Code: 8.16.090.	Prohibited materials	1982 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Phoenix Code: 8.20.010.	Definitions	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Phoenix Code: 8.20.020.	Requirements for solid fuel heating device installation.	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Phoenix Code: 8.20.030.	Solid fuel burning device emission standard.	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Phoenix Code: 8.20.040.	Restriction of woodburning and emissions on high pollution days.	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Phoenix Code: 8.20.050.	Prohibited materials	1998 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Jacksonville code: Ordinance 375.	An ordinance amending chapter 8.08.100 of the Jacksonville Municipal Code.	4/21/1992 (city effective).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Jacksonville Code Chapter 8.10.	Woodheating	February 1992 (city effective).	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Eagle Point Code: 8.08.160.	Outside burning of refuse or rubbish	2000 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Eagle Point Code: 8.08.170.	Open burning restricted	1990 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Eagle Point Code: 8.08.180.	Purposes for open burning permit	1990 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Eagle Point Code: 8.08.190.	Times when open burning fire allowed.	1990 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
City of Eagle Point Code: 8.08.200.	Public nuisance	1990 (city effective)	6/19/2006, 71 FR 35163.	Medford-Ashland PM—10 Attainment Plan.
Klamath County Ordinance 63.06.	Chapter 406—Klamath County Clean Air Ordinance 63.06.	12/31/2012 (county effective).	08/25/2015, 80 FR 51470.	Except 406.300 and 406.400 Klamath Falls PM _{2.5} Attainment Plan.
City of Oakridge Ordinance No. 920.	An Ordinance Amending Section 7 of Ordinance 914 and Adopting New Standards for the Oakridge Air Pollution Control Program.	10/20/2016 (county approved).	8/22/2022, 87 FR 51262.	Except section 6.
Lane County Code Chapter 9.	Restriction on Use of Solid Fuel Space Heating Devices.	2/9/2017 (county approved).	8/22/2022, 87 FR 51262.	Except sections 9.145 and 9.150.

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON¹

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
Title 11—Policy and General Provisions				
11-005	Policy	10/9/1979	9/9/1993, 58 FR 47385.	
11-010	Construction and Validity	10/9/1979	9/9/1993, 58 FR 47385.	
Title 12—Definitions				
12-001	General	3/23/2018	10/5/2018, 83 FR 50274.	
12-005	Definitions	5/17/2019	10/31/2019, 84 FR 59327.	
12-010	Abbreviations and Acronyms	3/23/2018	10/5/2018, 83 FR 50274.	
12-020	Exceptions	5/17/2019	10/31/2019, 84 FR 59327.	
12-025	Reference Materials	5/17/2019	10/31/2019, 84 FR 58327.	
Title 16—Home Wood Heating Curtailment Program Enforcement				
16-001	Purpose	7/13/1993	8/24/1994, 59 FR 43483.	
16-010	Definitions	7/13/1993	8/24/1994, 59 FR 43483.	
16-100	Civil Penalty Schedule	7/13/1993	8/24/1994, 59 FR 43483.	
16-110	Classification of Violations	7/13/1993	8/24/1994, 59 FR 43483.	
16-120	Notice of Violation	7/13/1993	8/24/1994, 59 FR 43483.	
16-130	Appeal of Civil Penalty	7/13/1993	8/24/1994, 59 FR 43483.	
16-140	Conducting Contested Case Evidentiary Hearings.	7/13/1993	8/24/1994, 59 FR 43483.	
16-150	Evidentiary Rules	7/13/1993	8/24/1994, 59 FR 43483.	
16-160	Final Orders	7/13/1993	8/24/1994, 59 FR 43483.	
16-170	Default Orders	7/13/1993	8/24/1994, 59 FR 43483.	

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON ¹—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
Title 29—Designation of Air Quality Areas				
29-0010	Definitions	11/18/2021	8/22/2022, 87 FR 51262.	
29-0020	Designation of Air Quality Control Regions	11/18/2021	8/22/2022, 87 FR 51262.	
29-0030	Designation of Nonattainment Areas	11/18/2021	8/22/2022, 87 FR 51262.	
29-0040	Designation of Maintenance Areas	11/18/2021	8/22/2022, 87 FR 51262.	
29-0050	Designation of Prevention of Significant Deterioration Areas.	11/18/2021	8/22/2022, 87 FR 51262.	
29-0060	Redesignation of Prevention of Significant Deterioration Areas.	11/18/2021	8/22/2022, 87 FR 51262.	
29-0070	Special Control Areas	11/18/2021	8/22/2022, 87 FR 51262.	
29-0080	Motor Vehicle Inspection Boundary Designations.	11/18/2021	8/22/2022, 87 FR 51262.	
29-0090	Oxygenated Gasoline Control Areas	11/18/2021	8/22/2022, 87 FR 51262.	
Designation of Areas				
29-0300	Designation of Sustainment Areas	11/18/2021	8/22/2022, 87 FR 51262.	
29-0310	Designation of Reattainment Areas	11/18/2021	8/22/2022, 87 FR 51262.	
29-0320	Priority Sources	11/18/2021	8/22/2022, 87 FR 51262.	
Title 30—Incinerator Regulations				
30-010	Definitions	3/23/2018	10/5/2018, 83 FR 50274.	
30-015	Best Available Control Technology for Solid and Infectious Waste Incinerators.	3/31/2014	10/5/2018, 83 FR 50274.	
30-020	Emission Limitations for Solid and Infectious Waste Incinerators.	3/31/2014	10/5/2018, 83 FR 50274	Except (2) and (8).
30-025	Design and Operation for Solid and Infectious Waste Incinerators.	3/31/2014	10/5/2018, 83 FR 50274	Except (9).
30-030	Continuous Emission Monitoring for Solid and Infectious Waste Incinerators.	3/31/2014	10/5/2018, 83 FR 50274	Except (1)(I) and (2)(E).
30-035	Reporting and Testing for Solid and Infectious Waste Incinerators.	3/31/2014	10/5/2018, 83 FR 50274.	
30-040	Compliance for Solid and Infectious Waste Incinerators.	3/31/2014	10/5/2018, 83 FR 50274.	
30-045	Emission Limitations of Crematory Incinerators.	3/31/2014	10/5/2018, 83 FR 50274	Except (3).
30-050	Design and Operation of Crematory Incinerators.	3/31/2014	10/5/2018, 83 FR 50274.	
30-055	Monitoring and Reporting for Crematory Incinerators.	3/31/2014	10/5/2018, 83 FR 50274.	
30-060	Compliance of Crematory Incinerators	3/31/2014	10/5/2018, 83 FR 50274.	
Title 31—Public Participation				
31-0010	Purpose	3/23/2018	10/5/2018, 83 FR 50274.	
31-0020	Applicability	5/17/2019	10/31/2019, 84 FR 58327.	
31-0030	Public Notice Categories and Timing	5/17/2019	10/31/2019, 84 FR 58327.	
31-0040	Public Notice Information	5/17/2019	10/31/2019, 84 FR 58327.	
31-0050	Public Notice Procedures	5/17/2019	10/31/2019, 84 FR 58327.	
31-0060	Persons Required to be Notified	3/23/2018	10/5/2018, 83 FR 50274.	
31-0080	Issuance or Denial of Permit	3/23/2018	10/5/2018, 83 FR 50274.	
Title 32—Emission Standards				
32-001	Definitions	3/23/2018	10/5/2018, 83 FR 50274.	
32-005	Highest and Best Practicable Treatment and Control Required.	3/23/2018	10/5/2018, 83 FR 50274.	
32-006	Pollution Prevention	3/23/2018	10/5/2018, 83 FR 50274.	
32-007	Operating and Maintenance Requirements	3/23/2018	10/5/2018, 83 FR 50274.	
32-008	Typically-Achievable Control Technology Requirements.	3/23/2018	10/5/2018, 83 FR 50274.	
32-009	Additional Control Requirements for Stationary Sources of Air Contaminants.	3/23/2018	10/5/2018, 83 FR 50274.	
32-010	Visible Air Contaminant Limitations	3/23/2018	10/5/2018, 83 FR 50274.	
32-015	Particulate Matter Emission Limitations for Sources Other than Fuel Burning Equipment, Refuse Burning Equipment, and Fugitive Emissions.	3/23/2018	10/5/2018, 83 FR 50274.	

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON¹—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
32-020	Particulate Matter Weight Standards—Existing Combustion Sources.	3/23/2018	10/5/2018, 83 FR 50274.	
32-030	Particulate Matter Weight Standards—New Combustion Sources.	3/23/2018	10/5/2018, 83 FR 50274.	
32-045	Process Weight Emission Limitations and Determination of Process Weight.	3/23/2018	10/5/2018, 83 FR 50274.	
32-050	Concealment and Masking of Emissions	3/23/2018	10/5/2018, 83 FR 50274.	
32-060	Air Conveying Systems	3/23/2018	10/5/2018, 83 FR 50274.	
Gaseous Emission Limitations				
32-065	Sulfur Content of Fuels	3/23/2018	10/5/2018, 83 FR 50274.	
32-070	Sulfur Dioxide Emission Limitations	3/23/2018	10/5/2018, 83 FR 50274.	
32-090	Other Emissions	3/31/2014	10/5/2018, 83 FR 50274.	
32-100	Alternative Emission Controls (Bubble)	3/23/2018	10/5/2018, 83 FR 50274.	
32-8010	Particulate Matter Emissions Standards for Process Equipment.	3/23/2018	10/5/2018, 83 FR 50274.	
Title 33—Prohibited Practices and Control of Special Classes of Industry				
33-005	Definitions	3/23/2018	10/5/2018, 83 FR 50274.	
33-060	Board Products Industries (Hardboard, Particleboard, Plywood, Veneer).	3/23/2018	10/5/2018, 83 FR 50274.	
33-065	Charcoal Producing Plants	3/23/2018	10/5/2018, 83 FR 50274.	
33-070	Kraft Pulp Mills	3/23/2018	10/5/2018, 83 FR 50274	Except in (1) the definitions of “non-condensables”, “other sources”, and “TRS”, (3)(a), (4)(b) (5)(b), (6)(a), and (6)(b).
33-500	Particulate Matter Emissions Standards for Process Equipment.	3/23/2018	10/5/2018, 83 FR 50274.	
Title 34—Stationary Source Notification Requirements				
34-005	Definitions	3/23/2018	10/5/2018, 83 FR 50274.	
34-010	Applicability	3/23/2018	10/5/2018, 83 FR 50274.	
34-015	Request for Information	3/23/2018	10/5/2018, 83 FR 50274.	
34-016	Records: Maintaining and Reporting	3/23/2018	10/5/2018, 83 FR 50274.	
34-017	Enforcement; Credible Evidence	3/23/2018	10/5/2018, 83 FR 50274.	
34-020	Information Exempt from Disclosure	3/23/2018	10/5/2018, 83 FR 50274.	
Registration				
34-025	Registration is General	3/23/2018	10/5/2018, 83 FR 50274.	
34-030	Source Registration Requirements and Re-Registration and Maintaining Registration.	3/23/2018	10/5/2018, 83 FR 50274.	
Notice of Construction and Approval of Plans				
34-034	Requirements for Construction	3/23/2018	10/5/2018, 83 FR 50274.	
34-035	Types of Construction/Modification Changes ..	3/23/2018	10/5/2018, 83 FR 50274.	
34-036	Notice to Construct	3/23/2018	10/5/2018, 83 FR 50274.	
34-037	Construction Approval	3/23/2018	10/5/2018, 83 FR 50274.	
34-038	Approval to Operate	3/23/2018	10/5/2018, 83 FR 50274.	
Title 35—Stationary Source Testing and Monitoring				
35-0010	Definitions	3/23/2018	10/5/2018, 83 FR 50274.	
Sampling, Testing and Measurement				
35-0110	Applicability	3/23/2018	10/5/2018, 83 FR 50274.	
35-0120	Program	3/23/2018	10/5/2018, 83 FR 50274.	
35-0130	Stack Heights and Dispersion Techniques	3/23/2018	10/5/2018, 83 FR 50274.	
35-0140	Methods	3/23/2018	10/5/2018, 83 FR 50274.	
35-0150	LRAPA Testing	3/31/2014	10/5/2018, 83 FR 50274.	
Title 37—Air Contaminant Discharge Permits				
37-0010	Purpose	5/17/2019	10/31/2019, 84 FR 58327.	
37-0020	Applicability and Jurisdiction	5/17/2019	10/31/2019, 84 FR 58327.	

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON ¹—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
37–0025	Types of Permits	5/17/2019	10/31/2019, 84 FR 58327.	
37–0030	Definitions	5/17/2019	10/31/2019, 84 FR 58327.	
37–0040	Application Requirements	5/17/2019	10/31/2019, 84 FR 58327.	
37–0052	Construction ACDP	3/23/2018	10/5/2018, 83 FR 50274.	
37–0054	Short Term Activity ACDPs	3/23/2018	10/5/2018, 83 FR 50274.	
37–0056	Basic ACDPs	3/23/2018	10/5/2018, 83 FR 50274.	
37–0060	General Air Contaminant Discharge Permits ...	3/23/2018	10/5/2018, 83 FR 50274.	
37–0062	General ACDP Attachments	3/23/2018	10/5/2018, 83 FR 50274.	
37–0064	Simple ACDPs	3/23/2018	10/5/2018, 83 FR 50274.	
37–0066	Standard ACDPs	3/23/2018	10/5/2018, 83 FR 50274.	
37–0068	Simple and Standard ACDP Attachments	3/23/2018	10/5/2018, 83 FR 50274.	
37–0070	Permitting a Source with Multiple Activities or Processes at a Single Adjacent or Contiguous Site.	3/23/2018	10/5/2018, 83 FR 50274.	
37–0082	Termination or Revocation of an ACDP	3/23/2018	10/5/2018, 83 FR 50274.	
37–0084	LRAPA-Initiated Modification	3/23/2018	10/5/2018, 83 FR 50274.	
37–0090	Sources Subject to ACDPs and Fees	5/17/2019	10/31/2019, 84 FR 58327.	
37–0094	Temporary Closure	3/23/2018	10/5/2018, 83 FR 50274.	
37–8010	Table 1—Activities and Sources	3/23/2018	10/5/2018, 83 FR 50274.	
37–8020	Table 2—Air Contaminant Discharge Permits	5/17/2019	10/31/2019, 84 FR 58327.	
Title 38—New Source Review				
38–0010	Applicability and General Prohibitions, General Requirements and Jurisdiction.	3/23/2018	10/5/2018, 83 FR 50274.	
38–0020	Definitions	3/23/2018	10/5/2018, 83 FR 50274.	
38–0025	Major Modification	3/23/2018	10/5/2018, 83 FR 50274.	
38–0030	New Source Review Procedural Requirements	3/23/2018	10/5/2018, 83 FR 50274.	
38–0034	Exemptions	3/23/2018	10/5/2018, 83 FR 50274.	
38–0038	Fugitive and Secondary Emissions	3/23/2018	10/5/2018, 83 FR 50274.	
38–0040	Review of Sources Subject to Major NSR or Type A State NSR for Compliance With Regulations.	3/23/2018	10/5/2018, 83 FR 50274.	
Major New Source Review				
38–0045	Requirements for Sources in Sustainment Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38–0050	Requirements for Sources in Nonattainment Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38–0055	Requirements for Sources in Reattainment Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38–0060	Records; Maintaining and Reporting	3/23/2018	10/5/2018, 83 FR 50274.	
38–0070	Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
State New Source Review				
38–0245	Requirements for Sources in Sustainment Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38–0250	Requirements for Sources in Nonattainment Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38–0255	Requirements for Sources in Reattainment Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38–0260	Requirements for Sources in Maintenance Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38–0270	Requirement for Sources in Attainment and Unclassified Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
Net Air Quality Benefit Emission Offsets				
38–0500	Net Air Quality Benefit for Sources Locating Within or Impacting Designated Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38–0510	Common Offset Requirements	3/23/2018	10/5/2018, 83 FR 50274	Except (3).
38–0530	Requirements for Demonstrating Net Air Quality Benefit for Non-Ozone Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
38–0540	Sources in a Designated Area Impacting Other Designated Areas.	3/23/2018	10/5/2018, 83 FR 50274.	

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON¹—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
Title 39—Contingency for PM₁₀ Sources in Eugene-Springfield Non-Attainment Area				
39–001	Purpose	11/13/1991	8/24/1994, 59 FR 43483.	
39–005	Relation to Other Rules	11/13/1991	8/24/1994, 59 FR 43483.	
39–010	Applicability	11/13/1991	8/24/1994, 59 FR 43483.	
39–015	Definitions	11/13/1991	8/24/1994, 59 FR 43483.	
39–020	Compliance Schedule for Existing Sources	11/13/1991	8/24/1994, 59 FR 43483.	
39–025	Wood-Waste Boilers	11/13/1991	8/24/1994, 59 FR 43483.	
39–030	Veneer Dryers	11/13/1991	8/24/1994, 59 FR 43483.	
39–035	Particle Board Plants and Wood Particle Dryers.	11/13/1991	8/24/1994, 59 FR 43483.	
39–040	Kraft Pulp Mills	11/13/1991	8/24/1994, 59 FR 43483.	
39–050	Air Conveying Systems	11/13/1991	8/24/1994, 59 FR 43483.	
39–055	Fugitive Dust	11/13/1991	8/24/1994, 59 FR 43483.	
39–060	Open Burning	11/13/1991	8/24/1994, 59 FR 43483.	
Title 40—Air Quality Analysis Requirements				
40–0010	Purpose	3/23/2018	10/5/2018, 83 FR 50274.	
40–0020	Definitions	3/23/2018	10/5/2018, 83 FR 50274.	
40–0030	Procedural Requirements	3/23/2018	10/5/2018, 83 FR 50274.	
40–0040	Air Quality Models	3/23/2018	10/5/2018, 83 FR 50274.	
40–0045	Requirements for Analysis in Maintenance Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
40–0050	Requirements for Analysis in PSD Class II and Class III Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
40–0060	Requirements for Demonstrating Compliance with Standards and Increments in PSD Class I Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
40–0070	Requirements for Demonstrating Compliance with Air Quality Related Values Protection.	3/23/2018	10/5/2018, 83 FR 50274.	
Title 41—Emission Reduction Credits				
41–0010	Applicability	3/31/2014	10/5/2018, 83 FR 50274.	
41–0020	Definitions	3/23/2018	10/5/2018, 83 FR 50274.	
41–0030	Emission Reduction Credits	3/23/2018	10/5/2018, 83 FR 50274.	
Title 42—Stationary Source Plant Site Emission Limits				
42–0010	Policy	3/23/2018	10/5/2018, 83 FR 50274.	
42–0020	Applicability	3/23/2018	10/5/2018, 83 FR 50274.	
42–0030	Definitions	3/23/2018	10/5/2018, 83 FR 50274.	
Criteria for Establishing Plant Site Emission Limits				
42–0035	General Requirements for Establishing All PSELs.	3/23/2018	10/5/2018, 83 FR 50274.	
42–0040	Generic Annual PSEL	3/23/2018	10/5/2018, 83 FR 50274.	
42–0041	Source Specific Annual PSEL	3/23/2018	10/5/2018, 83 FR 50274.	
42–0042	Short Term PSEL	3/23/2018	10/5/2018, 83 FR 50274.	
42–0046	Netting Basis	3/23/2018	10/5/2018, 83 FR 50274	
42–0048	Baseline Period and Baseline Emission Rate	3/23/2018	10/5/2018, 83 FR 50274.	
42–0051	Actual Emissions	3/23/2018	10/5/2018, 83 FR 50274.	
42–0055	Unassigned Emissions	3/23/2018	10/5/2018, 83 FR 50274.	
42–0080	Plant Site Emission Limit Compliance	3/23/2018	10/5/2018, 83 FR 50274.	
42–0090	Combining and Splitting Sources and Changing Primary SIC Code.	3/23/2018	10/5/2018, 83 FR 50274.	
Title 47—Rules for Outdoor Burning				
47–001	General Policy	7/13/2018	2/20/2019, 84 FR 5000.	
47–005	Exemptions from these Rules	7/13/2018	2/20/2019, 84 FR 5000.	
47–010	Definitions	7/13/2018	2/20/2019, 84 FR 5000	Except the definition of “nuisance”.
47–015	Open Burning Requirements	7/13/2018	2/20/2019, 84 FR 5000	Except (1)(d) and (1)(h).
47–020	Letter Permits	7/13/2018	2/20/2019, 84 FR 5000	Except (3), (9)(i), and (10).
Title 48—Rules for Fugitive Emissions				
48–001	General Policy	3/23/2018	10/5/2018, 83 FR 50274.	

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON ¹—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
48-005	Definitions	3/23/2018	10/5/2018, 83 FR 50274.	
48-010	General Applicability	3/23/2018	10/5/2018, 83 FR 50274.	
48-015	General Requirements for Fugitive Emissions	3/23/2018	10/5/2018, 83 FR 50274.	
Title 50—Ambient Air Standards and PSD Increments				
50-001	Definitions	3/23/2018	10/5/2018, 83 FR 50274.	
Ambient Air Quality Standards				
50-005	Purpose and Scope of Ambient Air Quality Standards.	3/23/2018	10/5/2018, 83 FR 50274.	
50-015	Suspended Particulate Matter	3/23/2018	10/5/2018, 83 FR 50274.	
50-025	Sulfur Dioxide	3/23/2018	10/5/2018, 83 FR 50274.	
50-030	Carbon Monoxide	3/23/2018	10/5/2018, 83 FR 50274.	
50-035	Ozone	3/23/2018	10/5/2018, 83 FR 50274.	
50-040	Nitrogen Dioxide	3/23/2018	10/5/2018, 83 FR 50274.	
50-045	Lead	3/23/2018	10/5/2018, 83 FR 50274.	
PSD Increments				
50-050	General	3/23/2018	10/5/2018, 83 FR 50274.	
50-055	Ambient Air PSD Increments	3/23/2018	10/5/2018, 83 FR 50274.	
50-060	Ambient Air Ceilings	3/31/2014	10/5/2018, 83 FR 50274.	
50-065	Ambient Air Quality Impact Levels for Maintenance Areas.	3/23/2018	10/5/2018, 83 FR 50274.	
Title 51—Air Pollution Emergencies				
51-005	Introduction	3/23/2018	10/5/2018, 83 FR 50274.	
51-007	Definitions	3/23/2018	10/5/2018, 83 FR 50274.	
51-010	Episode Stage Criteria for Air Pollution Emergencies.	3/23/2018	10/5/2018, 83 FR 50274.	
51-011	Special Conditions	3/23/2018	10/5/2018, 83 FR 50274.	
51-015	Source Emission Reduction Plans	3/23/2018	10/5/2018, 83 FR 50274.	
51-020	Preplanned Abatement Strategies	3/23/2018	10/5/2018, 83 FR 50274.	
51-025	Implementation	3/23/2018	10/5/2018, 83 FR 50274.	
Table I	Air Pollution Episode, Alert Conditions Emission Reduction Plan.	3/23/2018	10/5/2018, 83 FR 50274.	
Table II	Air Pollution Episode, Warning Conditions Emission Reduction Plan.	3/23/2018	10/5/2018, 83 FR 50274.	
Table III	Air Pollution Episode, Emergency Conditions Emission Reduction Plan.	3/23/2018	10/5/2018, 83 FR 50274.	

¹ The EPA approves the requirements in Table 4 of this paragraph (c) only to the extent they apply to (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under Part C of Title I of the CAA, but only for the purposes of meeting or avoiding the requirements of Part C of Title I of the CAA.

(d) *EPA approved state source-specific requirements.*

EPA APPROVED OREGON SOURCE-SPECIFIC REQUIREMENTS ¹

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Industrial Laundry & Dry Cleaners.	26-3025	12/9/1980	8/27/1981, 46 FR 43142.	Air Contaminant Discharge Permit.
VANPLY, Inc. & Spalding Pulp & Paper Co.	Stipulation and Consent Final Order.	12/30/1980	8/27/1981, 46 FR 43142.	Transfer by VANPLY, INC. of a VOC Offset to Spalding Pulp & Paper Co.
Spaulding Pulp and Paper Co.	36-6041	12/11/1980	8/27/1981, 46 FR 43142.	Air Contaminant Discharge Permit—Addendum No. 1.
Weyerhaeuser Company—Bly, Oregon.	18-0037	2/3/1981	11/6/1981, 46 FR 55101.	Air Contaminant Discharge Permit—Conditions 5 and 6.
Intel Corporation	34-2681	9/24/1993 (State effective date of Title V Program).	7/18/1996, 61 FR 37393.	Oregon Title-V Operating Permit—Page 11.

EPA APPROVED OREGON SOURCE-SPECIFIC REQUIREMENTS ¹—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Cascade General (Port of Portland).	26–3224	10/4/1995	3/7/1997, 62 FR 10455.	Air Contaminant Discharge Permit—Condition 19 of Addendum 2.
White Consolidated Inc.	34–2060	8/1/1995	3/7/1997, 62 FR 10455.	Air Contaminant Discharge Permit—Conditions 11, 12 and 13 in Addendum No. 2.
PCC Structurals, Inc ..	26–1867	4/4/1997	6/20/1997, 62 FR 33548.	Air Contaminant Discharge Permit—Conditions 19, 20 and 21 in Addendum No. 2.
Dura Industries	26–3112	9/14/1995	3/31/1998, 63 FR 15293.	Air Contaminant Discharge Permit.
Ostrander Construction Company Fremont Sawmill.	ACDP No. 19–0002 ...	4/29/1998	9/21/1999, 64 FR 51051.	Air Contaminant Discharge Permit.
Ash Grove Cement Company.	Permit No. 01–0029–TV–01.	10/16/2020	10/8/2024, 89 FR 81361.	Permit conditions (3), (9) through (11), (14), (16) through (28), (42), (45) through (76), (84) through (97), (99), (100), and (102) only.
Biomass One, L.P	Order No. 15–0159	8/9/2021	10/8/2024, 89 FR 81361.	
Boise Cascade Wood Products, LLC—Elgin Complex.	Order No. 31–0006	8/12/2021	10/8/2024, 89 FR 81361.	
Boise Cascade Wood Products, LLC—Elgin Complex.	Permit No. 31–0006–TV–01.	12/5/2016	10/8/2024, 89 FR 81361.	Permit condition (56), (59) through (75), (77), and (78) only.
Boise Cascade Wood Products, LLC—Medford.	Order No. 15–0004	8/9/2021	10/8/2024, 89 FR 81361.	
Boise Cascade Wood Products, LLC—Medford.	Permit No. 15–0004–TV–01.	2/20/2020	10/8/2024, 89 FR 81361.	Permit conditions (71), (72), and (74) through (88) only.
Cascade Pacific Pulp, LLC—Halsey Pulp Mill.	Order No. 22–3501–A2.	8/25/2023	10/8/2024, 89 FR 81361.	
Cascades Tissue Group: A Division of Cascades Holding US Inc.	Order No. 05–1849	8/18/2021	10/8/2024, 89 FR 81361.	
Cascades Tissue Group: A Division of Cascades Holding US Inc.	Permit No. 05–1849–TV–01.	04/6/2018	10/8/2024, 89 FR 81361.	Permit conditions (24), (25), (27), and (29) through (43) only.
Collins Products, L.L.C.	Permit No. 18–0013–TV–01.	1/26/2015	10/8/2024, 89 FR 81361.	Permit conditions (3), (14) through (16), (19) through (24), (34) through (42), (63) through (75), and (77) only.
Columbia Forest Products, Inc.	Permit No. 18–0014–TV–01.	9/26/2017	10/8/2024, 89 FR 81361.	Permit conditions (3), (8) through (20), (22), (23), (34) through (52), (58) through (66), (67—introductory paragraph), (67.a), (67.b.iii) through (67.b.v), and (68) through (70).
EVRAZ Inc	Order No. 26–1865	8/9/2021	10/8/2024, 89 FR 81361.	
Gas Transmission Northwest LLC—Compressor Station 12.	Order No. 09–0084	8/9/2021	10/8/2024, 89 FR 81361.	
Gas Transmission Northwest LLC—Compressor Station 12.	Permit No. 09–0084–TV–01.	8/10/2017	10/8/2024, 89 FR 81361.	Permit conditions (32) through (34) and (37) through (50) only.
Gas Transmission Northwest LLC—Compressor Station 13.	Order No. 03–2729–A1.	6/1/2022	10/8/2024, 89 FR 81361.	OAH CASE NO. 2021–ABC–04835; DEQ CASE NO. AQ/RH–HQ–2021–140.
Gas Transmission Northwest LLC—Compressor Station 13.	Permit No. 18–0096–TV–01.	7/11/2018	10/8/2024, 89 FR 81361.	Permit conditions (24) through (26), (32) through (35), and (37) through (44) only.
Georgia-Pacific—Toledo LLC.	Order No. 21–0005, Amendment No. 21–005–A1.	12/5/2022	10/8/2024, 89 FR 81361.	

EPA APPROVED OREGON SOURCE-SPECIFIC REQUIREMENTS ¹—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Georgia Pacific— Wauna Mill.	Order No. 04–0004, Amendment No. 04–004–A1.	12/5/2022	10/8/2024, 89 FR 81361.	
Gilchrist Forest Prod- ucts.	Permit No. 18–0005– TV–01.	7/25/2023	10/8/2024, 89 FR 81361.	Permit conditions (4), (5), (9), (10), (12) though (19), (41) through (43), (45) through (59), and (61) only.
International Paper— Springfield.	Order No. 208850	8/9/2021	10/8/2024, 89 FR 81361.	
International Paper— Springfield.	Permit No. 208850	10/4/2016	10/8/2024, 89 FR 81361.	Permit conditions (186) through (189), (192), and (198) only.
JELD–WEN	Permit No. 18–0006– TV–01.	12/01/2021	10/8/2024, 89 FR 81361.	Permit conditions (55) through (77) and (80) through (87) only.
JELD–WEN	Permit No. 18–0006– TV–01, Addendum No. 1.	8/11/2022	10/8/2024, 89 FR 81361.	Permit conditions 53 and 53b only.
Kingsford Manufac- turing Company.	Permit No. 204402, addendum No. 2.	11/15/2021	10/8/2024, 89 FR 81361.	Permit conditions (71) through (73) and (75) through (91) only.
Klamath Energy LLC—Klamath Co- generation.	Permit No. 18–0003– TV–01.	6/12/2017	10/8/2024, 89 FR 81361.	Permit conditions (10) through (16), (18), (24) through (28), (32) through (37), (39) through (49), (51), (52), and (54), and (56) only.
Klamath Energy LLC—Klamath Co- generation.	Permit No. 18–0003– TV–01, Addendum No. 1.	12/8/2020	10/8/2024, 89 FR 81361.	Permit conditions (3.a), (3.b), (61.i), and (66.b.xii).
Northwest Pipeline LLC—Baker Com- pressor Station.	Order No. 01–0038, amendment 01– 0038–A1.	2/1/2022	10/8/2024, 89 FR 81361.	
Northwest Pipeline LLC—Baker Com- pressor Station.	Permit No. 01–0038– TV–01.	1/12/2017	10/8/2024, 89 FR 81361.	Permit conditions (27) through (30) and (32) through (43) only.
Northwest Pipeline LLC—Oregon City Compressor Station.	Order No. 03–2729, amendment 03– 2729–A1.	2/1/2022	10/8/2024, 89 FR 81361.	
Northwest Pipeline LLC—Oregon City Compressor Station.	Permit No. 03–2729– TV–01.	2/19/2013	10/8/2024, 89 FR 81361.	Permit conditions (7), (19), (25) through (27), (38), (41), (45), and (50) through (65).
Ochoco Lumber Com- pany.	Permit No. 12–0032– ST–01.	6/25/2019	10/8/2024, 89 FR 81361.	Permit conditions (1.1) through (1.3), (1.6), (2.1) through (2.5), (4.1) though (4.4), and (5.1) through (6.2).
Owens-Brockway Glass Container Inc.	Order No. 26–1876	8/9/2021	10/8/2024, 89 FR 81361.	
Owens-Brockway Glass Container Inc.	Permit No. 26–1876– TV–01.	12/10/2019	10/8/2024, 89 FR 81361.	Permit conditions (33) through (48) only.
Pacific Wood Lami- nates, Inc.	Permit No. 08–0003– TV–01.	12/30/2019	10/8/2024, 89 FR 81361.	Permit conditions (3), (9), (10), (12) through (19), (26) through (41), (56) through (71), and (73) only.
PGE Beaver Plant/ Port Westward I Plant.	Order No. 05–2606	8/10/2021	10/8/2024, 89 FR 81361.	
PGE Beaver Plant/ Port Westward I Plant.	Permit No. 05–2520 ...	01/21/2009	10/8/2024, 89 FR 81361.	Permit conditions (62) through (66), (68) through (78), (79.a), (80) through (83), (85), (87), (88.a), (89.d), (89.f), and (89.i) only.
Roseburg Forest Products—Dillard.	Order No. 10–0025	8/9/2021	10/8/2024, 89 FR 81361.	
Roseburg Forest Products—Medford MDF.	Permit No. 15–0073– TV–01.	08/18/2022	10/8/2024, 89 FR 81361.	Permit conditions (44) through (46), (48) through (61), (63), and (64) only.
Roseburg Forest Products—Riddle Plywood.	Permit No. 10–0078– TV–01.	07/31/2019	10/8/2024, 89 FR 81361.	Permit conditions (65), (66), (68) through (81) only.
Swanson Group Mfg. LLC.	Permit No. 10–0045– TV–01.	06/12/2017	10/8/2024, 89 FR 81361.	Permit conditions (4), (10) through (24), (25—introductory paragraph), (25.a) through (25.c), (27) through (40), (50) through (64), and (66) only.
Timber Products Co. Limited Partnership.	Permit No. 15–0025– TV–01.	6/23/2022	10/8/2024, 89 FR 81361.	Permit conditions (70) through (72) and (74) through (90) only.
Willamette Falls Paper Company.	Order No. 03–2145	8/9/2021	10/8/2024, 89 FR 81361.	

EPA APPROVED OREGON SOURCE-SPECIFIC REQUIREMENTS ¹—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Willamette Falls Paper Company.	Permit No. 03–2145–TV–01.	2/24/2016	10/8/2024, 89 FR 81361.	Permit conditions (40) through (55) only.
Woodgrain Millwork LLC—Particleboard.	Permit No. 31–0002–TV–01.	5/24/2021	10/8/2024, 89 FR 81361.	Permit conditions (3), (12) through (21), (22—introductory paragraph), (22.a), (22.e), (22.f), (23), (25) through (28), (30) through (35), (37), (39) through (41), (43), (44), (46), (48), (49), (51) through (72), (80) through (94), and (96) only.

¹ The EPA does not have the authority to remove these source-specific requirements in the absence of a demonstration that their removal would not interfere with attainment or maintenance of the NAAQS, violate any prevention of significant deterioration increment or result in visibility impairment. The Oregon Department of Environmental Quality may request removal by submitting such a demonstration to the EPA as a SIP revision.

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

TABLE 1—OREGON STATE STATUTES APPROVED BUT NOT INCORPORATED BY REFERENCE

State citation	Title/subject	State effective date	EPA approval date	Explanations
ORS Chapter 468	General Administration, Enforcement, Pollution Control Facilities Tax Credit.	11/4/1993	7/19/1995, 60 FR 37013	Except 468A.075 and 468A.330.
ORS Chapter 468A	Air Pollution Control, Regional Air Quality Control Authorities, Motor Vehicle Pollution Control, Field Burning and Propane.	11/4/1993	7/19/1995, 60 FR 37013	
ORS Chapter 468A.330	Small Business Stationary Source Technical and Environmental Compliance Assistance Program.	11/4/1993	9/5/1995, 60 FR 46025	
ORS Chapter 477.013 ...	Smoke Management Plan; rules	3/1/2019	5/25/2021, 86 FR 27976	

TABLE 2—OREGON ADMINISTRATIVE RULES APPROVED BUT NOT INCORPORATED BY REFERENCE

State citation	Title/subject	State effective date	EPA approval date	Explanations

Oregon Administrative Rules

Division 11—Rules of General Applicability and Organization

011–0005	Definitions	1/6/2014	10/23/2015, 80 FR 64346.	
011–0009	Incorporation of Attorney General's Uniform and Model Rules.	3/20/2008	4/25/2013, 78 FR 24347.	
011–0010	Notice of Rulemaking	3/20/2008	4/25/2013, 78 FR 24347.	
011–0024	Rulemaking Process	1/6/2014	10/23/2015, 80 FR 64346.	
011–0029	Policy on Disclosure of the Relationship Between Proposed Rules and Federal Requirements.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0046	Petition to Promulgate, Amend, or Repeal Rule: Content of Petition, Filing or Petition.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0053	Periodic Rule Review	1/6/2014	10/23/2015, 80 FR 64346.	
011–0061	Declaratory Ruling: Institution of Proceedings, Consideration of Petition and Disposition of Petition.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0310	Purpose	1/6/2014	10/23/2015, 80 FR 64346.	
011–0330	Requests for Review or to Obtain Copies of Public Records	1/6/2014	10/23/2015, 80 FR 64346.	
011–0340	Costs for Record Review and Copying	1/6/2014	10/23/2015, 80 FR 64346.	
011–0360	Collecting Fees	1/6/2014	10/23/2015, 80 FR 64346.	
011–0370	Certification of Copies of Records	1/6/2014	10/23/2015, 80 FR 64346.	
011–0380	Fee Waivers and Reductions	1/6/2014	10/23/2015, 80 FR 64346.	
011–0390	Exempt Records	1/6/2014	10/23/2015, 80 FR 64346.	
011–0500	Contested Case Proceedings Generally	1/6/2014	10/23/2015, 80 FR 64346.	
011–0510	Agency Representation by Environmental Law Specialist	1/6/2014	10/23/2015, 80 FR 64346.	
011–0515	Authorized Representative of a Participant other than a Natural Person in a Contested Case Hearing.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0520	Liability for the Acts of a Person's Employees	1/6/2014	10/23/2015, 80 FR 64346.	
011–0525	Service and Filing of Documents	1/6/2014	10/23/2015, 80 FR 64346.	

TABLE 2—OREGON ADMINISTRATIVE RULES APPROVED BUT NOT INCORPORATED BY REFERENCE—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
011–0530	Requests for Hearing	1/6/2014	10/23/2015, 80 FR 64346.	
011–0535	Final Orders by Default	1/6/2014	10/23/2015, 80 FR 64346.	
011–0540	Consolidation or Bifurcation of Contested Case Hearings	1/6/2014	10/23/2015, 80 FR 64346.	
011–0545	Burden and Standard of Proof in Contested Case Hearings; DEQ Interpretation of Rules and Statutory Terms.	1/6/2014	10/23/2015, 80 FR 64346.	
011–0550	Discovery	1/6/2014	10/23/2015, 80 FR 64346.	
011–0555	Subpoenas	1/6/2014	10/23/2015, 80 FR 64346.	
011–0565	Immediate Review	1/6/2014	10/23/2015, 80 FR 64346.	
011–0570	Permissible Scope of Hearing	1/6/2014	10/23/2015, 80 FR 64346.	
011–0573	Proposed Orders in Contested Cases	1/6/2014	10/23/2015, 80 FR 64346.	
011–0575	Review of Proposed Orders in Contested Cases	1/6/2014	10/23/2015, 80 FR 64346.	
011–0580	Petitions for Reconsideration or Rehearing	1/6/2014	10/23/2015, 80 FR 64346.	
011–0585	Petitions for a Stay of the Effect of a Final Order	1/6/2014	10/23/2015, 80 FR 64346.	

Division 12—Enforcement Procedure and Civil Penalties¹

012–0026	Policy	1/6/2014	10/23/2015, 80 FR 64346.	
012–0027	Rule Effective Date	3/29/2006	4/25/2013, 78 FR 24347.	
012–0028	Scope of Applicability	1/6/2014	10/23/2015, 80 FR 64346.	
012–0030	Definitions	11/16/2018	10/31/2019, 84 FR 58324.	
012–0038	Warning Letters, Pre-Enforcement Notices and Notices of Permit Violation.	1/6/2014	10/23/2015, 80 FR 64346.	
012–0041	Formal Enforcement Actions	1/6/2014	10/23/2015, 80 FR 64346.	
012–0042	Determination of Base Penalty	5/13/2005	4/25/2013, 78 FR 24347.	
012–0045	Civil Penalty Determination Procedure	1/6/2014	10/23/2015, 80 FR 64346.	
012–0053	Classification of Violations that Apply to all Programs	11/16/2018	10/31/2019, 84 FR 58324.	
012–0054	Air Quality Classification of Violations	11/16/2018	10/31/2019, 84 FR 58324.	
012–0073	Environmental Cleanup Classification of Violation	3/29/2006	4/25/2013, 78 FR 24347.	
012–0082	Contingency Planning Classification of Violations	3/29/2006	4/25/2013, 78 FR 24347.	
012–0130	Determination of Violation Magnitude	1/6/2014	10/23/2015, 80 FR 64346.	
012–0135	Selected Magnitude Categories	11/16/2018	10/31/2019, 84 FR 58324.	
012–0140	Determination of Base Penalty	11/16/2018	10/31/2019, 84 FR 58324.	
012–0145	Determination of Aggravating or Mitigating Factors	1/6/2014	10/23/2015, 80 FR 64346.	
012–0150	Determination of Economic Benefit	1/6/2014	10/23/2015, 80 FR 64346.	
012–0155	Additional or Alternate Civil Penalties	1/6/2014	10/23/2015, 80 FR 64346.	
012–0160	DEQ Discretion Regarding Penalty Assessment	1/6/2014	10/23/2015, 80 FR 64346.	
012–0162	Inability to Pay the Penalty	1/6/2014	10/23/2015, 80 FR 64346.	
012–0165	Stipulated Penalties	1/6/2014	10/23/2015, 80 FR 64346.	
012–0170	Compromise or Settlement of Civil Penalty by DEQ	1/6/2014	10/23/2015, 80 FR 64346.	

Division 200—General Air Pollution Procedures and Definitions**Conflicts of Interest**

200–0100	Purpose	4/16/2015	10/11/2017, 82 FR 47122.	
200–0110	Public Interest Representation	4/16/2015	10/11/2017, 82 FR 47122.	
200–0120	Disclosure of Potential Conflicts of Interest	4/16/2015	10/11/2017, 82 FR 47122.	

Division 209—Public Participation

209–0070	Hearing Procedures	4/16/2015	10/11/2017, 82 FR 47122.	

Division 262—Heat Smart Program for Residential Wood Stoves and Other Solid Fuel Heating Devices

262–0050	Residential Woodheating—Civil Penalties	10/14/1999	1/22/2003, 68 FR 2891.	

¹ The EPA approves the provisions in Table 2 of this paragraph (e) only to the extent the provisions relate to enforcement of the requirements contained in the Oregon SIP.

TABLE 3—LANE REGIONAL AIR PROTECTION AGENCY REGULATIONS APPROVED BUT NOT INCORPORATED BY REFERENCE

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
Title 13—General Duties and Powers of Board and Director				
13–005	Authority of the Agency	3/31/2014	10/5/2018, 83 FR 50274.	
13–010	Duties and Powers of the Board of Directors	3/31/2014	10/5/2018, 83 FR 50274.	
13–020	Duties and Function of the Director	3/31/2014	10/5/2018, 83 FR 50274.	
13–025	Conflict of Interest	3/31/2014	10/5/2018, 83 FR 50274.	

TABLE 3—LANE REGIONAL AIR PROTECTION AGENCY REGULATIONS APPROVED BUT NOT INCORPORATED BY REFERENCE—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
13-030	Advisory Committee	3/31/2014	10/5/2018, 83 FR 50274.	
13-035	Public Records and Confidential Information	3/31/2014	10/5/2018, 83 FR 50274.	
Title 14—Rules of Practice and Procedure				
14-110	Definitions	3/23/2018	10/5/2018, 83 FR 50274.	
Rulemaking				
14-115	Rulemaking Notice	3/23/2018	10/5/2018, 83 FR 50274.	
14-120	Rulemaking Hearings and Process	3/23/2018	10/5/2018, 83 FR 50274.	
14-125	Temporary Rules	3/23/2018	10/5/2018, 83 FR 50274.	
14-130	Petition to Promulgate, Amend or Repeal Rule—Content of Petition, Filing of Petition.	3/23/2018	10/5/2018, 83 FR 50274.	
14-135	Declaratory Rulings	3/23/2018	10/5/2018, 83 FR 50274.	
Contested Cases				
14-140	Contested Case Proceedings Generally	3/23/2018	10/5/2018, 83 FR 50274.	
14-145	Agency Representation by Environmental Law Specialist	3/23/2018	10/5/2018, 83 FR 50274.	
14-147	Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing.	3/23/2018	10/5/2018, 83 FR 50274.	
14-150	Liability for the Acts of a Person's Employees	3/23/2018	10/5/2018, 83 FR 50274.	
14-155	Consolidation or Bifurcation of Contested Case Hearings	3/23/2018	10/5/2018, 83 FR 50274.	
14-160	Final Orders	3/23/2018	10/5/2018, 83 FR 50274.	
14-165	Default Orders	3/23/2018	10/5/2018, 83 FR 50274.	
14-170	Appeal to the Board	3/23/2018	10/5/2018, 83 FR 50274.	
14-175	Power of the Director	3/23/2018	10/5/2018, 83 FR 50274.	
14-185	Request for Stay Pending Judicial Review	3/23/2018	10/5/2018, 83 FR 50274.	
14-190	Request for Stay—Motion to Intervene	3/23/2018	10/5/2018, 83 FR 50274.	
14-200	Request for Stay—Agency Determination	3/23/2018	10/5/2018, 83 FR 50274.	
14-205	Request for Stay—Time Frames	3/23/2018	10/5/2018, 83 FR 50274.	
Title 15—Enforcement Procedures and Civil Penalties¹				
15-001	Policy	9/14/2018	2/20/2019, 84 FR 5000.	
15-003	Scope of Applicability	6/13/1995	8/3/2001, 66 FR 40616.	
15-005	Definitions	5/17/2019	10/31/2019, 84 FR 58327.	
15-010	Consolidation of Proceedings	6/13/1995	8/3/2001, 66 FR 40616.	
15-015	Notice of Violation	9/14/2018	2/20/2019, 84 FR 5000.	
15-018	Notice of Permit Violations (NPV) and Exceptions	5/17/2019	10/31/2019, 84 FR 58327.	
15-020	Enforcement Actions	5/17/2019	10/31/2019, 84 FR 58327.	
15-025	Civil Penalty Schedule Matrices	5/17/2019	10/31/2019, 84 FR 58327.	
15-030	Civil Penalty Determination Procedure (Mitigating and Aggravating Factors).	5/17/2019	10/31/2019, 84 FR 58327.	
15-035	Written Notice of Civil Penalty Assessment—When Penalty Payable.	9/14/2018	2/20/2019, 84 FR 5000.	
15-040	Compromise or Settlement of Civil Penalty by Director	9/14/2018	2/20/2019, 84 FR 5000.	
15-045	Stipulated Penalties	5/17/2019	10/31/2019, 84 FR 58327.	
15-050	Additional Civil Penalties	6/13/1995	8/3/2001, 66 FR 40616.	
15-055	Air Quality Classification of Violation	5/17/2019	10/31/2019, 84 FR 58327.	
15-057	Determination of Violation Magnitude	9/14/2018	2/20/2019, 84 FR 5000.	
15-060	Selected Magnitude Categories	5/17/2019	10/31/2019, 84 FR 58327.	
15-065	Appeals	9/14/2018	2/20/2019, 84 FR 5000.	

Title 31—Public Participation

31-0070	Hearing Procedures	3/23/2018	10/5/2018, 83 FR 50274.	

¹ The EPA approves the provisions in Table 3 of this paragraph (e) only to the extent the provisions relate to enforcement of the requirements contained in the Oregon SIP.

TABLE 4—CITY AND COUNTY ORDINANCES APPROVED BUT NOT INCORPORATED BY REFERENCE

Agency and ordinance	Title or subject	Date	EPA approval date	Explanations
Codified Ordinances of Jackson County 1810.09.	Abatement; Legal Proceedings.	12/20/1989 (county passed).	6/19/2006, 71 FR 35163.	

TABLE 4—CITY AND COUNTY ORDINANCES APPROVED BUT NOT INCORPORATED BY REFERENCE—Continued

Agency and ordinance	Title or subject	Date	EPA approval date	Explanations
Codified Ordinances of Jackson County 1810.99.	Penalty	10/29/2003 (county passed).	6/19/2006, 71 FR 35163.	
Code of the City of Medford, Oregon: 7.226.	Abatement; Legal Proceedings.	11/20/1989 (county effective).	6/19/2006, 71 FR 35163.	
Code of the City of Medford, Oregon: 7.300.	Penalty	4/6/2000 (county effective).	6/19/2006, 71 FR 35163.	
City of Central Point Municipal Code: 8.04.100.	Abatement—Notice	1966 (city effective) ...	6/19/2006, 71 FR 35163.	
City of Central Point Municipal Code: 8.04.110.	Abatement—By owner	1966 (city effective) ...	6/19/2006, 71 FR 35163.	
City of Central Point Municipal Code: 8.04.120.	Abatement—By city ...	1966 (city effective) ...	6/19/2006, 71 FR 35163.	
City of Central Point Municipal Code: 8.04.130.	Abatement—Assessment of costs.	1966 (city effective) ...	6/19/2006, 71 FR 35163.	
City of Central Point Municipal Code: 8.04.140.	Summary abatement	1966 (city effective) ...	6/19/2006, 71 FR 35163.	
City of Central Point Municipal Code: 8.04.150.	Penalty	1995 (city effective) ...	6/19/2006, 71 FR 35163.	
City of Ashland Municipal Code: 10.30.050.	Definitions	1993 (city effective) ...	6/19/2006, 71 FR 35163.	
City of Ashland Municipal Code: 9.24.060.	Penalty	1998 (city effective) ...	6/19/2006, 71 FR 35163.	

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM—NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
Volume 2—The Federal Clean Air Act Implementation Plan				
Section 1—Introduction				
Introduction	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Section 2—General Administration				
General Administration.	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Agency Organization	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Legal Authority	Statewide	7/29/1992	7/19/1995, 60 FR 37013.	
Resources	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Intergovernmental cooperation.	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Miscellaneous Provisions.	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Small Business Assistance Program.	Statewide	11/16/1992	9/05/1995, 60 FR 46025.	
Section 3—Statewide Regulatory Provisions				
Statewide Regulatory Provisions.	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	Refer to section (c) and (d) for approved regulations incorporated by reference.

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM—NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
Oregon Administrative Rules and Source-Specific RACT determinations.	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	Refer to section (c) for approved regulations incorporated by reference and section (d) for Source-Specific RACT determinations.
Lane Regional Air Protection Agency Regulations.	Lane County	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	Refer to section (c) for approved regulations incorporated by reference.
Smoke Management Plan Administrative Rule.	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	Refer to section (c) for approved regulations incorporated by reference (OAR chapter 629 43–043).
Section 4—Control Strategies for Nonattainment Areas				
Introduction	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Attainment and Maintenance Planning—Carbon Monoxide (CO)				
Carbon Monoxide Attainment Plan.	Salem	6/20/1979; 6/29/1979	6/24/1980, 45 FR 42265.	CO contingency plan revision to satisfy 172(c)(9).
Carbon Monoxide Attainment Plan.	Eugene-Springfield	6/20/1979; 6/29/1979	6/24/1980, 45 FR 42265.	
Carbon Monoxide Attainment Plan.	Portland-Vancouver ...	7/20/1982	10/07/1982, 47 FR 44261.	
Carbon Monoxide Attainment Plan.	Medford-Ashland	10/09/1985	2/13/1987, 52 FR 4620.	
Carbon Monoxide Attainment Plan.	Grants Pass	11/24/1986	1/15/1988, 53 FR 1020.	
Carbon Monoxide Maintenance Plan.	Eugene-Springfield	12/28/1989	12/06/1993, 58 FR 64161.	
Carbon Monoxide Attainment Plan.	Grants Pass, Medford, Portland and Klamath Falls.	11/15/1993	6/28/1994, 59 FR 33202.	
Carbon Monoxide Maintenance Plan.	Portland	8/30/1996	9/02/1997, 62 FR 46208.	
Carbon Monoxide Maintenance Plan.	Grants Pass	11/10/1999	8/31/2000, 65 FR 52932.	
Carbon Monoxide Maintenance Plan.	Klamath Falls	11/20/2000	9/20/2001, 66 FR 48349.	
Carbon Monoxide Maintenance Plan.	Medford	5/31/2001	7/24/2002, 67 FR 48388.	TCM substitution.
Carbon Monoxide 2nd 10-year Maintenance Plan.	Portland	12/27/2004	1/24/2006, 71 FR 3768.	
Carbon Monoxide Limited Maintenance Plan.	Salem-Keizer	8/09/2007	12/30/2008, 73 FR 79655.	
Carbon Monoxide 2nd 10-year Maintenance Plan Update.	Portland	1/14/2014	5/22/2014, 79 FR 29359.	
Carbon Monoxide 2nd 10-year Limited Maintenance Plan.	Grants Pass	4/22/2015	7/28/2015, 80 FR 44864.	
Carbon Monoxide 2nd 10-year Limited Maintenance Plan.	Medford	12/11/2015	7/20/2016, 81 FR 47029.	
Attainment and Maintenance Planning—Ozone				
Ozone Attainment Plan.	Salem	10/16/1980	4/12/1982, 47 FR 15587.	
Ozone Attainment Plan.	Portland-Vancouver ...	7/20/1982	10/07/1982, 47 FR 44261.	
Ozone Maintenance Plan.	Medford-Ashland	2/28/1985	6/04/1986, 51 FR 20285.	
Ozone Maintenance Plan.	Portland-Vancouver ...	8/30/1996	5/19/1997, 62 FR 27204.	

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM—NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
Ozone Maintenance Plan.	Portland-Vancouver & Salem-Keizer.	8/09/2005; 5/22/2007	12/19/2011, 76 FR 78571.	Portland-Vancouver AQMA (Oregon portion) & Salem Keizer Area 8-hour Ozone (110(a)(1)) Maintenance Plan.
Attainment and Maintenance Planning—Total Suspended Particulate (TSP)				
TSP Attainment Plan	Portland-Vancouver ...	3/24/1981	4/12/1982, 47 FR 15587.	
TSP Attainment Plan	Eugene-Springfield	2/23/1981	4/12/1982, 47 FR 15587.	
TSP Attainment Plan	Medford-Ashland	4/25/1983	8/15/1984, 49 FR 32574.	
Attainment and Maintenance Planning—Particulate Matter (PM ₁₀)				
PM ₁₀ Attainment Plan	Grants Pass	11/15/1991	12/17/1993, 58 FR 65934.	
PM ₁₀ Attainment Plan	Eugene-Springfield	11/15/1991	8/24/1994, 59 FR 43483.	
PM ₁₀ Attainment Plan	LaGrande	11/15/1991	3/15/1995, 60 FR 8563.	
PM ₁₀ Attainment Plan	Klamath Falls	11/15/1991; 9/20/1995	4/14/1997, 62 FR 18047.	
PM ₁₀ Attainment Plan	Oakridge	12/09/1996	3/15/1999, 64 FR 12751.	
PM ₁₀ Attainment Plan	Lakeview	6/01/1995	9/21/1999, 64 FR 51051.	
PM ₁₀ Maintenance Plan.	Klamath Falls	11/04/2002	10/21/2003,68 FR 60036.	
PM ₁₀ Maintenance Plan.	Grants Pass	11/04/2002	10/27/2003, 68 FR 61111.	
PM ₁₀ Attainment Plan and Maintenance Plan.	Medford-Ashland	3/10/2005	6/19/2006, 71 FR 35163.	
PM ₁₀ Maintenance Plan.	La Grande	10/25/2005	6/19/2006, 71 FR 35161.	
PM ₁₀ Maintenance Plan.	Lakeview	10/25/2005	6/19/2006, 71 FR 35159.	
PM ₁₀ Limited Maintenance Plan.	Eugene-Springfield	1/13/2012	4/11/2013, 78 FR 21547.	
PM ₁₀ 2nd 10-year Limited Maintenance Plan.	Grants Pass	4/22/2015	7/30/2015, 80 FR 45431.	
Oakridge PM ₁₀ Maintenance Plan.	Oakridge	1/13/2022	8/22/2022, 87 FR 51265.	
Attainment and Maintenance Planning—Particulate Matter (PM _{2.5})				
PM _{2.5} Attainment Plan	Klamath Falls	12/12/2012	6/06/2016, 81 FR 36176.	Attainment date extension see final rule published 7/18/2016.
2012 PM _{2.5} Attainment Plan.	Oakridge-Westfir	12/12/2012	10/21/2016, 81 FR 72714.	
Updated PM _{2.5} Attainment Plan.	Oakridge-Westfir	1/20/2017	2/08/2018, 83 FR 5537.	
Oakridge PM _{2.5} Maintenance Plan.	Oakridge-Westfir	1/13/2022	8/22/2022, 87 FR 51262.	
Section 5—Control Strategies for Attainment and Nonattainment Areas				
Control Strategies for Attainment and Nonattainment Areas.	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Statewide Control Strategies for Lead.	Statewide	1/24/1983	5/18/1983, 48 FR 22298.	
Motor Vehicle Inspection and Maintenance.	Statewide	11/5/1999; 9/15/2000; 1/27/2000; 1/10/2003; 4/22/2004.	11/27/2004, 69 FR 67819.	

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM—NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
Test Procedures and Standards.	Statewide	4/19/2004	11/22/2004, 69 FR 67819.	Meets CAA requirements section 169A and 40 CFR 51.308(e) regarding BART and the requirements of 40 CFR 51.308(d)(2) and (d)(4)(v) regarding the calculation of baseline and natural conditions of OR Wilderness areas and the statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal Area.
Visibility Protection Plan.	Statewide	1/22/2003	3/15/2005, 70 FR 12587.	
Prevention of Significant Deterioration.	Statewide	7/11/1986	7/30/1991, 56 FR 36006.	
Oregon Regional Haze Plan-Section 308.	Statewide	12/9/2010	7/05/2011, 76 FR 38997.	
Oregon Regional Haze SIP revision.	Statewide	12/9/2010; 2/01/2011	8/22/2012, 77 FR 50611.	Meeting CAA requirements section 169A, and 40 CFR 51.308(d)(1) and (3).
Regional Haze Progress Report.	Statewide	7/18/2017	5/17/2018, 83 FR 22853.	
Oregon Regional Haze State Implementation Plan Revision for the Second Planning Period (2018–2028).	Statewide	4/29/2022 and 11/22/2023.	10/8/2024, 89 FR 81361.	
Section 6—Ambient Air Quality Monitoring Program				
Ambient Air Quality Monitoring Program.	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Air Monitoring Network.	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Data Handling and Analysis Procedures.	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Episode Monitoring	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Section 7—Emergency Plan				
Emergency Action Plan.	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Section 8—Public Involvement				
Public Involvement	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
Section 9—Plan Revisions and Reporting				
Plan Revisions and Reporting.	Statewide	5/31/1986; 7/11/1986	7/30/1991, 56 FR 36006.	
110(a)(2) Infrastructure and Interstate Transport				
Interstate Transport for the 1997 8-hour ozone NAAQS.	Statewide	6/23/2010; 12/23/2010	6/09/2011, 76 FR 33650.	This action addresses CAA section 110(a)(2)(D)(i)(I).
Interstate Transport for the 1997 PM2.5 NAAQS.	Statewide	6/23/2010; 12/23/2010	6/09/2011, 76 FR 33650.	This action addresses CAA section 110(a)(2)(D)(i)(I).
Interstate Transport for the 1997 8-hour ozone NAAQS.	Statewide	12/20/2010	7/05/2011, 76 FR 38997.	This action addresses CAA section 110(a)(2)(D)(i)(II) as it applies to visibility.
Interstate Transport for the 1997 PM2.5 NAAQS.	Statewide	12/20/2010	7/05/2011, 76 FR 38997.	This action addresses CAA section 110(a)(2)(D)(i)(II) as it applies to visibility.

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM—NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
Interstate Transport for the 1997 8-hour ozone NAAQS.	Statewide	6/23/2010; 12/22/2010	12/27/2011, 76 FR 80747.	This action addresses CAA section 110(a)(2)(D)(i) and section 110(a)(2)(D)(i)(II).
Interstate Transport for the 1997 24-hour PM2.5 NAAQS.	Statewide	6/23/2010; 12/22/2010	12/27/2011, 76 FR 80747.	This action addresses CAA section 110(a)(2)(D)(i) and section 110(a)(2)(D)(i)(II).
Interstate Transport for the 2006 24-hour PM2.5 NAAQS.	Statewide	6/23/2010; 12/22/2010	12/27/2011, 76 FR 80747.	This action addresses CAA section 110(a)(2)(D)(i)(II).
Infrastructure for the 1997 8-hour ozone NAAQS.	Statewide	9/25/2008	5/21/2012, 77 FR 29904.	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Infrastructure for the 2008 lead NAAQS.	Statewide	12/27/2013	6/24/2014, 79 FR 35693.	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Infrastructure for the 1997 24-hour PM2.5 NAAQS.	Statewide	9/25/2008	8/01/2014, 78 FR 46514.	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Infrastructure for the 2006 24-hour PM2.5 NAAQS.	Statewide	8/17/2011	8/01/2014, 78 FR 46514.	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Infrastructure for the 2008 ozone NAAQS.	Statewide	12/19/2011	8/01/2014, 78 FR 46514.	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Interstate Transport for the 2006 24-hour PM2.5 NAAQS.	Statewide	12/23/2010	8/01/2014, 78 FR 46514.	This action addresses CAA section 110(a)(2)(D)(i)(II) as it applies to visibility.
Interstate Transport for the 2008 ozone NAAQS.	Statewide	12/23/2010	8/01/2014, 78 FR 46514.	This action addresses CAA section 110(a)(2)(D)(i)(II) as it applies to PSD and visibility.
Interstate Transport for the 2006 24-hour PM2.5 NAAQS.	Statewide	6/23/2010	1/16/2015, 80 FR 2313.	This action addresses CAA section 110(a)(2)(D)(i)(I).
Interstate Transport for the 2008 ozone NAAQS.	Statewide	6/28/2010	12/21/2015, 80 FR 79266.	This action meets the requirements of CAA section 110(a)(2)(D)(i)(I).
Interstate Transport for the 2008 lead NAAQS.	Statewide	10/20/2015	5/16/2016, 81 FR 30181.	This action meets the requirements of CAA section 110(a)(2)(D)(i)(I).
Interstate Transport for the 2010 nitrogen dioxide NAAQS.	Statewide	10/20/2015	5/16/2016, 81 FR 30181.	This action meets the requirements of CAA section 110(a)(2)(D)(i)(I).
Infrastructure for the 2010 nitrogen dioxide NAAQS.	Statewide	12/27/2013	5/24/2018, 83 FR 24034.	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Infrastructure for the 2010 sulfur dioxide NAAQS.	Statewide	12/27/2013	5/24/2018, 83 FR 24034.	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Infrastructure for the 2012 PM2.5 NAAQS.	Statewide	10/20/2015	5/24/2018, 83 FR 24034.	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Interstate Transport for the 2012 PM2.5 NAAQS.	Statewide	10/20/2015	9/18/2018, 83 FR 47073.	This action meets the requirements of CAA section 110(a)(2)(D)(i)(I).
2015 Ozone NAAQS Interstate Transport.	Statewide	9/25/2018	5/17/2019, 84 FR 22376.	This action addresses CAA 110(a)(2)(D)(i)(I).
Infrastructure for the 2015 Ozone NAAQS.	Statewide	10/21/2018	6/6/2019, 84 FR 26347.	This action addresses the following CAA section 110(a)(2) elements: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM—NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
Interstate Transport for the 2010 sulfur dioxide NAAQS.	Statewide	10/20/2015	7/17/2020, 85 FR 43463.	This action addresses CAA 110(a)(2)(D)(i)(I).
EPA Approved Oregon State Directives				
Oregon Department of Forestry Directive 1–4–1–601.	Operational Guidance for the Oregon Smoke Management Program.	9/27/2019	5/25/2021, 86 FR 27976.	
ODEQ–LRAPA Stringency Directive, Attachment B.	DEQ analysis and recommendations regarding which of the proposed rules that the EQC should require LRAPA to implement directly.	4/22/2015	10/11/2017, 82 FR 47122.	
EPA Approved Manuals				
ODEQ Source Sampling Manual.	Statewide	12/11/2018	10/31/2019, 84 FR 58324.	Volumes I (November 2018 edition) and Volume II (April 2015 edition) only for purposes of the emission limits and requirements approved into the Oregon SIP. For purposes of the limits approved into the SIP.
ODEQ Continuous Emissions Monitoring Manual.	Statewide	4/22/2015	10/11/2017, 82 FR 47122.	

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 24–136; FCC 25–27; FR ID 305703]

Promoting the Integrity and Security of Telecommunications Certification Bodies, Measurement Facilities, and the Equipment Authorization Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) requires all recognized telecommunication certification bodies (TCBs), test labs, and laboratory accreditation bodies to certify to the Commission that they are not owned by, controlled by, or subject to the direction of a prohibited entity and to report all equity or voting interests of 5% or greater by any entity. The FCC also amends its rules to state that it will not recognize—and will revoke any existing recognition of—any TCB, test lab, or laboratory accreditation body that fails to provide, or that

provides a false or inaccurate, certification; or that fails to provide, or provides false or inaccurate, information regarding equity or voting interests of 5% or greater. The FCC prohibits recognition of any TCB, test lab, or laboratory accreditation body owned by, controlled by, or subject to the direction of a prohibited entity, and prohibits such TCBs, test labs, and laboratory accreditation bodies from participating in the Commission's equipment authorization program, not only with regard to the equipment certification process but also the Supplier's Declaration of Conformity (SDoC) process.

DATES: Effective September 8, 2025, except for amendatory instructions 4, 8, 9, 10, 12, 15, 16, 18, 20, 22, 23, and 24 which are delayed indefinitely. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of September 8, 2025. The incorporation by reference of certain other material listed in the rule was approved by the Director of the Federal Register as of October 30, 2023.

FOR FURTHER INFORMATION CONTACT: Jamie Coleman of the Office of Engineering and Technology, at

Jamie.Coleman@fcc.gov or 202–418–2705.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (*Report and Order*), in ET Docket No. 24–136, FCC 25–27, adopted on May 22, 2025, and released on May 27, 2025. The full text of this document is available for public inspection and can be downloaded at <https://docs.fcc.gov/public/attachments/FCC-25-27A1.pdf>. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format) by sending an email to fcc504@fcc.gov or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule and policy changes contained in the *Report and Order* on small entities. The FRFA is set

forth in Appendix C of the *Report and Order*.

Paperwork Reduction Act. This document contains proposed new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on any information collection requirements contained in this document. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

Introduction

The Commission adopts new rules to help ensure that the telecommunication certification bodies (TCBs), measurement facilities (test labs), and laboratory accreditation bodies that participate in the FCC’s equipment authorization program are not subject to ownership, direction, or control by untrustworthy actors that pose a risk to national security. The Commission previously established new equipment authorization program rules that prohibit authorization of specified equipment determined to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. It is incumbent on TCBs and test labs, to which certain functions of the certification process—including the receipt and maintenance of sensitive and proprietary information regarding communications equipment—have been entrusted, to be vigilant and to promote the integrity of the FCC’s authorization procedures to help protect our nation’s supply chain against such unacceptable risk. In light of these responsibilities and ongoing security risks, the Commission strengthens its oversight of

TCBs, test labs, and laboratory accreditation bodies by adopting new rules that will help ensure the integrity of these entities for purposes of the FCC’s equipment authorization program, promote national security, and advance the Commission’s comprehensive strategy to build a more secure and resilient communications supply chain. The Commission finds that it is critical for national security and the integrity of the supply chain that it prohibit from recognition or participation in the equipment authorization program TCBs, test labs, and laboratory accreditation bodies that are owned by, controlled by, or subject to the direction of a prohibited entity.

In defining the scope of the term “prohibited entity,” the Commission relies on federal government agency determinations identifying entities that pose national security threats. For purposes of the *Order*, the term “prohibited entity” means any of the following:

- Entities identified on the FCC’s Covered List;
- Entities identified by any of the following sources:
 - Department of Commerce Bureau of Industry and Security (BIS) Entity List;
 - BIS Military End-User List;
 - Department of Homeland Security (DHS) Uyghur Forced Labor Prevention Act (UFLPA) Entity List;
 - Section 5949 of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year 2023 (Section 5949 List of Semiconductor Companies);
 - Department of Defense (DOD) 1260H list of Chinese Military Companies (1260H List);
 - Department of Treasury NS-CMIC List of Chinese military companies (NS-CMIC List); and
- Entities identified as “foreign adversaries” by the Department of Commerce.

The Commission will deem a TCB, test lab, or laboratory accreditation body as “owned by” a prohibited entity when any such prohibited entity, has, possesses, or otherwise controls an equity or voting interest of 10% or more in the relevant TCB, test lab, or laboratory accreditation body. The Commission also provides further clarity on what it means for a TCB, test lab, or laboratory accreditation body to be controlled by or subject to the direction of a prohibited entity.

To help ensure that the Commission has the necessary information to enforce this prohibition, the FCC expands its current reporting and certification

requirements. The Commission adopts a requirement for all recognized TCBs, test labs, and laboratory accreditation bodies to certify to the FCC, within 30 days after the effective date of the rules, and thereafter with the request for recognition, that they are not owned by, controlled by, or subject to the direction of a prohibited entity. The Commission also adopts a requirement for all recognized TCBs, test labs, and laboratory accreditation bodies to report, within 90 days after the effective date of the rules, and thereafter with the request for recognition, all equity or voting interests of 5% or greater by any entity. The Commission also amends its rules to state that it will not recognize—and will revoke any existing recognition of—any TCB, test lab, or laboratory accreditation body that fails to provide, or that provides a false or inaccurate, certification; or that fails to provide, or provides false or inaccurate, information regarding equity or voting interests of 5% or greater.

In keeping with the new reporting requirements, the Commission also clarifies the requirement that every entity specifically named on the Covered List must provide to the Commission, pursuant to § 2.903(b), information regarding all of its subsidiaries and affiliates, not merely those that produce “covered” equipment. Each relevant entity must provide this information no later than 30 days after the effective date of this rule and thereafter in accordance with the provisions of § 2.903(b). The Commission makes a minor rule change clarifying its process for withdrawing recognition from test labs and laboratory accreditation bodies. The Commission also adopts several additional rules to strengthen the integrity of TCBs and test labs associated with its equipment authorization program.

Background

In the *EA Integrity NPRM*, the Commission sought to strengthen its requirements for and oversight of FCC-recognized TCBs and test labs by proposing new rules that would help ensure the integrity of these entities for purposes of the equipment authorization program, better protect national security, and advance the Commission’s comprehensive strategy to build a more secure and resilient supply chain. As the Commission stated, it is vital to ensure that these TCBs and test labs are not subject to control by foreign adversaries or other untrustworthy actors that pose a risk to national security.

The Equipment Authorization Program

The Commission's equipment authorization program, codified in its part 2 rules, plays a critical role in enabling the Commission to carry out its responsibilities under the Communications Act of 1934, as amended (the Act). Under section 302 of the Act, the Commission is authorized to make reasonable regulations governing the interference potential of equipment that emits radiofrequency (RF) energy and that can cause harmful interference to radio communications; such regulations are implemented through the equipment authorization program. In addition, the equipment authorization program helps ensure that communications equipment complies with certain other policy objectives—which include protecting the communications networks and supply chain from equipment that poses an unacceptable risk to national security.

Under section 302a(e) of the Act, certain important responsibilities have been delegated to TCBs and test labs with regard to implementing its equipment authorization program. Specifically, TCBs and test labs each play a role in ensuring that RF equipment complies with Commission rules, which is required for such equipment to be marketed in or imported to the United States. Test labs gather radiofrequency measurement data and develop technical reports to demonstrate subject equipment compliance with the Commission's applicable technical rules to minimize the risk of harmful interference, promote efficient use of spectrum, and advance other technical policy goals, such as ensuring hearing aid compatibility and controlling the environmental effects of RF radiation.

TCBs perform evaluation and review of application data, including test reports, and make decisional determinations for certifications. For all granted certification applications, the TCBs must send to the Commission any test lab data and other information relied upon by the TCB. This information is made publicly available on the FCC's website upon grant of the equipment authorization. Commission rules also impose certain obligations on each TCB to perform post-market surveillance, based on "type testing a certain number of samples of the total number of product types" that the TCB has certified. Accreditation bodies conduct assessments to ensure that TCBs and test labs are competent and capable of providing accurate and reliable certification and testing services.

To be recognized for participation in the FCC's equipment certification process, TCBs, test labs, and laboratory accreditation bodies must meet certain criteria specified in its rules. TCBs must be designated to issue grants of certification and must be located in the United States or in countries that have entered into applicable mutual recognition agreements (MRAs) with the United States. Currently, there are 39 FCC-recognized TCBs, 23 of which are located in the United States while the remaining 16 are located in seven MRA-partnered countries. The Commission will withdraw recognition of a TCB if the TCB's designation or accreditation is withdrawn, if the Commission determines that there is "just cause," or if the TCB requests that it no longer hold its designation or recognition. The Commission's rules also set forth specific procedures, including notification requirements, that the Commission will follow if the Commission intends to withdraw its recognition of a TCB.

Test lab recognition occurs based on current Commission rules stating that if a test lab has been accredited for the appropriate scope for the types of equipment that it will test, then it "shall be deemed competent to test and submit test data for equipment subject to certification." Based on such accreditation, the Commission—namely, the Chief Engineer, to whom recognition authority has been delegated—makes determinations regarding the continued acceptability of individual test labs. Test labs must be reassessed for accreditation and recognition at least every two years. Approximately 75% of certified devices are tested in recognized labs located in China.

The Commission recognizes four laboratory accreditation bodies in the U.S. that can accredit test labs in the United States. For test labs in countries with which the U.S. has entered into an MRA, the Commission will consider for recognition an accredited laboratory that has been designated by a foreign designating authority. Currently there are 24 such FCC-recognized laboratory accreditation bodies outside the United States, located in 23 different MRA-partnered countries. All other test labs must be accredited by an organization recognized by the Commission to perform test lab accreditations in non-MRA countries. Currently, the Commission recognizes three such accrediting bodies. Current rules do not preclude a laboratory accreditation body that is not in an MRA-partnered country from submitting a request to be recognized, but, to date, the FCC has not recognized any laboratory accreditation

body outside of an MRA-partnered country.

Recent Related Commission Action

The EA Security R&O and FNPRM. On November 11, 2022, the Commission adopted the *EA Security Report and Order, Order, and Further Notice of Proposed Rulemaking* (88 FR 7592; February 6, 2023). Specifically, the Commission established several new rules to prohibit authorization of equipment identified on the Commission's Covered List (covered equipment) maintained pursuant to the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act). The Covered List identifies certain types of communications equipment produced by particular entities as well as information security products and certain services provided by various entities. This list is derived from specific determinations made by sources enumerated in the Secure Networks Act, including certain federal agencies and Congress, that certain equipment or services pose an unacceptable risk to national security. The *EA Security R&O* adopted several revisions to part 2 of the Commission's rules concerning equipment authorization requirements and processes. These revisions include requirements that, to help implement the prohibition on authorization of any covered equipment, applicants seeking equipment certification must make certain attestations about the relevant equipment. These include attesting that the equipment is not prohibited from receiving authorization and whether the applicant is an entity identified on the Covered List as an entity producing covered communications equipment. TCBs, pursuant to their responsibilities as part of the Commission's equipment authorization program, review the applications and must ensure that only applications that meet all of the Commission's applicable technical and non-technical requirements are ultimately granted, and that none of these grants are for covered equipment.

In the *EA Security R&O*, the Commission, in affirming its authority to prohibit authorization of communications equipment that had been placed on the Covered List, noted that it has broad statutory authority, under sections 302 and 303(e) of the Communications Act and other statutory provisions, to take into account national security concerns when promoting the public interest, including in its equipment authorization program.

Evolving Risks Order and NPRM (88 FR 50486; August 1, 2023). Since adopting the *EA Security R&O*, the

Commission has taken several additional steps to address evolving national security concerns to protect the security of America's critical communications networks and supply chains. In April 2023, in the *Evolving Risks Order and NPRM*, the Commission required all international section 214 authorization holders to respond to a one-time information collection to update the Commission's records regarding their foreign ownership, noting that "the information will assist the Commission in developing a timely and effective process for prioritizing the review of international section 214 authorizations that are most likely to raise national security, law enforcement, foreign policy, and/or trade policy concerns." The Commission also sought comment on further actions it could take to protect the nation's telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing comprehensive changes to the Commission's rules that allow carriers to provide international telecommunications service. The Commission proposed, among other things, to adopt a renewal framework or, in the alternative, a formalized periodic review process for all international section 214 authorization holders. The Commission stated that, due to the evolving national security and law enforcement concerns identified in its recent proceedings to revoke the section 214 authorizations of certain providers controlled by the Chinese government, a formalized system of periodically reassessing international section 214 authorizations would better ensure that international section 214 authorizations, once granted, continue to serve the public interest.

In addition, in the *Evolving Risks NPRM*, the Commission proposed, among other things, to prioritize the renewal applications or any periodic review filings and deadlines based on, for example, "reportable foreign ownership, including any reportable foreign interest holder that is a citizen of a foreign adversary country," as defined in the Department of Commerce's rule, 15 CFR 791.4. The Commission also sought comment on whether to revise its ownership reporting threshold, currently set at 10% or greater direct and indirect equity and/or voting interests, to 5%, noting that the current 10% threshold may not capture all of the foreign interests that may present national security, law enforcement, foreign policy, and/or trade policy concerns in today's national security and law

enforcement environment. The Commission also proposed, among other things, to require applicants to certify in their application whether they use equipment or services identified on the Commission's Covered List.

Cybersecurity IoT Labeling R&O (89 FR 61242; July 30, 2024). On March 14, 2024, the Commission adopted the *Cybersecurity IoT Labeling R&O* to strengthen the nation's cybersecurity protections by adopting a voluntary cybersecurity labeling program for wireless Internet of Things (IoT) products. In that R&O, the Commission determined that entities that are owned by, controlled by, or affiliated with "foreign adversaries," as defined by the Department of Commerce, should be ineligible for purposes of the Commission's voluntary IoT Labeling Program. The Commission also generally prohibited entities that produce equipment on the Covered List, as well as entities named on the DOD's list of Chinese military companies or the Department of Commerce's Entity List, and entities suspended or debarred from receiving federal procurements or financial awards, including all entities and individuals published as ineligible for award on the General Service Administration's System for Award Management, from any participation in the IoT Labeling Program. Also, the Commission specifically prohibited any of these entities from serving as a Cybersecurity Label Administrator or serving as a CyberLAB for testing products for compliance with forthcoming cybersecurity technical standards. The Commission concluded that these lists represent the determination of relevant federal agencies that entities on these lists may pose a national security threat within their respective areas, and that it is not in the public interest to permit these entities to provide assurance to the public that their IoT products meet the new cybersecurity standards for obtaining the U.S. Cyber Trust Mark.

In the *Submarine Cable Landing License NPRM* (90 FR 12036; March 13, 2025), the Commission opened a proceeding to improve and streamline the submarine landing license rules, seeking comment on how to facilitate efficient deployment of submarine cables while ensuring the security, resilience, and protection of this critical infrastructure. It noted that, of the 84 licensed cables that currently are operating or planned to enter service, three land in a "foreign adversary" country as defined by the U.S. Department of Commerce rules and, according to the Commission's records, nine licensees of submarine cables have

direct or indirect interest holders that include the Chinese government or an entity with a place of organization in China.

The Commission, among other things, sought comment on whether to preclude the grant of a cable landing license application filed by any applicant that: (1) is directly and/or indirectly owned or controlled by, or subject to the influence of a government organization of a foreign adversary country, as defined under 15 CFR 791.4; (2) is directly and/or indirectly owned or controlled by, or subject to the influence of an individual or entity that has a citizenship(s) or place(s) of organization in a foreign adversary country; (3) is directly and/or indirectly owned or controlled by, or subject to the influence of an individual or entity on the Commission's Covered List; and/or (4) is using or will use equipment or services identified on the Commission's Covered List in the proposed submarine cable infrastructure.

The Commission also proposed, among other things, to prioritize the filing and review of periodic ownership reports and related submarine cable system information for submarine cable systems that: (1) have a licensee that is directly or indirectly wholly or partially owned by a government of, or other entities with a place of organization in, a "foreign adversary" country, as defined in the Department of Commerce's rule, 15 CFR 791.4; (2) have a licensee with a place of organization in a "foreign adversary" country; or (3) land in a "foreign adversary" country.

The Commission also sought comment on whether it should prohibit cable landing licensees from entering into arrangements for Indefeasible Rights of Use or leases for capacity on submarine cables landing in the United States, with any entity that has a citizenship(s) or place(s) of organization in a "foreign adversary" country, as defined under 15 CFR 791.4. It sought comment on whether it should prohibit cable landing licensees from entering into such arrangements with any entity that is directly and/or indirectly owned or controlled by, or subject to the influence of, (1) a government organization of a foreign adversary country, and/or (2) any individual or entity that has a citizenship(s) or place(s) of organization in a "foreign adversary" country, as defined under 15 CFR 791.4. Additionally, it sought comment on whether to adopt rules that prohibit cable landing licensees from landing a cable licensed by the Commission in certain locations, such as landing points in a "foreign

adversary” country, as defined under 15 CFR 791.4.

The EA Integrity NPRM

On May 23, 2024, the Commission adopted the *EA Integrity NPRM* (89 FR 55530; July 5, 2024), in which it proposed measures to strengthen the requirements for and oversight of TCBs and test labs to help ensure the integrity of these entities for purposes of the equipment authorization program, better protect national security, and help build a more secure and resilient communications supply chain. The Commission explained that, in light of the new national security-related responsibilities on TCBs and test labs, and their ongoing responsibilities to receive and maintain sensitive and proprietary information regarding communications equipment, among other reasons, it is vital to ensure that TCBs and test labs are not subject to influence or control by untrustworthy actors that pose a risk to national security.

First, the Commission proposed to prohibit any TCB or test lab in which an entity identified on the Covered List has, possesses, or otherwise controls an equity or voting interest of 10% or more from being recognized by the FCC or participating in the FCC’s equipment authorization program. Second, the Commission proposed prohibiting the use of, or reliance on, any TCB or test lab for equipment authorization if any entity listed on the Covered List holds, possesses, or otherwise controls an equity or voting interest of 10% or more. Third, the Commission sought comment on prohibiting recognition of any TCB or test lab owned or controlled by a foreign adversary or any other entity that has been found to pose a risk to national security. To that end, the Commission sought comment on whether and how the FCC should consider national security determinations made in other federal agency lists in establishing eligibility qualifications for Commission recognition of a TCB or a test lab in the equipment authorization program. Fourth, to help ensure that the Commission has the information required to enforce any requirements adopted in the proceeding, the FCC proposed new certification, recordkeeping, and reporting obligations for TCBs and test labs, including requiring TCBs and test labs to certify that no entity identified on the Covered List has, possesses, or otherwise controls an equity or voting interest of 10% or more in the TCB or test lab, and to produce documentation identifying any entity that has, possesses, or

otherwise controls an equity or voting interest of 5% or more in the TCB or test lab. The Commission also sought comment on other revisions or clarifications to its rules to implement this requirement. Finally, the Commission sought comment on various related matters regarding implementation of the proposed prohibition and the equipment authorization program generally. Namely, the Commission sought comment regarding whether to revise its rules, policies, or guidance regarding post-market surveillance, accreditation and reassessment of TCBs, recognition and withdrawal of recognition of TCBs, transparency for test labs, accreditation of test labs, recognition and withdrawal of recognition of test labs, and whether to require the use of accredited, FCC-recognized test labs in the SDoC process. In particular, in light of the goals of the proceeding, the Commission sought comment on potential revisions to the rules governing TCB and laboratory accrediting bodies.

In response to the NPRM, the Commission received 10 comments and two reply comments. Some commenters generally supported the goal of the Commission to ensure the integrity of entities that participate in its equipment authorization program and found the Commission’s proposals to be reasonable and important to promoting national security, while others generally supported the Commission’s goals but expressed concerns with certain aspects of its proposals or contended that no changes to the equipment authorization program are needed. Some advised that any action the Commission takes should be designed so as not to cause disruption or delay in the equipment authorization process and to the FCC’s supply chains, and suggest alternative actions the Commission could take that those commenters believe would be less disruptive.

Report and Order

In the *Report and Order*, the Commission adopts revisions to its rules designed to promote the integrity of the FCC’s equipment authorization program and ensure that it serves the Commission’s goal of protecting its communications equipment supply chain from entities posing unacceptable risks to national security. The Commission recognizes that the benefits of protecting U.S. national security, law enforcement, foreign policy, and trade policy interests are difficult to quantify in monetary terms. The difficulty in quantifying these benefits does not, however, diminish their importance. The Commission previously has found

that “a foreign adversary’s access to American communications networks could result in hostile actions to disrupt and surveil its communications networks, impacting the nation’s economy generally and online commerce specifically, and result in the breach of confidential data.” Given that the national gross domestic product was over \$29 trillion in 2024, the digital economy accounted for approximately 16% of its economy, and the volume of international trade for the United States (exports and imports) was \$7.3 trillion in 2024, even a temporary disruption in communications could cause millions of dollars in economic losses. The harms by foreign adversaries or other untrustworthy actors thus could be significant, causing disruption to the U.S. economy, residential and government communications, and critical infrastructure.

Through the Commission’s equipment authorization process, third party entities are tasked with various responsibilities to ensure that RF devices comply with FCC rules. Specifically, equipment for which an authorization is sought is provided to a test lab to gather radiofrequency measurement data and develop technical reports to demonstrate device compliance with the Commission’s applicable rules. For devices for which equipment certification is sought (as opposed to SDoC), TCBs perform evaluation and review of those test reports along with other application data, and make decisional determinations for certifications. The Commission has a process, known as “recognition,” for ensuring that accredited TCBs and test labs, and the laboratory accreditation bodies, meet the necessary qualifications for participation in the FCC’s equipment authorization program.

The Commission finds that excluding from participation in its equipment authorization program entities that threaten to undermine national security is necessary to effectively promote the integrity of the FCC’s equipment authorization program and to protect national security interests. To implement this finding, the Commission takes several actions to ensure the integrity of those entities the FCC recognizes for participation in its equipment authorization program or upon which entities seeking authorization may rely. First, the Commission identifies, pursuant to federal agency or congressional determinations, a class of “prohibited entities” that pose national security threats and therefore could adversely affect the trustworthiness of, or

otherwise undermine the public's confidence in, a TCB, test lab, or laboratory accreditation body that is owned by, controlled by, or subject to the direction of a prohibited entity. Second, the Commission prohibits from participation in its equipment authorization process, any TCB, test lab, or laboratory accreditation body that is owned by, controlled by, or subject to the direction of a prohibited entity. This includes a prohibition on the reliance on or use of, for purposes of equipment authorization, any such TCB or test lab, for both certification and supplier's declaration of conformity (SDoC). Third, the Commission explains that it will consider a TCB, test lab, or laboratory accreditation body as "owned by" a prohibited entity when a prohibited entity has, possesses, or otherwise controls an equity or voting interest of 10% or more in the TCB, test lab, or laboratory accreditation body. The Commission also provides clarification on what it means for a TCB, test lab, or laboratory accreditation body to be controlled by, or subject to the direction of, a prohibited entity. Fourth, the Commission adopts expanded reporting requirements to require that all TCBs, test labs, and laboratory accreditation bodies seeking Commission recognition certifies to the Commission that they are not owned by, controlled by, or subject to the direction of a prohibited entity and report all equity or voting interests of 5% or greater by any entity. The Commission will not recognize, and will revoke recognition of, any TCB, test lab, or laboratory accreditation body that fails to provide or provides false or inaccurate information or certification. Finally, the Commission adopts a minor rule change clarifying its process for withdrawing recognition from test labs and laboratory accreditation bodies, and the Commission adopts other revisions to its rules including related recordkeeping and reporting obligations associated with the FCC's equipment authorization program and non-substantive changes to remove repetition of requirements.

Identifying "Prohibited Entities"

In the *EA Integrity NPRM*, the Commission proposed to not recognize or permit reliance on TCBs, test labs, or their accrediting bodies, or permit them to have any role in the FCC's equipment authorization program, if they have sufficiently close ties with Covered List entities. The Commission also sought comment on whether, and to what extent, the Commission should apply its measures to other entities identified by federal agencies or Congress that reflect expert determinations about entities that

pose national security concerns. Specifically, the Commission sought comment on extending the proposed prohibition to the entities identified pursuant to the following:

- Department of Commerce list of "foreign adversary" countries that identifies any foreign government or foreign non-government person that the Secretary of Commerce has determined to have engaged in a "long-term pattern or serious instances of conduct significantly adverse to the national security interest of the United States or security and safety of United States persons;"
- DOD 1260H list of Chinese Military Companies;
- Department of Commerce Entity List;
- Department of Commerce Military End-User List;
- Non-Specially Designated Nationals Chinese Military-Industrial Complex Companies List;
- FY2023 NDAA section 5949 list of semiconductor companies;
- Foreign entities of concern as defined by the CHIPS Act; and
- Uyghur Forced Labor Prevention Act Entity List.

The Commission concludes that the integrity of its equipment authorization program is more effectively ensured not only through the exclusion of participation by entities identified on the Covered List, but also the other entities as described herein that federal government agencies or Congress have determined pose national security risks. Collectively, the Commission will refer to these as "prohibited entities" with regard to participation in the Commission's equipment authorization program.

Entities Identified on the Covered List

The Covered List is derived from specific determinations made by certain sources (particular federal agencies with national security expertise and Congress) designated by the Secure Networks Act that certain equipment or services produced or provided by a specified entity poses an unacceptable risk to national security. In light of these determinations from expert federal agencies and Congress about the serious national security risks posed by equipment or services produced or provided by entities identified on the Covered List, the Commission concludes that it should not permit TCBs, test labs, or laboratory accreditation bodies to have any role in its equipment authorization program, if they have sufficiently close ties with entities identified on the Covered List. This exclusion will help to promote the

integrity of the equipment authorization program and protect the equipment supply chain from pre-authorization exposure to entities that present national security concerns.

Other Entities That Raise National Security Concerns

The Covered List is only one source that identifies entities presenting national security concerns that have potential to compromise the integrity of the equipment authorization program. Several federal agencies with particular national security responsibilities—including two agencies that also serve as sources of determinations for the Covered List—develop or maintain lists that identify entities, companies, persons, and other parties that they have determined raise national security concerns. Congress has done similarly in legislation. The Commission finds that to help ensure the integrity of entities that play a role in its equipment authorization program, to promote national security, and to advance the Commission's comprehensive strategy to build a more secure and resilient communications supply chain, the Commission should not limit its definition of "prohibited entities" to entities identified on the Covered List, but also address entities that federal agencies have determined raise similar national security concerns.

The Commission's conclusion to include entities identified by federal agencies as posing unacceptable risks to national security in addition to those on the Covered List is supported by the Heritage Foundation and the Foundation for Defense of Democracies (FDD) (two Washington, DC think tanks with national security expertise). Heritage stated that "it would be prudent for the Commission to consult other agencies that maintain lists of known entities that present national security risks to the U.S." In fact, Heritage encouraged the Commission to go even further and consider extending the prohibition to any foreign adversary-linked entity. FDD similarly encouraged the Commission to extend its prohibition to "entities not only listed on the FCC's Covered List, but also those subject to the jurisdiction, direction, or control of a foreign adversary, consistent with federal definitions under the Committee on Foreign Investment in the United States." According to FDD, "[g]iven the PRC's current regulatory environment, including national security laws that coerce corporate cooperation with state intelligence objectives, firms operating under PRC jurisdiction cannot credibly demonstrate operational independence

from the Chinese government. This presents a material compliance and reputational risk to U.S. markets. Therefore, all PRC-based or PRC-controlled entities must be assumed to be under state influence.” Additionally, DOJ strongly supports “the FCC considering eligibility restrictions based on determinations made by Executive Branch agencies regarding entities that pose national security risks. This whole-of-government approach leverages specialized expertise across the federal enterprise to identify and mitigate evolving threats. For example, it is essential that the FCC utilizes other lists developed by Executive Branch agencies that reflect expert determinations about entities that pose national security concerns, rather than relying solely on the FCC’s Covered List.” The Commission seeks comment on a similar proposal in the *Further Notice of Proposed Rulemaking* (FNPRM) portion of the proceeding, relying instead on the Department of Commerce’s definition of foreign adversary.

Conversely, the China-based Telecommunication Terminal Industry Forum Association (TAF) argued that the Commission’s current regulations in this area are “sufficiently strict,” and that the Commission should not rely on lists from other U.S. government agencies, and instead, use these lists “as background references for the FCC when considering the covered list.” The Commission disagrees and finds unpersuasive TAF’s argument that these other federal agency lists “are established for different regulatory purposes.” The Commission also rejects TAF’s argument that referencing other lists and determinations would “contravene the spirit of the [World Trade Organization Agreement on Technical Barriers to Trade]” and “increase the costs for telecommunications equipment manufacturers, ultimately driving up the final prices of electronic consumer products in the U.S.” The Commission finds that prohibiting entities that have been determined to pose risks to U.S. national security is not an unnecessary or arbitrary barrier to trade, but instead serves to promote public confidence in the integrity of the FCC’s equipment authorization process and helps protect U.S. communications networks by addressing these national security concerns. The Commission also finds that any potential increased costs are outweighed by the substantial benefit to enhancing national security.

Each of the entities on the lists that the Commission discusses in the *Order* has been determined by either Congress or a federal agency to raise national

security concerns and has been blocked from accessing certain aspects of the U.S. supply chain, thereby addressing concerns similar to those that the FCC seeks to address today to protect the integrity of its equipment authorization program. Moreover, many of the same agencies that Congress directed to serve as sources of determinations for inclusion on the Covered List are the sources of determination for entities on these other lists. The Commission finds that permitting such entities to participate in its equipment authorization program as TCBs, test labs, or laboratory accreditation bodies would adversely affect the trustworthiness of, or otherwise undermine the public’s confidence in, the equipment authorization program, and would be inconsistent with U.S. national security interests.

For these and the other reasons discussed in the *Order*, the Commission finds that, in addition to the entities identified on the Covered List, it is incumbent upon us to also address, with regard to the equipment authorization program, other entities deemed by federal agencies to pose risks to national security as follows:

- Entities identified by any of the following sources:
 - Department of Commerce Bureau of Industry and Security (BIS) Entity List (BIS Entity List);
 - BIS Military End-User List;
 - Department of Homeland Security (DHS) Uyghur Forced Labor Prevention Act (UFLPA) Entity List;
 - Section 5949 of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year 2023 (Section 5949 List of Semiconductor Companies);
 - Department of Defense (DOD) 1260H list of Chinese Military Companies;
 - Department of Treasury NS-CMIC List of Chinese military companies; and
- Entities identified as “foreign adversaries” by the Department of Commerce, including governments.

Department of Commerce BIS Entity List. “The [BIS] Entity List . . . identifies persons or addresses of persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States” as determined by an End-User Review Committee consisting of various federal national security agencies. The BIS Entity List in part seeks to ensure that sensitive technologies do not fall into the hands

of known threats. The Commission concludes that these entities, which federal agencies found to, at the very least, “pose a significant risk” of activities threatening American national security or foreign policy interests, present the same concerns with regard to the integrity of the equipment authorization program. Seeing as U.S. persons are generally prohibited from providing unlicensed exports, re-exports, or transfers (in-country) of certain commodities, software, and technology subject to BIS jurisdiction to entities on the BIS Entity List, the Commission finds it particularly risky for such entities to be closely associated with the review and approval of communications devices (with all the components therein) for the U.S. market—if these entities should not be allowed access to sensitive technologies after they are on the market, they similarly should not be allowed access before they are on the market through the equipment authorization program. This conclusion is consistent with the Commission’s action in the *Cybersecurity IoT Labeling R&O* (89 FR 61242; July, 30, 2024), which prohibited entities named on the BIS Entity List from having their products receive a U.S. Cyber Trust Mark label or from serving as Cybersecurity Label Administrator or other lab participating in the labelling program.

Commerce Department BIS Military End-User List. The Military End-User List consists of entities subject to heightened export controls because the End-User Review Committee determined that “exports, reexports, or transfers . . . to that entity represent an unacceptable risk of use in or diversion to a ‘military end use’ in Belarus, Burma, Cambodia, China, Nicaragua, the Russian Federation, or Venezuela, or for a Belarusian, Burmese, Cambodian, Chinese, Nicaraguan, Russian, or Venezuelan ‘military end user,’ wherever located.” The Commission finds that the national security risks presented by these foreign military-associated entities in terms of export activities are applicable to the FCC’s obligation to ensure the integrity of its equipment authorization program, which is an integral step in the importation and marketing of devices in the U.S.

DHS Uyghur Forced Labor Prevention Act Entity List. Section 2 of the UFLPA requires reporting a list of entities found to be involved in forced labor in the Xinjiang region of China, which the Department of Homeland Security posts on its website. The Commission received no comments on this specific list, but Heritage did urge the

Commission to consider forced labor practices in China and noted that broadening the sources used to make determinations about recognition of test labs might remove from recognition consideration labs using forced labor or committing other human rights abuses. Federal agencies have found the entities listed on the UFLPA Entity List to be involved in forced labor, and goods that are manufactured wholly or in part by such entities are prohibited from U.S. importation. Because goods manufactured by these entities are prohibited from U.S. importation, the Commission finds that it would not be in the public interest or consistent with the integrity and security of the equipment authorization testing program for these entities to play a role in the equipment authorization program, particularly in such a way that contributes to ensuring compliance to the FCC's rules of equipment that must be authorized to be imported.

Section 5949 List of Semiconductor Companies. Section 5949 of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year 2023 prohibits Executive Branch agencies from procuring, obtaining, or contracting with entities to obtain any electronic parts, products, or services that include a semiconductor, a semiconductor product, or a product that incorporates semiconductor products designed or produced by Semiconductor Manufacturing International Corporation, ChangXin Memory Technologies, Yangtze Memory Technologies Corp, or any subsidiary, affiliate, or successor of such entities; or any such product produced by an entity determined by designated sources. The FCC finds that Congress's determination that these entities were not to be trusted to provide semiconductor products and services to "Federal systems" and were a threat in the "supply chains of Federal contractors and subcontractors" is strong evidence that the Commission should address the threat such entities present to ensuring the integrity and security of the equipment authorization program.

DOD 1260H List of Chinese Military Companies. Under section 1260H of the FY 2021 NDAA, the Secretary of Defense is required to publicly list entities that the Secretary has determined to be a "Chinese military company" that is "operating directly or indirectly in the United States" and is "engaged in providing commercial services, manufacturing, producing, or exporting." Effective June 30, 2026, DOD is prohibited from entering into, renewing, or extending contracts for goods, services, or technology with

entities on the 1260H List or their affiliates. Contracts with companies controlled by these listed entities are also prohibited. Further, in 2027, DOD is prohibited from entering into, renewing, or extending a contract for the procurement of goods or services that include goods or services produced or developed by an entity, or controlled by an entity, on the Section 1260H List. The prohibitions do not extend to existing contracts or to contracts for goods, services, or technology that provide a service that connects to the facilities of a third party, including backhaul, roaming, or interconnection arrangements. The Secretary of Defense may waive the prohibition under certain circumstances.

The FCC concludes that, for the same reasons that these entities are identified on the 1260 List, such companies present an unacceptable risk to ensuring the integrity and security of the equipment authorization testing program. This is consistent with the Commission's action in the *Cybersecurity IoT Labeling R&O*, which prohibited entities named on the DOD 1260H List from having their products receive a U.S. Cyber Trust Mark label or from serving as Cybersecurity Label Administrator or other lab participating in the labelling program.

Department of Treasury NS-CMIC List of Chinese Military Companies. The NS-CMIC List, maintained by the Department of Treasury, consists of persons found to "operate or have operated in the defense and related materiel sector or the surveillance technology sector of the economy of the PRC" and was created as part of an Executive Order to address "the threat posed by the military-industrial complex of the People's Republic of China (PRC) and its involvement in military, intelligence, and security research and development programs, and weapons and related equipment production under the PRC's Military-Civil Fusion strategy." This list is almost identical to the 1260H List. The FCC concludes that the threat presented by such entities as determined by federal agencies would apply in terms of its efforts to ensuring the integrity and security of the equipment authorization program.

Foreign Adversary Governments and Persons. The Department of Commerce has developed a list of "foreign adversary" governments and persons, which includes "any foreign government or foreign non-government person determined by the Secretary [of Commerce] to have engaged in a long-term pattern or serious instances of conduct significantly adverse to the

national security of the United States or security and safety of United States persons." Currently, the list of foreign adversaries consists of the People's Republic of China (including the Hong Kong Special Administrative Region and the Macau Special Administrative Region), Republic of Cuba, Islamic Republic of Iran, Democratic People's Republic of North Korea, Russian Federation, and the Venezuelan politician Nicolas Maduro.

The rules establishing the process for these determinations were made pursuant to Executive Order 13873 of May 15, 2019, "Securing the Information and Communications Technology and Services Supply Chain." President Trump issued Executive Order 13873 in response to the national emergency caused by the threat of foreign adversaries exploiting vulnerabilities in information and communications technology and services (ICTS). The same concerns that the Department of Commerce's ICTS rules seek to address are also a key component of the Commission's equipment authorization program; namely, the equipment authorization program seeks to ensure the Commission protects the U.S. communications networks and the supply chain from equipment that poses an unacceptable risk to national security.

Moreover, the Secure Networks Act's definition of "foreign adversary" is identical to the definition of "foreign adversary" as used by the Department of Commerce in producing its list of foreign adversaries. National Telecommunications and Information Administration (NTIA), in a notice and request for public comment implementing these provisions of the Secure Networks Act, treated the Department of Commerce's list of foreign adversaries as "foreign adversaries" for purposes of determining who is a "trusted . . . provider of advanced communications service or a supplier of communications equipment or service" under the Secure Networks Act. If Congress and NTIA determined that entities subject to foreign adversaries' ownership or control are not to be trusted to provide or supply communications equipment or services, the Commission does not believe they should be trusted to participate in the equipment authorization program, which tests and reviews communications equipment.

The FCC's proposal to address participation by foreign adversaries in the equipment authorization program is generally supported by Heritage and FDD. And the Commission does not

agree that application of the foreign adversary list is “discriminatory,” as TAF contends, given that the list reflects determinations by an expert agency that the entities listed have engaged in a “long-term pattern or serious instances of conduct significantly adverse to the national security interest of the United States or security and safety of United States persons.”

The Commission finds that its efforts to ensure the integrity and security of the equipment authorization program could be hindered by the participation of entities determined to have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons. These findings are consistent with the Commission’s actions in other proceedings. For example, in the *Cybersecurity IoT Labeling R&O*, the Commission relied on the foreign adversary list as a disqualifier from receiving a U.S. Cyber Trust Mark label or from serving as Cybersecurity Label Administrator or other lab participating in the labelling program. Additionally, in the *Evolving Risks Order and NPRM*, the Commission proposed to rely on the Department of Commerce’s definition of foreign adversary in its proposal to prioritize the renewal applications or any periodic review filings and deadlines based on, for example, “reportable foreign ownership, including any reportable foreign interest holder that is a citizen of a foreign adversary country.”

CHIPS Act. At this time, the FCC declines to extend the definition of prohibited entity to any “foreign entity of concern” as defined by the CHIPS Act, because this definition extends to entities subject to the “jurisdiction” of specified countries. The FCC interprets this definition as potentially applicable to a broader range of entities than those owned by, controlled by, or subject to the direction of certain entities, and thereby more broadly applicable than anticipated in the *EA Integrity NPRM*. So, the FCC seeks further comment on adopting this definition, as discussed in the *FNPRM* portion of the proceeding. The FCC also declines at this time to extend the prohibition in this R&O to several other federal agency-developed and statutory “lists” of entities of concern both because the record on these lists is not developed and because the alignment between the policy goals underlying those lists and the integrity and security of the equipment authorization testing program is not as obvious, and seeks further comment in the *FNPRM*.

Preventing Prohibited Entities From Participating in the Equipment Authorization Program

Recognizing the importance of ensuring that the TCBs and test labs that review equipment for importation and marketing in the U.S., and the entities that accredit test labs, are themselves trustworthy actors, and to complement the FCC’s efforts to ensure the security of the supply chain, the Commission takes steps to remove from participation in its equipment authorization program entities that have been determined to pose unacceptable risks to the national security of the United States based on a number of sources (*i.e.*, prohibited entities). The Commission adopts its proposals in the *EA Integrity NPRM* to: (1) prohibit from recognition by the Commission and participation in the FCC’s equipment authorization program any TCB, test lab, or laboratory accreditation body owned by, controlled by, or subject to the direction of a prohibited entity; and (2) prohibit reliance on or use of, for purposes of equipment authorization, any TCB or test lab owned by, controlled by, or subject to the direction of a prohibited entity. By adopting these prohibitions, the FCC takes a significant step in addressing the risks posed by these actors to U.S. national security in the communications equipment supply chain.

The restriction on entities that present national security concerns is rooted in longstanding legislative and regulatory efforts aimed at safeguarding U.S. national security, economic interests, and technological leadership, which have consistently recognized the risks posed by foreign adversaries. These efforts have consistently targeted the same foreign adversaries (or a subset thereof) designated as such by the Department of Commerce and treated as “prohibited entities” in the rules the FCC adopts today. These efforts include actions to safeguard military operations, protect U.S. supply chains against foreign adversaries exploiting vulnerabilities in key industries, and federal restrictions on adversarial access to sensitive data and emerging technologies that have been implemented to address cybersecurity, research security, and otherwise protect national security. In February of this year, President Trump issued a memorandum announcing the America First Investment Policy which, among other things, states that “[e]conomic security is national security,” discusses the need to limit certain investments in strategic sectors by the same six foreign adversaries as identified in the

Department of Commerce’s rules, and singles out China in particular for its nefarious exploitation of U.S. open capital markets to gain access to U.S. strategic technology and critical infrastructure. Taken together, these measures reflect an ongoing, bipartisan effort to mitigate foreign adversary involvement in U.S. economic and technological supply chains across multiple fronts over multiple Congresses and multiple Presidential Administrations.

Contrary to TAF’s assertion that accreditation according to relevant ISO standards alone is sufficient to allow test lab participation in the Commission’s equipment authorization program, the FCC believes that compliance with ISO standards should be a floor, not a ceiling, for all equipment authorization participants. And, while such compliance with generally universally-applied standards may be necessary to ensure technical competency, it may not be sufficient. Furthermore, the Commission believes that implementation of Congress’s instruction that the Commission “may . . . establish such qualifications and standards as it deems appropriate for such private organizations, testing, and certification” requires us to address other concerns, such as protecting the supply chain from entities that present national security concerns. In light of ongoing security risks, the Commission must take measures to ensure that entities entrusted with access to equipment, and related data, prior to authorization for importing and marketing, as well as entities that assess the competence of such, are not acting on behalf of foreign adversaries but instead are operating consistent with their responsibilities to help ensure that equipment that poses an unacceptable risk to national security is kept out of our nation’s supply chain, in addition to being technically competent. In fact, the Secure Networks Act demonstrates Congress’s view that participants in the communications equipment supply chain that are “owned by, controlled by, or subject to the influence of a foreign adversary” are not to be “trusted.”

Additionally, one of the agencies upon which the FCC regularly relies for national security expertise—the Department of Justice, National Security Division (FIRS)—has noted several other national security concerns arising from reliance on TCBs and test labs “that could be exploited by adversarial entities.” Specifically, FIRS points out that TCBs and test labs perform certain activities that create technical vulnerabilities. The privileged access by TCBs and test labs to highly sensitive

intellectual property and emerging technologies could lead to systematic collection of information that represents a significant counterintelligence concern and the aggregation of such data has the potential to aid foreign adversaries in developing counterstrategies or identifying asymmetric advantages. Also, compromised entities could deliberately overlook or inadequately test devices, or manipulate test results, which could result in compromised devices in the U.S. market that have the potential to facilitate access by foreign intelligence services or that do not meet compliance requirements and pose interference risks.

The FCC finds that allowing entities that have been repeatedly identified as foreign adversaries of the U.S. government, specifically those identified in the *Order* as prohibited entities, to participate in the equipment authorization program as TCBs, test labs, and laboratory accreditation bodies could adversely affect a TCB's, test lab's, or laboratory accreditation body's "trustworthiness, or otherwise undermine the public's confidence," especially their "access to proprietary, sometimes sensitive information about suppliers and their devices." By enforcing stricter regulations on ownership and control of TCBs, test labs, and laboratory accreditation bodies, the FCC upholds core national security priorities, reinforcing the broader strategy to protect U.S. interests from adversarial exploitation.

Prohibiting Recognition of TCBs, Test Labs, and Laboratory Accreditation Bodies That Are Owned by, Controlled by, or Subject to the Direction of Prohibited Entities

In the *EA Integrity NPRM*, the Commission proposed to prohibit from recognition by the Commission and participation in the FCC's equipment authorization program any TCB, test lab, or laboratory accreditation body in which an entity identified on the Covered List has, possesses, or otherwise controls an equity or voting interest of 10% or more, either directly or indirectly, and sought comment on this proposal. The Commission also proposed and sought comment on whether it should decline to recognize laboratory accreditation bodies associated with any foreign adversary, including as to how such association should be determined.

The Commission adopts a modified version of these proposals to include a prohibition on recognition of, or participation by, TCBs, test labs, and laboratory accreditation bodies that are

owned by, controlled by, or subject to the direction of prohibited entities, as defined in the *Order*. Several commenters were broadly supportive of the proposal, stating, for example, that it is necessary to ensure equipment is properly vetted against the Commission's rules intended to address national security threats. The Covered List represents expert determinations made by Congress and relevant federal agencies that the specified equipment and services produced by certain named entities represent an unacceptable threat to national security, and the risk of their importation into the United States necessitates that the FCC take measures to prevent such equipment from improperly obtaining FCC equipment authorization. Congress believed so strongly that the importation or marketing of certain equipment and services produced or provided by specific entities posed a threat to the national security and public safety that it passed the Secure Equipment Act to ensure that such equipment and services would be unable to obtain equipment authorizations from the Commission. The Commission takes seriously the Congressional mandate to ensure that its equipment authorization system excludes entities that have been determined to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. As such, the FCC finds it necessary to expand its proposal beyond the Covered List to include all prohibited entities as defined in the *Order*. The Commission finds it imperative that it not allow prohibited entities to circumvent supply chain protections or otherwise undermine the integrity of its supply chain. Prohibiting recognition of TCBs, test labs, or laboratory accreditation bodies that are owned by, controlled by, or subject to the direction of prohibited entities will help to ensure that participants in the FCC's equipment certification procedure, the most rigorous equipment authorization process, are not subject to undue influence and support the integrity and security of the program.

The Commission rejects TAF's arguments that there is no need to make changes to the existing authorization system because it has operated effectively to date without national security incidents, and that restricting lab authorization based on national security lacks a technical basis because labs do not modify products and so cannot introduce national security issues, nor do they possess any information that could threaten national security. A2LA also observed that as

part of ISO/IEC 17011, accreditation bodies must maintain impartiality and, by that criteria, no accreditation body should have an "affiliation" with a foreign government, adversarial or not. The Commission emphasizes that the measures it adopts today are both an important corollary to the rules the FCC adopted in the *EA Security R&O* and proactive measures against evolving risks reflected in the record before us. As FDD noted, this action is just the latest Commission effort in recognition of "a growing vector of systemic risk: adversarial control over the authorization process that safeguards the U.S. communications technology ecosystem." Further, the Commission agrees with FDD that "TCBs and test labs handle highly sensitive, proprietary manufacturing and development data, conduct testing protocols, and produce compliance certifications upon which the FCC relies," meaning "their actions directly affect what devices are legally imported into and offered for sale within the United States." The Commission further agrees with FDD that if U.S. adversaries are participants in this layer of the supply chain, they can introduce vulnerabilities at scale, long before devices reach consumers or critical systems."

Absent rules intended to ensure the impartiality of TCBs, test labs, and laboratory accreditation bodies, prohibited entities could pressure TCBs, test labs, or laboratory accreditation bodies to take actions that are contrary to the FCC's efforts to protect the communications equipment supply chain. For example, entities that own, control, or direct TCBs, test labs, or laboratory accreditation bodies could pressure the TCB, test lab, or laboratory accreditation body to overlook requirements that could ultimately result in the authorization of equipment identified on the Covered List. Furthermore, TCBs and test labs have access to sensitive, proprietary information related to equipment submitted for testing and certification and laboratory accreditation bodies are tasked with assessing the competence of test labs. Access to such information by entities who have been determined to pose unacceptable risks to national security would provide further opportunity for actions that would compromise the integrity of the FCC's equipment authorization program.

Given the importance of ensuring the security of the FCC's supply chain and limiting vulnerabilities from entities that present national security concerns, the Commission declines to implement certain alternatives proposed by commenters. For example, the

Commission finds inadequate TIC's suggestion that it would be sufficient to simply adopt disclosure requirements, because such disclosure requirements would not necessarily prevent entities presenting national security concerns from participating in the FCC's equipment authorization program. Moreover, such a disclosure regime would potentially require the Commission to engage in extensive, individualized reviews of test lab and TCB ownership to determine whether national security interests are implicated. Such a regime also would result in uncertainty within the regulated community as to what the Commission might do to address such instances. By adopting the rules in the *Order*, the Commission is creating a transparent method of addressing the threat of entities that present national security risks within its equipment authorization program. The Commission is also not persuaded that its proposed rules would meaningfully adversely impact global supply chains, slow equipment approvals, or increase costs for manufacturers. The transparency of these new requirements will not only provide the Commission with the necessary information to ensure the integrity of its equipment authorization program, it will also increase awareness within industry as to the entities with whom they choose to do business and lessen concern that prohibited entities could interfere with their equipment authorizations or the process of obtaining such, potentially speeding up equipment approvals and reducing costs. Additionally, the Commission doesn't find it necessary to provide an extended transition period for implementation of the rules in order to allow sufficient time to identify and engage adequate replacement facilities, as suggested. Considering the time needed for the rules adopted here to take effect, in addition to the procedural timeframes included in the rules for withdrawal of recognition, the Commission believes that any concerns are speculative and outweighed by its goal of ensuring the integrity of the equipment authorization program.

The role of laboratory accreditation bodies in the FCC's equipment authorization program—namely, to provide impartial assessment of the competence of the test labs that they accredit—requires that they be free of and safeguarded from influence by actors that may pose a risk to national security. The Commission also recognizes that the activities and practices of laboratory accreditation bodies extend internationally and

include relationships with various foreign actors, and so clarity is needed regarding how to determine which laboratory accreditation bodies will be recognized by the Commission. In addition, if the Commission were to adopt a prohibition on TCBs and test labs owned by, controlled by, or subject to the direction of prohibited entities without adopting a corresponding prohibition on laboratory accreditation bodies, the Commission would leave open the possibility that prohibited entities would simply move upstream to exercise ownership, control, or direction within the equipment authorization program. Acknowledging commenters' desire for clarity, the Commission adopts a rule that it will not recognize a laboratory accreditation body, and will revoke the recognition of any previously-recognized laboratory accreditation body, that is owned by, controlled by, or subject to the direction of a prohibited entity.

The Commission finds that this rule, along with the explanation provided in the proceeding of what the FCC means by "owned by, controlled by, or subject to the direction of" will provide clear requirements for participation in the equipment authorization program. With regard to A2LA's observation that laboratory accreditation bodies are required to maintain impartiality pursuant ISO/IEC 17011, the Commission finds it incumbent upon us to take proactive measures to ensure the integrity and guarantee against equipment authorization program participation by entities owned by, controlled by, or subject to the direction of prohibited entities.

Prohibiting Reliance on, or Use of, for Purpose of Equipment Authorization, and TCB or Test Lab Owned by, Controlled by, or Subject to the Direction of a Prohibited Entity

In the *EA Integrity NPRM*, the Commission also proposed to prohibit from recognition by the Commission and participation in its equipment authorization program, any TCB or test lab in which an entity identified on the Covered List has direct or indirect ownership or control. The Commission tentatively concluded that, in light of the determinations made from expert federal agencies and Congress about the national security risks posed by entities with equipment identified on the Covered List, the Commission should not permit such TCBs and test labs to have any role in its equipment authorization program.

The Commission adopts the proposed rule to prohibit reliance on or use of any TCB or test lab owned by, controlled by,

or subject to the direction of an entity (or its subsidiaries or affiliates) identified on the Covered List, for purposes of equipment authorization. The Commission expands this prohibition, however, to include all "prohibited entities." This means that parties seeking equipment authorization pursuant to the SDoC process may not rely on testing performed at a test lab that is owned by, controlled by, or subject to the direction of a prohibited entity.

By prohibiting, for purposes of SDoC authorization, the use of test labs that are owned by, controlled by, or subject to the direction of a prohibited entity, the Commission seeks to ensure that entities posing national security risks cannot use the SDoC process as a loophole to circumvent the FCC's restrictions. The Commission rejects the arguments of commenters that extending the prohibition to the SDoC process will not enhance national security, and that any security concerns are mitigated by the existing prohibition on entities identified on the Covered List from using SDoC. The Commission also disagrees with TIA that we must provide specific evidence of abuse of the SDoC process to warrant changes. In enacting the Secure Networks Act and Secure Equipment Act, Congress recognized that it was imperative that those entities determined to pose unacceptable risks to U.S. national security be foreclosed from accessing U.S. communications networks and supply chains, and nothing in the record would support excluding test labs used as part of the SDoC process from this prohibition.

Information on equipment authorized via the SDoC process is less readily transparent to the Commission than information on equipment authorized via certification, meaning that equipment authorization through the SDoC process may be at greater risk of potential exploitation by prohibited entities, raising national security concerns regarding the possible introduction of equipment that poses an unacceptable risk to national security into the U.S. market. In prohibiting entities identified on the Covered List from using SDoC to obtain equipment authorization, the Commission sought to ensure consistent application of the prohibition on further authorization of covered equipment, while also providing for more active oversight. The same rationale applies here—namely that, absent the clarification the Commission adopts today, prohibited entities might use their influence over labs, and take advantage of the more limited oversight the Commission has

over the SDoC process, to allow for the introduction of equipment that poses an unacceptable risk to U.S. national security and otherwise undermine the integrity of its equipment authorization process. The value of the SDoC process to many parties seeking equipment authorization, and the importance of prohibiting equipment that poses an unacceptable risk to national security, necessitates that the Commission takes measures to prevent abuse of the SDoC process.

Defining “Ownership” and “Direction or Control”

The FCC prohibitions in section III.B. of this document rely on specific definitions of “ownership” and “direction or control.” As the Commission discusses below, it has repeatedly used ownership limits or attribution rules to identify entities presumed to be able to exert effective direction or control even in the absence of a majority voting interest. Here the Commission defines and adopts such a limit. The Commission also recognizes that an entity may exert direction or control when it has minority interests below the limits the Commission sets or no ownership interests, so the Commission adopts and clarifies qualitative indicia that entities, and the Commission, may use in determining and attesting to the existence of direction or control.

Implementation of the 10% Ownership Threshold

The Commission adopts its proposals in the *EA Integrity NPRM* to prohibit from recognition by the Commission and participation in its equipment authorization program, any TCB, test lab, or laboratory accreditation body in which a prohibited entity directly or indirectly owns or controls 10% or more of the equity or voting rights. Consistent with Commission precedent and the rules and precedent of other federal regulatory agencies, the Commission finds that the 10% ownership threshold provides a reasonable proxy or indication that a TCB, test lab, or laboratory accreditation body is controlled by or subject to the direction of a prohibited entity.

Some commenters oppose the proposed prohibition and recommended alternative approaches. For instance, TIA proposed that the Commission first “target” only TCBs and test labs that are wholly owned by entities on the Covered List. TIA presented no evidence, however, to support its implicit contention that a threat is only present when a TCB or a test lab is wholly owned by a prohibited entity,

nor does it explain why a prohibited entity cannot exert direction or control even though it may hold only a minority ownership interest or no ownership interest in the TCB, test lab, or laboratory accreditation body. Indeed, under TIA’s proposal, a TCB 99.99% owned by an entity identified on the Covered List would not be prohibited, but it would be prohibited if such ownership rose to 100%. Based on the FCC’s record, such a limited prohibition would not adequately protect the integrity of the equipment authorization program against participation by prohibited entities. Therefore, the Commission rejects TIA’s proposal and concludes that prohibiting only those TCBs and test labs that are wholly owned by prohibited entities would not sufficiently advance the national security interests in the proceeding.

Some commenters question whether laboratory accreditation bodies have the capability to ascertain ownership interests. In their view, because laboratory accreditation is primarily a technical assessment conducted by technical experts—and not a review of ownership interests by financial analysts, accountants, or auditors—reliance on laboratory accreditation bodies to prevent accreditation of test labs based on ownership interests is not feasible. A preferable approach, according to A2LA, would be for the Commission to assess all test labs, offer accreditation if warranted, and then restrict the ability of labs to conduct testing or participate in the equipment authorization if accredited entities are found to be a national security risk. Another proposed alternative was to create a “self-reporting component” for ownership interests of TCBs and test labs that the Department of Commerce might oversee. A2LA further stated that it was unclear how ownership impacts national security risk.

In response to concerns of commenters that laboratory accreditation bodies are not equipped to determine ownership interests, the Commission clarifies that the rules it adopts today do not require laboratory accreditation bodies to independently investigate and establish ownership. Rather, the rules will require TCBs and test labs themselves to certify that no prohibited entity has an equity or voting interest of 10% or more in the TCB or test lab. And while the FCC’s rules do require that the laboratory accreditation body submit a test lab’s certification directly to the Commission in order for the test lab to be included on the list of accredited test labs that the FCC has recognized, this does not require the laboratory accreditation body to

undertake its own investigation of a test lab’s ownership. Nor do the Commission see that this requirement imposes an undue burden on laboratory accreditation bodies, which must already submit to the Commission various information regarding the test lab. That said, the Commission do, however, expect a laboratory accreditation body to take reasonable steps to not knowingly or negligently facilitate the obfuscation of the ownership of a test lab. In other words, a laboratory accreditation body could be held responsible for what it knew or should reasonably have known concerning the ownership interests in the TCB or test lab. Indeed, this is the same standard that TCBs should already be applying in the equipment authorization context in assessing whether an applicant’s attestations regarding the equipment for which authorization is sought—namely that the equipment is not “covered,” and providing a valid U.S. agent for service of process—is accurate and true.

A2LA asked how “affiliation” would be defined, as used in the *NPRM*, and asked whether participation by accreditation bodies in countries with which the U.S. has MRA and accreditation of test labs in foreign countries might be considered “affiliation.” A2LA said U.S. accreditation bodies have accredited test labs in foreign countries that “may be” on the adversary list and questioned whether those accreditation bodies would be precluded for that reason. ANAB similarly said that the FCC should clarify that “affiliation” does not include participation in widely recognized international accreditation cooperations through which ANAB accepts and promotes the results of conformity assessment bodies accredited by other signatories, some of which are government organizations in countries identified on the foreign adversaries list. In the proposals the Commission provided in the *NPRM*, we used the term “affiliation” very broadly throughout the discussion and once in the proposed rules to convey a connection between entities. The Commission did not specifically propose to tie that term to its definition of “affiliate” nor did the Commission propose a new definition. In finalizing the rules that the Commission adopts today, we are adopting a defined relationship of ownership, direction, or control in lieu of affiliation, for the reasons discussed herein. As such, the Commission finds no reason to further expand upon the discussion of “affiliation” as raised by A2LA and

ANAB. The Commission also clarifies here that its rules apply equally to all TCBs, test labs, and laboratory accreditation bodies regardless of the existence of MRAs or physical location of the relevant facility.

The Commission concludes that it is appropriate to prohibit any TCB, test lab, laboratory accreditation body from participating in the equipment authorization process if a prohibited entity directly or indirectly owns 10% or more of the equity or voting stock. Consistent with Commission precedent and that of other federal agencies, the Commission finds that a third party could exert direction or control over another entity even without holding a majority of the equity or voting rights. Establishing the direct and indirect ownership rule at 10% aligns with Commission precedent and reflects a reasonable standard for identifying potential direction or control. For example, applicants for an international section 214 authorization are required to identify any individual or entity that directly or indirectly owns 10% or more of the equity interests and/or voting interests, or a controlling interest, of the applicant. Also, applicants or licensees subject to the ownership reporting requirements of § 1.2112 of the FCC's rules must identify any party holding 10% or more of stock, partnership interest, or indirect ownership interest in the reporting entity.

This 10% threshold is also consistent with definitions of ownership applied by other federal agencies with expertise in examining corporate ownership and structure. For example, the Internal Revenue Code defines the term "United States shareholder" with respect to any foreign corporation, as "a United States person . . . who owns . . . 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation, or 10 percent or more of the total value of such shares of all classes of stock of such foreign corporation." Under the Change in Bank Control Act, anyone, including those "acting in concert," must provide a written notice before acquiring control of a bank or bank holding company, if they acquire 10% or more of its voting shares. Similarly, a foreign entity acquiring at least 10% of the voting interest (directly or indirectly through a U.S. entity) in a U.S. business enterprise, either through acquisition or establishment of a new entity, is required to file a BE-13 Report with the Bureau of Economic Analysis (BEA). The Commission concludes that adopting the 10% ownership threshold appropriately identifies entities with

sufficient direction or control as to pose a risk.

Heritage asked the Commission to explain "why entities with less than 10% [ownership or control] pose a risk, but entities below 5% do not." The Commission recognizes that a third party may exercise direction or control over another entity even where it holds less than a 10% ownership stake in that entity or holds no ownership stake. Consistent with precedents discussed above of this document, the Commission expands its current reporting requirement and adopts a requirement that all TCBs, test labs, and laboratory accreditation bodies report all equity or voting interests of 5% or greater by any entity. This 5% reporting threshold balances the need to protect national security while minimizing undue reporting burden by providing the Commission with the necessary information to confirm compliance with the ownership prohibitions and to more easily identify closely associated entities. The Commission notes that the reporting requirement is parallel to and not a substitute for its requirement that all TCBs, test labs, and laboratory accreditation bodies, regardless of ownership interests, certify that they are not under the ownership, or otherwise direction or control of prohibited entities based on the indices of direction or control that the Commission discusses next.

Definition of "Direction or Control"

In addition to prohibiting any TCB, test lab, or laboratory accreditation body in which a prohibited entity has direct or indirect ownership or control of 10% or more equity or voting interest from recognition or participation in the FCC's equipment authorization process, the Commission also adopts that prohibition for any TCB, test lab, or laboratory accreditation body that is subject to the direction or control of a prohibited entity. The concept of direction and control includes the control that is inherent when an entity is a part of the governmental structure or hierarchy of a foreign adversary, including subnational governments thereof. Recognizing that a prohibited entity may exert direction or control over another entity even where it does not own 10% or more of the equity or voting stock of that entity, the Commission therefore requires TCBs, test labs, and laboratory accreditation bodies to assess whether a prohibited entity directly or indirectly possesses or has the power (whether or not exercised) to determine, direct, or decide important matters affecting an entity. Factors indicating direction or

control could include the power to decide matters pertaining to the entity's reorganization, merger, or dissolution; the opening or closing of facilities or major expenditures or to exercise authority over its operating budget; selection of new lines of business; entering into, terminating, or otherwise affecting the fulfillment of significant contracts; adopting policies relating to treatment of non-public or proprietary information; appointing officers or senior leadership; appointing or dismissing employees with access to critical or sensitive technology; or amending the entity's organizational documents. Such indicators would be relevant regardless of whether the power was exercised, and could take the form of, for example, ownership of securities or partnership or other ownership interests, board representation, holding a special share, contractual arrangements, or other formal or informal arrangements to act in concert or to decide important matters affecting an entity. Additionally, the Commission considers any applicant, wherever located, to be under the direction or control of a prohibited entity if that applicant acts as an agent or representative of a prohibited entity or acts in any other capacity at the order or request of a prohibited entity or whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in majority part.

Reporting, Certification, and Recordkeeping Requirements

To help ensure that the Commission have the necessary information to implement the measures it adopts to prohibit from participation in the equipment authorization program entities that have been determined to pose unacceptable risks to national security, the Commission expands its current reporting and certification requirement for TCBs, test labs, and laboratory accreditation bodies that seeks Commission recognition. The Commission finds that requiring certification and reporting of ownership is necessary to minimize vulnerabilities in the telecommunications infrastructure and strengthen national security through the equipment authorization process by ensuring that TCBs, test labs, and laboratory accreditation bodies will not be owned by or under the direction or control by prohibited entities. The Commission finds that these adopted rules will yield significant benefits, including improved consistency in the Commission's consideration of evolving national security risks, completeness of the

Commission's information regarding equipment authorization, and timely Commission attention to issues that warrant heightened scrutiny. The Commission also finds that the adoption of the rules will better protect U.S. telecommunications infrastructure from national security risks posed by prohibited entities. These benefits cannot be achieved with *ad hoc* reviews alone. Thus, adopting a systemized review of the ownership certification and report by TCBs, test labs, and laboratory accreditation bodies is necessary to help ensure that the Commission and the Executive Branch agencies have the necessary information to address evolving national security, law enforcement, foreign policy, and/or trade policy risks on a continuing basis. While it is difficult to quantify these economic benefits, the Commission believes the benefits are far greater than the costs of the requirements.

The Commission adopts a requirement for all recognized TCBs, test labs, and laboratory accreditation bodies to certify to the Commission, within 30 days after the effective date of the relevant rules, and thereafter with each request for recognition, that they are not owned by, controlled by, or subject to the direction of a prohibited entity. The Commission also adopts a requirement that all recognized TCBs, test labs, and laboratory accreditation bodies report, within 90 days after the effective date of the relevant rules and thereafter with each request for recognition, all equity or voting interests of 5% or greater by any entity. The Commission will not recognize—and will revoke any existing recognition of—any TCB, test lab, or laboratory accreditation body that fails to provide, or that provides a false or inaccurate certification; or that fails to provide, or provides false or inaccurate, information regarding equity or voting interests of 5% or greater. If there is any change to any of the lists that make up the prohibited entities resulting in the addition of an entity after the effective date of these rules, the Commission will require compliance with the relevant reporting, certification, and recordkeeping requirements no later than 90 days after the effective date of such change. In keeping with these reporting requirements, the FCC also clarifies the requirement that every entity specifically named on the Covered List must provide to the Commission, pursuant to § 2.903(b), information regarding all of its subsidiaries and affiliates, not merely those that produce “covered” equipment. The Commission orders

each relevant entity to provide this information no later than 30 days after the effective date of this rule and thereafter in accordance with the provisions in § 2.903(b).

In order to more effectively protect the FCC's equipment authorization program from the direction or control of untrustworthy entities and ensure the integrity of the program, the Commission proposed and sought comment in the *EA Integrity NPRM* on new recordkeeping, reporting, and certification obligations for TCBs and test labs to enable the Commission to determine ownership or control, as well as comment on any changes to its rules governing laboratory accreditation bodies.

First, the Commission proposed that any entity seeking to become an FCC-recognized TCB or test lab report to the Commission equity or voting interests in the TCB or test lab of 5% or more. Second, the Commission proposed to require that recognized TCBs and test labs: (1) no later than 30 days after the effective date of any final rules adopted in this proceeding, certify that no entity identified on the Covered List (or otherwise specified in our final rules) has, possesses, or otherwise controls an equity or voting interest of 10% or more in the TCB or test lab, and (2) no later than 90 days after the effective date of any final rules adopted in this proceeding identify any entity (including the ultimate parent of such entities) that holds such ownership or control interest as our final rules require, proposed as 5% or more ownership, as discussed above. Third, the Commission proposed that any test lab that takes measurements of equipment subject to an equipment authorization, whether pursuant to certification or SDoC, maintain in its records a certification that no entity identified on the Covered List has, possesses, or otherwise controls an equity or voting interest of 5% or more in the test lab. Finally, the Commission sought comment on precluding laboratory accreditation bodies associated with foreign adversaries, including how such association should be determined.

The Commission received comments directed at these reporting requirements. The American Council of Independent Laboratories commented that the Commission's reporting requirements are reasonable and appropriate. Other commenters expressed concerns or suggested changes to these proposals.

For instance, TIC commented that the proposed reporting requirements are not currently covered in MRAs between the United States and participating countries, and asked that any rules adopted be tailored to address supply chain security without disrupting testing capacity or U.S. trade commitments. Heritage asked the Commission to consider whether any level of ownership by an entity on the Covered List needs to be disclosed. Other commenters made more general observations that are relevant here. For example, TIA said that any new rules should not overly burden trustworthy TCBs or test labs.

The Commission adopts the certification, reporting, and recordkeeping requirements that the Commission proposed in the *EA Integrity NPRM* with the modifications that these requirements will be extended to laboratory accreditation bodies and broadened to include ownership, control, or direction by any prohibited entity, as well as the additional note that reported ownership information will be made publicly available on the Commission's website. The Commission and all parties seeking equipment authorization must have ready access to the information necessary to determine which TCBs, test labs, and laboratory accreditation bodies can be relied upon for purposes of the FCC's equipment authorization program. In particular, stakeholders must be able to evaluate any ownership interest concerns that may be raised regarding an entity's impartiality or trustworthiness, particularly with regard to potential influence by entities that raise national security concerns. The Commission also finds that such ownership information could be relevant going forward to establishing appropriate “qualifications and standards” under section 302(e) of the Act regarding private entities to which the Commission has delegated and entrusted certain responsibilities as part of its equipment authorization program. Such data could also be instructive in other efforts to bolster the integrity of the equipment authorization program, such as ensuring that TCBs are complying with applicable impartiality requirements and rules targeted at ensuring they are not owned or controlled by a manufacturer whose equipment they must examine.

Certification Requirement. To implement our prohibition on recognition of TCBs, test labs, and laboratory accreditation bodies that are subject to ownership or direction or control of a prohibited entity, the Commission adopts the proposal that,

no later than 30 days after the effective date of the rules adopted in the proceeding, recognized TCBs, test labs, and laboratory accreditation bodies must certify that no prohibited entity has, possesses, or otherwise controls an equity or voting interest of 10% or more. The Commission also requires that recognized TCBs, test labs, and laboratory accreditation bodies certify compliance with these rules and submit the requested ownership information along with the request for recognition and within 30 days after any relevant change. Because ownership interests evolve over time, and the lists of prohibited entities are subject to modification, the Commission believes that change-dependent certification and reporting requirements, along with regular confirmation, are critical to verifying the integrity of TCBs, test labs, and laboratory accreditation bodies. The Commission recognizes that relevant entities would need time to consider their options when there is a change to any of the lists that make up the prohibited entities resulting in the addition of an entity. To allow TCBs, test labs, and laboratory accreditation bodies to fully assess their ownership considerations, the Commission will require compliance with the relevant certification requirements no later than 90 days after the effective date of such changes to the prohibited entities.

Reporting Requirement. The Commission also adopts a requirement that all recognized TCBs, test labs, and laboratory accreditation bodies report, within 90 days after the effective date of the rules, all equity or voting interests of 5% or greater by any entity. The Commission further requires that recognized TCBs, test labs, and laboratory accreditation bodies submit an updated report with the request for recognition and within 30 days after any change to entities that own 5% or more of its equity or voting interests. The Commission recognizes that the current 10% ownership threshold may not capture all of the information necessary to adequately assess whether a TCB, test lab, or laboratory accreditation body is owned by, controlled by, or subject to the direction of a prohibited entity. In certain instances, an entity holding less than 10% of direct or indirect ownership may nonetheless be able to exert direction or control over a TCB, a test lab, or a laboratory accreditation body. For example, where enhanced voting rights are present, such an entity may possess disproportionate decision-making power relative to its ownership stake. To balance the need to protect national security while minimizing

undue reporting burden, the Commission expands its current reporting requirement and adopts a requirement that all recognized TCBs, test labs, and laboratory accreditation bodies, or those seeking recognition, report all equity or voting interests of 5% or greater by any entity. A reporting threshold of 5% would be consistent with the ownership threshold used by the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) in its review of certain applications. For instance, in the *2021 Standard Questions Order*, the Commission noted the views of Committee staff that, “5% threshold is appropriate because in some instances a less-than-ten percent foreign ownership interest—or a collection of such interests—may pose a national security or law enforcement risk.” The Commission, based on the views of Committee staff, agreed that a 5% ownership reporting threshold is appropriate with respect to the Standard Questions. Given the Committee’s expertise in assessing national security and law enforcement risks associated with foreign ownership interests, the Commission finds its reliance on a 5% threshold lends further support to its decision to adopt the same. The Commission concludes that a 5% reporting threshold would position the Commission to more easily identify foreign interests and their possible control.

A reporting threshold of 5% would also be consistent with requirements imposed by other agencies, such as the Securities and Exchange Commission (SEC). The SEC Exchange Act Rule 13d-1 requires a person or “group” that becomes, directly or indirectly, the “beneficial owner” of more than 5% of a class of equity securities registered under section 12 of the Exchange Act to report the acquisition to the SEC. The Commission further notes that various SEC forms filed by issuers, including their annual reports (or proxy statements) and quarterly reports, require the issuer to include a beneficial ownership table that contains, *inter alia*, the name and address of any individual or entity, or “group,” who is known to the issuer to be the beneficial owner of more than 5% of any class of the issuer’s voting securities. Finally, a reporting threshold of 5% is also consistent with the standards adopted by the Committee on Foreign Investment in the United States (CFIUS), which reviews certain transactions involving foreign acquisitions of U.S. businesses.

The Commission is mindful of the caution from commenters against placing overly burdensome restrictions on TCBs or test labs. However, the Commission considers this type of information collection to be routine in many contexts and find that these obligations are an appropriate and not unduly burdensome means of enabling the Commission to confirm compliance with the ownership prohibitions and to more easily identify closely associated entities of TCBs, test labs, and laboratory accreditation bodies seeking to participate in the equipment authorization program. As aforementioned, the Commission and other government agencies commonly adopt rules to identify direct or indirect ownership or control of entities by third parties to address various concerns including national security. The Commission concludes that ascertaining the holders of 5% or more of the direct or indirect ownership should not present a substantial burden because it is reasonable to conclude that a privately held company would be aware of its investors and would maintain record of such information in the ordinary course of business, while for publicly held companies, the information on persons holding 5% or more of any class of equity security should be generally available to the public. The Commission recognizes that relevant entities would need time to consider their options when there is a change to any of the lists that make up the prohibited entities resulting in the addition of an entity. To allow TCBs, test labs, and laboratory accreditation bodies to fully assess their ownership considerations, the Commission will require compliance with the relevant reporting requirements no later than 90 days after the effective date of such an addition of prohibited entities.

Recordkeeping requirements. In order to implement the prohibition, for purposes of SDoC authorization, on the use of test labs that are owned by, controlled by, or subject to the direction of a prohibited entity, the Commission adopts a requirement that parties seeking equipment authorization pursuant to the SDoC process maintain a record that the entity performing the testing conducted pursuant to the SDoC process is not owned by, controlled by, or subject to the direction of a prohibited entity. Specifically, parties availing themselves of the SDoC process must maintain a record that no prohibited entity has, possesses, or otherwise controls an equity or voting interest of 5% or more in the test lab performing the testing conducted

pursuant to the SDoC process. This requirement will help to ensure that responsible parties perform the due diligence necessary to compile the required record and determine that the test lab is eligible to participate in the FCC's equipment authorization program pursuant to the rules the Commission adopts today. The Commission also finds, and agrees with CTA, that this requirement will not meaningfully raise the cost and complexity of the SDoC process. As with test labs seeking FCC recognition, the Commission believes this type of ownership information would be retained by the test lab in the ordinary course of business. For these reasons, the Commission modifies § 2.938(b)(2) of its rules to adopt this requirement. The Commission recognizes that relevant entities would need time to consider their options when there is a change to any of the lists that make up the prohibited entities resulting in the addition of an entity. To allow TCBs, test labs, and laboratory accreditation bodies to fully assess their ownership considerations, the Commission will require compliance with the relevant recordkeeping requirements no later than 90 days after the effective date of such changes to the prohibited entities. To make determinations regarding the continued acceptability of TCBs, test labs, and laboratory accreditation bodies, the Commission may also request additional information regarding the test site, the test equipment, or the qualifications of the company or individual performing the tests for the SDoC process, including documentation identifying any entity that holds a 5% or greater direct or indirect equity or voting interest in the test lab, company, or individual performing the testing.

Reporting subsidiaries and affiliates of Covered List entities. The Commission proposed in the *EA Integrity NPRM* to require that every entity specifically named on the Covered List must provide to the Commission information regarding all of its subsidiaries and affiliates, not just those subsidiaries and affiliates that produce "covered" equipment, pursuant to § 2.903(b). The Commission stated that this proposal would be in keeping with the certification and reporting requirements for test labs and TCBs discussed above. The Commission did not receive comment directed at this proposal.

The Commission adopts this proposal and requires that every entity specifically named on the Covered List must provide to the Commission information regarding all of its subsidiaries and affiliates. The

Commission has previously explained that in adopting rules and procedures to prohibit authorization of "covered" equipment, it is critical for the Commission, applicants for equipment authorizations, TCBs, and other interested parties to have the requisite, transparent, and readily available information of the particular entities that in fact are associated with the named entities on the Covered List. In light of the rules the Commission adopts today, it is now critical that the Commission and all stakeholders have complete information regarding all of the subsidiaries and affiliates of Covered List entities in order for the Commission, applicants for equipment authorization, TCBs, and others to make determinations about which entities may be relied upon for purposes of the Commission's equipment authorization program. Requiring this information is reasonable and justified in keeping with its goal of effectively ensuring that "covered" equipment determined as posing an unacceptable risk to national security under the Secure Networks Act, and prohibited from authorization under the Secure Equipment Act, is not authorized, and helps to ensure that the Commission meet the mandate in the Secure Equipment Act that the Commission not approve the grant of any "covered" equipment.

Accordingly, the Commission requires each entity specifically named on the Covered List to submit a complete and accurate list to the Commission, within 30 days after the effective date of the rules, identifying all subsidiaries and affiliates. For each associated entity (e.g., subsidiary or affiliate), the entity named on the Covered List must provide the following information: the full name, mailing address or physical address (if different from mailing address), email address, and telephone number of each of that named entity's associated entities (e.g., subsidiaries or affiliates). As before, named entities must provide up-to-date information on any changes to the list, and if there are changes, the named entity must submit such updated information to the Commission within 30 days after the change(s), and indicate the date on which the particular change(s) occurred. Furthermore, when the Covered List is updated, any newly named entity must submit the required information for associated entities within 30 days after its inclusion on the Covered List. These submissions must be reported by an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the named entity on the Covered List with personal

knowledge verifying the truth and accuracy of the information provided about the entity's associated entities. The affidavit or declaration must comply with § 1.16 of the Commission's rules. The Commission directs the OET to make the lists of affiliates and subsidiaries available to the public for review and inspection.

Defining "own" for purposes of identifying affiliates. The Commission also proposed in the *EA Integrity NPRM* to revise the term "own," in the context of determining what is an "affiliate" of an entity named on the Covered List, from ownership of more than 10 percent to ownership of 10 percent or more. The Commission received only one comment relevant to this revision. A2LA observed that the current definition of "affiliate" uses an ownership threshold of "more than 10 percent," while the rule as proposed uses a threshold of 10% or more, and asked for clarity as to the threshold.

The Commission adopts the revision as proposed. Specifically, the Commission revises its rules such that the term "own" in the context of determining what is an "affiliate" of an entity named on the Covered List means to "have, possess, or otherwise control an equity or voting interest (or the equivalent thereof) of 10 percent or more." The Commission observes first that it's not bound, here, by a particular statutory definition of the term "affiliate." Rather, while the Communications Act generally defines the terms "affiliate" and "own," and there "own" means "to own an equity interest (or the equivalent thereof) of more than 10 percent," such definitions are applied "unless the context otherwise requires." The National Defense Authorization Act for Fiscal Year 2019, which designated as "covered telecommunications equipment or services" any telecommunications equipment produced by Huawei or ZTE "or any subsidiary or affiliate of such entities," and, for certain purposes, video surveillance and telecommunications equipment produced by Hytera, Hikvision, or Dahua "or any subsidiary or affiliate of such entities," did not define the term "affiliate," but the Commission believes that the threshold of 10% or more, rather than more than 10%, is most consistent with Congress's intent because of its use in several other statutory schemes as well as other Commission information collections. The Commission finds that the compelling interest in preventing authorization of equipment that may pose an unacceptable risk to national security also justifies using the

moderately more expansive definition the Commission adopts today.

Other Rule Revisions

TCB, test lab, and laboratory accreditation body recognition withdrawal. The Commission proposed in the *EA Integrity NPRM* that, if a relevant TCB or test lab does not make the certification required in the proceeding, or provides a false or inaccurate certification, the Commission would suspend the recognition of any such TCB or test lab and commence action to withdraw FCC recognition under applicable withdrawal procedures. The Commission also sought comment on whether laboratory accreditation bodies should be subject to additional requirements. With regard to withdrawal of recognition of test labs, the Commission received one comment directly relevant to this proposal. A2LA suggested that the Commission employ different levels of sanctions for different violations, such as harsher penalties for intentional violations of FCC requirements. Further, A2LA asked the Commission to consider offering test labs the opportunity to remediate an otherwise prohibited ownership threshold before withdrawing recognition.

Inherent in the authority to recognize a TCB, test lab, or laboratory accreditation body is the authority to withdraw or cease such recognition when a TCB, test lab, or laboratory accreditation body does not comply with the FCC's requirements. Accordingly, the Commission adopts rules specifying that its will to withdraw the FCC's recognition of a TCB, test lab, or laboratory accreditation body, if the TCB, test lab, or laboratory accreditation body is owned by, controlled by, or subject to the direction of a prohibited entity; fails to provide, or provides a false or inaccurate, certification that it is not owned by, controlled by, or subject to the direction of a prohibited entity or, similarly, fails to provide, or provides a false or inaccurate, report regarding entities with more than 5% ownership. Although the Commission believes that such ownership, control, or direction, a failure to report, or providing a false or inaccurate report, would constitute "just cause" that would permit revocation under existing rules, the Commission takes the opportunity here to codify it as an explicit basis for revocation and to provide a more streamlined process for resolution. The Commission finds this is necessary to adequately ensure the integrity of the equipment authorization program. It is also consistent with existing obligations on TCBs, test labs,

and laboratory accreditation bodies and the Commission's rules regarding withdrawal of recognition of a TCB for just cause or if the TCB is not certifying equipment in accordance with the Commission's rules and policies.

The FCC's rules already specifies the procedures the Commission will follow when withdrawing recognition of a TCB. The Commission adopts similar rules here, specific to withdrawal of recognition of a TCB, test lab, or laboratory accreditation body, if the TCB, test lab, or laboratory accreditation body is owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902; fails to provide, or provides a false or inaccurate, certification that it is not owned by, controlled by, or subject to the direction of a prohibited entity or, similarly, fails to provide, or provides a false or inaccurate, report regarding entities with more than 5% ownership. The procedure for such withdrawal is consistent with that explained in the *EA Integrity NPRM* and already employed by OET in taking action to suspend or deny the recognition of a test lab apparently owned by an entity on the Covered List. In any instance in which the Commission or OET, acting on delegated authority, has a reasonable basis for determining that a TCB, test lab, or laboratory accreditation body is owned by, controlled by, or subject to the direction of a prohibited entity, or fails to provide or provides a false or inaccurate, certification of such, the Commission directs OET to issue a letter to the TCB, test lab, or laboratory accreditation body notifying it of the FCC's intent to withdraw or deny recognition. The letter will request explanation or correction of any apparent deficiencies, and for the TCB, test lab, or laboratory accreditation body to show cause it should be allowed recognition, within 30 days after the date of correspondence. The Commission directs OET to withdraw or deny recognition of any TCB, test lab, or laboratory accreditation body that fails, in OET's determination, to timely reply, to adequately explain or correct any deficiencies, or to show cause OET will issue a public notice of withdrawal of recognition of any TCB, test lab, laboratory accreditation body.

Other NPRM Proposals

TCB Post-market surveillance. In the *EA Integrity NPRM*, the Commission invited comment on whether to revise the post-market surveillance rules, policies, or guidance to require surveillance of authorized equipment for compliance relating to the prohibition on authorization of

"covered" equipment. In particular, the Commission sought comment on reasonable practices TCBs could implement to identify erroneous authorizations of "covered" equipment, whether to change the post-market surveillance requirements to require that TCBs review grants by other TCBs, whether to require that any post-market surveillance be done only by FCC-recognized labs in the United States or MRA countries, and other measures the Commission might take to strengthen the integrity of the post-market surveillance process.

The Commission received comments directed at this proposal from one commenter. TIC "fores[aw] challenges" leveraging post-market surveillance to identify erroneous authorizations—particularly if used to monitor for authorized equipment that is discovered post-authorization to be ineligible—because TCBs rely on attestations and information from the Commission to assess whether a grantee is ineligible based on the Covered List, and TCBs are unlikely to have more information than the Commission. TIC also said that it is unlikely that changes in eligibility would be discovered during the "relatively short" post-market surveillance look-back period of 12 to 18 months. Finally, TIC noted that TCBs have "limited" resources and skills to perform the organizational and financial analysis necessary for identifying manufacturers impermissibly connected to the Covered List, and believes the Commission is in a superior position to request, track, and review such information.

The purpose of post-market surveillance is to reassess compliance of the product with the Commission's rules. While OET guidance provides that evaluation against all of the Commission's rules is not required, sufficient testing must be performed to allow the TCB to evaluate those requirements most likely to be in non-compliance, and to provide a high level of confidence that the sample complies with the Commission's rules, including its rules on authorizations prohibited by virtue of the Covered List. Accordingly, TCBs must consider compliance with the rules the Commission adopts today when reviewing and deciding whether a product subject to post-market surveillance complies with applicable Commission rules. Consistent with our rules, should the TCB find that a sample fails to comply with Commission requirements, the TCB is required to immediately notify the grantee and the Commission in writing of its findings. The Commission therefore expects that the existing post-market surveillance

process, even absent any changes, will help ensure that prohibited equipment is not authorized.

The Commission will not at this time revise its rules related to post-market surveillance but seeks further comment on doing so in the Further Notice portion of the proceeding. The Commission believes the rules it adopts today will be a significant measure in ensuring the integrity of test labs and TCBs that participate in the FCC's equipment authorization program and preventing the authorization of equipment that poses an unacceptable risk to national security. Nevertheless, the Commission may revisit this decision as its rules are implemented and learns more about the potential influence of untrustworthy actors in the program.

Accreditation and reassessment of TCBs. The Commission sought comment in the *EA Integrity NPRM* on whether the Commission should clarify or revise its rules or procedures concerning the accreditation of TCBs to ensure that the TCBs can meet their responsibilities. In particular, the Commission sought comment on what particular steps or procedures in the accreditation process could be implemented to examine how TCBs are structured, owned, or managed to safeguard impartiality and otherwise ensure that commercial, financial, or other pressures do not compromise impartiality on certification activities concerning prohibited equipment authorization. The Commission also proposed that, if it were to revise any such rules or procedures, the changes would also apply to reassessments required for continued accreditation, and sought comment on whether to provide additional clarity on the reassessment process. Further, the Commission sought comment on whether any such changes may implicate U.S. international agreements such as MRAs, and asked any commenters that proposed further clarification or revisions to address any implications under the existing MRAs and whether and how to implement any suggested changes.

The Commission received two comments relevant to TCB accreditation procedures. As noted above, A2LA said that ownership assessments for certification bodies should not be the responsibility of accreditation bodies as they lack the necessary expertise in financial analysis or auditing. TIA asked that the Commission provide notice and timelines for accreditation and reassessments.

The Commission does not believe it necessary to clarify its rules regarding accreditation and reassessment of TCBs

at this time, for the following reasons. First, the Commission notes that the standard to which TCBs are accredited, ISO/IEC 17065, already requires that certification activities by TCBs be “undertaken impartially” and contains provisions intended to ensure impartiality, including regarding the management, structure, and personnel of the TCB, and TCBs are required to have a mechanism to ensure impartiality. Second, insofar as the existing impartiality requirements are insufficient, the rules the Commission adopts today will help to ensure the impartiality of TCBs and prevent undue influence on them by entities that pose a risk to national security and other untrustworthy actors. They will also improve Commission oversight over the entities that participate in its equipment authorization program and provide information that will help in determining whether and what further changes to the FCC's equipment authorization program may be necessary, including with regard to accreditation and reassessment of TCBs. Third, while the Commission has experience in recognizing TCBs, the Commission is not directly involved in the accreditation of TCBs, so the Commission is better positioned to effectuate its aims in the proceeding through amendments and clarifications to recognition processes, as the Commission does herein.

FCC recognition of TCBs. The Commission sought comment in the *EA Integrity NPRM* on whether the Commission should consider revisions to the rules or processes by which the Commission recognizes a TCB following its initial accreditation, or the process by which accreditation is subsequently extended on a periodic basis, including any further review the FCC would do to continue to recognize an accredited TCB. In particular, the Commission sought comment on whether it should make any clarifications or changes to the FCC recognition rules or procedures to better ensure that TCBs have the capacity and procedures to meet their obligations under Commission rules, including any requirements adopted in the proceeding. The Commission did not receive comments directly responsive to these inquiries.

The Commission adopts the requirement proposed in the *EA Integrity NPRM* that TCBs must have an organizational and management structure in place, including personnel with specific training and expertise, to verify that no authorization is granted for any equipment that is listed on the Covered List. The Commission does not believe this represents a substantial

burden for TCBs, as TCBs are required to certify equipment in accordance with the Commission's rules and policies and equipment on the Covered List is already prohibited from obtaining FCC equipment authorization. Therefore, TCBs should already have the means, including the requisite organizational structure and personnel, to determine when authorizations are prohibited under the FCC's rules.

The Commission is otherwise confident that TCBs, which as noted must already be capable of understanding and applying the Commission's rules and policies in order to participate in its equipment authorization program, will be capable of interpreting and implementing the requirements the Commission adopts today, and that they will have the requisite information to do so pursuant to the certification and reporting requirements for test labs that the FCC have established. As such, the Commission does not believe further revision of its rules regarding recognition of TCBs is necessary at this time. The Commission will monitor implementation of the rules it adopts today and may later revisit this question.

Procedures for withdrawing FCC recognition of a TCB. In the *EA Integrity NPRM* the Commission invited comment on the its rules and policies regarding withdrawal of FCC recognition of a TCB, in particular as to the procedures by which the Commission would withdraw recognition of a TCB, and whether and to what extent any changes would affect MRAs.

One commenter addressed the Commission's procedures for withdrawing recognition of a TCB. Specifically, TIA commented that if the Commission revokes the authority of a TCB, the FCC should provide clear guidelines and procedures, including notice and timelines, to allow manufacturers sufficient time to plan alternative testing arrangements. Further, to prevent disruption to manufacturers and existing contracts, such revocations should be prospective, not retroactive—that is, if a manufacturer has engaged in certification with a recognized TCB, the Commission should not retroactively revoke authorizations from a TCB that were granted based on an existing recognition.

The Commission finds that, with the revisions it adopts today, the FCC's rules are sufficiently clear regarding the procedures by which the Commission will withdraw recognition of a TCB, and provide TCBs with ample time to

respond to the Commission's concerns. Specifically, § 2.962(e)(2) of the FCC's existing rules states that the Commission will notify a TCB in writing of its intention to withdraw the TCB's recognition. The Commission maintains that procedure and adopts a withdrawal procedure specific to instances where the TCB is found to be owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902; fails to provide, or provides a false or inaccurate, certification, as required in this section; or that fails to provide, or provides false or inaccurate, information regarding equity or voting interests of 5% or greater, as required in this section. In such instances, OET will notify a TCB in writing of its intention to withdraw the TCB's recognition and provide at least 30 days for the TCB to respond. The Commission finds that the potential harm posed by such TCBs, as discussed throughout the proceeding, necessitates a more streamlined process for withdrawal of recognition so as to ensure timely removal from participation in our equipment authorization process. Further, as discussed in the proceeding, the Commission expects the relevant information would be maintained by the TCB in the ordinary course of business thereby presenting minimal burden to disclose whereas other reasons for withdrawal of recognition are likely to be related to technical functions of the entity, which could require more time for resolution. While the Commission is not in a position to inform every equipment manufacturer that may be seeking authorization through that TCB that the Commission may withdraw the TCB's recognition, the Commission could request that the TCB so inform parties seeking equipment authorizations, or otherwise make public that the Commission intends to withdraw recognition of a TCB if the Commission believes that withdrawing recognition might disrupt time to market timelines for manufacturers. Further, the FCC's rules already provides that if the Commission withdraws recognition of a TCB, all certifications will remain valid unless specifically set aside or revoked by the Commission, effectively addressing concerns of commenters about broad, retroactive revocations of authorizations.

Test lab transparency. In the *EA Integrity NPRM*, the Commission sought comment on whether additional transparency requirements for test labs are necessary and appropriate in light of the proposals in the NPRM. The

Commission received one comment. Heritage commented that while test labs are reassessed every two years, that is "too lengthy" a time period for change in ownership disclosures, noting that the Securities and Exchange Commission requires quarterly and annual earnings reports from publicly traded companies.

In response to Heritage's comment, the Commission notes that recognized TCBs, test labs, and laboratory accreditation bodies will be required to provide updated certifications or documentation regarding their ownership within 30 days after the effective date of the rules, within 30 days after any relevant change, and thereafter with the request for recognition. Should these mechanisms prove insufficient to protect the certification and SDoC equipment authorization procedures under the rules the Commission adopts today, the Commission may consider additional transparency measures in the future. The Commission will, therefore, not at this time require additional transparency measures.

Test labs in non-MRA countries. The Commission sought comment in the *EA Integrity NPRM* on whether, in light of evolving national security concerns, the Commission should revisit its rules and procedures for recognizing test labs with regard to some or all of the countries that do not have an MRA with the United States, and asked specifically whether to no longer recognize any test lab that is located in a "foreign adversary" country that does not have an MRA with the United States.

TIA commented that changes in testing requirements, including as to test labs in non-MRA countries, could negatively impact the global information and communications technology market, interfere with international trade agreements, and negatively affect U.S. competitiveness. TIA recommended that the Commission should consult with industry and U.S. trade officials to assess the impacts of revoking authorizations from non-MRA countries.

While test labs in non-MRA countries may be impacted by the rules the Commission adopts today, the Commission will not at this time take additional action related to these inquiries and directed toward test labs in non-MRA countries. The Commission believes that the rules announced today will mitigate the potential for national security threats arising from test labs in foreign countries. To the extent that the location of the test lab indicates potential ownership of direction or control over the test lab, the

Commission observes again that it has limited information at this time about the ownership and control of test labs that participate in the FCC's equipment authorization program, and accordingly a limited understanding of the entities that may be under the ownership of, or direction or control over, the lab, and limited ability to forecast the impact of additional prohibitions on the FCC's equipment authorization program. Further, any action the Commission takes should properly first look to sources and lists of entities that pose a risk to national security compiled by agencies and other bodies with appropriate national security expertise, and it is unclear whether prohibiting test labs based on their location, rather than on the identity of the entities that own, direct, or control the test lab, will accomplish that aim. Nevertheless, the Commission intends to revisit this decision after it has had time to review the ownership information reported by test labs pursuant to the rules the Commission adopts today and assess, in consultation with relevant federal agencies and other sources, the necessity, benefits, and any potential adverse impacts of precluding recognition of test labs on bases other than the one the Commission adopts today.

Use of accredited, FCC-recognized test labs in SDoC process. The Commission sought comment in the *EA Integrity NPRM* on whether to require that all equipment authorized pursuant to the SDoC process be tested by accredited and FCC-recognized test labs, which could serve to promote the integrity of the program in precluding potentially untrustworthy test labs from participating in the equipment authorization program and serve the national security goals of the proceeding.

Some commenters expressed concern about the potential "rolling back" of the successful SDoC program. These commenters say that the SDoC program has been a resounding success that has added efficiency to the equipment authorization program without raising interference or national security concerns, as evidenced by the few enforcement actions related to SDoC devices, and that therefore it is unclear what national security benefit would be derived from so revising the SDoC program. The Consumer Technology Association (CTA) suggests that, alternatively, the FCC could require parties seeking equipment authorization to maintain a record that the equipment was not tested by a lab, company, or individual owned by an entity named on the Covered List (or otherwise

identified by the lists or processes determined by the outcome of the proceeding). In CTA's view, doing so would preclude the use of such labs for SDoC without raising the cost and complexity for all users of the process.

The Commission acknowledges the concerns of commenters and recognizes that any changes the Commission adopts herein must be balanced with the significant interest in maintaining the ability of its equipment authorization program to timely review new products and allow compliant products to come to market. In light of the changes the Commission adopts today to promote the integrity of test labs, and the limited record the Commission currently possesses regarding whether and how to amend the current SDoC process, the Commission have determined that it will not at this time require the use of accredited, FCC-recognized labs in the SDoC process. Nevertheless, in light of the persistent and evolving threats posed by untrustworthy actors seeking, among other things, to compromise the FCC's networks and supply chains, the Commission will continue to consider whether and what reforms may be necessary to ensure the integrity of the FCC's SDoC process and that equipment authorized pursuant to that process does not pose a risk to national security. The Commission further considers this issue in the FNPRM portion of the proceeding.

Location of laboratory accreditation bodies. The Commission sought comment on whether laboratory accreditation bodies should be located only in the United States or other MRA-partnered countries. The Commission received one relevant comment. A2LA commented that accreditation bodies that meet the competency criteria should be permitted to accredit test labs in the United States, no matter their country of origin, and that this is and should be a reciprocal arrangement among MRA-partners. The Commission will not require that laboratory accreditation bodies be located only in the United States or other MRA-partnered countries because the Commission believes that the rules it adopts today are better suited to ensuring the integrity of the laboratory accreditation bodies participating in the equipment authorization process, and additional requirements are not necessary at this time.

Accreditation and assessment of test labs. The Commission sought comment in the *EA Integrity NPRM* on the responsibilities and procedures by which FCC-recognized laboratory accreditation bodies conduct their assessment of prospective test labs and

determine whether to accredit particular test labs. In part, the Commission asked whether to clarify its recognition requirements with regard to any of the ISO/IEC 17025 standards to ensure that the test lab accreditation process guarantees that test labs are competent and impartial, generate valid test results, and ensure that effective procedures are in place to ensure that test labs meet the ownership, direction, and control requirements adopted in the proceeding. The Commission proposed that if it were to adopt clarifications of any ISO/IEC 17025 principles, the Commission would require that the laboratory accreditation bodies reassess test labs under the new requirements or procedures. The Commission also requested comment on whether to clarify or revise any of the Commission's rules or policies concerning assessment of test lab accreditation every two years in order to help ensure implementation of the prohibitions on recognition adopted in the proceeding, and asked whether OET should establish specific procedures for reassessment and recognition of test labs and other potential revisions of its procedures for reassessment, recognition, and revocation.

Commenters observed that laboratory accreditation is primarily an assessment of the technical capabilities of the test lab and said that the laboratory accreditation process is "rigorous." A2LA said that accreditation against the ISO/IEC 17025 standard is a technical assessment "limited to activities directly related to the tests on the proposed scope of accreditation" and that assessors are "technical experts in their fields," not financial analysts or other personnel with expertise in examining ownership and financial records. TIC said that the "accreditation process is a thorough assessment of the capacity and competency of the lab and its personnel to understand and perform the testing, as well as to generate accurate test reports that can be relied upon for equipment authorization." TIC also said that the accreditation process is "rigorous, requiring a demonstration of technical competence, an understanding of program rules, and well-established policies and procedures to safeguard objectivity, confidentiality, and impartiality."

Based on the record, in which commenters argue that the laboratory accreditation process is adequate, the Commission will not at this time adopt any rules related to these inquiries, but the Commission seeks additional comment in the FNPRM portion of this proceeding on certain proposals that

were not substantially addressed by commenters.

Incorporation by Reference

The OFR has regulations concerning incorporation by reference. These regulations require that, for a final rule, agencies must discuss in the preamble to the final rule the way in which materials that the agency incorporates by reference are reasonably available to interested parties, and how interested parties can obtain the materials. Additionally, the preamble to the final rule must summarize the material.

Section 2.960 incorporates by reference ISO/IEC 17025:2005(E) and ISO/IEC 17025:2017(E). Both of these standards are currently incorporated by reference elsewhere within the Commission's rules. The standards contain the requirements related to test laboratory accreditation, including requirements for processes, procedures, documented information, and organizational responsibilities. Interested persons may obtain ISO/IEC 17025:2005(E) or ISO/IEC 17025:2017(E) from the sources provided in 47 CFR 2.910. A copy of the standards may also be inspected at the FCC's main office.

The following standards appear in the amendatory text of this document and were previously approved for the locations in which they appear: ISO/IEC 17011:2004(E) and ISO/IEC 17065:2012(E).

Cost-Benefit Analysis

In the *Report and Order*, the Commission strengthens its oversight of TCBs, test labs, and laboratory accreditation bodies by adopting new rules that help ensure the integrity of these entities to the extent that they participate in the FCC's equipment authorization program. The Commission finds that it is critical for national security and the integrity of the supply chain that it prohibits from recognition, or participation in the equipment authorization program by, TCBs, test labs, and laboratory accreditation bodies that are owned by, controlled by, or subject to the direction of a prohibited entity.

The Commission recognizes that the benefits of protecting U.S. national security, law enforcement, foreign policy, and trade policy interests are difficult to quantify in monetary terms. The difficulty in quantifying these benefits does not, however, diminish their importance. The Commission previously has found that "a foreign adversary's access to American communications networks could result in hostile actions to disrupt and surveil the FCC's communications networks,

impacting its nation's economy generally and online commerce specifically, and result in the breach of confidential data. Given that its national gross domestic product was over \$29 trillion in 2024, the digital economy accounted for approximately 16% of its economy, and the volume of international trade for the United States (exports and imports) was \$7.3 trillion in 2024, even a temporary disruption in communications could cause billions of dollars in economic losses. The harms by foreign adversaries or other untrustworthy actors thus could be significant, causing disruption to the U.S. economy, residential and government communications, and critical infrastructure.

The Commission finds that requiring certification and reporting of ownership is necessary to minimize vulnerabilities in the telecommunications infrastructure and the communications and consumer technology supply chain. Furthermore, it would strengthen national security through the equipment authorization process by ensuring that TCBs, test labs, and laboratory accreditation bodies are not owned by, controlled by, or under the direction of prohibited entities. The Commission finds that these adopted rules will yield significant benefits, including improved consistency in the Commission's consideration of evolving national security risks, completeness of the Commission's information regarding equipment authorization, and timely Commission attention to issues that warrant heightened scrutiny. The Commission also finds that the adoption of the rules will better protect U.S. telecommunications infrastructure and the communications and consumer technology supply chain from national security risks posed by prohibited entities. These benefits cannot be achieved with *ad hoc* reviews alone. Thus, adopting a systemized review of the ownership certification and reporting by TCBs, test labs, and laboratory accreditation bodies is necessary to help ensure that the Commission and the Executive Branch agencies have the necessary information to address evolving national security, law enforcement, foreign policy, and/or trade policy risks on a continuing basis. The benefits exceed the requirements' costs as discussed in this section.

By adopting the proposed rules, the Commission requires TCBs, test labs, and laboratory accreditation bodies to: (1) certify that they are not owned by or subject to the direction or control of, a prohibited entity; and (2) report all equity or voting interests of 5% or greater by any entity. The Commission

further adopts the proposal and requires that every entity specifically named on the Covered List must provide to the Commission information regarding all of its subsidiaries and affiliates. The Commission concludes that requiring TCBs, test labs, and laboratory accreditation bodies to ascertain their direct and indirect ownership information or whether they are under direction of or controlled by prohibited entities does not present a substantial burden because a privately held company likely knows its investors and stakeholders with significant control of the business directives, while a publicly held company is required to identify its interest holders in requisite filings with the U.S. Securities and Exchange Commission. For similar reasons, the Commission finds that requiring entities on the Covered List to provide information on its subsidiaries and affiliates imposes only a minimal burden as these entities should retain this information as part of their normal business operations.

The Commission estimates that the aggregate recurring annual costs associated with the attestation and reporting requirements adopted in the *Report and Order* will not exceed \$800,000. Specifically, the Commission estimates that each of the 706 FCC-recognized TCBs, test labs, and laboratory accreditation bodies will require approximately two hours of outside legal counsel time at a rate of \$300 per hour and eight hours of administrative staff time at a rate of \$57 per hour to complete the attestation and reporting process each year. For the 11 entities named on the Covered List, the Commission conservatively doubles the estimated time to account for additional reporting obligations regarding subsidiaries and affiliates. Based on these assumptions, the Commission estimates the upper bound of the aggregate annual compliance costs to be \$768,768. The Commission finds that this estimate likely substantially overestimates the actual attestation and reporting burden for several reasons. First, many test labs operate under common ownership and may therefore satisfy the attestation and reporting requirements at the firm level, rather than on a per-laboratory basis. Second, the Commission assumes that, for purposes of this estimate, each TCB, test lab, and laboratory accreditation body will report changes in ownership annually, whereas many entities are unlikely to experience ownership changes each year. Third, the FCC's estimate assumes reliance on outside counsel, whereas many entities may

utilize in-house resources or forego legal review altogether, thereby potentially incurring lower compliance costs. Finally, as discussed above, the Commission expects that many entities already maintain the information required by the *Report and Order* as part of routine business practices or to comply with obligations imposed by other government agencies (e.g., the Securities and Exchange Commission, Team Telecom). Accordingly, these entities are unlikely to incur material additional costs in complying with the requirements set forth herein.

The Commission further requires parties seeking equipment authorization pursuant to the SDoC process to maintain a record that no prohibited entity has ownership in or direction or control of the test lab, company, or individual performing the testing conducted pursuant to the SDoC process. As the Commission clarifies in the section titled "Reporting, Certification, and Recordkeeping Requirements," the Commission believes this type of ownership information would be retained by the test lab in the ordinary course of business. As a result, the Commission finds the requirement imposes minimal burden, and that any associated costs are negligible when weighed against the substantial benefits to the security of the telecommunications infrastructure and national interests.

The Commission finds that the requirements adopted in the *Report and Order* are highly unlikely to impose substantial harms on U.S. consumers, equipment manufacturers, or other stakeholders. The Commission finds any direct costs stemming from the requirements in the *Report and Order* will be minor; any indirect costs that may be borne by domestic stakeholders are likely similarly minor but also highly speculative in nature. First, the Commission did not receive substantive comments or reply comments in its record outlining such harms. Second, the Commission tentatively believes that most test labs negatively affected by the *Report and Order* are owned by, controlled by, or subject to the direction of China and that these test labs disproportionately test equipment from Chinese companies. Harms to such entities are not considered in a Cost-Benefit Analysis. Third, the vast majority of TCBs, test labs, and laboratory accreditation bodies would maintain their recognition under these rules, and the Commission have no evidence that U.S. equipment producers or U.S. consumers would face significant costs as a result of some producers switching to non-prohibited

test labs. Therefore, the Commission finds the requirements to be minimally harmful to U.S. stakeholders.

Ordering Clauses

Accordingly, *it is ordered*, pursuant to the authority found in sections 1, 4(i), 229, 301, 302, 303, 309, 312, 403, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 229, 301, 302a, 303, 309, 312, 403, and 503, section 105 of the Communications Assistance for Law Enforcement Act, 47 U.S.C. 1004; the Secure and Trusted Communications Networks Act of 2019, 47 U.S.C. 1601–1609; and the Secure Equipment Act of 2021, Public Law 117–55, 135 Stat. 423, 47 U.S.C. 1601 note, that this *Report and Order* and Further Notice of Proposed Rulemaking is hereby adopted.

It is further ordered that the amendments of parts 2 and 15 of the Commission's rules as set forth in Appendix A of the *Report and Order* are adopted, effective 30 days after the date of publication in the **Federal Register**, with the exception of §§ 2.903(b); 2.911(d)(5)(ii); 2.929(c)(2), (d)(1)(ii); 2.932(e)(2); 2.938(b)(2); 2.949(b)(5)–(6), (d); 2.950(c) through (e); 2.951(a)(10) and (11), (c); 2.960(a)(2) and (3); 2.962(d)(9); 2.1033(b)(3), (c)(3), and 2.1043(b)(2)(i)(C), (b)(3)(i)(C) which contain new or modified information collection requirements that require review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Commission directs the Office of Engineering and Technology to establish and announce the effective date of these sections in a document published in the **Federal Register** after completion of OMB review.

It is further ordered that the Office of the Secretary, *shall send* a copy of the *Report and Order*, including the Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered that the Office of the Managing Director, Performance Program Management, *shall send* a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 2

Administrative practice and procedures, Communications, Communications equipment, Incorporation by reference, Reporting and recordkeeping requirements,

Telecommunications, Wiretapping and electronic surveillance.

47 CFR Part 15

Communications equipment, Reporting and recordkeeping requirements, Security measures, Wiretapping and electronic surveillance.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 15 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

- 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

- 2. Add § 2.902 to read as follows:

§ 2.902 Terms and definitions.

Owned by, controlled by, or subject to the direction of. Any entity:

(1) In which any other entity has direct or indirect ownership or control of 10% or more equity, voting interest, or stock;

(2) In which any other entity directly or indirectly possesses or has the power (whether or not exercised) to determine, direct, or decide important matters affecting the subject entity; or

(3) That acts as an agent or representative of another entity or acts in any other capacity at the order or request of another entity or whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in majority part, including being part of a governmental structure or hierarchy.

Prohibited entities. (1) Each entity identified on the Covered List pursuant to § 1.50002 of this chapter.

(2) Entities identified by any of the following sources:

(i) Department of Commerce Bureau of Industry and Security Entity List pursuant to 15 CFR part 744, supplement no. 4;

(ii) Department of Commerce Bureau of Industry and Security Military End-User List pursuant to 15 CFR part 744, supplement no. 7;

(iii) Department of Homeland Security Uyghur Forced Labor Prevention Act Entity List as published by the Forced Labor Enforcement Task Force pursuant to 19 U.S.C. 4681;

(iv) Section 5949 of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117–263);

(v) Section 1260H of the National Defense Authorization Act (NDAA) for Fiscal Year 2021 (Pub. L. 116–283); and

(vi) Department of Treasury Non-Specially Designated Nationals Chinese Military-Industrial Complex Companies List pursuant to 31 CFR part 586.

(3) Entities identified as “foreign adversaries” by the Department of Commerce pursuant to 15 CFR 791.4.

- 3. Amend § 2.903 by revising the definition of “Affiliate” in paragraph (c) to read as follows:

§ 2.903 Prohibition on authorization of equipment on the Covered List.

* * * * *

(c) * * *

Affiliate. The term “affiliate” means an entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another entity; for purposes of this definition, the term “own” means to have, possess, or otherwise control an equity interest (or the equivalent thereof) of 10 percent or more.

* * * * *

- 4. Delayed indefinitely, further amend § 2.903 by revising paragraph (b) to read as follows:

§ 2.903 Prohibition on authorization of equipment on the Covered List.

* * * * *

(b) Each entity named on the Covered List, as established pursuant to § 1.50002 of this chapter, must provide to the Commission the following information: the full name, mailing address or physical address (if different from mailing address), email address, and telephone number of each of that named entity's associated entities (e.g., subsidiaries or affiliates).

(1) Each entity named on the Covered List must provide the information described in this paragraph (b) no later than 30 days after the effective date of each updated Covered List; and

(2) Each entity named on the Covered List must notify the Commission of any changes to the information described in this paragraph (b) no later than 30 days after such change occurs.

* * * * *

- 5. Amend § 2.906 by revising paragraphs (a) and (d) to read as follows:

§ 2.906 Supplier's Declaration of Conformity.

(a) Supplier's Declaration of Conformity (SDoC) is a procedure where the responsible party, as defined in

§ 2.909, makes measurements or completes other procedures found acceptable to the Commission to ensure that the equipment complies with the appropriate technical standards and other applicable requirements.

(1) Equipment testing necessary to ensure compliance with the appropriate technical standards and other applicable requirements must not be performed at a measurement facility that is owned by, controlled by, or under the direction of a prohibited entity, as defined in § 2.902.

(2) Submittal to the Commission of a sample unit or representative data demonstrating compliance is not required unless specifically requested pursuant to § 2.945.

(d) Notwithstanding other parts of this section, equipment otherwise subject to the Supplier's Declaration of Conformity process that is produced by any entity identified on the Covered List, established pursuant to § 1.50002 of this chapter, is prohibited from obtaining equipment authorization through that process. The rules in this chapter governing certification apply to authorization of such equipment.

■ 6. Amend § 2.907 by revising paragraph (c) to read as follows:

§ 2.907 Certification.

* * * * *

(c) Any equipment otherwise eligible for authorization pursuant to the Supplier's Declaration of Conformity, or exempt from equipment authorization, produced by any entity identified on the Covered List, established pursuant to § 1.50002 of this chapter, must obtain equipment authorization through the certification process.

■ 7. Amend § 2.910 by revising paragraphs (c)(1) through (4) to read as follows:

§ 2.910 Incorporation by reference.

* * * * *

(c) * * *

(1) ISO/IEC 17011:2004(E), Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies, First Edition, 2004–09–01; IBR approved for §§ 2.948(e); 2.949(b); 2.960(d).

(2) ISO/IEC 17025:2005(E), General requirements for the competence of testing and calibration laboratories, Second Edition, 2005–05–15; IBR approved for §§ 2.948(e); 2.949(b); 2.950(a); 2.960(a); 2.962(c).

(3) ISO/IEC 17025:2017(E), General requirements for the competence of testing and calibration laboratories,

Third Edition, November 2017; IBR approved for §§ 2.948(e); 2.949(b); 2.950(a); 2.960(a); 2.962(c).

(4) ISO/IEC 17065:2012(E), Conformity assessment—Requirements for bodies certifying products, processes and services, First Edition, 2012–09–15; IBR approved for §§ 2.960(a) and (c); 2.962(a), (c), (d), and (i).

* * * * *

■ 8. Delayed indefinitely, amend § 2.911 by revising paragraphs (b) and (d)(5)(ii) to read as follows:

§ 2.911 Application requirements.

* * * * *

(b) A TCB shall submit an electronic copy of each equipment authorization application to the Commission pursuant to § 2.962(d)(6) on a form prescribed by the Commission at <https://www.fcc.gov/eas>.

* * * * *

(d) * * *

(5) * * *

(ii) An affirmative or negative statement as to whether the applicant is identified on the Covered List, established pursuant to § 1.50002 of this chapter.

* * * * *

■ 9. Delayed indefinitely, amend § 2.929 by revising paragraphs (c)(2) and (d)(1)(ii) to read as follows:

§ 2.929 Changes in name, address, ownership, or control of grantee.

* * * * *

(c) * * *

(2) An affirmative or negative statement as to whether the applicant is identified on the Covered List, established pursuant to § 1.50002 of this chapter; and

* * * * *

(d) * * *

(1) * * *

(ii) An affirmative or negative statement as to whether the applicant is identified on the Covered List, established pursuant to § 1.50002 of this chapter; and

* * * * *

■ 10. Delayed indefinitely, amend § 2.932 by revising paragraph (e)(2) to read as follows:

§ 2.932 Modification of equipment.

* * * * *

(e) * * *

(2) An affirmative or negative statement as to whether the applicant is identified on the Covered List, established pursuant to § 1.50002 of this chapter; and

* * * * *

■ 11. Amend § 2.938 by revising paragraph (b)(1)(ii) and adding paragraph (h) to read as follows:

§ 2.938 Retention of records.

* * * * *

(b) * * *

(1) * * *

(ii) State the name of the test laboratory, company, or individual performing the testing;

* * * * *

(h) The Commission may request additional information regarding the test site, the test equipment, or the qualifications of the company or individual performing the tests, including documentation identifying any entity that has equity or voting interests of 5% or greater in the test lab.

■ 12. Delayed indefinitely, further amend § 2.938 by revising paragraph (b)(2) to read as follows:

§ 2.938 Retention of records.

* * * * *

(b) * * *

(2) A written and signed certification that:

(i) As of the date of first importation or marketing of the equipment, the equipment for which the responsible party maintains Supplier's Declaration of Conformity is not produced by any entity identified on the Covered List, established pursuant to § 1.50002 of this chapter; and

(ii) As of the date of testing, the test laboratory performing the testing is not owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902.

* * * * *

■ 13. Amend § 2.948 by:

■ a. Revising paragraph (a); and

■ b. Removing and reserving paragraph (c).

The revision reads as follows:

§ 2.948 Measurement facilities.

(a) Equipment authorized under the certification procedure must be tested at a laboratory that is:

(1) Accredited in accordance with paragraph (e) of this section; and

(2) Recognized by the Commission in accordance with § 2.951.

* * * * *

■ 14. Amend § 2.949 by adding paragraphs (c) through (f) to read as follows:

§ 2.949 Recognition of laboratory accreditation bodies.

* * * * *

(c) The Commission will not recognize a laboratory accreditation body that:

(1) Is owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902;

(2) Fails to provide, or provides a false or inaccurate, certification as required in this section; or

(3) Fails to provide, or provides false or inaccurate, information regarding equity or voting interests of 5% or greater as required in this section.

(d) [Reserved]

(e) The Commission will withdraw recognition of any laboratory accreditation body that:

(1) Is owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902;

(2) Fails to provide, or provides a false or inaccurate, certification, as required by this section; or

(3) Fails to provide, or provides false or inaccurate, information regarding equity or voting interests of 5% or greater, as required by this section.

(f) The Commission will notify a laboratory accreditation body in writing of its intention to withdraw the laboratory accreditation body's recognition and provide at least 30 days for the laboratory accreditation body to respond.

■ 15. Delayed indefinitely, further amend § 2.949 by adding paragraphs (b)(5) and (6) and (d) to read as follows:

§ 2.949 Recognition of laboratory accreditation bodies.

* * * * *

(b) * * *

(5) Certification to the Commission that the laboratory accreditation body is not owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902.

(6) Documentation to the Commission identifying any entity that has equity or voting interests of 5% or greater in the laboratory accreditation body.

* * * * *

(d) Each recognized laboratory accreditation body must provide to the Commission, in accordance with § 2.950 and no later than 30 days after any relevant change to the required information takes effect:

(1) Certification to the Commission that the laboratory accreditation body is not owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902.

(2) Documentation to the Commission identifying any entity that has equity or voting interests of 5% or greater in the laboratory accreditation body.

* * * * *

■ 16. Delayed indefinitely, amend § 2.950 by adding paragraphs (c) through (e) to read as follows:

§ 2.950 Transition periods.

* * * * *

(c) Each recognized laboratory accreditation body must provide to the Commission:

(1) No later than October 6, 2025, certification to the Commission that the laboratory accreditation body is not owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902; and

(2) No later than December 5, 2025, documentation to the Commission identifying any entity that has equity or voting interests of 5% or greater in the laboratory accreditation body.

(d) Each recognized laboratory must provide to the Commission:

(1) No later than October 6, 2025, certification to the Commission that the laboratory is not owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902; and

(2) No later than December 5, 2025, documentation to the Commission identifying any entity that has equity or voting interests of 5% or greater in the laboratory.

(e) Each recognized TCB must provide to the Commission:

(1) No later than October 6, 2025, certification to the Commission that the TCB is not owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902; and

(2) No later than December 5, 2025, documentation to the Commission identifying any entity that has equity or voting interests of 5% or greater in the TCB.

■ 17. Add § 2.951 to read as follows:

§ 2.951 Recognition of measurement facilities.

(a) The Commission will consider for recognition a measurement facility (*i.e.*, testing laboratory) for which an FCC-recognized accrediting organization submits a written request to the Chief of the Office of Engineering and Technology (OET) requesting such recognition, including the following information:

(1) Laboratory name, location of test site(s), mailing address, and contact information.

(2) Name of accrediting organization.

(3) Scope of laboratory accreditation.

(4) Date of expiration of accreditation.

(5) Designation number.

(6) FCC Registration Number (FRN).

(7) A statement as to whether the laboratory performs testing on a contract basis.

(8) For laboratories outside the United States, the name of the mutual recognition agreement or arrangement under which the accreditation of the laboratory is recognized.

(9) Other information as requested by the Commission.

(b) The Commission will not recognize a laboratory:

(1) In which a prohibited entity, as established pursuant to § 2.902, has, possesses, or otherwise controls an equity or voting interest of 10% or more;

(2) That fails to provide, or that provides a false or inaccurate, certification as required in this section; or

(3) That fails to provide, or provides false or inaccurate, information regarding equity or voting interests of 5% or greater as required in this section.

(c) [Reserved]

(d) The Commission will withdraw recognition of any laboratory that:

(1) Is owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902;

(2) Fails to provide, or provides a false or inaccurate, certification, as required in this section; or

(3) Fails to provide, or provides false or inaccurate, information regarding equity or voting interests of 5% or greater, as required in this section.

(e) The Commission will notify a laboratory in writing of its intention to withdraw the laboratory's recognition and provide at least 30 days for the lab to respond.

■ 18. Delayed indefinitely, amend § 2.951 by adding paragraphs (a)(10) and (11) and (c) to read as follows:

§ 2.951 Recognition of measurement facilities.

(a) * * *

(10) Certification to the Commission that the laboratory is not owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902.

(11) Documentation to the Commission identifying any entity that has equity or voting interests of 5% or greater in the laboratory.

* * * * *

(c) Each recognized laboratory must provide to the Commission, in accordance with § 2.950 and no later than 30 days after any relevant change to the required information takes effect:

(1) Certification to the Commission that the laboratory is not owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902.

(2) Documentation to the Commission identifying any entity that has equity or voting interests of 5% or greater in the laboratory.

* * * * *

■ 19. Revise § 2.960 to read as follows:

§ 2.960 Recognition of Telecommunication Certification Bodies (TCBs).

(a) The Commission will consider for recognition under the terms of this section a Telecommunication Certification Body (TCB) that:

(1) Has been designated according to requirements of this section to issue grants of certification as required under this part.

(2)–(3) [Reserved]

(4) By means of accreditation specifying the group of equipment to be certified and the applicable regulations for product evaluation, meets all appropriate specifications in ISO/IEC 17065 (incorporated by reference, see § 2.910) for the scope of equipment the TCB would certify.

(5) Demonstrates expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise must include familiarity with all applicable technical regulations, administrative provisions or requirements, as well as the policies and procedures used in the application thereof.

(6) Has the technical expertise and capability to test the equipment it will certify and must also be accredited in accordance with ISO/IEC 17025 (incorporated by reference, see § 2.910) to demonstrate it is competent to perform such tests.

(7) Demonstrates an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel must demonstrate knowledge of how to obtain current and correct technical regulation interpretations.

(i) The competence of the TCB must be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products covered by those technical regulations, as well as compliance with applicable parts of ISO/IEC 17025 and ISO/IEC 17065 must be taken into consideration during assessment; and

(ii) The TCB must be assessed for accreditation on intervals not exceeding two years.

(iii) The Commission will provide public notice of the specific methods that will be used to accredit TCBs, consistent with the qualification criteria provided in this part.

(b) The Commission will not recognize a TCB:

(1) In which a prohibited entity, as established pursuant to § 2.902, has, possesses, or otherwise controls an equity or voting interest of 10% or more;

(2) That fails to provide, or provides a false or inaccurate, certification as required in paragraph (a) of this section; or

(3) That fails to provide, or provides false or inaccurate, information regarding equity or voting interests of 5% or greater.

(c) In the United States, TCBs must be accredited and designated by the National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE) program, or other recognized programs based on ISO/IEC 17065 (incorporated by reference, see § 2.910) to comply with the Commission's qualification criteria for TCBs. NIST may, in accordance with its procedures, allow other appropriately qualified accrediting bodies to accredit TCBs.

(d) Outside the United States, a TCB must be designated in accordance with the terms of an effective bilateral or multilateral mutual recognition agreement or arrangement (MRA) to which the United States is a party.

(1) The Commission will not recognize a TCB in an MRA partner economy if that economy does not permit TCBs in the United States to authorize equipment to its requirements.

(2) The organization accrediting the prospective telecommunication certification body must be capable of meeting the requirements and conditions of ISO/IEC 17011 (incorporated by reference, see § 2.910).

(3) A team of qualified experts in, but not limited to, electromagnetic compatibility and telecommunications equipment (wired and wireless), must perform the accreditation assessment covering all of the elements within the scope of accreditation.

(e) The Commission will notify a TCB in writing when it has concerns or evidence that the TCB is not certifying equipment in accordance with the Commission's rules in this chapter and policies and request that it explain and correct any apparent deficiencies.

(1) The Commission may require that all applications for the TCB be processed under the pre-approval guidance procedure in § 2.964 for at least 30 days, and will provide a TCB with 30 days' notice of its intent to do so unless good cause exists for providing shorter notice.

(2) The Commission may request that a TCB's Designating Authority or accreditation body investigate and take appropriate corrective actions as required, and the Commission may initiate action to limit or withdraw the recognition of the TCB.

(3) In the case of a TCB designated and recognized pursuant to a bilateral or multilateral mutual recognition agreement or arrangement (MRA), the Commission will consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any disputes arising under an MRA for compliance with the Telecommunications Trade Act of 1988 (section 1371–1382 of the Omnibus Trade and Competitiveness Act of 1988).

(f) The Commission will limit the scope of equipment that can be certified by a TCB if its accreditor limits the scope of its accreditation or if the Commission determines there is good cause to do so. The Commission will notify a TCB in writing of its intention to limit the scope of the TCB's recognition and provide at least 60 days for the TCB to respond.

(g) The Commission will notify a TCB in writing of its intention to withdraw the TCB's recognition, and provide at least 60 days for the TCB to respond, if:

(1) The TCB's designation or accreditation is withdrawn;

(2) The Commission determines there is just cause for withdrawing the recognition; or

(3) The TCB requests that it no longer hold its designation or recognition.

(h) The Commission will notify a TCB in writing of its intention to withdraw the TCB's, and provide at least 30 days for the TCB to respond, if the Commission determines that the TCB:

(1) Is owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902;

(2) Fails to provide, or provides a false or inaccurate, certification, as required in this section; or

(3) Fails to provide, or provides false or inaccurate, information regarding equity or voting interests of 5% or greater, as required in this section.

(i) If the Commission withdraws its recognition of a TCB, all certifications issued by that TCB will remain valid unless specifically set aside or revoked by the Commission.

(j) The Commission will publish a list of recognized TCBs.

■ 20. Delayed indefinitely, further amend § 2.960 by adding paragraphs (a)(2) and (3) to read as follows:

§ 2.960 Recognition of Telecommunication Certification Bodies (TCBs).

(a) * * *

(2) Has certified to the Commission that the TCB is not owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902.

(3) Has reported to the Commission documentation identifying any entity

that has equity or voting interests of 5% or greater in the TCB.

* * * * *

■ 21. Revise § 2.962 to read as follows:

§ 2.962 Requirements for Telecommunication Certification Bodies.

(a) A TCB must review for compliance with the Commission's requirements an application that includes all the information specified in this part to determine whether to grant equipment certification in accordance with § 2.911.

(1) The certification system must be based on type testing as identified in ISO/IEC 17065 (incorporated by reference, see § 2.910).

(2) Certification determinations must typically be based on testing of no more than one unmodified representative sample of each product type for which certification is sought. A TCB may request additional samples when clearly warranted, such as when certain tests are likely to render a sample inoperative.

(b) A TCB must not outsource review and certification decision activities.

(c) Evaluation may be performed using internal TCB resources or external (outsourced) resources.

(1) Evaluation is the selection of applicable requirements and the determination that those requirements are met.

(2) Bodies that meet the applicable requirements of ISO/IEC 17025 may perform the evaluation of a product in accordance with the applicable provisions of ISO/IEC 17065 for external resources (outsourcing) and other relevant standards.

(3) The TCB remains responsible for any evaluation function provided by external resources, including the testing of equipment subject to certification, and the TCB must maintain appropriate oversight of the external resources used to ensure reliability of the evaluation. Such oversight must include periodic audits of products that have been tested and other activities as required in ISO/IEC 17065.

(d) A TCB must:

(1) Certify equipment in accordance with the Commission's rules in this chapter and policies.

(2) Accept test data from any Commission-recognized accredited test laboratory, subject to the requirements in ISO/IEC 17065, and must not unnecessarily repeat tests.

(3) Only act on applications that it has received or for which it has issued a grant of certification.

(4) Dismiss an application that is not in accordance with the provisions of this subpart or when the applicant requests dismissal. A TCB may dismiss

an application if the applicant does not submit additional information or test samples requested by the TCB.

(5) Follow the procedures in § 2.964 for equipment on the pre-approval guidance list.

(6) Supply an electronic copy of each certification application and all necessary exhibits to the Commission prior to grant or dismissal of the application. Where appropriate, the application must be accompanied by a request for confidentiality of any material that may qualify for confidential treatment under the Commission's rules in this chapter.

(7) Grant or dismiss each certification application through the Commission's electronic filing system.

(8) Participate in any consultative activities, identified by the Commission or NIST, to facilitate a common understanding and interpretation of applicable regulations.

(e) A TCB may establish and assess fees for processing certification applications and other Commission-required tasks.

(f) Within 30 days of the date of grant of certification, the Commission or TCB issuing the grant may set aside a grant of certification that does not comply with the applicable requirements or upon the request of the applicant. A TCB must notify the applicant and the Commission when a grant is set aside. After 30 days, the Commission may revoke a grant of certification through the procedures in § 2.939.

(g) A TCB must not:

(1) Grant a waiver of the rules in this chapter;

(2) Take enforcement actions; or

(3) Authorize a transfer of control of a grantee.

(h) All TCB actions are subject to Commission review.

(i) In accordance with ISO/IEC 17065 a TCB must perform appropriate post-market surveillance activities. These activities must be based on type testing a certain number of samples of the total number of product types that the TCB has certified.

(1) The Chief of the Office of Engineering and Technology (OET) has delegated authority under § 0.241(g) of this chapter to develop procedures that TCBs will use for performing post-market surveillance. OET will publish a document on TCB post-market surveillance requirements that provides specific information such as the number and types of samples that a TCB must test.

(2) OET may request that a grantee of equipment certification submit a sample for evaluation directly to OET, to the TCB that performed the original

certification, or to an entity designated by OET. Any equipment samples requested by the Commission and properly tested by a TCB may be counted toward the minimum number of samples that the TCB must test.

(3) TCBs may request samples of equipment that they have certified directly from the grantee of certification in accordance with § 2.945.

(4) If during post market surveillance of a certified product, a TCB determines that a product fails to comply with the technical regulations for that product, the TCB must immediately notify the grantee and the Commission in writing of its findings. The grantee must provide a report to the TCB describing the actions taken to correct the situation, and the TCB must provide a report of these actions to the Commission within 30 days.

(5) TCBs must submit periodic reports to OET of their post-market surveillance activities and findings in the format and by the date specified by OET.

■ 22. Delayed indefinitely, further amend § 2.962 by adding paragraph (d)(9) to read as follows:

§ 2.962 Requirements for Telecommunication Certification Bodies.

* * * * *

(d) * * *

(9) Provide to the Commission, in accordance with § 2.950 and no later than 30 days after any relevant change to the required information takes effect:

(i) Certification to the Commission that the TCB is not owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902; and

(ii) Documentation to the Commission identifying any entity that has equity or voting interests of 5% or greater in the TCB.

* * * * *

■ 23. Delayed indefinitely, amend § 2.1033 by revising paragraphs (b)(3) and (c)(3) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(b) * * *

(3) An affirmative or negative statement as to whether the applicant is identified on the Covered List, established pursuant to § 1.50002 of this chapter; and

* * * * *

(c) * * *

(3) An affirmative or negative statement as to whether the applicant is identified on the Covered List, established pursuant to § 1.50002 of this chapter.

* * * * *

■ 24. Delayed indefinitely, amend § 2.1043 by revising paragraphs (b)(2)(i)(C) and (b)(3)(i)(C) to read as follows:

§ 2.1043 Changes in certificated equipment.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) An affirmative or negative statement as to whether the applicant is identified on the Covered List, established pursuant to § 1.50002 of this chapter;

* * * * *

(3) * * *

(i) * * *

(C) An affirmative or negative statement as to whether the applicant is identified on the Covered List, established pursuant to § 1.50002 of this chapter;

* * * * *

PART 15—RADIO FREQUENCY DEVICES

■ 25. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 26. Amend § 15.103 by revising paragraph (j) to read as follows:

§ 15.103 Exempted devices.

* * * * *

(j) Notwithstanding other provisions of this section, the rules in this chapter governing certification apply to any equipment produced by any entity identified on the Covered List, as established pursuant to § 1.50002 of this chapter.

[FR Doc. 2025–14970 Filed 8–6–25; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 227

[Docket No. FRA–2009–0044]

RIN 2130–AD01

Emergency Escape Breathing Apparatus Standards

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

ACTION: Final rule; extension of compliance dates.

SUMMARY: This document extends the compliance dates in the emergency

escape breathing apparatus final rule published on January 26, 2024. FRA is extending the compliance dates in response to concerns raised in a joint petition for reconsideration, as well as FRA's own investigation into the feasibility of these dates.

DATES: This final rule is effective August 7, 2025.

FOR FURTHER INFORMATION CONTACT:

Michael Watson, Occupational Safety and Health Manager, Office of Railroad Safety, telephone: 202–527–2908, email: michael.watson@dot.gov; or Brian Roberts, Attorney-Adviser, Office of the Chief Counsel, telephone: 202–306–4333, email: brian.roberts@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

As mandated by section 413 of the Rail Safety Improvement Act of 2008 (RSIA), Public Law 110–432, 122 Stat. 4848, 4889 (Oct. 16, 2008) (codified at 49 U.S.C. 20166),¹ FRA published a final rule on January 26, 2024, establishing emergency escape breathing apparatus (EEBA) standards in 49 CFR part 227, subpart C (2024 Final Rule).² The 2024 Final Rule, which became effective on March 26, 2024, requires freight railroads to provide covered employees with an appropriate atmosphere-supplying EEBA when occupying a locomotive cab of a train transporting a hazardous material that would pose an inhalation hazard if released during an accident. Railroad employees covered under the final rule include train employees, their supervisors, deadheading employees, and any other employee designated by the railroad who is in the cab of a locomotive. In addition, the final rule requires railroads to develop and adhere to inventory, storage, maintenance, and employee training requirements related to their EEBA's.

The 2024 Final Rule established two compliance dates: one for Class I and II railroads, and another, later compliance date for Class III railroads. Specifically, Class I and II railroads were required to comply with the rule's requirements within 12 months of the rule's March 26, 2024, effective date (*i.e.*, March 26, 2025), while Class III railroads had 18 months from the same effective date to comply (*i.e.*, September 26, 2025).

On March 15, 2024, FRA received a timely filed, joint petition for

reconsideration of the rule from the Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA).³ The petition asked FRA to delay each compliance date for an additional 12 months, citing the production limitations of the few EEBA manufacturers who can make EEBA's that comply with the final rule's requirements and other, related factors. FRA sent questions to AAR seeking additional information on the issues raised in the joint petition, which AAR responded to via email on July 29, 2024.⁴ In evaluating the joint petition, FRA also spoke with several EEBA manufacturers, including Ocenco (a manufacturer of the railroads' preferred model of EEBA's), and their distributors. These manufacturers and distributors expressed concerns to FRA about being able to provide the requested numbers of EEBA's by the 2024 Final Rule's compliance dates, citing, among other things, the need to supply EEBA's to the U.S. military and other governments.⁵

With the March 26, 2025, EEBA compliance deadline for Class I and II railroads quickly approaching, FRA issued an interim response to the joint petition on January 29, 2025.⁶ FRA's interim response recognized that railroads may not be able to meet the compliance dates in the 2024 Final Rule, and in the spirit of the Presidential Memorandum issued on January 20, 2025, titled "Regulatory Freeze Pending Review,"⁷ FRA announced it would exercise its enforcement discretion for 60 days from each compliance date in the rule. The interim response explained this would also allow FRA time to determine how to respond to the joint petition and a separate petition for reconsideration from ASLRRA, which asked FRA to create a *de minimis* exception to the EEBA final rule.⁸ On May 27, 2025, FRA announced in a follow-up response to the joint petitioners that FRA would exercise its enforcement discretion for an additional 60 days from each compliance date in the Final Rule to allow FRA time to complete its response.⁹

³ FRA–2009–0044–0025, available at www.regulations.gov.

⁴ Communication with AAR Regarding Final Rule. FRA–2009–0044–0028.

⁵ Communication with Ocenco and Other Companies Regarding Final Rule. FRA–2009–0044–0028.

⁶ FRA–2009–0044–0029.

⁷ 90 FR 8249 (Jan. 28, 2025).

⁸ FRA–2009–0044–0025.

⁹ FRA–2009–0044–0030 and FRA–2009–0044–0031.

¹ The Secretary of Transportation delegated the authority to conduct the EEBA rulemaking and implement its requirements to the Federal Railroad Administrator. 49 CFR 1.89(b).

² 89 FR 5113. The notice of proposed rulemaking was published on October 5, 2010 (75 FR 61386) and supplemental notice of proposed rulemaking was published on March 22, 2023 (88 FR 17302).

As the March 26, 2025, compliance date for Class I and II railroads has passed, and the September 26, 2025, date for Class III railroads approaches, FRA is granting the joint petition's request to extend the compliance dates in the 2024 Final Rule by 12 months. FRA is not aware of a change since issuance of its January 29, 2025 initial, interim response that would otherwise alleviate the railroads' compliance difficulties.

Specifically, railroads face various factors outside of their control that prevent them from purchasing enough EEBA's from manufacturers to comply with the 2024 Final Rule's requirements. For example, as the rule establishes specific criteria EEBA's must meet, FRA understands that railroads only have approximately four manufacturers with which they can contract to supply compliant EEBA's: 3M, Dräger, Ocenco, and Semmco. As stated in the joint petition, the major manufacturers of EEBA's have indicated to railroads that they would need significant lead time to ramp up production to provide sufficient EEBA's for railroads to comply with the rule's requirements.¹⁰ In fact, one EEBA manufacturer told a Class I railroad that it would take approximately 12 months to deliver the quantity of EEBA's necessary for that railroad alone to comply with the final rule's requirements.¹¹ The joint petition added that Class II and III railroads could expect even longer delays in receiving compliant devices given their smaller market power and EEBA manufacturers' likelihood to prioritize larger orders from Class I railroads over these smaller railroads.¹²

FRA received the same message as the railroads in conversations with EEBA manufacturers: providing railroads with a sufficient number of EEBA in order to comply with the 2024 Final Rule's requirements was unachievable.¹³ Dräger, Ocenco, and Semmco each stated that they could not meet the railroads' EEBA manufacturing demands within the rule's compliance deadlines.

Market forces also hinder the railroads' ability to purchase sufficient EEBA's to comply with the rule's requirements. Railroads are not the only entities looking to purchase EEBA's. The U.S. military and foreign governments, as well as other companies and organizations, are also in the market to purchase these devices. This broader, competing demand to obtain EEBA's only exacerbates the "first come, first served" dilemma collectively facing railroads seeking to comply with the rule, as indicated in the joint petition.¹⁴ Further, it is unreasonable to assume that EEBA manufacturers, and their component manufacturers, which are not subject to the rule's same regulatory pressures, would be willing to devote all of their resources—physical plants and workforces—to supplying railroads with EEBA's that meet the rule's requirements.

In addition to these supply limitations, which are outside of the control of the railroad industry, railroads are constrained from complying with other requirements of the rule. For example, each railroad must, at a minimum: (1) "establish and comply with a written program for inspection, maintenance, and replacement of EEBA's;"¹⁵ (2) "adopt and comply with its written program of instruction on EEBA's for all its employees," including instructing its employees on "[t]he capabilities and limitations of the EEBA" and "[h]ow to inspect, put on, remove, and use the EEBA, and how to check the seals of the EEBA;"¹⁶ and (3) "adopt and comply with a comprehensive, written, general program to implement" the rule.¹⁷ As a prerequisite to fulfilling these requirements in any practical manner for an individual railroad, let alone for railroads that operate over multi-state networks and interchange their equipment,¹⁸ procurement of the EEBA devices is a necessity.

The RSIA, the governing statutory framework for the 2024 Final Rule, does not establish compliance deadlines for FRA's EEBA requirements. In setting the compliance dates in the 2024 Final Rule, FRA recognized "it will take time to procure EEBA's, instruct employees

on their use, and outfit locomotives with the appropriate equipment to carry the devices."¹⁹ FRA underestimated this time.

In consideration of the foregoing, FRA delays each of the compliance dates in the 2024 Final Rule, found in 49 CFR 227.217(a), (b), and (c), by 12 months so that railroads will have adequate time to procure and receive compliant EEBA's from manufacturers, and then fully implement the rule's requirements once the EEBA's are in the railroads' possession. However, this delay does not affect the ability of any railroad to comply with the rule's requirements in advance of any compliance date.

Finally, this action should not be construed as a response to ASLRRRA's separate petition for reconsideration, which asked FRA to create a *de minimis* exception to the 2024 Final Rule's requirements for certain Class II and Class III train operations for failing to comply with the rule when they would not otherwise be required to do so.²⁰ This action provides immediate relief from the rule's requirements for all railroads and does not preclude FRA from granting additional relief. A full response to ASLRRRA's separate petition will be forthcoming.

II. Section-by-Section Analysis

Subpart C—Emergency Escape Breathing Apparatus Standards

Section 227.217 Compliance Dates

The compliance dates in this section are delayed by 12 months so all railroads will have an additional year to procure sufficient EEBA's to comply with the 2024 Final Rule's requirements, including establishing and complying with a written program for the inspection, inventory, maintenance, and replacement of the devices, and training employees how to use EEBA's properly. Specifically, paragraphs (a) and (b) now will provide Class I and II railroads with a new compliance date of no later than 12 months from March 26, 2025, *i.e.*, March 26, 2026, and paragraph (c) will now provide Class III railroads with a new compliance date of no later than 18 months from March 26, 2025, *i.e.*, September 26, 2026.

III. Public Proceedings

¹⁹ 89 FR at 5125.

²⁰ ASLRRRA Pet. at 3.

¹⁰ AAR/ASLRRRA Pet. at 1–2.

¹¹ *Id.* at 2.

¹² *Id.*

¹³ Communication with Ocenco and Other Companies Regarding Final Rule, FRA–2009–0044–0028.

¹⁴ AAR/ASLRRRA Pet. at 2.

¹⁵ 49 CFR 227.207(a).

¹⁶ 49 CFR 227.209(a), (b)(2) and (4).

¹⁷ 49 CFR 227.211(a).

¹⁸ AAR/ASLRRRA Pet. at 3.

The Administrative Procedure Act generally requires agencies to provide the public with notice of proposed rulemaking and an opportunity to comment prior to publication of a substantive rule. However, 5 U.S.C. 553(b)(B) authorizes agencies to dispense with notice and comment “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” FRA finds that providing notice and an opportunity to comment would be impracticable and contrary to the public interest. The compliance deadlines for Class I and II railroads have already passed, and the deadline for Class III railroads is approaching. Railroads face various factors outside of their control that prevent them from purchasing enough EEBAs from manufacturers to comply with the 2024 Final Rule’s requirements by the existing regulatory deadlines, as discussed above.²¹ Though FRA has exercised its forbearance through enforcement discretion in an interim and a follow-up response to railroad petitions for reconsideration,²² amending the applicable regulation to delay the compliance dates is necessary to ensure certainty and an orderly

implementation of the rule’s requirements. If FRA does not delay the compliance dates, costs to the regulated community to obtain compliant EEBAs will escalate greatly, as railroads compete to purchase available EEBAs, and compliance by all railroads still will be impossible, given the currently insufficient supply of EEBAs. In addition, the quality of training employees on the proper use of EEBAs and meaningfully fulfilling other requirements of the 2024 Final Rule likely will suffer, as railroads rush to comply with the deadlines FRA now understands are unreasonable. For these reasons, providing notice and an opportunity to comment on the compliance date delay is impracticable and contrary to the public interest.

For the foregoing reasons, the good cause exception in 5 U.S.C. 553(d)(3) also applies to FRA’s decision to make this final rule effective upon publication, rather than not less than 30 days before its effective date.

IV. Regulatory Impact and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FRA has evaluated this final rule in accordance with E.O. 12866, Regulatory Planning and Review (58 FR 51735, Oct. 4, 1993), and DOT Order 2100.6B,

Policies and Procedures for Rulemaking (Mar. 10, 2025). The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866. This final rule extends the compliance dates for all railroads to comply with FRA’s EEBA requirements by one year, which will provide railroads with additional time to procure EEBAs as well as to adopt and to comply with the other requirements in the 2024 Final Rule in an efficient and effective manner. FRA has analyzed the potential costs and benefits of this final rule’s compliance date extension. The extension of time for compliance will grant some relief to the railroads and will not impose any additional burdens on regulated entities.

FRA estimates the 10-year costs of the 2024 final rule to be between \$24.4 million to \$84.2 million, discounted at 7 percent, after taking into account the extension provided in this final rule. By comparing those costs to the costs that were provided with the 2024 final rule, FRA calculates the extension in compliance date will result in an estimated 10-year cost savings of between \$2.7 million to \$7.7 million, discounted at 7 percent. Table 1 shows the revised total costs over the 10-year analysis period.

TABLE 1—TOTAL 10-YEAR COSTS
[2021 Dollars]

Category	10-Year cost (\$)	Present value 7% (\$)	Present value 3% (\$)	Annualized 7% (\$)	Annualized 3% (\$)
Option 1: Employee Assignment	\$89,202,440	\$72,578,026	\$81,302,151	\$10,333,478	\$9,531,092
Option 2: Locomotive Assignment	103,516,340	84,169,015	94,319,301	11,983,774	11,057,099
Option 3: Equipment Pooling	31,575,340	24,406,067	28,105,629	3,474,875	3,294,837

FRA estimates the 10-year benefits of the 2024 final rule to be \$36,926, discounted at 7 percent, after taking into account the extension provided by this

final rule. This is a reduction of \$6,184 compared to the benefits that were provided with the 2024 final rule, discounted at 7 percent. Table 2 shows

the total revised benefits over the 10-year analysis period.

TABLE 2—TOTAL 10-YEAR BENEFITS
[2021 Dollars]

10-Year benefits (\$)	Present value 7% (\$)	Present value 3% (\$)	Annualized 7% (\$)	Annualized 3% (\$)
\$56,640	\$36,926	\$46,846	\$5,257	\$5,492

Generally, extending the compliance dates for all railroads to comply with FRA’s EEBA requirements by one year will result in a net cost savings. However, other factors such as market

conditions, the possibility for manufacturers requiring deposits on large orders, and the possibility of railroads having already begun procuring EEBAs in anticipation of this

final rule, could influence the extent of the cost savings.

²¹ See Section I (Background), discussing the information gathered by FRA and the railroads

demonstrating that the 2024 Final Rule’s compliance dates are unachievable.

²² FRA–2009–0044–0029, FRA–2009–0044–0030, and FRA–2009–0044–0031.

B. E.O. 14192 (Unleashing Prosperity Through Deregulation)

E.O. 14192, Unleashing Prosperity Through Deregulation (90 FR 9065, Jan. 31, 2025), requires that for “each new [E.O. 14192 regulatory action] issued, at least ten prior regulations be identified for elimination.”²³ Implementation guidance for E.O. 14192 issued by OMB (Memorandum M–25–20, March 26, 2025) defines two different types of E.O. 14192 actions: an E.O. 14192 deregulatory action, and an E.O. 14192 regulatory action.²⁴

An E.O. 14192 deregulatory action is defined as “an action that has been finalized and has total costs less than zero.” This final rule is expected to have total costs less than zero, and therefore it would be considered an E.O. 14192 deregulatory action. The extension in compliance date is expected to result in an estimated 10-year cost savings of between \$2.7 million to \$7.7 million, discounted at 7 percent.

C. Regulatory Flexibility Act and E.O. 13272

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.* and E.O. 13272, Proper Consideration of Small Entities in Agency Rulemaking (67 FR 53461, Aug. 16, 2002), require an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice and comment rulemaking. FRA has determined that this rule is exempt from notice and comment rulemaking. Therefore, a regulatory flexibility analysis is not required for this rule.

D. Federalism Implications

This rule will not have a substantial effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with E.O. 13132, Federalism (64 FR 43255, Aug. 10, 1999), preparation of a Federalism Assessment is not warranted.

E. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from

engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This final rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the U.S.

F. Paperwork Reduction Act

There are no new information requirements contained in this final rule and, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, an information collection submission to the Office of Management and Budget (OMB) is not required. The recordkeeping and reporting requirements already contained in this rule were approved by OMB on March 22, 2024. The information collection requirements of this rule thereby became effective when they were approved by OMB. The OMB approval number is OMB No. 2130–0620, and OMB approval expires on March 31, 2027.

G. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 2 U.S.C. 1531, each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of UMRA (2 U.S.C. 1532) further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement” detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in such an expenditure, and thus preparation of such a statement is not required.

H. Environmental Assessment

FRA has analyzed this rule for the purposes of the National Environmental Policy Act of 1969 (NEPA). In accordance with 42 U.S.C. 4336 and DOT NEPA Order 5610.1D, FRA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4), “[p]lanning and administrative activities not involving or leading directly to construction, such as: [p]romulgation of rules, regulations, and directives.” This rulemaking is not anticipated to result in any environmental impacts, and there are no unusual or extraordinary circumstances present in connection with this rulemaking.

I. Energy Impact

E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” FRA has evaluated this rule in accordance with E.O. 13211 and determined that this rule is not a “significant energy action” within the meaning of E.O. 13211.

J. E.O. 13175 (Tribal Consultation)

FRA has evaluated this final rule in accordance with the principles and criteria contained in E.O. 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, Nov. 9, 2000). The final rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of E.O. 13175 do not apply, and a tribal summary impact statement is not required.

List of Subjects in 49 CFR Part 227

Hazardous materials transportation, Locomotive noise control, Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA amends part 227 of chapter II, subtitle B of title 49 of the Code of Federal Regulations as follows:

PART 227—OCCUPATIONAL SAFETY AND HEALTH IN THE LOCOMOTIVE CAB

■ 1. The authority citation for part 227 continues to read as follows:

²³ E.O. 14192, Unleashing Prosperity Through Deregulation (90 FR 9065, Feb. 6, 2025).

²⁴ OMB, Memorandum M–25–20, *Guidance Implementing Section 3 of Executive Order 14192, Titled “Unleashing Prosperity Through Deregulation”* (Mar. 26, 2025).

Authority: 49 U.S.C. 20103, 20103 note, 20166, 20701–20703, 21301, 21302, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

■ 2. Revise § 227.127 to read as follows:

§ 227.217 Compliance dates.

(a) Class I railroads subject to this subpart are required to comply with this

subpart beginning no later than 12 months from March 26, 2025.

(b) Class II railroads subject to this subpart are required to comply with this subpart beginning no later than 12 months from March 26, 2025.

(c) Class III railroads subject to this subpart and any other railroads subject

to this subpart are required to comply with this subpart beginning no later than 18 months from March 26, 2025.

Issued in Washington, DC.

Robert Andrew Feeley,

Acting Administrator.

[FR Doc. 2025–15022 Filed 8–6–25; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register

Vol. 90, No. 150

Thursday, August 7, 2025

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. FAA–2025–0950; Notice No. 33–25–01–SC]

Special Conditions: Pratt and Whitney Canada, PW220A; Flat 30-Second and 2-Minute OEI Rating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Pratt and Whitney Canada (PWC) aircraft engine model PW220A. This engine will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for engines. This design feature is an additional one engine inoperative (OEI) power rating that combines the 30-second and 2-minute OEI power ratings into a single rating. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send comments on or before September 22, 2025.

ADDRESSES: Send comments identified by Docket No. FAA–2025–0950 using any of the following methods:

- *Federal regulations 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 (DOT), 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.

Privacy: Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in Title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will post all comments received without change to www.regulations.gov, including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

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 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.

FOR FURTHER INFORMATION CONTACT: Philip Haberlen, Engine and Propulsion

Section, AIR–625, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 1200 District Avenue, Burlington, MA 01803; telephone 781–238–7770; email Philip.Haberlen@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the proposed special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments, and will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these special conditions based on the comments received.

Background

On November 16, 2021, Pratt and Whitney Canada applied for a type certificate for the new engine model PW220A. The PW220A is a turboshaft engine designed for transport category twin-engine helicopters.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Pratt and Whitney Canada must show that the model PW220A meets the applicable provisions of Part 33, as amended by Amendments 33–1 through 33–34.

If the Administrator finds that the applicable airworthiness regulations (e.g., 14 CFR part 33) do not contain adequate or appropriate safety standards for the model PW220A because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of

the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The PW220A will incorporate the following novel or unusual design feature:

A “Flat 30-second and 2-minute” one engine inoperative (OEI) rating.

Discussion

These special conditions are necessary because current Part 33 regulations do not contain airworthiness standards for extending the 2-minute OEI rating for 30 seconds. These special conditions extend the time-dependent requirements in §§ 33.87(f) and 33.88(b) applicable to the 30-second OEI and 2-minute OEI to the 2.5-minute time duration of the “Flat 30-second and 2-minute OEI” power. The 2.5-minute time duration for the rating may affect the engine’s structural and operational characteristics that are time-dependent, such as the values for transients, the time duration for stabilization to steady state, and part growth due to deformation.

To address these aspects, the FAA proposes these special conditions based on §§ 33.7, 33.28(k), 33.29(c), 33.85(d), 33.87(a)(7), 33.87(f), 33.88(b), and A33.4(b).

In addition to § 33.7, an engine rating and operating limitation must be established for the flat 30-second and 2-minute OEI power rating.

The 2.5-minute time duration for the rating necessitates extending the time duration requirement of § 33.28(k) applicable to the 30-second OEI rating from 30 seconds to 2.5 minutes. This requirement is for automatic availability and control of the engine for the entire duration of the rating’s usage.

The rating’s 2.5-minute time duration also necessitates applying the requirements of § 33.29(c) to the flat 30-second and 2-minute OEI power rating. These special conditions will be used to ensure that the instrumentation requirements normally reserved for 30-second OEI and 2-minute OEI ratings are applied to the flat 30-second and 2-minute OEI power rating over its whole duration.

Paragraph (c)(3) of these special conditions states that the engine must provide means or provision of means to alert maintenance personnel of the use of the flat 30-second and 2-minute OEI power rating; the retrieval of the recorded data must be available after the aircraft lands, so any required maintenance actions can be completed before the next flight.

A special condition regarding calibration tests for the flat 30-second

and 2-minute OEI power rating to mirror the requirements of § 33.85(d) is needed. This will permit the use of measurements taken during the endurance test, required by the special condition based on § 33.87(f), to show compliance with § 33.85(d).

The 2.5-minute time duration for the rating affects the endurance test requirements of § 33.87. For the flat 30-second and 2-minute OEI power rating, a 2.5-minute time duration is needed to establish a level of safety equivalent to that established by § 33.87(f). For the 30-second OEI and 2-minute OEI, the test schedule of § 33.87(f) is divided between the two ratings. The FAA proposes special conditions based on § 33.87(f) to ensure the test will be run for a duration of 2.5 minutes with no interruption.

A special condition to extend the time duration requirements referenced in Section 33.88(b) from 4 to 5 minutes at the overtemperature condition is also needed.

In addition, the FAA proposes special conditions to ensure that the requirements in § A33.4(b) apply to this rating.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these proposed special conditions are applicable to PWC model PW220A turboshaft engine. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would apply to the other model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model engine. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 33

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, and 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of

the type certification basis for engine model PW220A.

In addition to the general definitions in 14 CFR 1.1, the following definition applies to these special conditions: “Rated Flat 30-second and 2-minute One Engine Inoperative (OEI) Power,” with respect to rotorcraft turbine engines, means (1) a single rating for which the shaft horsepower and associated operating limitations of the 30-second OEI and 2-minute OEI ratings are equal, and (2) the shaft horsepower is that developed under static conditions for a specified altitude and temperature and within the operating limitations established under Part 33. The rating is for continuation of flight operation after the failure or shutdown of one engine in multiengine rotorcraft, for up to three periods of use no longer than 2.5 minutes each in any one flight and followed by mandatory inspection and prescribed maintenance action.

The airworthiness standards in Part 33 Amendment 34 for the 30-second OEI and 2-minute OEI ratings are applicable to the flat 30-second and 2-minute OEI power rating.

In addition to the airworthiness standards in Part 33, the following special conditions apply:

(a) Section 33.7(c)(1) Engine ratings and operating limitations. In addition to the requirements in § 33.7(c)(1), the flat 30-second and 2-minute OEI power rating and operating limitations must be established for power, torque, rotational speed, gas temperature, and time duration.

(b) Section 33.28 Engine controls systems. In addition to the requirements in § 33.28, rotorcraft engines having the flat 30-second and 2-minute OEI power rating must incorporate a means, or a provision for a means, for automatic availability and automatic control of the flat 30-second and 2-minute OEI power within the declared operating limitations.

(c) Section 33.29 Instrument Connection. In lieu of the requirements of 33.29(c), the PW220A must incorporate a means or a provision for a means to:

(1) Alert the pilot when the engine is at the flat 30-second and 2-minute OEI power level, when the event begins, and when the time interval expires;

(2) Automatically record each usage and duration of power at the flat 30-second and 2-minute OEI power rating;

(3) Following each flight when the flat 30-second and 2-minute OEI power rating is used, alert maintenance personnel in a positive manner that the engine has been operated at the flat 30-second and 2-minute OEI power level,

and permit retrieval of the recorded data; and

(4) Enable routine verification of the proper operation of the above means.

(d) Section 33.87 Endurance test. The requirements of § 33.87 are applicable to the PW220A, except that for the flat 30-second and 2-minute OEI power rating, the following requirements apply:

(1) The test of § 33.87(a)(7), for the purposes of temperature stabilization, must be run with a test period time of 2.5 minutes.

(2) The tests in § 33.87(f)(2) and (3) must be run continuously for the duration of 2.5 minutes, and

(3) The tests in § 33.87(f)(6) and (7) must be run continuously for the duration of 2.5 minutes.

(e) Section 33.85 Calibration tests. Test requirements of § 33.85(d) are applicable to the PW220A except that any measurements taken during the applicable endurance test prescribed in § 33.87(f)(1) through (8) as modified per this special condition may be used in showing compliance with the requirements of § 33.85(d) for the flat 30-second and 2-minute OEI power rating.

(f) Section 33.88 Engine overtemperature test. The requirements of § 33.88(b) apply, except that the test time is 5 minutes instead of 4 minutes. During the 5-minute time interval, the engine must be run at the maximum power-on rpm with a gas temperature at least 35 °F (19 °C) higher than the maximum operating limit at the flat 30-second and 2-minute OEI power rating.

(g) Section A33.4 Airworthiness Limitations Section. Additional airworthiness requirements of § A33.4(b) are applicable to the PW220A as follows:

(1) The Airworthiness Limitations Section must also prescribe the mandatory post-flight inspections and maintenance actions associated with any use of the flat 30-second and 2-minute OEI power rating.

(2) The applicant must validate the adequacy of the inspections and maintenance actions required with any use of the flat 30-second and 2-minute OEI power rating.

(3) The applicant must establish an in-service engine evaluation program to ensure the continued adequacy of the instructions for mandatory post-flight inspections and maintenance actions prescribed under paragraph (b)(1) of § A33.4 and of the data for § 33.5(b)(4) pertaining to power availability. The program must include service engine tests or equivalent service engine test experience on engines of similar design and evaluations of service usage of the

flat 30-second and 2-minute OEI power rating.

Issued in Des Moines, Washington, on August 5, 2025.

Michael Thompson,

Acting Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2025–15009 Filed 8–6–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2025–1730; Project Identifier MCAI–2023–01122–E]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Rolls-Royce Deutschland Ltd & Co KG (RRD) Model Trent 7000–72 and Trent 7000–72C engines. This proposed AD was prompted by the manufacturer's determination that certain intervals for visual inspection of the intermediate pressure 8 (IP8) and high pressure 3 (HP3) air tubes need to be reduced for certain engines, and instructions for visual inspection of the IP8 and HP3 air tubes were not available for certain other engines. This proposed AD would require initial and repetitive visual inspections of the IP8 and HP3 air tubes for cracking, damage, or air leakage wear, and replacement if necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by September 22, 2025.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2025–1730; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADS@easa.europa.eu; website: easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT:

Barbara Caufield, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7146; email: barbara.caufield@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under **ADDRESSES**. Include “Docket No. FAA–2025–1730; Project Identifier MCAI–2023–01122–E” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner.

Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Barbara Caufield, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0186, dated October 27, 2023 (EASA AD 2023–0186) (also referred to as the MCAI), to correct an unsafe condition on RRD Model Trent 7000–72 and Trent 7000–72C engines. The MCAI states that the manufacturer's normal engine maintenance instructions for visual inspection to determine the integrity of the IP8 and HP3 air tubes at intervals consistent with exposure assumptions used in critical part life assessments may result in the fracture of an affected part to remain undetected for a longer period than assumed. Thus, more frequent visual inspections of the IP8 and HP3 air tubes are necessary. Also, instructions for visual inspection of the IP8 and HP3 air tubes were not available

for certain other engines. The manufacturer issued service material that provides instructions for visual inspections of the IP8 and HP3 air tubes for all affected engines. The FAA is proposing this AD to prevent failure of the IP8 and HP3 air tubes.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2025–1730.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0186, which specifies procedures for performing initial and repetitive visual inspections of the IP8 and HP3 air tubes for cracking, damage, or air leakage wear, and replacement if necessary. This material is reasonably available because the interested parties have access to it through their normal course of business or by the mean identified in the ADDRESSES section.

FAA's Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the MCAI described previously, except for any differences identified as

exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0186 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0186 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0186 does not mean that operators need comply only with that section. For example, where the AD requirement refers to "all required actions and compliance times," compliance with this AD requirement is not limited to the section titled "Required Action(s) and Compliance Time(s)" in EASA AD 2023–0186. Material required by EASA AD 2023–0186 for compliance will be available at *regulations.gov* under Docket No. FAA–2025–1730 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 100 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the IP8 and HP3 air tubes	3 work-hours × \$85 per hour = \$255	\$0	\$255	\$25,500

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the proposed inspection. The agency has no way of determining the

number of engines that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace air tube	3 work-hours × \$85 per hour = \$255	\$1,000	\$1,255

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Rolls-Royce Deutschland Ltd & Co KG:
Docket No. FAA-2025-1730; Project Identifier MCAI-2023-01122-E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 22, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG Model Trent 7000-72 and Trent 7000-72C engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7500, Engine Bleed Air System.

(e) Unsafe Condition

This AD was prompted by the manufacturer's determination that certain intervals for visual inspection of the intermediate pressure 8 (IP8) and high pressure 3 (HP3) air tubes need to be reduced for certain engines, and instructions for visual inspection of the IP8 and HP3 air tubes were not available for certain other engines. The FAA is issuing this AD to prevent failure of the IP8 and HP3 air tubes. The unsafe condition, if not addressed, could result in reduced efficiency of internal cooling and sealing flows, failure of the IP8 air tubes and HP3 air tubes, damage to the engine, and reduced control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD, perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2023-0186, dated October 27, 2023 (EASA AD 2023-0186).

(h) Exceptions to EASA AD 2023-0186

(1) Where EASA AD 2023-0186 requires compliance from its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (6) of EASA AD 2023-0186 states "any damage is detected", this AD requires replacing that text with "any cracking or sign of air leakage is detected".

(3) This AD does not adopt the "Remarks" paragraph of EASA AD 2023-0186.

(i) No Reporting Requirement

Although the service material referenced in EASA AD 2023-0186 specifies to submit

certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR-520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of AIR-520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Additional Information

For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238-7146; email: barbara.caufield@faa.gov.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2023-0186, dated October 27, 2023.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email:

ADs@easa.europa.eu; website: easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on August 4, 2025.

Peter A. White,
Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2025-14965 Filed 8-6-25; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2025–1365; Project Identifier AD–2024–00684–E]

RIN 2120–AA64

Airworthiness Directives; Lycoming Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2024–21–02, which applies to Lycoming Engines (Lycoming) model engines that have certain connecting rod assemblies installed. AD 2024–21–02 requires repetitive oil inspections for bronze metal particulates and, if found, additional inspections of the connecting rod bushings for damage, proper fit, movement, and wear, and replacement if necessary. As terminating action to the connecting rod bushing inspections, AD 2024–21–02 also requires replacement of the connecting rod bushings with parts eligible for installation. Since the FAA issued AD 2024–21–02, the ship date range for potentially affected parts that may be subject to connecting rod failure has been expanded, and additional parts that are eligible for installation have been identified. This proposed AD would require the actions in AD 2024–21–02 and would require expanding the applicability. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 22, 2025.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax:* (202) 493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2025–1365; or in person at

Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Lycoming material identified in this proposed AD, contact Lycoming Engines, 652 Oliver Street, Williamsport, PA 17701; phone: (800) 258–3279; website: [lycoming.com/contact/knowledge-base/publications](https://www.lycoming.com/contact/knowledge-base/publications).

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT:

David Bergeron, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (516) 228–7321; email: david.j.bergeron@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2025–1365; Project Identifier AD–2024–00684–E” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may revise this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as

private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to David Bergeron, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2024–21–02, Amendment 39–22869 (89 FR 86721, October 31, 2024), (AD 2024–21–02), for Lycoming model engines that have certain connecting rod assemblies installed. AD 2024–21–02 was prompted by several reports of connecting rod failures, which resulted in uncontained engine failure and in-flight shutdowns. AD 2024–21–02 requires repetitive oil inspections for bronze metal particulates and, if found, additional inspections of the connecting rod bushings for damage (e.g., deterioration, missing metal), proper fit, movement, and wear, and replacement if necessary. As terminating action to the connecting rod bushing inspections, AD 2024–21–02 also required replacement of the connecting rod bushings with parts eligible for installation. The agency issued AD 2024–21–02 to prevent connecting rod failure.

Actions Since AD 2024–21–02 Was Issued

Since the FAA issued AD 2024–21–02, the FAA was notified that there are Parts Manufacturer Approval (PMA) connecting rod bushings and connecting rod assemblies eligible for installation that were not included in AD 2024–21–02. Also, the manufacturer notified the FAA that the shipping date range for affected parts should be extended to include parts that were shipped between January 30, 2009, and September 9, 2021. The manufacturer also requested that credit be given to operators for the actions required in AD 2024–21–02 provided that the operators already accomplished AD 2017–16–11 and re-inspected any replacement connecting rod bushings received from Lycoming in accordance with the required actions of AD 2017–16–11.

FAA’s Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Lycoming Mandatory Service Bulletin No. 630B, dated June 11, 2025, which specifies procedures for inspection of the connecting rod bushings for damage, proper fit, movement, and wear.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Proposed AD Requirements in This NPRM

This proposed AD would require all of the actions of AD 2024–21–02. This proposed AD would require repetitive oil inspections for bronze metal particulates and, if found, additional inspections of the connecting rod bushings for damage (e.g., deterioration, missing metal), proper fit, movement, and wear, and replacement if necessary.

As terminating action to the connecting rod bushing inspections, this proposed AD would require replacement of the connecting rod bushings with parts eligible for installation. This proposed AD would also expand the applicability by extending the shipping date range for affected parts.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 45,152 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect oil	2 work-hours × \$85 per hour = \$170	\$65	\$235	\$10,610,720
Inspect connecting rod bushings	1 work-hour × \$85 per hour = \$85	0	85	3,837,920
Replace connecting rod bushings (per bushing).	4.5 work-hours × \$85 per hour = \$382	380	762	34,405,824

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
 - a. Removing Airworthiness Directive 2024–21–02, Amendment 39–22869 (89 FR 86721, October 31, 2024); and
 - b. Adding the following new airworthiness directive:

Lycoming Engines: Docket No. FAA–2025–1365; Project Identifier AD–2024–00684–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 22, 2025.

(b) Affected ADs

This AD replaces AD 2024–21–02, Amendment 39–22869 (89 FR 86721, October 31, 2024); (AD 2024–21–02).

(c) Applicability

This AD applies to Lycoming Engines (Lycoming) model engines that have an affected part and part number (P/N) installed and are assembled within the ship date range, as specified in Table 1 to paragraph (c) of this AD.

TABLE 1 TO PARAGRAPH (c)—AFFECTED P/NS

P/N	Affected part	Ship date range
LW–13923	Connecting Rod Bushing	01/30/2009–09/09/2021
LW–11750	Connecting Rod Assembly	01/30/2009–09/09/2021
78030	Connecting Rod Assembly	01/30/2009–09/09/2021
LW–19332	Connecting Rod Assembly	01/30/2009–09/09/2021

TABLE 1 TO PARAGRAPH (c)—AFFECTED P/NS—Continued

P/N	Affected part	Ship date range
LW-13865	Connecting Rod Assembly	01/30/2009–09/09/2021
77450	Connecting Rod Assembly	01/30/2009–09/09/2021
LW-13422	Connecting Rod Assembly	01/30/2009–09/09/2021
LW-13937	Connecting Rod Assembly	01/30/2009–09/09/2021
LW-15288	Connecting Rod Assembly	01/30/2009–09/09/2021

Note 1 to paragraph (c): The affected parts are known to be installed on Lycoming Model AEIO-320 series, AEIO-360 series, AEIO-390 series, AEIO-540 series, AEIO-580-B1A, AIO-320 series, AIO-360 series, HIO-360 series, HIO-390-A1A, HIO-540-A1A, HO-360 series, IO-320 series, IO-360 series, IO-390 series, IO-540 series, IVO-360-A1A, IVO-540-A1A, LHIO-360 series, LIO-320 series, LIO-360 series, LO-360 series, LTIO-540 series, LTO-360 series, O-233-A1, O-235 series, O-320 series, O-340 series, O-360 series, O-435 series, O-540 series, SO-580 series, TEO-540 series, TIGO-541 series, TIO-360 series, TIO-540 series, TIO-541 series, TIVO-540-A2A, TO-360 series, TVO-435 series, TVO-540-A1A, VO-360 series, VO-435 series, VO-540 series, and VSO-580-A1A engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 8500, Engine (Reciprocating).

(e) Unsafe Condition

This AD was prompted by several reports of connecting rod failures resulting in uncontained engine failure and in-flight shutdowns (IFSDs). The FAA is issuing this AD to prevent connecting rod failure. The unsafe condition, if not addressed, could result in engine failure, an IFSD, and loss of control of the aircraft.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

(1) At the next oil change or within 4 months after the effective date of this AD, whichever occurs first, and thereafter at every oil change until the bushing replacement required by either paragraph (g)(3) or (4) of this AD is done, perform a visual inspection of the engine oil filter, oil pressure screen, and oil suction screen (depending on the engine configuration) for bronze metal particulates. The actions required by this paragraph may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

Note 2 to paragraph (g)(1): Guidance for engine oil filter, oil pressure screen, and oil suction screen inspection instructions and identification of metallic solids may be found in Lycoming Mandatory Service Bulletin No. (MSB) 480F, dated May 25, 2017 (Lycoming MSB 480F).

(2) If, during any inspection required by paragraph (g)(1) of this AD, any bronze metal particulates are found and the source is identified as the connecting rod bushings, before further flight, inspect all affected connecting rod bushings for damage (e.g. deterioration, missing metal), proper fit, movement, and wear in accordance with “Connecting Rod Bushing Inspection,” of Lycoming MSB 630B, dated June 11, 2025.

Note 3 to paragraph (g)(2): Guidance for identifying the source of metallic contamination may be found in Table 3 of Lycoming MSB 480F.

(3) If the connecting rod bushings fail any inspection required by paragraph (g)(2) of this AD, before further flight, replace the connecting rod bushings with parts eligible for installation. This terminates the repetitive inspection required by paragraph (g)(1) of this AD.

(4) At the next engine overhaul, replace the connecting rod bushings with parts eligible for installation. This terminates the repetitive inspection required by paragraph (g)(1) of this AD.

(h) Definition

For the purpose of this AD, a “part eligible for installation” is any connecting rod bushing having P/N 01K28983 or AEL13923, and any connecting rod assembly having P/N AEL11750, AEL78030, SL78030, SL77450, SL13937, SL19332, SL11750, and SL13422.

(i) Credit for Previous Actions

(1) You may take credit for the actions required by paragraph (g)(1) of this AD if you performed those actions before the effective date of this AD using Lycoming MSB 480F.

(2) You may take credit for the actions required by paragraph (g)(2) of this AD if you performed those actions before the effective date of this AD using Lycoming MSB 630A, dated June 13, 2017.

(3) You may take credit for the actions required by paragraph (g) of this AD if you accomplished AD 2017-16-11, Amendment 39-18988 (82 FR 37296, August 10, 2017) before the effective date of this AD. Credit is not given if you received replacement bushings from Lycoming as a result of accomplishing AD 2017-16-11 and you did not perform the connecting rod bushing press-out verification procedure on the replacement bushings in accordance with Lycoming Engines Mandatory Service Bulletin No. 632B, dated August 4, 2017.

(4) You may take credit for the actions required by paragraph (g) of this AD if you accomplished AD 2024-21-02, Amendment 39-22869 (89 FR 86721, October 31, 2024) before the effective date of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, East Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the East Certification Branch, send it to the attention of the person identified in paragraph (k)(1) of this AD and email to: AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Additional Information

(1) For more information about this AD, contact David Bergeron, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (516) 228-7321; email: david.j.bergeron@faa.gov.

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (l)(3) of this AD.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Lycoming Mandatory Service Bulletin No. 630B, dated June 11, 2025.

(ii) [Reserved]

(3) For Lycoming material identified in this AD, contact Lycoming Engines, 652 Oliver Street, Williamsport, PA 17701; phone: (800) 258-3279; website: lycoming.com/contact/knowledge-base/publications.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on July 29, 2025.

Steven W. Thompson,

Acting Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2025–15039 Filed 8–6–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2014–N–0053]

RIN 0910–ZC21

Requirements for Additional Traceability Records for Certain Foods: Compliance Date Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration is proposing to extend the compliance date for the final rule, “Requirements for Additional Traceability Records for Certain Foods,” due to concerns about the amount of time affected entities will need to implement the requirements of the rule. If finalized, this rule would extend the compliance date by 30 months from January 20, 2026, to July 20, 2028.

DATES: Either electronic or written comments on the proposed rule must be submitted by September 8, 2025.

ADDRESSES: You may submit comments on the extension of the compliance date as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 8, 2025. 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–2014–N–0053 for “Requirements for Additional Traceability Records for Certain Foods: Compliance Date Extension.” 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, the plain language summary of the proposed rule of not more than 100 words as required by the “Providing Accountability Through Transparency Act,” 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:

Katherine Vierk, Office of Surveillance Strategy and Risk Prioritization, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2122, Katherine.Vierk@fda.hhs.gov, or Alissa Van Wie, Office of Policy and International Engagement, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–654–7524, Alissa.VanWie@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

A. The Food Traceability Rule

The Food and Drug Administration (FDA, the Agency, or we) published the final rule, “Requirements for Additional Traceability Records for Certain Foods” (87 FR 70910) (Food Traceability Rule), on November 21, 2022. The final rule establishes additional recordkeeping requirements for persons who

manufacture, process, pack, or hold foods the Agency has designated for inclusion on the Food Traceability List (FTL) based on risk. The final rule requires these entities to maintain records containing information on critical tracking events in the supply chain for these designated foods (FTL foods), such as initial packing, shipping, receiving, and transforming these foods. The requirements established in the final rule will help the Agency rapidly and effectively identify recipients of foods to prevent or mitigate foodborne illness outbreaks and address credible threats of serious adverse health consequences or death. The requirements will reduce the harm to public health caused by foodborne illness outbreaks and limit adverse impacts on industry sectors affected by these outbreaks by improving the ability to quickly and efficiently trace the movement through the supply chain of FTL foods identified as causing illness, identify and remove contaminated foods from the marketplace, and develop mitigation strategies to prevent future contamination. The final rule had an effective date of January 20, 2023 (60 days after publication of the final rule), and a compliance date of January 20, 2026 (3 years after the effective date).

The Food Traceability Rule establishes first of its kind national standards for supply chain traceability from farm to restaurant/retail, for certain foods based on risk. The rule requires covered entities to maintain and share specific data elements for FTL foods throughout supply chains (and with FDA upon request). Entities along a supply chain must therefore coordinate to share relevant data elements with subsequent entities in the chain, in a compatible and timely manner.

Since issuing the Food Traceability Rule in 2022, FDA has conducted extensive stakeholder outreach and education on the rule, in addition to providing technical assistance, tools, and other resources to assist industry with implementation. As the regulated industry has worked to comply with the rule's requirements, entities from across the supply chain have voiced strong concerns with the initial 3-year implementation timeframe, stating that they need more time to come into compliance. Specifically, FDA has heard concerns from industry that some of the required data elements are not routinely maintained or shared throughout supply chains, nor are many data systems currently interoperable throughout supply chains. Industry has also expressed concerns about the volume of data certain entities in the supply chain (particularly distributors

and retailers) would be required to manage and challenges with implementing the requirements, including implementing technology to manage and share the data required. Technology solutions to assist industry in managing the data are still being developed, piloted, and evaluated for interoperability. In addition to the technology challenges, distributors are struggling to obtain lot codes from their suppliers and experiencing challenges transmitting them to retailers in a cost-effective manner.

At FDA's request, the Reagan-Udall Foundation for the Food and Drug Administration (the Foundation) held a series of roundtables over the summer of 2024 to hear from industry about challenges with implementation and to help facilitate cross-sector dialogue on potential solutions. The Foundation issued a summary of feedback received via the roundtables (Ref. 1). On October 7, 2024, the Foundation held a public meeting to allow all interested parties to comment on the feedback gleaned via the roundtables (Ref. 2). The Foundation also accepted public feedback in writing (Ref. 3).

The feedback received during the roundtables, the public meeting, and the comments submitted to the Foundation was consistent with what FDA has been hearing in our other interactions with stakeholders. While members of industry have expressed a range of views on the challenges of implementation, very few of them have indicated that they expect to be able to comply with the Food Traceability Rule by the January 2026 deadline. Even the entities that have been able to devote significant efforts to compliance have expressed concern about the timeline, in part because they rely on receiving accurate data from their supply chain partners, who might not be similarly situated. Moreover, although the rule does not require electronic recordkeeping or any specific technologies for records maintenance or supply chain communications, many industry members using or intending to use electronic data systems have expressed that they need additional time to develop interoperable systems for maintaining and sharing traceability data. However, some consumer group representatives have expressed concern with postponing implementation of the rule as that would delay the benefits of enhanced foodborne illness outbreak response.

After carefully considering the public comments, feedback, and other information gathered since issuing the rule, including from the Foundation-led efforts, meetings with stakeholders,

onsite visits to covered entities, and other outreach, we have tentatively concluded that additional time is needed for covered entities to prepare, including working with their supply chain partners, to help ensure successful implementation. As stated in the preamble to the final rule (87 FR 70910 at 71067), because the traceability requirements operate via a chain of information being maintained and passed forward through covered entities in the supply chain, if entities in the supply chain fail to provide required information to their supply chain partners, the chain would be broken. This means that even if most of the entities in that particular supply chain were prepared to comply with the rule, accurate traceability data would still not reach the retail location, which is where FDA generally must begin its outbreak investigations. Therefore, the possibility that a significant number of supply chain entities may have great difficulty coming into compliance by the current compliance date (January 20, 2026) could substantially diminish the rule's effectiveness.

We have tentatively concluded that a partial or phased approach to compliance is not feasible. For the reasons described above, any break in the chain of information would affect the availability of traceability data if FDA needed to investigate an outbreak. Moreover, the complex, interconnected nature of supply chains (with many entities both sending and receiving required traceability information) makes extending the compliance date for all covered entities more operationally feasible than a phased approach that would require compliance by different types of entities according to different schedules. Implementing a phased approach would likely require FDA to describe and classify different steps in the supply chain, which would be difficult in light of the varied and complicated supply chains that exist for different types of products. More generally, the focus of both FDA and industry would be likely to shift to the logistics of describing and implementing a partial or phased approach to compliance. We think the public health benefits will be greater if the compliance date is delayed by 30 months for all of industry, allowing time to focus on successful implementation of the entire rule throughout the full supply chain. During the additional time for achieving compliance that the proposed rule would allow, FDA would continue to support industry by providing education and other forms of

engagement to help facilitate the implementation process.

This proposed rule, if finalized as proposed, is expected to be an Executive Order 14192 deregulatory action.

B. Proposed Compliance Date

The current compliance date for the Food Traceability Rule is January 20, 2026. FDA is proposing to extend the compliance date deadline by 30 months to July 20, 2028. This proposed rule is limited in scope to the Food Traceability Rule compliance date; therefore, comments should address the proposed compliance date extension. This compliance date extension does not amend, nor do we intend to amend, the requirements of the final rule, which will improve food safety and protect public health.

II. Legal Authority

The Food Traceability Rule was promulgated under section 204(d)(1) of the FDA Food Safety Modernization Act (FSMA) (21 U.S.C. 2223(d)(1)), which directed FDA to establish recordkeeping requirements, in addition to the requirements under section 414 of the FD&C Act (21 U.S.C. 350c) and FDA regulations in 21 CFR part 1, subpart J (the subpart J regulation), for facilities that manufacture, process, pack, or hold foods that FDA designates under section 204(d)(2) of FSMA as high-risk foods. The proposed compliance date discussed in this document is consistent with our authority under section 204(d) of FSMA. We discuss our legal authority in greater detail in the Final Rule on the Requirements for Additional Traceability Records for Certain Foods (87 FR 70910 at 70915).

III. Description of the Proposed Rule

This proposed rule proposes to extend the compliance date for the Food Traceability Rule to address concerns about the amount of time affected entities will need to implement the requirements. If finalized, this rule would extend the compliance date by 30 months from January 20, 2026, to July 20, 2028. FDA anticipates that this additional time is sufficient for affected entities to implement the requirements of the Food Traceability Rule—including coordinating with their supply chain partners as needed—so

that the anticipated public health benefits of the rule can be fully realized.

IV. Preliminary Economic Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 14192, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866 and 13563 direct us to assess all benefits and costs of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. Rules are economically significant under Executive Order 12866 if they have an annual effect on the economy of \$100 million or more; or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The Office of Information and Regulatory Affairs (OIRA) has determined that this proposed rule is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866.

Executive Order 14192 requires that any new incremental costs associated with certain significant regulatory actions “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.” This proposed rule, if finalized as proposed, is expected to be an Executive Order 14192 deregulatory action.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule will reduce the burden on covered food entities by extending the compliance date of the final rule titled “Requirements for Additional Traceability Records for Certain Foods” (the Food Traceability Rule), we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (Section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated

impacts, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year.” The current threshold after adjustment for inflation is \$187 million, using the most current (2024) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

The benefits of this proposed rule comprise the foregone benefits associated with extending the compliance date of the Food Traceability Rule by 2.5 years. We estimate that the present value of the benefits of the proposed rule over 20 years ranges from –\$3,866 million to –\$102 million, with a primary estimate of –\$1,348 million, using a 3 percent discount rate and from –\$3,408 million to –\$90 million, with a primary estimate of –\$1,188 million, using a 7 percent discount rate. The annualized benefits of the proposed rule range from –\$260 million per year to –\$7 million per year, with a primary estimate of –\$91 million per year, using a 3 percent discount rate and from –\$322 million per year to –\$8 million per year, with a primary estimate of –\$112 million per year, using a 7 percent discount rate.

The costs of this proposed rule comprise the cost savings associated with extending the compliance date of the Food Traceability Rule by 2.5 years. The present value of the costs of the proposed rule over 20 years ranges from –\$3,381 million to –\$46 million, with a primary estimate of –\$797 million, using a 3 percent discount rate and from –\$3,258 million to –\$56 million, with a primary estimate of –\$775 million, using a 7 percent discount rate. Annualized, the costs of the proposed rule range from –\$227 million per year to –\$3 million per year, with a primary estimate of –\$54 million per year, using a 3 percent discount rate and from –\$308 million per year to –\$5 million per year, with a primary estimate of –\$73 million per year, using a 7 percent discount rate.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE PROPOSED RULE
[Millions of 2024 dollars]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered	
Benefits:							
Annualized Monetized \$millions/year	– \$112 – 91	– \$322 – 260	– \$8 – 7	2024 2024	7 3	2024–2043 2024–2043	Foregone benefits associated with extending the compliance date of the Food Traceability Rule by 2.5 years.
Annualized Quantified .....	.....	.....	.....	.....	7 3	.....	
Qualitative							
Costs:							
Annualized Monetized \$millions/year	– 73 – 54	– 308 – 227	– 5 – 3	2024 2024	7 3	2024–2043 2024–2043	The costs of this proposed rule comprise the cost savings associated with extending the compliance date of the Food Traceability Rule by 2.5 years. A portion of foreign cost savings could be passed on to domestic consumers. We estimate that between 0% and 100% of \$5 million in annualized costs savings (7%, 20 years) to foreign facilities could be passed on to domestic consumers. This estimate is not included in total cost savings reported in this table.
Annualized Quantified .....	.....	.....	.....	.....	7 3	.....	
Qualitative	Farming-, manufacturing- or cooking-related actions form a necessary link between direct compliance activities and changing risks of foodborne illness; thus, negative benefits estimates imply cost savings in this unquantified category.						
Transfers:							
Federal Annualized Monetized \$millions/year.	.....	.....	.....	.....	7 3	.....	
From/To	From:			To:			
Other Annualized Monetized \$millions/ year.	.....	.....	.....	.....	7 3	.....	
From/To	From:			To:			
Effects:							
State, Local or Tribal Government: None.							
Small Business: We estimate that small, covered food entities will experience a collective <i>cost savings</i> of between \$16 million and \$22 million annually.							
Wages: None.							
Growth: None.							

In line with Executive Order 14192, in Table 2 we estimate present and annualized values of costs, cost savings, and net costs over a perpetual time horizon. This proposed rule, if finalized

as proposed, is expected to be an Executive Order 14192 deregulatory action. We estimate that this proposed rule would generate \$54 million in annualized net cost savings at a 7

percent discount rate, discounted relative to year 2024 over a perpetual time horizon.

TABLE 2—EXECUTIVE ORDER 14192 SUMMARY TABLE

[Millions of 2024 dollars, discounted over a perpetual time horizon relative to year 2024 at a 7 percent discount rate]

	Primary estimate	Low estimate	High estimate
Present Value of Costs	\$0	\$0	\$0
Present Value of Cost Savings	771	3,239	56
Present Value of Net Costs	–771	–3,239	–56
Annualized Costs	0	0	0
Annualized Cost Savings	54	227	4
Annualized Net Costs	–54	–227	–4

We have developed a Preliminary Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full preliminary analysis of

economic impacts is available in the docket for this proposed rule (Ref. 4).

V. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively

have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

This proposed rule contains no new or revised collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that this proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

VIII. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The Agency solicits comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

IX. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <https://www.regulations.gov>. Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

1. Reagan-Udall Foundation for the FDA, "Industry Roundtable Series on the FSMA Final Rule of Requirements for Additional Traceability Records for Certain Foods Top-Line Learnings Summary". September 2024. Available

at: https://reaganudall.org/sites/default/files/2024-09/Food%20Traceability%20Top-Line%20Summary%20090424_0.pdf.

2. Reagan-Udall Foundation for the FDA, "Virtual Public Meeting on FDA's Final Rule on Requirements for Additional Traceability Records for Certain Foods". October 7, 2024. Available at: <https://reaganudall.org/news-and-events/events/virtual-public-meeting-fdas-final-rule-requirements-additional-traceability>.
3. Reagan-Udall Foundation for the FDA, "FDA's Final Rule on Requirements for Additional Traceability Records for Certain Foods (Written Comments)". Available at: <https://reaganudall.org/sites/default/files/2024-11/FDA%27s%20Final%20Rule%20on%20Requirements%20for%20Additional%20Traceability%20Records%20for%20Certain%20Foods%20%28Written%20Comments%29.pdf>.
4. FDA, "Preliminary Regulatory Impact Analysis, Preliminary Regulatory Flexibility Analysis, and Unfunded Mandates Reform Act Analysis for Requirements for Additional Traceability Records for Certain Foods: Compliance Date Extension," 2025. Available at: <https://www.fda.gov/about-fda/economics-staff/regulatory-impact-analyses-ria>.

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

[FR Doc. 2025–14967 Filed 8–6–25; 8:45 am]

BILLING CODE 4164-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2024–0468; FRL–12884–01–R8]

Air Plan Approval; Colorado; Inspection and Maintenance Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Colorado through the Colorado Department of Public Health and Environment (CDPHE) on May 16, 2022. The revision includes changes to the Colorado Air Quality Control Commission's Regulation Number 11, "Motor Vehicle Emissions Inspection Program." The submitted changes constitute a revision to Colorado's vehicle inspection and maintenance (I/M) SIP. Colorado's I/M SIP revision includes several minor clerical and

typographical revisions. The I/M SIP revision also streamlines the visual inspection procedures used on subject vehicles in obtaining I/M program emissions certification compliance and vehicle registration renewal. CDPHE also submitted revisions to its I/M program regulations which were marked as "state only" revisions and not meant for EPA consideration. The EPA is not acting upon these state-only changes in this action.

DATES: Written comments must be received on or before September 8, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2024–0468, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.regulations.gov>. 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) 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in <https://www.regulations.gov>. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT:

Gregory Lohrke, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129,

telephone number: (303) 312-6396, email address: lohre.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

The Clean Air Act (CAA) requires states with areas designated as Moderate, Serious, Severe, or Extreme nonattainment areas for the ozone national ambient air quality standard (NAAQS) to establish SIP provisions necessary to provide for a vehicle inspection and maintenance (I/M) program that will identify and repair high-emitting vehicles operating in the nonattainment area. See CAA sections 182(b)(4), (c)(3), (d) and (e). The requirements for CAA-mandated I/M programs are codified in the federal I/M Rule at 40 CFR part 51, subpart S. Within the I/M Rule, 40 CFR 51.350 details the applicability for nonattainment areas to establish I/M programs. Certain urbanized Moderate ozone nonattainment areas are required to establish a “Basic” I/M program. Certain urbanized Serious, Severe, and Extreme ozone nonattainment areas are required to implement an “Enhanced” I/M program. The performance standards¹ for Basic and Enhanced I/M programs are outlined in 40 CFR 51.352 and 51.351 respectively. Enhanced I/M programs have additional requirements and require program elements intended to strengthen ozone precursor reductions over the Basic program. Additional I/M program features in Enhanced program areas include on-road testing requirements and more rigorous program evaluation and reporting requirements.

The Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado nonattainment area (Denver or the “DMNFR area”) failed to attain the 2008 ozone NAAQS by the applicable attainment date for Moderate nonattainment areas and was reclassified as a Serious nonattainment area, effective January 27, 2020.^{2,3} Since the Denver nonattainment area was reclassified as a Serious nonattainment area for the 2008 ozone NAAQS, the State of Colorado was required to establish an Enhanced I/M program

equivalent to, or more stringent than, the relevant program performance standard under 40 CFR 51.351.

Colorado has maintained an Enhanced I/M program for the DMNFR area since January 1, 1995. Colorado’s Enhanced program was originally required under CAA section 187(a)(6) due to the Denver area’s nonattainment designation and classification as Serious nonattainment for the carbon monoxide NAAQS.⁴ The State maintained the Enhanced I/M program between 1995 and the DMNFR area’s reclassification as a Serious ozone nonattainment area in 2020. Since Colorado had been operating an I/M program meeting the Enhanced performance standard before reclassification as a Serious ozone nonattainment area, no additional program design elements were required by operation of the DMNFR area’s reclassification to Serious for the 2008 8-hr ozone NAAQS. Colorado last demonstrated state program equivalency to the Enhanced program performance standard in its Serious ozone SIP revisions. The EPA’s approval of this most recent demonstration of performance standard equivalency became effective on June 8, 2023.⁵

Colorado Air Quality Control Commission’s Regulation Number 11 (Regulation No. 11) includes all provisions for the implementation of the State’s Enhanced I/M program. Vehicles of the seven most recent model years are exempt from the Colorado I/M program. Discussion of program requirements in this and subsequent sections of this document apply only to non-exempt vehicles. Colorado’s Enhanced I/M program utilizes on-board diagnostic (OBD) testing of vehicles that are eleven years old and newer, the dynamometer-based IM240 test for gasoline-powered light-duty vehicles (LDV) between model year 1982 and twelve years old and a two-speed idle (TSI) test for all model year 1981 and older gasoline LDV. Colorado also operates a remote sensing program to fulfill the on-road testing requirement for Enhanced I/M programs under 40 CFR 51.351. All non-diesel fueled light-duty motor vehicles registered in the DMNFR I/M program area are subject to these inspections as a prerequisite to initial or renewed registration of the vehicle with the State. Regulation No. 11, Part A, section I. Under State law, 42-4-3-10, C.R.S., a vehicle owner must provide a certification of emissions compliance or an emissions waiver when applying to renew or initially register their subject vehicle.

On August 19, 2021, the Colorado Air Quality Control Commission adopted changes to Regulation No. 11. The State of Colorado submitted these changes to EPA as an I/M SIP revision with a cover letter dated May 16, 2022. The May 16, 2022, Colorado submittal is available in the docket for today’s proposed action. Collectively, the submitted revisions to Regulation No. 11 revise punctuation and style, provide uniformity of regulatory language and internal organization of Regulation No. 11, and make changes to requirements for visual inspection of emission control equipment. The submitted revisions also include state-only updates to emission limits with respect to the IM240 test to increase stringency of emission requirements for vehicles tested under that inspection procedure. The state-only revisions were excluded from the State’s request to amend the federally enforceable SIP provisions.

II. The EPA’s Evaluation

A. Regulation No. 11—Part A

Colorado’s I/M SIP revisions to Regulation No. 11, Part A make several minor clerical and administrative changes to subsections A.II.—*Definitions*, A.IV.—*Clean Screen/Remote Emissions Sensing*, and A.V.—*Expansion of the Enhanced Emissions Program to the North Front Range Area*. These changes include capitalization of a word in a definition, changes to the style of subsection markers for internal consistency of the regulation’s notation format, and changes to the style and format of notation for formerly repealed sections of Part A. The revisions to Part A also include minor clerical and administrative changes in subsection A.I.—*Applicability* as well as the removal of reference in that subsection to the requirement of a visual inspection of emission control equipment as a first-step prerequisite for all emission certifications and vehicle registration renewals. The removal of the visual inspection as a prerequisite for all emission certifications will be discussed in more detail in section II.C. of this preamble.

Given the nature of the submitted revisions to Regulation No. 11, Part A, they have no impact on emission reduction benefits provided by the Colorado I/M program and are consistent with CAA requirements.

B. Regulation No. 11—Part B

Colorado’s I/M SIP revisions to Regulation No. 11, Part B are limited to clerical and administrative changes to section XI.—*Requests for Approval of Clean Screen Test Analyzer Systems*.

¹ An I/M performance standard is a collection of program design elements which defines a benchmark program to which a state’s proposed I/M program is compared in terms of its potential to reduce emissions of the ozone precursors, VOC, and NO_x.

² 84 FR 70897 (Dec. 26, 2019).

³ The Denver area has since been reclassified as Severe for the 2008 ozone NAAQS. See 87 FR 60926 (Oct. 7, 2022).

⁴ 59 FR 35875 (July 14, 1994).

⁵ 88 FR 29827 (May 9, 2023).

These clerical and administrative changes include grammatical revisions, changes to style, and the removal of referential language, such as “above”, when referring to other paragraphs and subsections of Regulation No. 11, Part B.

Given the nature of the submitted revisions to Regulation No. 11, Part B, they have no impact on emission reduction benefits provided by the Colorado I/M program and are consistent with CAA requirements.

C. Regulation No. 11—Part C

Colorado’s 2022 I/M SIP revision includes amendments to Regulation No. 11, Part C to make several minor clerical and administrative changes. Minor revisions to Regulation No. 11, Part C include changes to sections C.II.—*Exhaust Emissions Inspection Procedures*, C.III.—*Emissions Control Systems Inspection Procedures*, C.VIII.—*Certification of Emissions Control*, and C.XII.—*Clean Screen Inspection Program Procedures*. These minor revisions include updates to subsection organizational notation, clerical revisions, changes to referential language, and updates to citations of federal regulations. Minor clerical changes to the organization of Regulation No. 11, Part C include an addition of enumerated subparagraph notations under section C.II.C.3. to clarify requirements for the readiness check of various monitors during an OBD inspection. Other minor revisions include the deletion of several instances of colloquial, referential language throughout Part C to refer to other sections and paragraphs of Regulation No. 11. Intra-regulation references such as “above”, “below”, or “this Paragraph” are either deleted or deleted and replaced with explicit citations to the proper, referenced section of Regulation No. 11 to improve clarity. Colorado also updated a Regulation No. 11, Part C reference to 40 CFR part 86 to update the noted location of federal emission regulations for light-duty vehicles and light-duty trucks.

The 2022 revisions to Part C also make substantive changes to visual inspection procedures, aftermarket catalytic converter repair requirements, and clarification of responsible parties for issuance of emissions certification in cases of vehicle engine swaps. Substantive changes to Regulation No. 11, Part C include the modification of the visual inspection procedure for inspected vehicles. Sections of Part C affected by the modification of the visual inspection procedures are sections III. and VIII. Colorado has removed the requirement for a visual inspection of emission control devices

on all inspected vehicles between model years 1975 and 1995 as a first-step prerequisite to issuing an emissions certification. Part C, section III.A., containing most of the language on this requirement has been repealed. The listing of a successful visual inspection of emission control devices on model year (MY) 1975–1995 vehicles has also been repealed as a prerequisite for certification of emissions compliance under section VIII.A. of Part C. However, Colorado maintains the requirement that any waiver of the certification of emissions compliance will not be granted without a visual inspection of the vehicle’s emission control devices. Accordingly, Colorado has included revisions to Part C, section VIII.B. to preserve the visual inspection as a prerequisite to the issuance of an emissions waiver. A discussion that approval of the removal of the mandatory visual inspection of particular emission control devices on all MY 1975–1995 vehicles would not result in interference under CAA section 110(l) is contained in section II.E. of this proposal.

Colorado has also revised Regulation No. 11, Part C, section III.C. to modify aftermarket catalytic converter requirements. The 2022 I/M SIP revision requires the replacement of catalytic converters, when necessitated by failed vehicle inspections, shall only be made with original equipment manufacturer devices or California Air Resource Board (CARB) approved aftermarket components. This revision reflects Colorado’s adoption of California aftermarket catalytic converter requirements elsewhere in the State’s regulations.⁶ Colorado adopted California aftermarket parts requirements, effective January 1, 2021. CARB-approved catalytic converters have tighter criteria pollutant reduction requirements and higher durability requirements than federal standard aftermarket converters; therefore, Colorado’s revisions to Regulation No. 11 to reflect the adoption of these California aftermarket catalytic converter requirements will not reduce the emission reduction benefits produced by the I/M program.

Colorado has also revised Regulation No. 11, Part C, section XI. to clarify that vehicle engine replacements will be certified as conforming to the applicable emission requirements by an I/M program certified emissions technical center licenser or their designee. This revision is administrative in nature and will not reduce the emission reduction benefits produced by the I/M program.

⁶ 5 Code Colo. Regs. 1001–24, Part C.

D. Regulation No. 11—Part D

Colorado’s 2022 I/M SIP revision includes amendments to Regulation No. 11, Part D to make several minor clerical and administrative changes. Minor revisions to Regulation No. 11, Part D include clerical changes to sections I. and III. to improve consistency of style of subsection notation and other typographic elements.

Colorado has also revised Part D, sections I. and II. to remove references to visual inspection procedures which are now irrelevant after the State made its concurrent revisions to Part C, as discussed in section II.C. of this preamble. The revisions to Regulation No. 11, Part D are administrative and clerical in nature and will not reduce the emission reduction benefits produced by the I/M program.

E. CAA Section 110(l) Noninterference Evaluation

Section 110(l) of the CAA requires that EPA not approve a revision to a SIP “if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of [the CAA].” In evaluating Colorado’s submitted SIP revision, EPA considered whether approval of the revision would result in interference under CAA section 110(l). Consequently, an analysis of whether EPA’s approval of the Colorado SIP revision would be consistent with CAA section 110(l) is presented here.

The May 16, 2022, Colorado SIP revision submittal revised the elements of the State’s existing vehicle inspection program necessary to obtain a certificate of emissions compliance or a certification of emissions waiver. The certificate of emissions compliance is required to register, or transfer ownership of a vehicle, subject to the Colorado I/M program’s applicability thresholds, in the DMNFR I/M program area. A certification of emissions waiver may be issued to a vehicle for vehicle registration under certain conditions if it fails the State’s exhaust emissions inspection, emissions control system inspection, or OBD inspection procedures.

Under the prior, approved SIP version, between January 1, 2015, and the 2022 revision, light-duty vehicles were required to undergo the following inspections and tests:

- *Exhaust Emissions Inspection*: All light-duty vehicles model year (MY) 1982 or newer were required to undergo an IM240 test, or an OBD test, and obtain a pass/fail determination. Regulation No. 11, Part C, section II.B. & II.C. (2015).

- *Emissions Control Systems*

Inspection: All vehicles must be configured as required by 40 CFR part 86, unless specific documentation is provided. All MY 1975–1995 vehicles were required to undergo a visual inspection for the presence and operability of the air system, catalytic converter system, and oxygen (O₂) systems. Regulation No. 11, Part C, section III.A. & III.B. (2015).

If a light duty vehicle passes the exhaust emission inspection and there are no visible smoke emissions from the vehicle, and if an MY 1975–1995 vehicle also passes the emission control systems inspection, the vehicle is issued a certification of emissions compliance. Regulation No. 11, Part C, section VIII.A. (2015). Vehicles that do not qualify for a certification of emission compliance could be issued a waiver if, among other qualifying conditions, the vehicle passes the emission control systems inspection, there are no visible smoke emissions from the vehicle, and the testing staff determine the vehicle has not been tampered with. Regulation No. 11, Part C, section VIII.B. (2015).

Under the May 16, 2022, SIP revision, light-duty vehicles are required to undergo the following inspections and tests:

- *Exhaust Emissions Inspection:* All light-duty vehicles model year (MY) 1982 or newer are required to undergo an IM240 test, or an OBD test, and obtain a pass/fail determination. Regulation No. 11, Part C, section II.C. & II.D.

- *Emissions Control Systems*

Inspection: All motor vehicles must be configured as required by 40 CFR part 86, unless specific documentation is provided. Vehicles subject to an OBD test for the Exhaust Emissions Inspection are required to undergo assessment of the emissions control system Malfunction Indicator Lamp (MIL) (*i.e.*, check-engine light) and obtain a pass/fail determination. Regulation No. 11, Part C, section III.A. & III.B.

Under the effective revisions to Regulation No. 11, if a light duty vehicle passes the exhaust emission inspection and there are no visible smoke emissions from the vehicle, the vehicle may be issued a certification of emissions compliance. Regulation No. 11, Part C, section VIII.A. Vehicles that do not qualify for a certification of emission compliance can be issued a waiver if there are no visible smoke emissions from the vehicle and the testing staff determine the vehicle has not been tampered with. The tampering determination must be based on an evaluation, including a visual emissions

control system inspection, for MY1975 and newer cars. Regulation No. 11, Part C, section VIII.B. (2015).

In short, the primary change made by the May 2022 SIP submission is that MY 1975 through 1995 vehicles are no longer subject to a preliminary, mandatory visual inspection for the presence and proper function of the “air system, catalytic converter system and oxygen systems”⁸ as a pre-requisite for a certification of emissions compliance. In substitution for the across-the-board visual inspection requirement of these components for all MY 1975–1995 vehicles, the newer emission control systems inspection procedure now requires vehicles first go through the previously approved exhaust emission inspection procedures maintained by the program. If a vehicle fails these exhaust emission inspection procedures, it will be required to receive a visual inspection for these components as an additional condition for receiving an emissions waiver. Alternatively, the failing vehicle can either be repaired and retested or will not be re-registered.

For 20 years, EPA has consistently interpreted CAA section 110(l) as prohibiting the EPA from approving a “revision of a [SIP] if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress [. . .], or any other applicable [CAA] requirement.” To “interfere” means to hamper, frustrate, hinder, or impede any applicable CAA provision.⁷ Therefore, EPA’s approval of a SIP revision would be consistent with section 110(l) so long as “emissions in the air are not increased,” and “status quo air quality” is preserved.⁸ The appropriate analysis under section 110(l) is not standardized and is determined on a case-by-case basis given the nature of the SIP revision.⁹ To demonstrate noninterference where EPA anticipates that a SIP revision may result in increased emissions, a state may either substitute equivalent or greater emission reductions in order to preserve status quo air quality or submit an air quality analysis showing that the SIP revision

will not interfere with any applicable requirements.¹⁰

Accordingly, EPA must evaluate whether the revised program’s procedures provide a reasonable substitute for the mandatory visual inspection procedures of all MY 1975–1995 light-duty vehicles, as required in Regulation No. 11 previous to the 2022 SIP revision. Therefore, the EPA evaluated whether the program’s exhaust emission inspection procedures provide suitable safeguards to compensate for the removal of across-the-board visual inspections for the presence and function of these emission control components.

The emission inspection procedures maintained by the Colorado I/M program are designed in accordance with EPA requirements in 40 CFR part 51, subpart S and are SIP-approved. Principally, the EPA requirements for tailpipe emission inspection procedures are designed to ensure state I/M programs can reliably identify high-emitting vehicles due to, among other things, malfunctioning or inoperative emission control components such as catalytic converters and oxygen systems. The visual inspection of the particular emission control components in question is not one of the test elements included in the Enhanced I/M performance standard outlined in 40 CFR 51.351(i) for areas designated and classified under the 8-hour ozone standard. The air, catalytic converter and oxygen systems are more critical to reducing emissions of ozone precursors than the components listed in the component inspection element of the Enhanced I/M performance standard. We therefore maintain that the revised, streamlined emission control component inspection compares favorably to the emission control component inspection element of the Enhanced performance standard. Also, given the subjective nature of visual inspections, Colorado’s proposed approach would not decrease the benefits or effectiveness of Colorado’s I/M program. Therefore, it is reasonable to determine that it is equally, or more, effective to test tailpipe emissions of all MY 1975–1995 light-duty vehicles to identify vehicles for which these components were malfunctioning, absent, or inoperative as it is to visually inspect for the same problems.

The Colorado revisions evaluated in this proposal streamline the program’s overall visual emission control inspection procedures by limiting visual inspections to vehicles which have

⁷ Bryan A. Garner, *Garner’s Dictionary of Legal Usage* 570 (3d ed. 2011); see also Merriam-Webster’s Collegiate Dictionary 652 (11th ed. 2005) (“to interpose in a way that hinders or impedes”).

⁸ *Ky. Res. Council, Inc. v. EPA*, 467 F.3d 986, 991 (6th Cir. 2006); see also *Indiana v. EPA*, 796 F.3d 803, 806 (7th Cir. 2015); *Ala. Env’t Council v. EPA*, 711 F.3d 1277, 1292–93 (11th Cir. 2013); *Galveston-Houston Ass’n for Smog Prevention v. EPA*, 289 F. App’x 745, 754 (5th Cir. 2008).

⁹ *Center for Biological Diversity v. EPA*, 75 F.4th 174, 181 (3rd Cir. 2023).

¹⁰ See *Ky. Res. Council, Inc. v. EPA*, 467 F.3d at 995.

already failed a tailpipe emissions test or OBD test. Colorado's tailpipe emissions tests and OBD testing are EPA-approved inspection procedures and are capable of making a positive discovery of a vehicle with malfunctioning or tampered emission control devices. Further, tailpipe emissions and OBD tests may eliminate visual inspection error and errors in inspector decision-making. Therefore, removal of the visual inspection procedure as a first-pass inspection feature is unlikely to negatively affect program performance. Additionally, this regulatory streamlining does not outright remove the visual inspection requirement and vehicles with visually detectable tampering will still fail to receive the State's inspection certification or a waiver of that certification. As stated above, there is no reasonable basis to assess that the revisions to Regulation No. 11 Part C discussed here will reduce the emission reduction benefits produced by the I/M program. Without cause to believe the revisions will measurably reduce the I/M program's emission reduction benefits, the EPA concludes that status-quo air quality will be preserved under the substitute program visual inspection procedure. Therefore, EPA's proposed approval of these SIP revisions would not result in interference with attainment, reasonable further progress, or any other applicable CAA requirement and approval would be consistent with CAA section 110(l).

III. Proposed Action

The EPA is proposing to approve changes to the Colorado SIP-approved I/M program regulation as provided in the State's May 16, 2022 submittal. These SIP revisions include changes to Colorado Code of Regulations (CCR) number: 5 CCR 1001–13 Regulation No. 11, Part A, sections I.—*Applicability*, II.—*Definitions*, IV.—*Clean Screen/Remote Emissions Sensing*, and V.—*Expansion of the Enhanced Emissions Program to the North Front Range Area*; Part B, section XI.—*Requests for Approval of the Clean Screen Test Analyzer Systems*; Part C, sections II.—*Exhaust Emissions Inspection Procedures*, III.—*Emissions Control Systems Inspection Procedures*, VIII.—*Certification of Emissions Control*, XI.—*Engine Changes*, and XII.—*Clean Screen Inspection Program Procedures*; and Part D, sections I.—*Licensing of Emissions Inspection and Readjustment Stations, Inspection-only Stations, Inspection-only Facilities, Enhanced Inspection Centers, Fleet Inspection Stations and Motor Vehicle Dealer Test*

Facilities, II.—*Qualification of Emissions Mechanics and Emissions Inspectors*, and III.—*Registration of Emissions Related Repair Facilities*. The EPA has made the preliminary determination that the submitted changes to SIP-approved regulations are consistent with CAA requirements; therefore, the EPA is proposing to incorporate these changes into the Colorado SIP.

The EPA is not proposing action on changes to Regulation No. 11, Part F. These changes, although submitted in the same package as the revisions EPA is proposing for approval in this action, were clearly marked as “state only” revisions. The purpose of these state-only revisions was to increase the stringency of tailpipe emission thresholds for vehicle certification. As state-only revisions, the EPA will not evaluate the consistency of the revisions with respect to the relevant CAA and Federal regulation requirements.

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Colorado Air Quality Control Commission Regulation Number 11 rules, 5 CCR 1001–13—Part A, sections I., II., IV. and V., Part B, section XI., Part C, sections II., III., VIII., XI., and XII., and Part D, sections I., II., and III.—as set forth above. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. 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, 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 Orders 12866 (58 FR 51735, October 4, 1993);

- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: July 24, 2025.

Cyrus M. Western,
Regional Administrator, Region 8.

[FR Doc. 2025–14982 Filed 8–6–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[EPA–R05–OAR–2024–0549; FRL–12784–01–R5]****Air Plan Approval; Ohio; Carmeuse Lime, Inc. SO₂****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the addition of Director's Final Findings and Orders (DFFOs) issued by the Ohio Environmental Protection Agency (Ohio EPA) to Carmeuse Lime, Inc. into the Ohio State Implementation Plan (SIP) for the 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). The DFFOs establish a new emissions limit for SO₂ emissions from the combined lime kiln stack that receives and emits SO₂ emissions from two rotary lime kilns at the Carmeuse Lime Maple Grove Facility in Seneca County, Ohio.

DATES: Comments must be received on or before September 8, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2024–0549 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. EPA may publish any comment received to its public docket. Do not submit to 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 the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. 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://](https://www.epa.gov/dockets/commenting-epa-dockets)

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 EPA.

I. Background

On August 21, 2015 (80 FR 51052), EPA finalized the Data Requirements Rule (DRR) which required State air agencies to characterize ambient SO₂ levels in areas with large sources of SO₂ emissions to help implement the 2010 SO₂ NAAQS. Under the DRR, State air agencies must at a minimum, model or monitor air quality around sources that emit 2,000 tons per year (tpy) or more of SO₂, and that are not located in an area already designated nonattainment. An air agency could have avoided this requirement for a source emitting more than 2,000 tpy by adopting federally enforceable emission limits by January 13, 2017, that ensured the source would emit less than 2,000 tpy of SO₂. The DRR required State air agencies to notify EPA of their selected approach for characterizing air quality around SO₂ sources subject to the DRR by July 1, 2016.

On January 13, 2017, Ohio EPA submitted a list of applicable sources with SO₂ emissions of 2,000 tpy or more, subject to the DRR pursuant to 40 CFR 51.1203.¹ The list of sources included Carmeuse Lime Maple Grove, Inc. (referred to as Carmeuse Lime) (Ohio EPA Facility ID #0374000010) in Seneca County, Ohio. On January 9, 2018 (83 FR 1098), EPA designated Seneca County as unclassifiable/attainment under the 2010 SO₂ NAAQS Round 3 designations process and required the identified sources to adopt DRR requirements by July 1.

Under the DRR (40 CFR 51.1205), for any area where modeling of actual SO₂ emissions served as a basis for designating such area as attainment for the 2010 SO₂ NAAQS, the State air agency shall submit to EPA an annual

ambient SO₂ emissions report of applicable sources by July 1 of each year, including an assessment of the cause of any emission increases from the previous year and a recommendation regarding the need for additional dispersion modeling to determine if an area is still meeting the 2010 SO₂ NAAQS.

After analyzing data from Ohio's 2023 Annual SO₂ Emissions Review, Ohio EPA determined that new emission limits at Carmeuse Lime were needed to ensure that air quality standards are protected. On August 31, 2023, in preparation for Ohio's 2024 Annual SO₂ Emissions Review, as recommended by Ohio EPA, new modeling using data from the 2020–2022 period for the Carmeuse Lime facility, showed a maximum modeled 3-year DV of 211.003 µg/m³, representing a modeled violation of the 2010 SO₂ NAAQS value of 196.4 µg/m³. The updated modeling included WIN Waste Innovations of Seneca County at maximum permitted emission rates. In response to the modeled violation, Ohio EPA conducted new modeling based on allowables, using a critical emission rate of 1,350.00 pounds per hour (lbs/hr) from the combined lime kiln stack at the Carmeuse Lime facility that would model compliance with the 2010 SO₂ NAAQS. This updated dispersion modeling showed a maximum modeled 3-year DV for SO₂ of 192.2 µg/m³. In accordance with EPA's April 2014 “Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions” (April 2014 SO₂ Guidance)² and 40 CFR 63.10021, Equation 9, Ohio EPA determined the allowable emission rate for SO₂ from the combined lime kiln stack at Carmeuse Lime, resulting in an allowable emission rate of 1,170.0 lbs/hr as a 30-day rolling average.

On November 13, 2024, Ohio EPA submitted a request to incorporate into the Ohio SIP for the 2010 SO₂ NAAQS the DFFOs issued by Ohio EPA to Carmeuse Lime, establishing a new allowable 30-day rolling average SO₂ emissions limit of 1,170.0 lbs/hr for the combined lime kiln stack shared by two rotary lime kilns. EPA proposes to determine that the adoption of the revised enforceable emission limit (alternatively “the revised DFFOs”) will ensure continued attainment of the 2010 SO₂ NAAQS.

¹ Ohio EPA's “State of Ohio 2010 Revised Sulfur Dioxide National Ambient Air Quality Standard Recommended Area Designations Round 3” can be found at <https://www.epa.gov/system/files/documents/2025-04/recommendation-round-3-ohio.pdf>.

² EPA's “Guidance for 1-Hour Sulfur Dioxide (SO₂) Nonattainment Area State Implementation Plans (SIP) Submissions” can be found at <https://www.epa.gov/so2-pollution/guidance-1-hour-sulfur-dioxide-so2-nonattainment-area-state-implementation-plans-sip>.

II. Analysis of Ohio EPA's Request

Ohio EPA's November 13, 2024, SIP submittal requests to incorporate a new limit for Carmeuse Lime into the Ohio SIP through Ohio's DFFOs process and in accordance with the Data Requirements Rule at 40 CFR 51.1205. Ohio EPA is acting under Clean Air Act (CAA) section 110(a)(2)(B) and section 110(a)(2)(K) authorities that provide for the appropriate operation to monitor, compile, and analyze ambient air quality data and modeling for a pollutant with an established NAAQS. Ohio EPA is also acting under CAA section 116, to adopt the DFFOs into the Ohio SIP, if the State elects to do so. Ohio EPA followed EPA's April 2014 SO₂ Guidance to calculate the new limit issued to Carmeuse Lime that would provide for attainment of the 2010 SO₂ NAAQS. EPA's April 2014 SO₂ Guidance is intended to provide guidance and recommendations to States to consider as they develop information used in future actions, which may involve SIPs, for the 2010 SO₂ NAAQS nonattainment areas. EPA finds the application of this guidance for the purpose of development of Ohio EPA's DFFOs appropriate to address the modeled violations of the 2010 SO₂ NAAQS. Under 40 CFR 51.1205(d), EPA may take appropriate action in an area that modeling indicates is not attaining the 2010 SO₂ NAAQS, including but not limited to requiring the adoption of enforceable emission limits to ensure continued attainment of the 2010 SO₂ NAAQS, designation or redesignation of the area to nonattainment, or issuance of a SIP Call. Therefore, as a result of modeled 2010 SO₂ NAAQS violations, EPA proposes to find Ohio EPA's issuance of DFFOs establishing new SO₂ emission limits for Carmeuse Lime is appropriate, and no further action is needed by EPA for this area.

Due to modeled violations of the 2010 SO₂ NAAQS, Ohio EPA performed updated modeling for the 2021–2023 period resulting in an SO₂ critical emission rate of 1,350 lbs/hr from the combined kiln stack at Carmeuse Lime that receives and emits SO₂ emissions from rotary lime kiln #1 (EU P003) and rotary lime kiln #2 (EU P004). According to EPA's April 2014 SO₂ Guidance, determining a source's critical emission rate can serve “as a baseline for determining a longer-term average limit consistent with this guidance.” To derive a longer-term limit, the 2014 SO₂ Guidance establishes a six-step process summarized as follows:

1. Establish a critical emission value via dispersion modeling that serves as compliance with the 1-hour SO₂ standard,
2. Compile hourly emissions rate data reflecting the distribution of emissions that is expected once the limit is in place,
3. Calculate the longer-term emission rate average using hourly emission rate data from Step 2,
4. Determine the 99th percentile of the 1-hour average emission values compiled in Step 2 and the 99th percentile of the 30-day average emission values computed in Step 3,
5. Compute the ratio of the two 99th percentile values,
6. Multiply the ratio by the critical emission value in Step 1 to find the 30-day average emission limit that is comparably stringent to the 1-hour limit.

As part of the DFFOs, Ohio EPA used the process in the 2014 SO₂ Guidance to calculate the allowable 30-day SO₂ emission limit with which the Carmeuse Lime facility must comply. Ohio EPA provided documentation of its calculations in its 2024 Annual SO₂ Emissions Review, which is included in the docket for this action.³ The ratio of the 99th percentile of 1-hour average SO₂ emission rates and 99th percentile of 30-day average SO₂ emission rates from Carmeuse Lime based on actual emissions data from 2017–2022 was 0.8665. This ratio was multiplied by the critical emission value of 1,350 lbs/hr determined via dispersion modeling, resulting in an allowable 30-day average SO₂ emission rate of 1,170.0 lbs/hr from the combined lime kiln stack at the Carmeuse Lime facility by no later than 12 months from the effective date of the orders, in this case by November 8, 2025. EPA proposes to find Ohio EPA's allowable 30-day average SO₂ emission rate of 1,170.0 lbs/hr from the combined lime kiln stack at Carmeuse Lime issued in the DFFOs as sufficient to ensure continued attainment of the 2010 SO₂ NAAQS.

Per EPA's April 2014 SO₂ Guidance, sources would ordinarily rely on data obtained by continuous emissions monitoring system (CEMS) for sources with CEMS to demonstrate compliance with existing emission limits. Sources without CEMS wishing to apply longer term averaging need to establish an appropriate emission limit and an appropriate compliance method. The facilities without CEMS, such as Carmeuse Lime, would need sufficient data to demonstrate that the established emission limits adequately represent hourly emissions variability and

consider a range of factors that influence emissions variability.

In consideration of EPA's April 2014 SO₂ Guidance, Ohio EPA's DFFOs include an order for the Carmeuse Lime facility, or any subsequent owner of the facility, to collect two random samples of coal and coke burned from each rotary lime kiln feed belt each day. These samples shall be combined into a weekly composite sample of each coal and coke respectively, and will be analyzed for sulfur content, in accordance with ASTM method D4239, “Standard Test Method for Sulfur in the Analysis Sample of Coal and Coke Using High-Temperature Furnace Combustion,” or an equivalent method approved by Ohio EPA. The analysis methods will satisfy the Facility's title V operating permit (permit #P0128727) monitoring and recordkeeping requirements for the emission unit group—rotary lime kilns P003 and P004.

To demonstrate compliance with the established emission limit, Ohio EPA relies on compliance methods based on a mass balance approach. This includes instructions to calculate the rolling 30-day average of SO₂ emissions in lbs/hr following a mass balance-based methodology in the orders. Additionally, the DFFOs will allow for the installation and use of a CEMS at the facility to monitor SO₂ emissions from the combined lime kiln stack for CEMS-based compliance methods consistent with 40 CFR part 60, appendix F. This will allow the replacement of existing mass balance-based compliance methods without a SIP revision submittal requirement in the event the facility installs CEMS.

In accordance with the mass balance-based compliance methods in the orders, the DFFOs describe the methodology to calculate the rolling 30-day average SO₂ emissions rate in lbs/hr from the combined lime kiln stack. This relies on a calculated scrubbing factor (F) determined by using the most recent valid stack test data of the facility's combined lime kiln stack.

Per the April 2014 SO₂ Guidance, an absence of CEMS can pose two challenges: (1) establishing an appropriate emission limit, and (2) establishing an appropriate compliance determination method. Because the facility is opting to apply a longer-term average, exhaustive fuel quality data and exhaustive operating information are required to support an adequate assessment of emissions variability.⁴ As such, Ohio EPA's DFFOs include orders to perform daily fuel consumption monitoring and maintain daily fuel

³ Ohio EPA's “Ohio's 2024 Annual Sulfur Dioxide (SO₂) Emissions Review” can be found at https://dam.assets.ohio.gov/image/upload/epa.ohio.gov/Portals/27/sip/SO2/2024_SO2_annual_emissions_Final.pdf.

⁴ See April 2014 SO₂ Guidance, page 37.

consumption records that include type and quantity of fuel burned in the lime kilns each day. The facility is also required to maintain monthly fuel records that include the quantity of each fuel type received and the results of each sulfur content analyses of the required weekly composite sample. In select cases, routine fuel sulfur content measurements averaged as a rolling average over the appropriate period and established as an enforceable indicator of average emissions may suffice to assess compliance with a longer-term average limit.⁵ Further, when approved and appropriate, the DFFOs require a record of the type and quantity of fuel burned to be maintained if a fuel other than coal, coke, or natural gas is burned at the facility. Ohio EPA also includes orders to submit deviation reports of days in which fuel other than coal, coke, or natural gas are burned, unless approved by the appropriate agency. These reports shall be submitted within thirty days after the deviation. EPA is proposing to determine these orders adequately address hourly emissions variability from the application of a longer-term average emission limit per EPA's April 2014 SO₂ Guidance.

III. What action is EPA taking?

EPA is proposing to approve Ohio EPA's DFFOs issued to the Carmeuse Lime facility, which Ohio EPA submitted on November 13, 2024, into the Ohio 2010 SO₂ NAAQS SIP. The DFFOs establish a new SO₂ emissions limit of 1,170.0 lbs/hr for the combined lime kiln stack that receives and emits SO₂ emissions from two rotary lime kilns that will ensure continued attainment of the 2010 SO₂ NAAQS.

IV. 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, EPA is proposing to incorporate by reference Ohio's DFFOs for Carmeuse Lime, Inc. Maple Grove facility issued by Ohio EPA, effective November 8, 2024, discussed in sections I and II of this preamble. 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).

V. 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). In reviewing SIP submissions, EPA's role is to approve State choices provided they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
 - Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
 - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
 - Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 29, 2025.

Cheryl Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 2025–14989 Filed 8–6–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R07–OAR–2025–0693; FRL–12887–01–R7]

Air Plan Approval; State of Kansas; Attainment Redesignation for the 2008 Lead NAAQS and Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the request to redesignate portions of Saline County, Salina, Kansas to attainment for the 2008 lead National Ambient Air Quality Standards (NAAQS). The EPA's proposed approval of the redesignation request is based on the determination that the Salina area has met the criteria for redesignation to attainment set forth in the Clean Air Act (CAA), including the determination that the area has attained the standard. Additionally, the EPA is proposing to approve the State's plan for maintaining the 2008 lead NAAQS in the Salina area for ten years beyond redesignation.

DATES: Comments must be received on or before September 8, 2025.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2025–0693 to <https://www.regulations.gov>. Follow the online instructions for submitting comments. All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Written Comments” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jennifer Kissel, Environmental Protection Agency, Region 7 Office, Air

⁵ See April 2014 SO₂ Guidance, page 45.

and Radiation Division, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7982; email address: kissel.jenny@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” refer to the EPA. This section provides additional information by addressing the following:

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- VIII. Statutory and Executive Order Reviews

I. Written Comments

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2025-0693, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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) 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, the full the 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>.

II. What action is the EPA proposing to take?

The EPA is proposing to approve the request submitted by the State of Kansas (hereinafter referred to as the State) to redesignate the Salina County, Salina, Kansas nonattainment area (hereinafter referred to as Salina nonattainment area) to attainment for the 2008 lead NAAQS.

On March 20, 2025, the State submitted a redesignation request and plan that demonstrates attainment of the 2008 lead NAAQS. Also included in the submittal is an associated maintenance plan to ensure that the area continues to attain the standard ten years beyond redesignation. Based on our review of the State’s plan, which is described in detail in the following sections and in the EPA’s technical support document (TSD), the EPA proposes to approve the redesignation request for the Salina nonattainment area and associated maintenance plan. The redesignation request, maintenance plan, and the EPA TSD are included in the docket for this action. As part of this proposed action, the EPA also proposes to approve a revision to the Kansas SIP to incorporate a construction permit modification, which was issued on December 27, 2018 (hereinafter referred to as the December 2018 permit) for the Stryten Salina, LLC facility (formerly known as Exide Technologies, hereinafter referred to as Stryten) which contains an updated control strategy to control lead emissions. The December 2018 permit incorporates three permit modifications to the facility’s construction permit that was originally issued August 18, 2014 (hereinafter referred to as the August 2014 permit.)

III. Background for the EPA’s Proposed Action

On November 12, 2008, the EPA published a revision to the lead NAAQS, lowering the standard from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 0.15 $\mu\text{g}/\text{m}^3$ (73 FR 66964).

Effective November 22, 2011, the EPA designated the Salina area as nonattainment for the 2008 lead NAAQS based on air quality monitoring data from 2008 through 2010 (76 FR 72097).

The Stryten lead acid battery manufacturing plant located in Salina, KS was the main source of lead emissions impacting the violating monitor. On February 25, 2015, the State submitted a plan to bring the area into attainment of the standard, which was approved by the EPA on July 20,

2016 (81 FR 47034). The Salina lead attainment plan included a control strategy consisting of process and control device/equipment modifications with corresponding emission limitations, building enclosure projects, negative pressure and particulate capture ventilation systems, and paving projects at the Stryten facility. The mechanism to enforce the control strategy is the August 2014 construction permit issued to Stryten. With air quality monitoring data registering violations of the 2008 lead NAAQS from July 2016 through October 2016, the area did not attain by the statutory deadline of December 31, 2016. For this reason, Stryten implemented contingency measures and additional control strategies made enforceable through modifications to the August 2014 permit, the most recent of which is the December 2018 permit.¹ The additional emission reduction measures included better control device filtration efficiency and monitoring, expansion of negative pressure ventilation of all lead-emitting process areas, additional paving of plant property, and dust suppression on plant grounds and roadways using a water truck and vacuum street sweeper. See the State’s maintenance plan and the December 2018 permit for more information on the updated control strategy.

Following implementation of the additional emission reduction measures starting in 2017, ambient lead concentrations decreased in the area. Air quality monitoring data from 2017–2019, 2018–2020, and 2019–2021 show attainment of the 2008 lead NAAQS.

The State received a Change of Ownership/Operator Notification in 2020 notifying the State that Stryten is the owner of all permits related to the lead acid battery manufacturing facility related to Source Identification No. 1690035.

IV. Have the requirements for approval of a SIP revision been met?

The State’s redesignation submission meets the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfies the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from January 23, 2025, to February 24, 2025, and received no

¹ Modifications to Stryten’s August 2014 construction permit were also issued on January 11, 2017 and June 23, 2017. The December 2018 permit modification incorporates and maintains requirements from the previous construction permits. The December 2018 permit modification is included in appendix A of the State’s maintenance plan.

comments. In addition, as explained in this proposed action and in more detail in the TSD, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

V. The EPA's Analysis of the State's Request

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided the following criteria are met: (1) the Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of title I of the CAA.

The EPA has provided guidance on redesignation in the General Preamble² for the implementation of title I of the CAA Amendments of 1990 (April 16, 1992, 57 FR 13498, and supplemented

on April 28, 1992, 57 FR 18070) and has provided further guidance on processing redesignation requests in the following documents:

1. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "Calcagni Memorandum");³

2. "State Implementation Plan (SIP) Actions Submitted in Response to CAA Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and

3. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

These documents are included in the docket for this proposed action.

a. Criteria (1)—The Area Has Attained the 2008 Lead NAAQS

For designating a nonattainment area to attainment, the CAA requires the EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). The EPA is proposing to determine that the Salina nonattainment area is attaining the 2008 lead NAAQS based upon complete, quality-assured, and certified ambient air quality monitoring data from 2017–2019, 2018–2020, and 2019–2021 that show that the

area has monitored attainment of the 2008 Lead NAAQS.

According to 40 CFR 50.16, the 2008 lead NAAQS is met when the maximum arithmetic 3-month mean concentration for a 3-year period, as determined in accordance with 40 CFR part 50, appendix R, is less than or equal to 0.15 $\mu\text{g}/\text{m}^3$ at all relevant monitoring sites in the subject area. The EPA refers to this maximum rolling three-month average over a three-year period as the "design value." The form of the standard is based on the maximum three-month rolling average over a three-year period (thirty-six rolling calendar quarters, or thirty-eight total months).

The State operated the original monitoring site in Salina from 2010 to 2019. The site was relocated to the current location 90 meters east of the original site in October 2019 and was approved by the EPA. The EPA's TSD and the State's maintenance plan have more information concerning relocation of the monitor.

The area has not recorded a three-month average lead value at the air monitor greater than 0.15 $\mu\text{g}/\text{m}^3$ during any three-month calendar period since the three-month period ending October 2016. Table 1 summarizes the annual maximum 3-month rolling average lead concentrations and 3-year design values for the Salina lead monitor. As demonstrated by the data in the table, design values for the 2017–2019, 2018–2020, and 2019–2021 periods are in compliance with the 2008 lead NAAQS.

TABLE 1—SUMMARY OF ANNUAL MAXIMUM 3-MONTH ROLLING AVERAGE LEAD CONCENTRATIONS AND DESIGN VALUES FOR SALINA MONITOR FROM 2015–2021

Year	Annual max 3-month rolling average ($\mu\text{g}/\text{m}^3$)	3-Year period	Max 3-month rolling average design value for the 3-year period ($\mu\text{g}/\text{m}^3$)
2015	0.11	.....	.....
2016	0.18	.....	.....
2017	0.15	2015–2017	0.18
2018	0.05	2016–2018	0.18
2019	0.05	2017–2019	* 0.15
2020	0.05	2018–2020	* 0.05
2021	0.04	2019–2021	* 0.05

* Design values in attainment of the 2008 lead NAAQS.

Due to equipment failures and electrical malfunctions at the monitoring site between May 5, 2022, and June 16, 2022, the State was not able to meet data completeness thresholds required to calculate valid

lead design values for 2020–2022, 2021–2023, and 2022–2024. While design values for these periods are not available, the State's plan references 2022 and 2023 lead data and preliminary lead data from 2024 that are

consistent with attainment of the standard. More information on the lead monitoring data can be found in the State's maintenance plan and in the TSD.

² State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498, April 16, 1992.

³ See the docket for this action and at [https://www.epa.gov/sites/default/files/2016-03/documents/calcagni_memo_-_procedures_for](https://www.epa.gov/sites/default/files/2016-03/documents/calcagni_memo_-_procedures_for_processing_requests_to_redesignate_areas_to_attainment_090492.pdf)

[processing_requests_to_redesignate_areas_to_attainment_090492.pdf](https://www.epa.gov/sites/default/files/2016-03/documents/calcagni_memo_-_procedures_for_processing_requests_to_redesignate_areas_to_attainment_090492.pdf).

Based on the EPA's review of this data, the EPA proposes to find that the Salina area has attained the 2008 lead NAAQS.

b. Criteria (2)—The Area Has a Fully Approved SIP Under Section 110(k)

For designating a nonattainment area to attainment, the CAA requires that the Administrator has fully approved the applicable implementation plan for the area under section 110(k) (CAA section 107(d)(3)(E)(ii)). The EPA approved the State's attainment plan in a **Federal Register** rulemaking dated July 20, 2016 (81 FR 47034). The EPA has determined that the State has met all of the requirements for approval of the State's attainment SIP revision.

c. Criteria (3)—The Air Quality Improvement Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the Applicable SIP and Applicable Federal Air Pollutant Control Regulations and Other Permanent Enforceable Reductions

For redesignating a nonattainment area to attainment, section 107(d)(3)(E)(iii) of the CAA requires the EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions. The EPA proposes to find that the State has demonstrated that the observed air quality improvement in the Salina nonattainment area is due to permanent and enforceable reductions in emissions.

Despite implementation of the control strategy contained in the August 2014 permit, the Salina nonattainment area failed to attain the lead standard by December 31, 2016, triggering implementation of contingency measures at Stryten as specified in the permit. Stryten was subsequently issued three air construction permit modifications with updated control strategies that are incorporated in the December 2018 permit and are enforceable by the State and the EPA. The December 2018 permit includes additional emissions limitations and work practice controls that are attributed to the area's attainment of the NAAQS, such as baghouse improvements, street sweeping, and other fugitive dust measures.

Following implementation of the additional emission reduction measures

from the December 2018 permit, ambient lead concentrations decreased and the Salina nonattainment area came into compliance with the 2008 lead NAAQS. Section IV. of the TSD and section 2 of the State's submittal describes the control strategy and new lead emission reduction measures included in the December 2018 permit. The State included the December 2018 permit in appendix A of the State submittal for approval into the SIP. Once the EPA approves Stryten's December 2018 permit as part of this redesignation action, the enhanced control strategy in the December 2018 permit will be both permanent and enforceable.

Based on the information provided in the State's maintenance plan, the EPA proposes to find that Kansas has demonstrated that the observed air quality improvements in the Salina nonattainment area are due to implementation of the requirements of the August 2014 and December 2018 permits.

d. Criteria (4)—The Administrator Has Fully Approved a Maintenance Plan for the Area as Meeting the Requirements of Section 175A

For designating a nonattainment area to attainment, the CAA requires that the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A (CAA section 107(d)(3)(E)(iv)). In conjunction with its redesignation request submitted to the EPA on March 20, 2025, the State also submitted a maintenance plan to provide for the ongoing attainment of the 2008 lead NAAQS through the year 2036, which is at least 10 years following the effective date of approval of the redesignation SIP revision. The EPA has reviewed the maintenance plan and proposes to find that it meets the requirements of section 175A of the CAA as explained further below.

Section 175A of the CAA establishes requirements for maintenance plans seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the EPA approves a redesignation to attainment. Eight years after redesignation, a state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations,

the maintenance plan must contain contingency measures with a schedule for implementation as the EPA deems necessary to assure prompt correction of any future NAAQS violations.

The EPA's interpretation of section 175A is contained in the Calcagni Memorandum.⁴ The Calcagni Memorandum provides guidance on the content of a maintenance plan, explaining that it should address five requirements: (1) An emissions inventory; (2) a maintenance demonstration; (3) an air quality monitoring commitment; (4) verification of continued attainment; and (5) a contingency plan.

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area "for at least 10 years after the redesignation." The EPA has interpreted this as a showing of maintenance "for a period of ten years following redesignation," Calcagni Memorandum at page 9. Where the modeling method of showing maintenance is used, a state must show that "the future mix of sources and emission rates will not cause a violation of the NAAQS." *Id.* Modeling should "contain a summary of the air quality concentrations expected to result from application of the control strategy" and "identify and describe the dispersion model or other air quality model used to project ambient concentrations." *Id.*

The following provides a discussion of how the EPA has proposed to determine that the State's maintenance plan meets the requirements of 175A.

1. Attainment Emissions Inventory

The State is required to develop an inventory of actual emissions to identify the level of emissions sufficient to attain the NAAQS. Stryten is the only point source of lead in the Salina nonattainment area, and there are no nonpoint sources of lead emissions in the area. The State submitted the lead emissions inventory for the Stryten facility in table 3–1 in the maintenance plan. The emissions inventory is summarized in table 2. The emissions inventory includes Stryten's actual, facility-wide lead emissions from 2015–2021 in tons/year.

⁴ See the docket for this action and at https://www.epa.gov/sites/default/files/2016-03/documents/calcagni_memo_-_procedures_for_processing_requests_to_redesignate_areas_to_attainment_090492.pdf.

TABLE 2—STRYTEN'S REPORTED FACILITY-WIDE EMISSIONS FROM 2015–2021

Year	Lead emissions (tons/year)
2015	0.36
2016	0.32
2017	0.19
2018	0.14
2019	0.15
2020	0.10
2021	0.08

Table 2 shows that total lead emissions in the nonattainment area decline after 2017, which reflects enforceable emission reductions achieved through implementation of the additional control measures at Stryten beginning in 2017.

As discussed in section V.a. of this preamble, the annual maximum 3-month rolling average lead concentration has not exceeded the level of the 2008 lead NAAQS since 2017. For this reason, Stryten's total lead emissions of 0.19 tons in 2017 is consistent with attainment of the NAAQS. As shown in table 2, Stryten's lead emissions remain below 0.19 tons per year from 2018 through 2021. More information can be found in the EPA's TSD.

The EPA proposes to determine that the State has satisfied the requirement to develop an attainment inventory.

2. Maintenance Demonstration

The State may demonstrate maintenance of the 0.15 µg/m³ standard by either showing that future lead emissions will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emissions rates will not cause a violation of the 2008 lead NAAQS. The demonstration should be for a period of ten years following the redesignation. Dispersion modeling is a more sophisticated means of demonstrating maintenance than relying solely on the attainment emissions inventory because it incorporates meteorology, topography, and source characteristics in addition to permitted allowable emissions rates.

As discussed above, the State provides an emissions inventory to demonstrate the level of actual emissions consistent with attainment of the 2008 lead NAAQS. To demonstrate continued maintenance of the NAAQS for a period of at least ten years based on Stryten's permitted allowable emissions levels, the State provided two modeling demonstration analyses included in appendix B of the State's

plan and further detailed in the EPA's TSD. As explained in the State's plan, lead emissions from Stryten, the only point source of lead in the Salina nonattainment area, are expected to remain steady with only slight fluctuations throughout the maintenance period. The State does not expect any new industry or development through the 2036 maintenance period and any new source would need to comply with the NSR permitting program, ensuring anti-backsliding of the federally enforceable and permanent control strategy. This means that the 2036 projected emissions can be represented by the 2017 attainment year.

The maintenance plan's first modeling analysis was performed by Stryten based on implementation of the control measures that are enforceable through the December 2018 permit. This analysis is documented in detail in the "Air Quality Dispersion Modeling Report," prepared for Stryten by Ramboll and submitted to the State on October 1, 2021 (appendix B, Attachment D of the maintenance plan). Additionally, the State conducted a supplemental modeling analysis that evaluated an operating scenario characterizing the point sources' allowable emission rates at worst-case dispersion conditions. The State's supplemental modeling analysis used the same modeling configuration and emission rates as the Stryten October 2021 modeling but different stack parameters for the point sources in the model, specifically stack parameters that are generally less favorable for dispersion. The State's supplemental modeling analysis is described in detail in appendix B of the maintenance plan. Both Stryten's October 2021 modeling and the State's supplemental modeling analyses show attainment of the 2008 lead NAAQS at receptors throughout the nonattainment area. The EPA's review and analysis of both modeling demonstrations can be found in the TSD and is consistent with 40 CFR part 51, appendix W, *Guideline on Air Quality Models* (appendix W).⁵

The EPA proposes to find that the maintenance modeling demonstrations follow current EPA modeling guidance in appendix W and used allowable emission rates consistent with the December 2018 permit. As stated above, both demonstrations, including the State's supplemental modeling analysis based on a worst-case operating scenario with less favorable dispersion characteristics, show modeled attainment of the 2008 lead NAAQS

throughout the nonattainment area through 2036. Therefore, the EPA proposes to find that the State has demonstrated maintenance of the 2008 lead NAAQS. The input files used in the modeling demonstrations are available by request from the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

3. Monitoring Network

Once a nonattainment area has been redesignated, the state must continue to operate an appropriate air monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The State has committed in its redesignation request and maintenance plan for the Salina nonattainment area to operate the lead air quality monitor (site ID 20–169–0004) in accordance with 40 CFR part 58. Air modeling has shown this monitoring location to be in the predicted area of maximum impact from fugitive emissions from Stryten. Thus, this air monitoring location continues to be acceptable for verifying continued NAAQS attainment. The State will continue to operate a lead monitor at this location for a minimum of ten years. As required by section 175A, eight years following redesignation the State shall submit an additional maintenance plan. The lead monitoring network will be revisited at that time. The EPA reviews any changes to the State's lead monitoring network in the annual network monitoring plan in accordance with 40 CFR part 58.

4. Verification of Continued Attainment

The State has the legal authority to enforce and implement the requirements of the December 2018 permit for Stryten to ensure ongoing attainment of the 2008 lead NAAQS. These SIP-approved documents contain the permanent and enforceable measures for controlling lead emissions. The State commits in its maintenance plan to assure continued compliance through monitoring, performance testing, recordkeeping, and reporting requirements as established in the 2018 permit. The maintenance plan also includes that field representatives have the authority to conduct onsite inspections pursuant to K.S.A. 65–3009, which is part of the State's air quality program to identify violations and take timely and appropriate compliance and enforcement actions. Should another source of lead emissions to air seek a permit in the area to construct a new source or modify an existing one, the State has the authority to evaluate the potential impacts to air quality and NAAQS attainment.

⁵ See 89 FR 95031, November 29, 2024.

The maintenance plan also includes that since 2014, Stryten has been required to submit a Class 1 annual emissions inventory in accordance with K.A.R. 28–19–517. The State annually submits emissions inventories to the EPA.

The State commits in its maintenance plan to continue to operate its lead monitoring site to verify the attainment status of the area and will continue to work with Region 7 to follow the air monitoring network review process, as required by 40 CFR part 58, to determine the adequacy of the lead monitoring network.

The EPA proposes to find that the information in the maintenance plan demonstrates that the State has the legal authority to implement and enforce all measures necessary to attain and maintain the 2008 lead NAAQS.

5. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS in the area following redesignation of the area. The State's maintenance plan states that it will require Stryten to implement all of the contingency measures in the December 2018 permit if a NAAQS violation occurs after redesignation of the area. The State established triggers that will initiate a timely response to monitored indications of a possible future violation of the 2008 NAAQS as described in table 3–2 in the maintenance plan and section X. of the December 2018 permit. These contingency measures include, for example, increasing dust suppression, installing continuous pressure analyzers/monitors, completing a root cause analysis, conducting more frequent stack testing, or completing new air modeling.

The EPA proposes to find that the State's contingency measures satisfy the pertinent requirements of CAA section 175A(d).

e. Criteria (5)—The Area Has Met All Applicable Requirements Under Section 110 and Part D

For designating a nonattainment area to attainment, the CAA requires that the Administrator has fully approved a maintenance plan for the area as meeting the requirements under section 110 and Part D (CAA section 107(d)(3)(E)(v)). Section 110(a)(2) of title I of the CAA delineates the general requirements for an infrastructure SIP, which include enforceable emissions and other control measures, means, or techniques; provisions for the establishment and operation of

appropriate devices necessary to collect data on ambient air quality; and programs to enforce the limitations. More specifically these requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program and provisions for the implementation of a Prevention of Significant Deterioration (PSD) program; provisions for the implementation of a Nonattainment New Source Review (NSR) program; provisions for air pollution modeling and provisions for public and local agency participation in planning and emission control rule development.

The other requirements of section 110(a)(2) pertain to the administration of the state program to ensure the effectiveness of its overall air quality management program. The adequacy of the remaining elements of section 110(a)(2) including the State's PSD and Nonattainment NSR program, the State's appropriate air monitoring program for collecting air quality data, the State's ability to conduct air modeling, and the State's provisions for public participation for air planning are addressed in the EPA's September 15, 2014 final approval of the State's infrastructure SIP revision for the 2008 Lead NAAQS (79 FR 54908).

Finally, section 107(d)(3)(E)(v) requires that the redesignation plan meet the requirements of part D. Section 172(c) and identifies key provisions that states must address in a nonattainment SIP, including: provisions for attainment and the timely implementation of all reasonably available control technology (RACT) and reasonably available control measures (RACM); provisions for reasonable further progress (RFP); provisions for an emissions inventory for the nonattainment area; provisions for nonattainment NSR; provisions for other measures, including a control strategy with enforceable limits and schedules and timetables for compliance; provisions to meet applicable parts of title 42 section 7410(a)(2); provisions for equivalent technologies; and provisions for contingency measures.

The approved attainment SIP revision contains legally enforceable control measures and includes an evaluation of how those measures meet RACT and RACM.⁶ The approved attainment SIP

also included a plan for making RFP. An emissions inventory is included in the attainment SIP revision, and an emissions inventory is included as discussed in section V. of this preamble. The State has a SIP approved Nonattainment NSR program.⁷ The State did not request or use equivalent technologies. The December 2018 permit and the maintenance plan included in this proposed SIP action include enforceable contingency measures and control measures.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that the EPA promulgated pursuant to its authority under the CAA. Considering the elimination of lead additives in gasoline, transportation conformity does not apply to the lead NAAQS. See 73 FR 66964 (November 12, 2008).

We have reviewed the State's SIP and propose to determine that it meets all applicable requirements under section 110 and Part D of the CAA to the extent those requirements are applicable for purposes of redesignation. EPA has previously approved provisions of the State's SIP addressing section 110 requirements (including provisions addressing lead) at 40 CFR 52.870.

VI. Summary of Proposed Action

The EPA is proposing to approve the State's request to redesignate the Salina nonattainment area to attainment for the 2008 lead NAAQS. Based on our detailed analysis above, the EPA has determined that the State's March 20, 2025, request for redesignation demonstrates NAAQS attainment and the associated maintenance plan will ensure that the area continues to attain the standard. The EPA is also proposing to approve the 2018 construction permit into the SIP revision approval for the

⁷ Kansas Administrative Regulations NONATTAINMENT AREA REQUIREMENTS 28–19–16. New source permit requirements for designated nonattainment areas and 28–19–16a through 28–19–16m. January 16, 1990 (55 FR 1420) January 11, 2000 (65 FR 1545).

⁶ See 81 FR 47034 (July 20, 2016).

area's redesignation and maintenance plan.

Thus, we are processing this as a proposed action because we are soliciting comments. Final rulemaking will occur after consideration of any comments.

VII. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to add incorporation by reference of the Kansas permit issued December 27, 2018, discussed in section II. of this preamble and as set forth below in the proposed amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VIII. 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: July 21, 2025.

James Macy,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR parts 52 and 81 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart R—Kansas

- 2. In § 52.870:

- a. The table in paragraph (d) is amended by adding the entry “(6)” at the end of the table; and

- b. The table in paragraph (e) is amended by adding the entry “(48)” at the end of the table.

The additions read as follows:

§ 52.870 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED KANSAS SOURCE-SPECIFIC PERMITS

Name of source	Permit or case No.	State effective date	EPA approval date	Explanation
(6) Stryten Energy Battery Plant (formerly known as Exide).	1690035	12/27/2018	[Date of publication of the final rule in the Federal Register , 90 FR [Federal Register page where the document begins of the final rule].	.....

(e) * * *

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(48) Lead Redesigna- tion SIP and Mainte- nance Plan.	Portions of Saline County, Salina, Kansas.	3/20/2025	[Date of publication of the final rule in the Federal Reg- ister], 90 FR [Federal Register page where the doc- ument begins of the final rule].	[EPA-R07-OAR- 2025-0693; FRL- 12887-01-R7].

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 4. In § 81.317, the table entitled “Kansas—2008 Lead NAAQS” is

KANSAS—2008 LEAD NAAQS

amended by revising the entry “Saline County, KS:” to read as follows:

§ 81.317 Kansas.

* * * * *

Designated area	Designation for the 2008 NAAQS ^a	
	Date ¹	Type
Saline County, KS:	[Date of publication of the final rule in the Federal Register], 90 FR [Federal Register page where the document begins of the final rule].	Attainment.
Saline County (part). Area bounded by Schilling Rd. on the north, ¼ mile west of S Ohio St. on the east, Water Well Rd. on the south, and 9th Street on the west.		
*	*	*

^a Includes Indian Country located in each county or area, except as otherwise specified.
¹ December 31, 2011 unless otherwise noted.

Notices

Federal Register

Vol. 90, No. 150

Thursday, August 7, 2025

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF 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 September 8, 2025 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.

Foreign Agricultural Service

Title: Technical Assistance for Specialty Crops Program.

OMB Control Number: 0551–0038.

Summary of Collection: The Technical Assistance for Specialty Crops (TASC) program was authorized by Section 3205 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171). Regulations governing the program appear at 7 CFR part 1487. Section 3205 provides that the Secretary of Agriculture shall establish a program to address unique barriers that prohibit or threaten the export of U.S. specialty crops. The program was reauthorized by the Agricultural Improvement Act of 2018 (section 3201), which became effective on December 20, 2018. The Foreign Agricultural Service (FAS) will administer the program for the Commodity Credit Corporation.

Need and Use of the Information: FAS collects data for fund allocation, program management, planning and evaluation. FAS will collect information from applicants desiring to receive grants under the program to determine the viability of requests for funds. The program could not be implemented without the submission of project proposals, which provide the necessary information upon which funding decisions are based.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Federal Government.

Number of Respondents: 25.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 1,600.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2025–15000 Filed 8–6–25; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission for OMB Review; Comment Request; EDA Workforce Data Collection Instrument

The Department of Commerce will submit the following information

collection request 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. We invite 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. Public comments were previously requested via the **Federal Register** on May 27, 2025 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Economic Development Administration (EDA), Commerce.

Title: EDA Workforce Data Collection Instrument.

OMB Control Number: 0610–0109.

Form Number(s): None.

Type of Request: Extension.

Number of Respondents: 6,090 total participants. System Lead Entities: 32 from FY 2021 and 8 from FY 2024. Training Providers: 1,000 from FY 2021 and 50 from FY 2024. Participants: 5,000 from FY 2021.

Average Hours per Response: Average hours per response is estimated to be 2 hours per response to complete the semiannual data collection on the system and corresponding characteristics. The estimate of average hours per response to complete the quarterly data collection on training providers and their training participants is 16.7 hours. System Lead Entities: 1 hour. Training Providers: 30 minutes. Participants: 5 minutes.

Burden Hours: 3,764.

Needs and Uses: To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance. Under EDA's Workforce Program, award recipients will be required to submit identified program metrics and information to ensure that EDA workforce investments are evidence-based and data-driven, and accountable to participants and the public. EDA will require information on three key award stakeholders: (1) System Lead Entity/Backbone Organization, defined as the lead entity of a regional workforce training system or sectoral partnership; (2) Training Providers, defined as entities providing

relevant training and learning in a regional workforce training system; and (3) Participants, defined as individuals directly trained and placed into jobs via a regional workforce training system.

System Lead Entities/Backbone Organizations will also coordinate with relevant employers to understand program performance from the employers' perspective. All process, output, and outcome metrics are associated with the following objectives:

- System Lead Entity/Backbone Organizations: (1) Establish, strengthen, or expand sectoral partnerships or regional workforce training systems; (2) Target distressed populations and areas to participate in the skills training program, including by securing and offering wrap-around services; (3) Support employers in filling demand for good-paying jobs, and (4) Leverage federal and non-federal funds to expand reach and support sustainability.

- Training Providers: Provide skills training to unemployed, underemployed, or incumbent workers with opportunity for increased wages through targeted upskilling to place them into quality jobs and provide employers with skilled workers.

- Participants: Position for employment and wage growth.

Affected Public: Recipients of Workforce Program awards, which may include a(n): District Organization; Indian Tribe or a consortium of Indian Tribes; State, county, city, or other political subdivision of a State, including a special purpose unit of a state or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; institution of higher education or a consortium of institutions of higher education; or public or private non-profit organization or association, acting in cooperation with officials of a political subdivision of a State. Additionally, training providers and participants in regional workforce training systems will be affected.

Frequency: System Lead Entities from the FY 2021 Workforce program will respond semiannually. Training providers from the FY 2021 Workforce program will respond on a quarterly basis and participants will respond once. System lead entities and training providers from the FY 2024 workforce program will respond once. Participants from the FY 2024 workforce program will respond through a separate data collection instrument.

Respondent's Obligation: Mandatory.

Legal Authority: The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*).

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0610–0109.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary of Economic Affairs, Commerce Department.

[FR Doc. 2025–15041 Filed 8–6–25; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF001]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Northeast Supply Enhancement Project in Raritan Bay, Lower New York Bay and the Atlantic Ocean

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 Transcontinental Gas Pipe Line Company, LLC (Transco), a subsidiary of Williams Partners L.P., for authorization to take marine mammals incidental to the Northeast Supply Enhancement Project in Raritan Bay, Lower New York Bay, and the Atlantic Ocean. 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 September 8, 2025.

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.Fleming@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: Kate Fleming, 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 and 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 (collectively 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 and can be found in section 3 of the MMPA (16 U.S.C. 1362) and NMFS regulations at 50 CFR 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 May 30, 2025, NMFS received a request from Transco for an IHA to take marine mammals incidental to Northeast Supply Enhancement Project in Raritan Bay, Lower New York Bay and the Atlantic Ocean (in the New

York Bight). During NMFS’ application review, Transco indicated that two hammers at the same location may operate at the same time and provided scenarios for simultaneous pile driving on July 11, 2025, which necessitated additional analysis. Following NMFS’ review of the application and subsequent discussions between NMFS and Transco, the application was deemed adequate and complete on July 29, 2025. Transco’s initial request was for authorization of take of 14 species of marine mammals, by Level B harassment and, for a subset of 4 of these species, Level A harassment. Following analysis, NMFS is proposing to authorize take of 15 species of marine mammals, by Level B harassment and, for a subset of 7 of these species, Level A harassment. Neither Transco nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to Transco for the same project (85 FR 15125, March 17, 2020) as updated in the 2025 application. No work was conducted under the 2020 IHA. NMFS also previously issued a separate IHA to Transco for its Lower New York Bay Lateral Maintenance (LNYBL) that occurred in the same region (89 FR 20170, March 21, 2024). Transco conducted all required monitoring and reporting under the 2024 IHA, and information regarding Transco’s monitoring results may be found in the Potential Effects of the Specified Activity on Marine Mammals and their Habitat section.

Description of Proposed Activity

Overview

Transco is proposing to expand its existing interstate natural gas transmission system in Pennsylvania and New Jersey and its existing offshore natural gas transmission system in New Jersey and New York waters. The offshore pipeline facilities would include the installation of the Raritan Bay Loop, which would be located primarily in Raritan Bay, as well as parts of the Lower New York Bay and the Atlantic Ocean.

Construction of the Raritan Bay Loop pipeline would require vibratory and impact installation and vibratory removal of 163 temporary piles, ranging in size from 10 to 60-inches (in) (0.3 to 1.5 meters (m)) in diameter, which may result in the incidental take of marine mammals.

Dates and Duration

The proposed IHA would be valid for the statutory maximum of 1 year from the date of effectiveness. It will become effective upon written notification from the applicant to NMFS, but not beginning later than 1 year from the date of issuance or extending beyond 2 years from the date of issuance. In-water construction is anticipated to occur between the 2nd and 4th quarter of 2026, with pile installation and removal activities planned for June through August 2026. Removal activities may shift into fall 2026. However, project delays may occur due to a number of factors including project funding, permitting requirements, availability of equipment and/or materials, weather-related delays, equipment maintenance and/or repair, and other contingencies etc.

All in-water construction and removal activities would be conducted during daylight hours only. Pile installation and removal activities are anticipated to take a total of 69 days.

Specific Geographic Region

Transco’s proposed activity would occur in the waters of Raritan Bay, the Lower New York Bay, and the Atlantic Ocean, off the coast of New Jersey and New York, in a portion of the New York Bight sometimes referred to as the New York Bight Apex (Brown *et al.*, 2022). Leading to the Port of New York and New Jersey, one of the busiest ports on the East Coast and the third busiest port in the United States, this area experiences significant commercial and recreational vessel activity. Depths at the pile driving sites range from 4 to 13 m. The ensonified areas associated with the planned activities extend to very shallow areas to depths of 68 m.

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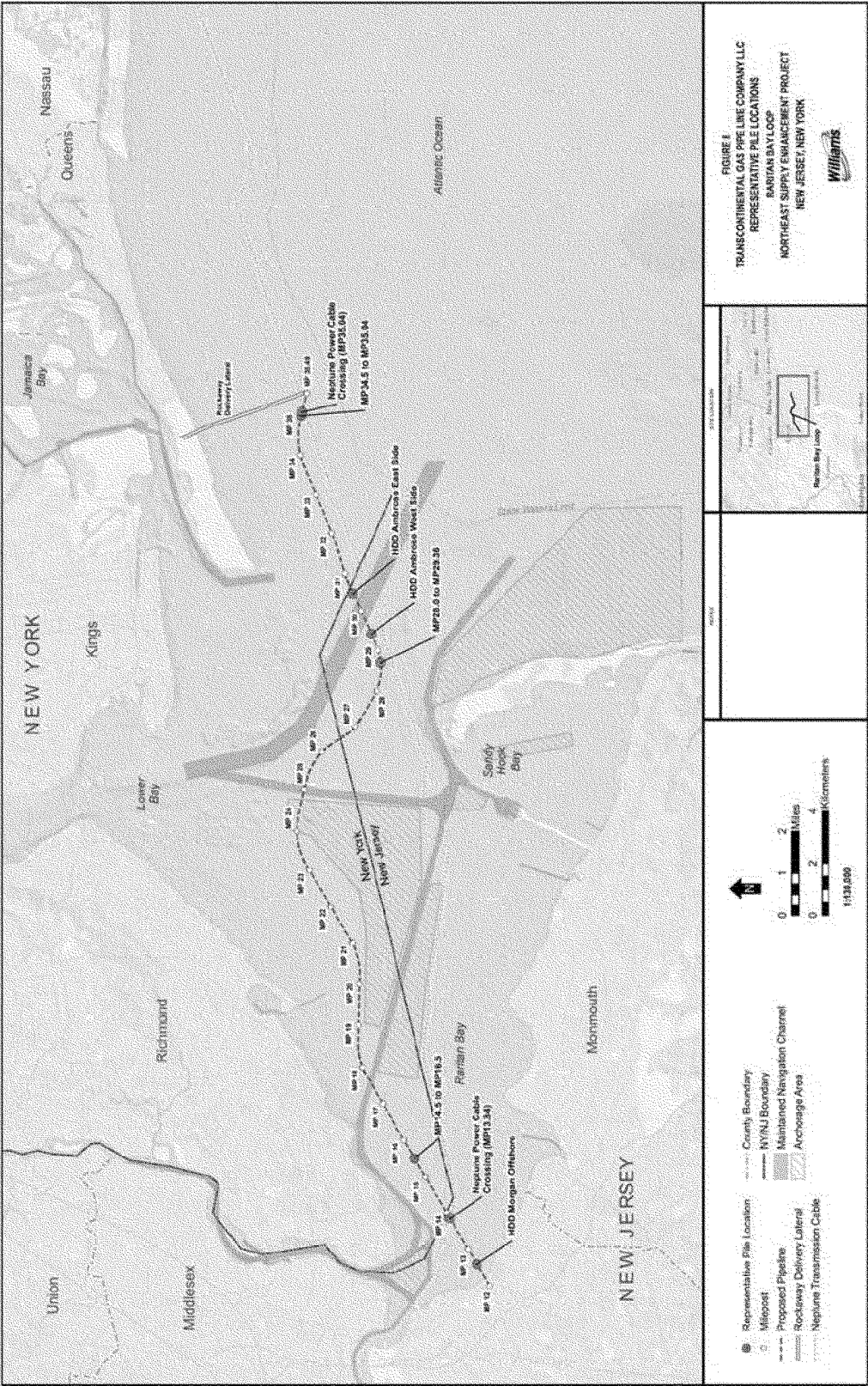


Figure 1 -- Representative locations for planned pile driving along the Raritan Bay Loop in Raritan Bay and Lower New York Bay and the Atlantic Ocean

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Detailed Description of the Specified Activity

Transco is proposing to expand its existing interstate natural gas pipeline system in Pennsylvania and New Jersey and its existing offshore natural gas pipeline system in New Jersey and New York waters with the goal of providing an additional 400,000 dekatherms per day transportation capacity to support its customers. To provide this additional capacity, Transco proposes to expand portions of its system from an existing compressor station in York County, Pennsylvania, to the Rockaway Delivery Point in New York State waters, which represents the interconnection point between Transco's existing LNYBL and the existing offshore Rockaway Delivery Lateral. The proposed project would consist of several components, including onshore pipeline facilities in Pennsylvania and New Jersey and offshore pipeline facilities in New Jersey and New York. Only the offshore pipeline components of the project have the potential to result in the incidental take of marine mammals, thus the onshore components of the project are not analyzed further.

Transco's proposed offshore pipeline facilities include the Raritan Bay Loop pipeline, which would be located primarily in Raritan Bay as well as parts of Lower New York Bay and the Atlantic Ocean. The Raritan Bay Loop would begin at the onshore connection with the Madison Loop in Middlesex, New Jersey (see figure 2 in the IHA application). The offshore portion of the Raritan Bay Loop would extend from the Sayreville shoreline approximately 37.6 kilometers (km) across Raritan Bay and Lower New York Bay to the Rockaway Transfer Point, which is the interconnection point with the Rockaway Delivery Lateral in New York state waters in the Atlantic Ocean, approximately 4.8 km seaward of Rockaway, New York. Approximately 9.6 km of the offshore portion of the Raritan Bay Loop route would cross New Jersey waters, while the remaining 28 km would cross New York waters.

The Raritan Bay Loop would cross a continuous expanse of open marine and estuarine waters in New Jersey and New York, which consists of three major contiguous waterbodies, including Raritan Bay, Lower New York Bay, and the Atlantic Ocean (See figures 1 and 2 in the application). This area is included in the eastern-most portion of a larger coastal area known as the New York Bight.

Construction of the Raritan Bay Loop pipeline would require the installation of 163 piles, ranging in size from 10 to 60-in (0.3 to 1.5-m) in diameter, using vibratory and impact pile driving and vibratory removal. Impact pile drivers are piston-type drivers that use various means to lift a piston to a desired height and drop the piston against the head of the pile in order to drive it into the substrate (Caltrans, 2015). Diesel impact hammers would be used to install approximately 34 steel piles (table 1). A vibratory device uses spinning counterweights, causing the pile to vibrate at high speed. The vibrating pile causes the soil underneath it to "liquefy" and allow the pile to move easily into or out of the sediment. Vibratory devices would be used to install and remove approximately 163 steel pipe piles (table 1). Note that some piles would require both impact and vibratory installation.

The total time to install a pile is dependent on the installation method (vibratory or impact), diameter of the pile, substrate composition, and depth the pile needs to penetrate through the substrate. For pile installation of 34 to 60-in (0.9 to 1.5-m) piles using a diesel impact hammer, the estimated time is 38 to 62 minutes per pile. For pile installation of 10 to 60-in (0.3 to 1.5-m) piles using a vibratory hammer, the estimated time is 15 minutes per pile. For pile removal of 10 to 60-in (0.3 to 1.5-m) piles using a vibratory hammer, the estimated time is 5 to 30 minutes per pile. The minimum handling time (*i.e.*, periods during which the pile is being positioned, steadied, *etc.*, and no in-water construction noise is anticipated) is dependent on activity type and pile size. For vibratory

hammer periods for 10 to 48-in (0.3 to 1.2-m) piles, the handling time ranges from 15 to 45 minutes. For vibratory hammer periods for 60-in (1.5-m) piles, the minimum handling time is 1 hour and 45 minutes. For impact hammer periods, the minimum handling time is 30 minutes. The total duration of pile installation (including both vibratory and impact pile driving) is estimated at 43 days (of which impact pile driving would occur on up to 14 days and vibratory pile driving would occur on 43 days). The piles would remain in the offshore environment only for the duration of each related offshore construction activity. Once offshore construction is complete, all piles would be removed using a vibratory hammer, which is expected to occur over an estimated 26 days. Thus, the total duration of pile installation and removal is 69 days (*i.e.*, 43 days for pile installation and 26 days for pile removal).

All piles would be installed along a string of locations within Raritan Bay (see figure 2 in the IHA application). Transco would complete construction of the various components of the offshore pipeline in several stages with overlapping schedules. An overview of these stages and their general sequence (*i.e.*, temporary fixed platform, pre-trenching, cable crossings and initial pipelay, Hydraulic Directional Drilling (HDD) crossings, additional pipelay and backfill, and subsea manifold tie-in, hydrostatic testing, and commissioning) are described in Transco's application.

The various components of the proposed construction of the Raritan Bay Loop pipeline, including pile type, size and quantity, installation method (*i.e.*, impact or vibratory), pile driving or removal duration, are shown in table 1 and are described in greater detail in the IHA application. At locations where more than one pile type is planned for installation, Transco plans to install and remove two piles simultaneously. The combination of piles that would create the largest cumulative sound exposure level at a given location are presented in table 2.

TABLE 1—PILE DRIVING SUMMARY FOR RARITAN BAY LOOP PIPELINE, INCLUDING PILE TYPES AND DRIVING DURATIONS

Mile	Construction site	Pile type	Pile size (inches)	Number of piles	Installation			Removal			
					Driving method	Duration (minutes); strikes per pile	Piles per day	Duration (days)	Removal time/pile	Piles per day	Duration (days)
12.59	Morgan Shore Approach HDD.	Platform	36	18	Vibratory, Impact ...	15; 1,920–12,500 ...	4	4.5	30	8	3
		Platform Reaction	36	4	Vibratory, Impact ...	15	2	2	30	3	3
		Support barge fender	36–48	4	Vibratory	15	4	2	15	3	3
		Water barge fender	36–48	4	Vibratory	15	4	2	15	3	3
13.84	Neptune Power Cable Crossing.	HDD sting goal post	24	10	Vibratory	15	4	3	5	4	3
		Sleeper vertical	10	8	Vibratory	15	4	2	15	4	1.5
		Morgan shore pull vertical guide.	24	22	Vibratory	15	5	5	15	11	1.5
		MP 28.0 to MP 29.36	34	12	Vibratory	15	4	3	30	6	2
28.0 to 29.36	Ambrose Channel HDD West.	W750	36	3	Vibratory	15	2	1.5	15	3	0.5
		Reaction frame	36–60	8	Vibratory; Impact ...	15; 3,382	2	4	30	8	0.5
		Support barge fender	36–48	4	Vibratory	15	4	1.5	15	8	1
		Water barge fender	36–48	4	Vibratory	15	6	1.5	15	5	2
30.48	Ambrose Channel HDD East Side.	HDD sting goal posts	24	12	Vibratory	15	5	1.5	5	6	2
		Vertical stabilization	24	22	Vibratory	15	5	5	15	22	0.5
		W751 side piles	36	3	Vibratory	15	3	0.5	15	3	0.5
		Support barge fender	36–48	4	Vibratory	15	8	1	15	8	1
34.5 to 35.04	Neptune Power Cable Crossing MP 35.04.	Water barge fender	36–48	4	Vibratory	15	5	1.5	15	5	2
		HDD drill sting goal posts	24	10	Vibratory	15	5	1	15	5	2
		Pipeline barge mooring pile ..	60	1	Vibratory	15	1	0.5	15	1	1
		Pipeline barge mooring pile ..	34	4	Vibratory; Impact ...	15; 1,920–2,500	2	3	15	2	2
35.04		Crossing pile	10	2	Vibratory	15	2	1	15	2	1

¹ Maximum strikes per pile per day (i.e., 2,500) were used to calculate distances to Level A harassment isopleths.

TABLE 2—SIMULTANEOUS PILE DRIVING SCENARIOS THAT RESULT IN THE LARGEST CUMULATIVE SOUND EXPOSURE LEVEL AT EACH LOCATION

Scenario	Construction site	Pile size (inches)	Activity	Total number of piles	Duration (minutes); strikes per pile	Installation/removal duration (days)	Average number of piles per day	Number of days for concurrent activities
Installation								
1	Morgan Shore Approach HDD (MP 12.59).	36	Impact	18	2,500 strikes	4.5	4	6.5
		36	Impact	4	2,500 strikes	2	2	
2	Ambrose Channel HDD West Side (MP 29.40).	60	Impact	8	3,382 strikes	4	2	4
		48	Vibratory	4	15 minutes	1.5	3	
3	Ambrose Channel HDD East Side (MP 30.48).	48	Vibratory	4	15 minutes	1	4	1
		48	Vibratory	4	15 minutes	1	4	
Removal								
4	Morgan Shore Approach HDD (MP 12.59).	36	Vibratory	18	30 minutes	*3	6	3
		36	Vibratory	4	30 minutes	*3	1	
5	Ambrose Channel HDD West Side (MP 29.4).	36	Vibratory	8	30 minutes	0.5	8	1
		48	Vibratory	4	15 minutes	1	4	
6	Ambrose Channel HDD East Side (MP 30.48).	48	Vibratory	4	15 minutes	1	4	1
		48	Vibratory	4	15 minutes	1	4	

* There are a total of 22 36-inch piles planned at Morgan Shore Approach HDD, 18 of which are platform piles (for temporary fixed platform); while the other 4 are platform reaction piles; The overall extraction rate for 36-inch piles at Morgan Shore Approach HDD is 8 per day, but for purposes of this concurrent pile extraction worst-case analysis, a more detailed extraction rate of 1.33 piles per day for the 4 platform reaction piles is used. As such, production rates here do not match those presented in table 1.

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 3 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 serious injury and mortality (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. Atlantic SARs. 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 3—SPECIES ¹ WITH ESTIMATED TAKE FROM THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)						
<i>Family Balaenidae:</i> N Atlantic Right Whale ⁵ ..	<i>Eubalaena glacialis</i>	Western Atlantic	E, D, Y	372 (0, 367, 2023)	0.73	14.8
<i>Family Balaenopteridae (rorquals):</i> Fin Whale	<i>Balaenoptera physalus</i>	Western N Atlantic	E, D, Y	6,802 (0.24, 5,573, 2021)	11	2.05
Humpback Whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	-, -, N	1,396 (0, 1380, 2016)	22	12.15
Minke Whale	<i>Balaenoptera acutorostrata</i> ...	Canadian Eastern Coastal ...	-, -, N	21,968 (0.31, 17,002, 2021) ..	170	9.4

TABLE 3—SPECIES¹ WITH ESTIMATED TAKE FROM THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Sei Whale	<i>Balaenoptera borealis</i>	Nova Scotia	E, D, Y	6,292 (1.02, 3,098, 2021)	6.2	0.6
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Long-Finned Pilot Whale ⁶	<i>Globicephala melas</i>	Western N Atlantic	-, -, N	39,215 (0.30, 30,627, 2021) ..	306	5.7
Short-Finned Pilot Whale ⁷	<i>Globicephala macrorhynchus</i>	Western N Atlantic	-, -, Y	18,726 (0.33, 14,292, 2021) ..	143	218
Atlantic Spotted Dolphin ..	<i>Stenella frontalis</i>	Western N Atlantic	-, -, N	31,506 (0.28, 25,042, 2021) ..	250	0
Atlantic White-Sided Dol- phin.	<i>Lagenorhynchus acutus</i>	Western N Atlantic	-, -, N	93,233 (0.71, 54,443, 2021) ..	544	28
Bottlenose Dolphin	<i>Tursiops truncatus</i>	Northern Migratory Coastal ...	-, -, Y	6,639 (0.41, 4,759, 2016)	48	12.2- 21.5
		Western N Atlantic Offshore ⁸	-, -, N	64,587 (0.24, 52,801, 2021) ..	507	28
Common Dolphin	<i>Delphinus delphis</i>	Western N Atlantic	-, -, N	93,100 (0.56, 59,897, 2021) ..	1,452	414
Family Phocoenidae (por- poises):						
Harbor Porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy ..	-, -, N	85,765 (0.53, 56,420, 2021) ..	649	145
Order Carnivora—Pinnipedia						
Family Phocidae (earless seals):						
Gray Seal ⁹	<i>Halichoerus grypus</i>	Western N Atlantic	-, -, N	27,911 (0.20, 23,624, 2021) ..	1,512	4,570
Harbor Seal	<i>Phoca vitulina</i>	Western N Atlantic	-, -, N	61,336 (0.08, 57,637, 2018) ..	1,729	339
Harp Seal	<i>Pagophilus groenlandicus</i>	Western N Atlantic	-, -, N	7.6M (UNK, 7.1M, 2019)	426,000	178,573

¹ 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/>).

² 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 which 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.

³ NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

⁴ 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, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

⁵ The current SAR includes an estimated population (N_{est} 372) based on sighting history through November 2023. In October 2024, NMFS released a technical report identifying that the North Atlantic right whale population size based on sighting history through 2023 was 372 whales, with a 95 percent credible interval ranging from 360 to 383 (Linden, 2024). Total annual average observed North Atlantic right whale mortality during the period 2018–2022 was 5.45 animals and annual average observed fishery mortality was 3.95 animals. Numbers presented in this table (14.8 total mortality and 10.8 fishery mortality) are 2018–2022 estimated annual means, accounting for undetected mortality and serious injury.

⁶ Key uncertainties exist in the population size estimate for this species, including uncertain separation between short-finned and long-finned pilot whales, small negative bias due to lack of abundance estimate in the region between US and the Newfoundland/Labrador survey area, and uncertainty due to unknown precision and accuracy of the availability bias correction factor that was applied.

⁷ A key uncertainty exists in the population size estimate for this species based upon the assumption that the logistic regression model accurately represents the relative distribution of short-finned vs. long-finned pilot whales.

⁸ Estimates may include sightings of the coastal form.

⁹ NMFS' stock abundance estimate (and associated PBR 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 15 number species (with 16 number managed stocks) in table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While sperm whale could potentially occur in the project area, the spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Sperm whales typically occur in deeper waters than what are included in the project area (Zoidis *et al.* 2021).

In addition to what is included in sections 3 and 4 of the IHA application, and NMFS' website, further detail informing the regional occurrence for select species of particularly or unique vulnerability (i.e., information regarding ESA listed or MMPA depleted species, information regarding current Unusual Mortality Events (UME) and known important habitat areas such as

Biologically Important Areas (BIAs)) (Van Parijs, 2015) is provided below. There is no ESA-designated critical habitat for any species within the project area.

North Atlantic Right Whale

In December 2024, NMFS finalized the 2023 SARs, which updated the North Atlantic right whale population estimate (N_{est}) to 372 individuals, which is equal to the population estimate included in the North Atlantic right whale Consortium's 2023 Report Card (Pettis *et al.*, 2024); between the final 2022 SAR and the final 2023 SAR, the estimated annual mortality and serious injury (M/SI) value decreased from 31.2 to 14.8. We note that beginning in the 2022 SARs, the M/SI for North Atlantic right whale included the addition of estimated undetected mortality and serious injury. There are no revisions to N_{est} or M/SI in the draft 2024 SAR.

Elevated North Atlantic right whale mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast, with the leading category for the cause of death for this UME to be "human interaction: through entanglement and vessel strikes. As of July 30, 2025, there have been 41 confirmed dead stranded whales, and 39 seriously injured free-swimming whales for a total of 80 whales. The UME also considers animals with sub-lethal injury or illness (called "morbidity"; n= x) bringing the total number of whales in the UME to 157. More information about the North Atlantic right whale UME is available online at: <https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events>.

The eastern portion of the proposed project area spatially overlaps with a BIA for migrating North Atlantic right whales, which is active in March and

April (northward migration to feeding areas), and November and December (southern migration to calving grounds) (LaBrecque *et al.*, 2015; Van Parijs *et al.*, 2015). It is during this time (November through April) that North Atlantic right whales are most likely to be found in the vicinity of the proposed project area, and seasonal management areas (SMAs) are in effect within a 37-kilometer (19-statute-mile) radius of several major ports along the U.S. East Coast (73 FR 60173, October 10, 2008). A portion of the project area overlaps with an SMA associated with the Port of New York and New Jersey. While North Atlantic right whales are occasionally observed in nearshore waters near the project site, their calls are most frequently detected in the shelf zone of the New York Bight (between 25 m to 200 m water depth) (Zoidis *et al.*, 2021). Within the last 10 years, 12 sightings of 19 right whales have been observed within the project area, off of Long Island, New Jersey, and at the mouth of Upper Bay (between Brooklyn and Staten Island) (Morrison and Taggart, 2021, accessed July 25, 2025). Dynamic Management Areas (DMAs) that overlap with the project area have been established on 18 occasions (including extensions) between January 2023 and June 2025. All DMAs occurred in the months of November through March. DMAs are a voluntary program that NMFS uses to notify vessel operators to slow down to avoid right whales. NMFS establishes DMAs based on visual sightings of three or more right whales within a distinct area. For a period of 15 days after whales are detected, mariners are encouraged to avoid these areas or reduce speeds to 10 knots or less while transiting through these areas.

Recent research indicates our understanding of North Atlantic right whale movement patterns remains incomplete (Davis *et al.*, 2017). A review of passive acoustic monitoring data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round right whale presence across their entire habitat range (for at least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.*, 2017). However, most of the north Atlantic right whales observed in the New York Bight outside of the migration period are detected in deeper waters of the continental shelf, much further offshore (Morrison and Taggart, 2021, accessed July 25, 2025). Of the 11 sightings of North Atlantic right whale observed in

the project area (referenced above), just four sightings of four individuals were reported within project waters outside the migration period, in June and October 2020, and August 2021 (Morrison and Taggart, 2021, accessed July 25, 2025).

North Atlantic right whale foraging behavior has not been documented near the coast of Long Island. The closest foraging sighting to the project area was reported by the New England Aquarium in 2024, in which over 82 unique individuals were observed during a series of flights between the end of July into August 2024 about 40–70 miles south and offshore of Long Island, between Hudson and Block Canyons (New England Aquarium, 2024). Zoidis *et al.*, 2021 also observed a right whale skim feeding at the shelf break, further offshore than is typical, in May 2019. Therefore, any right whales in the vicinity of the project area are expected to be transient, either migrating through the area from late fall until late April or spending short amounts of time within the waters southeast of Long Island.

During Transco's LNYBL Maintenance Project, which was located in Raritan Bay and Lower New York Bay, Protected Species Observers (PSOs) monitored for marine mammals on 59 days between mid-July and late October 2024, and reported no sightings of North Atlantic right whales. Two sightings of five unidentified whales were reported, but PSOs deduced they were not right whales based on the shapes of the dorsal fins.

The project area does not overlap with designated critical habitat for North Atlantic right whales.

Fin Whale

In the New York Bight, fin whales are most common in deeper waters of the continental shelf (Estabrook *et al.*, 2025, Lomack-Macnair *et al.*, 2022), particularly in the summer (Zoidis *et al.*, 2021), though they have been observed in nearshore waters off of Long Island in all seasons (Sadove and Cardinale, 1993; Zoidis *et al.*, 2021). During monthly 36-line transect aerial surveys, fin whales were observed closer to the project area primarily in the spring (Zoidis *et al.*, 2021).

During Transco's LNYBL Maintenance Project, PSOs reported no sightings of fin whales during project monitoring described above. However, two sighting of five unidentified whales were reported.

The project area does not overlap with any BIAs or other known important areas for fin whales.

Humpback Whale

Humpback whales are one of the most frequently detected baleen whale species throughout the New York Bight (Zoidis *et al.*, 2021; Estabrook *et al.*, 2025). While it is unclear how long individual humpback whales remain in the New York Bight, detections occur year-round (Brown *et al.*, 2022; Estabrook *et al.*, 2025; Zoidis *et al.*, 2021). There is increasing evidence to suggest that the New York Bight provides a supplemental foraging area for this species (Lomack-MacNair *et al.*, 2022; Estabrook *et al.*, 2025), including in the project area (Smith *et al.*, 2022). The majority of sightings from whale watch trips or public observations in the New York Bight Apex were reported between July and September (Brown *et al.*, 2022), though it is important to recognize reduced observer effort in the winter months (*i.e.*, there were no whale watch trips during this time, only public reports). Estabrook *et al.* (2025) noted that humpback whale calls were more frequently detected near New York Harbor between November and March, and at sites near the shelf edge between July and September.

During Transco's LNYBL Maintenance Project, PSOs reported eight sightings of 10 humpback whales during project monitoring described above. Additionally, two sightings of five unidentified whales were reported.

Since January 2016, elevated humpback whale mortalities along the Atlantic coast from Maine to Florida led to the declaration of a UME. As of July 30, 2025, 257 humpback whales have stranded as part of the UME. Partial or full necropsy examinations have been conducted on approximately 90 of the known cases. Of the whales examined, about 40 percent had evidence of human interaction, either vessel strike or entanglement. While a portion of the whales shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. Nearly a third of documented strandings have occurred off New York and New Jersey. More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events>.

The project area does not overlap with any BIAs for humpback whales.

Minke Whale

North Atlantic minke whales migrate seasonally between high latitude summer feeding grounds and low latitude winter breeding grounds. While they have been sighted in all months of the year in the New York Bight (Sadove

and Cardinale, 1993), the occurrence of minke whale in the mid-Atlantic increases during the spring and summer (Risch *et al.*, 2024, Lomac-MacNair *et al.*, 2022); acoustic array data analyzed by Rich *et al.*, 2014 detected minke whales off of NY in deep offshore waters, primarily in March through May and reported few detections in autumn and winter (note that summer data were not available at this NY site for this study). Lomac-Macnair *et al.*, 2022 observed minke whales may be using the New York Bight region as supplementary feeding habitat in the spring and summer.

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Main through Georgia. As of July 30, 2025, a total of 201 minke whales have stranded as part of the UME. Partial or full necropsy examinations have been conducted on approximately 60 percent of the known cases. Preliminary findings in several of the whales have shown evidence of human interactions or infectious diseases. These findings are not consistent across all of the whales examined, so more research is needed. Nearly a quarter of documented strandings have occurred off New York and New Jersey. More information is available at: <https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events>.

During Transco's LNYBL Maintenance Project, PSOs reported no sightings of minke whales during project monitoring described above. However, two sighting of five unidentified whales were reported.

The project area does not overlap with any BIAs or other known important areas for minke whales.

Sei Whale

Sei whales have been detected acoustically along the Atlantic Continental Shelf and Slope from south of Cape Hatteras, North Carolina to the Davis Strait, and acoustic occurrence has been increasing in the mid-Atlantic region since 2010 (Davis *et al.*, 2020). Although their migratory movements are not well understood, sei whales are believed to migrate between feeding

grounds in temperate and subpolar regions to wintering grounds in lower latitudes (Kenney and Vigness-Raposa, 2010; Hayes *et al.*, 2020). Sei whales generally occur offshore and in deeper waters (deeper waters of the continental shelf edge of the eastern United States and northeastward to south of Newfoundland (Mitchell, 1975; Hain *et al.*, 1985; Hayes *et al.*, 2022); however, individuals may also move into shallower, more inshore waters (Payne *et al.*, 1990; Halpin *et al.*, 2009; Hayes *et al.*, 2022).

During Transco's LNYBL Maintenance Project, PSOs reported no sightings of sei whales during project monitoring described above. However, two sighting of five unidentified whales were reported.

The project area does not overlap with any BIAs or other known important areas for sei whales.

Phocid Seals

Harbor and gray seals have experienced two UMEs since 2018, although one was closed in 2022 (pinniped UME in Maine) and closure of the second, described here, is pending. Beginning in July 2018, elevated numbers of harbor seal and gray seal mortalities occurred across Maine, New Hampshire, and Massachusetts. Additionally, stranded seals have shown clinical signs as far south as Virginia, although not in elevated numbers, therefore the UME investigations encompassed all seal strandings from Maine to Virginia. A total of 3,152 reported strandings (of all species) occurred from July 1, 2018, through March 13, 2020. Full or partial necropsy examinations were conducted on some of the seals and samples were collected for testing. Based on tests conducted thus far, the main pathogen found in seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME, which is pending closure. Information on this UME is available online at: <https://www.fisheries.noaa.gov/national/marine-life-distress/active-and-closed-unusual-mortality-events>.

Harbor seal, gray seal, and harp seal are most likely to occur within the

project area during the winter and early spring (September to May), with harbor seals primarily present between October to March. Sandy Hook Beach is the closest known haulout to the project area. It is approximately 2.9 km (1.8 mi) southwest of the project site, and is used by both harbor seals and gray seals (Reynolds, 2024). The average maximum daily count of pinnipeds reported by volunteers during winter surveys between 2005 and 2024 is 68 (Reynolds, 2024). The Coastal Research and Education Society of Long Island also implements volunteer-based monitoring of pinnipeds at Cupsogue Beach, approximately 72 km (45 mi) northeast of the Project Area. Additional gray seal haulout sites are likely Little Gull Island and Great Gull Island in Long Island Sound.

Pinnipeds were not detected during Transco's NYBL maintenance project monitoring, described above.

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 ~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 4.

TABLE 4—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, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	200 Hz to 165 kHz.

TABLE 4—MARINE MAMMAL HEARING GROUPS—Continued
[NMFS, 2024]

Hearing group	Generalized hearing range *
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 ~65 dB threshold from composite audiogram, previous analysis in NMFS 2018, and/or data from Southall *et al.* 2007; Southall *et al.* 2019. Additionally, animals are able to detect very loud sounds above and below that "generalized" hearing range.

For more detail 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.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (American National Standards Institute (ANSI), 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.*, waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.*, sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.*, vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise "ambient" or "background" sound—depends not only on the source levels (as determined by current weather conditions and levels of

biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.*, 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact and vibratory pile driving, and vibratory pile removal. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.*, explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; National Institute of Occupational Safety and Health (NIOSH), 1998; NMFS, 2018). Non-impulsive sounds (*e.g.*, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward, 1997, in Southall *et al.*, 2007).

Two types of hammers would be used on this project: impact and vibratory.

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is 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 sediment. Vibratory hammers produce significantly less sound 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). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.*, 2005).

The likely or possible impacts of Transco's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of equipment and personnel; however, any impacts to marine mammals are expected to be primarily acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal.

Acoustic Effects

The introduction of anthropogenic noise into the aquatic environment from pile driving is the means by which marine mammals may be harassed from Transco's specified activity. In general, animals exposed to natural or anthropogenic sound may experience behavioral, physiological, and/or physical effects, ranging in magnitude from none to severe (Southall *et al.*, 2007, 2019). In general, exposure to pile driving noise has the potential to result in behavioral reactions (*e.g.*, avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior) and, in limited cases, an auditory threshold shift (TS). Exposure to anthropogenic noise can also lead to

non-observable physiological responses such as 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 effects of pile driving on marine mammals are dependent on several factors, including, but not limited to, sound type (e.g., impulsive vs. non-impulsive), the species, age and sex class (e.g., adult male vs. mom with calf), duration of exposure, the distance between the sampling site and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.*, 2004; Southall *et al.*, 2007). Here we discuss physical auditory effects (TSs) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced 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 TS is customarily expressed in dB. A 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 and vocalization 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 and permanent threshold shift (PTS)—NMFS defines auditory injury (AUD INJ) as “damage to the inner ear that can result in destruction of tissue . . . which may or may not result in PTS” (NMFS, 2024). NMFS defines PTS 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). Available data from humans and other terrestrial mammals indicate that a 40-dB TS approximates PTS onset (Ward *et al.*, 1958, 1959; Ward 1960; Kryter *et al.*, 1966; Miller, 1974; Ahroon *et al.*, 1996; Henderson *et al.*, 2008). PTS levels for marine

mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Reichmuth 2019), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary threshold shift (TTS)—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, 2018). Based on data from cetacean TTS measurements (Southall *et al.*, 2007, 2019), a TTS of 6 dB is considered the minimum TS clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.*, 2000; Finneran *et al.*, 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum} , the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum} , the growth curves become steeper and approach linear relationships with the noise 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 serious (similar to those discussed in *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 serious 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. 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, beluga whale, harbor porpoise, and Yangtze finless porpoise (*Neophocaena 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, 2021, 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 at low frequencies, well below the region of best sensitivity for a species or hearing group, are less hazardous than those at higher frequencies, 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 will 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.*, 2014, 2015). This means that TTS predictions based on the total, cumulative SEL will 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, 2018). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above that inducing mild TTS (*e.g.*, a 40-dB threshold shift approximates PTS 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 PTS 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 PTS 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 PTS as compared with TTS, it is considerably less likely that PTS could occur.

Activities for this project include impact and vibratory pile driving and removal. For the proposed project, these activities could occur at the same time at three out of eight locations, but there would likely be pauses in activities producing the sound during each day.

Given these pauses and the fact that many marine mammals are likely moving through the project areas and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Generally speaking, NMFS considers a behavioral disturbance that rises to the level of harassment under the MMPA a non-minor 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); avoidance of areas where sound sources are located. 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 showed 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. 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. However, 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.

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). 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. 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.

Variations in respiration naturally vary 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 rate increased in response to pile driving sounds at and above a received broadband SPL of 136 dB (zero-peak SPL: 151 dB re 1 micropascal (μPa); SEL

of a single strike: 127 dB re 1 $\mu\text{Pa}^2\text{-s}$) (Kastelein *et al.*, 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). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.*, 1994).

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). 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., Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *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 (Evans and 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.

Across 59 monitoring days between mid-July and late October 2024, Transco documented observations of marine mammals during construction activities at a project site occurring in Raritan Bay and Lower New York Bay (LNYBL

Maintenance Project) (see 89 FR 20170, March 21, 2024). PSOs reported 8 sightings of 10 humpback whales and 35 sightings of 370 bottlenose dolphins in the project area. An additional 2 sightings of 5 unidentified cetaceans and 31 sightings of 262 unidentified dolphins were also reported. During pile driving activities, a total of 6 humpback whales, 113 bottlenose dolphins, and 166 unidentified dolphins were observed within the estimated Level B harassment zone. The humpback whales were observed breaching, surfacing, blowing, and feeding while the bottlenose dolphins were observed diving, porpoising, surfacing, blowing and milling. The unidentified dolphins were primarily surfacing but were also observed traveling, blowing, diving, milling and breaching. No changes in behavior in response to the activity were reported for any species.

Given the similarities in activities and habitat and the fact the same species are involved, we expect similar behavioral responses of marine mammals to Transco's specified activity. That is, disturbance, if any, is likely to be temporary and localized.

Stress Response—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., Seyle, 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 will 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). 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. These and other studies lead to a reasonable expectation that some marine mammals will 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, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Auditory Masking—Sound can disrupt behavior through masking, or interfering 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). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (e.g., snapping shrimp, wind, waves, precipitation) or anthropogenic (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. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (e.g., on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Raritan Bay, Lower New York Bay and the Atlantic Ocean where the project area is located experiences significant commercial and recreational vessel activity, and background sound levels are already elevated.

Airborne Acoustic Effects—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 the acoustic criteria. 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 temporarily abandon the area and 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. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Marine Mammal Habitat Effects

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish. The proposed activities could also affect acoustic habitat (see masking discussion above), but meaningful impacts are

unlikely. There are no known foraging hotspots, or other ocean bottom structures of significant biological importance to marine mammals present in the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously. The most likely impact to marine mammal habitat occurs from pile driving effects on likely marine mammal prey (e.g., fish). Impacts to the immediate substrate during installation and removal of piles are anticipated, but these would be limited to minor, temporary suspension of sediments, which could impact water quality and visibility for a short amount of time, without any expected effects on individual marine mammals. Impacts to substrate are therefore not discussed further.

In-water Construction Effects on Potential Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (e.g., crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish 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 which 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 fish, although several are based on studies in support of large, multiyear bridge construction projects (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., Pena *et al.*, 2013; Wardle *et al.*, 2001; Jorgenson and Gyselman, 2009; Cott *et al.*, 2012). More commonly, though, the impacts of noise on fish are temporary.

SPLs of sufficient strength have been known to cause auditory injury, non-auditory injury, and mortality in fish. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 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.*, 2012b; Casper *et al.*, 2013).

The greatest potential impact to fishes during construction would occur during impact pile driving which is estimated to occur on up to 14 days across the proposed project, with 7 days of impact pile driving estimated at Morgan Shore Approach HDD (MP 12.59) (with a maximum of 15,000 strikes per day), 4 days of impact pile driving planned at Ambrose Channel HDD West Side (with a maximum of 6,764 strikes per day), and 3 days of impact pile driving planned at MP 34.5 to MP 35.04 (with a maximum of 5,000 strikes per day). There would 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 and removal would 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.

The most likely impact to fishes from pile driving and removal activities in the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of the area after pile driving stops is unknown but a rapid return to normal recruitment, distribution, and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary. Further, it is anticipated that preparation activities for pile driving and removal (i.e., positioning of the hammer) and upon initial startup of devices would cause fish to move away from the affected area where injuries may occur. Therefore, relatively small portions of the proposed project area would be affected for short periods of time, and the potential for effects to fish would be temporary and limited to the duration of sound-generating activities.

In summary, given the short daily duration of sound associated with individual pile driving and removal, and the relatively small areas being affected, pile driving and removal activities associated with the proposed action are not likely to have a permanent adverse effect on any fish habitat, or populations of fish species. 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 conclude that impacts of the specified activity 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 and vibratory pile driving and removal) 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 for all hearing groups. However, 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, 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 pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μ Pa)) for continuous (*e.g.*, vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μ Pa 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.

Transco's proposed activity includes the use of continuous (vibratory pile driving and removal) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μ Pa 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). Transco's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and removal) sources.

The 2024 Updated Technical Guidance criteria include both updated thresholds and updated weighting functions for each hearing group. 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 5—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 ($L_{p,0-pk}$) has a reference value of 1 μ Pa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1 μ Pa²s. 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 Hertz (Hz) to 165 Kilohertz (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.*, vibratory pile driving and removal, and impact pile driving).

The project includes vibratory pile installation and removal, and impact pile driving. Since there would be many piles at each of the eight construction sites within close proximity to one another, Transco found, and NMFS agreed, that it was not practical to estimate harassment zones for each individual pile at specific locations and results would have been nearly identical for all similarly sized piles at each construction location. In order to simplify calculations, a representative pile site was selected for the eight separate pile locations (figure 1). For strings where only a single pile type would be installed or removed (*i.e.*, Neptune Power Cable Crossing MP 13.84 and MP 35.04, MP 14.5 to MP 16.5, MP 28 to MP 29.36, and MP 34.5 to MP 35.04), Transco selected a representative location in the middle of the string. For the Morgan Shore

Approach HDD string site, Transco selected the location closest to the platform installation as the representative pile location because it represents the area with the largest pile sizes. At the HDD Ambrose West Side and HDD Ambrose East Side locations, Transco’s representative pile locations were selected based on the entry and exit pits. The HDD Ambrose East Side is the entry pit and the HDD Ambrose West Side is the exit pit. This would also represent the outer limit of the HDD Ambrose string, and is therefore the most conservative modeling option.

In its application, Transco indicated that it identified source levels for installation and removal of each pile type and size using the compendium compiled by Caltrans 2015, but also referenced Caltrans, 2020 and Illingworth & Rodkin, 2017. Transco did not specify which sound levels were based on which reference. NMFS revised source levels for these activities based on reviews of measurements of the same or similar types and dimensions of piles available in the literature (table 6). NMFS and Transco assumed that the representative sound source levels were based on the largest pile expected to be driven/removed at each potential in-water construction site. For example, where Transco may use a range of pile sizes (*i.e.*, 36 to 48-in piles), the largest potential pile size (48-in) was used in modeling. Source

levels for vibratory installation and removal are assumed to be the same.

Additionally, while not included in its application, Transco indicated that two hammers, including a combination of vibratory and impact hammers, may operate simultaneously at three out of eight locations. As such, source levels for the combination of piles that would create the largest cumulative sound exposure level at location are also presented in table 6.

The methods for how the source levels for these concurrent activities are derived are described here: When two noise sources have overlapping sound fields, the sources are considered additive and combined using the rules of dB addition. For addition of two simultaneous sources, the difference between the two sound source levels is calculated, and if that difference is between 0 and 1 dB, 3 dB are added to the higher sound source levels; if the difference is between 2 and 3 dB, 2 dB are added to the highest sound source levels; if the difference is between 4 and 9 dB, 1 dB is added to the highest sound source levels; and with differences of 10 or more dB, there is no addition. For two simultaneous sources of different type (*i.e.*, impact and vibratory driving), there is no sound source addition. In such cases, the isopleth associated with the individual source which results in the largest isopleths is conservatively used for both sources to account for periods of overlapping activities.

TABLE 6—ESTIMATES OF MEAN UNDERWATER SOUND LEVELS¹ GENERATED DURING VIBRATORY AND IMPACT PILE DRIVING AND VIBRATORY REMOVAL OF TEMPORARY STEEL PILES

Method	Pile size (inches)	dB RMS	dB Peak	dB SEL	References
Vibratory	10	155	N/A	N/A	Caltrans 2015.
	24	157	N/A	N/A	Caltrans 2020.
	34	170	N/A	N/A	Caltrans 2015.
	36	170	N/A	N/A	Caltrans 2015.
	48	170	N/A	N/A	NMFS 2024. ²
Impact	60	170	N/A	N/A	NMFS 2024. ²
	34	193	210	183	Caltrans 2015, Caltrans 2020.
	36	193	210	183	Caltrans 2015, Caltrans 2020.
Impact, Impact ³	60	193	210	185	Caltrans 2020.
	36, 36	196	213	183	Caltrans 2015.
Impact, Vibratory	60, 48	170	210	185	Caltrans 2020.
Vibratory, Vibratory ³	48, 48	173	N/A	N/A	NMFS 2024. ²
	36, 36	173	N/A	N/A	
	36, 48	173	N/A	N/A	

Note: dB peak = peak sound level; rms = root mean square; SEL = sound exposure level.

¹ All sound levels are referenced at 10 m.

² Refers to a NMFS compendium of recommended source level proxies.

³Source levels adjusted following rules of dB addition described above.

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:

$$TL = B \times \log_{10} (R_1/R_2),$$

where

TL = transmission loss in dB

B = transmission loss coefficient

*R*₁ = the distance of the modeled SPL from the driven pile, and

*R*₂ = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured *TL*, a practical spreading value of 15 is used as the *TL* coefficient in the above formula. Site-specific *TL* data for the New York Bight are not available; therefore, the default coefficient of 15 is used to determine the distances to the Level A harassment and Level B harassment thresholds.

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 the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources pile driving and removal, 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, and the resulting estimated isopleths, are reported in tables 7 and 8.

To calculate Level A harassment isopleths for two impact hammers operating simultaneously, the NMFS User Spreadsheet calculator was used with modified inputs to account for the total estimated number of strikes for all piles. For simultaneous impact pile driving of two 36-in steel piles (the most conservative scenario identified at Morgan Shore Approach HDD MP 12.59), the total estimated number of strikes per day was summed to estimate total sound exposure during

simultaneous installation, and the number of piles per day was reduced to one. The source level for two simultaneous impact hammers was not adjusted because for identical sources the accumulation of energy depends only on the total number of strikes, whether or not they overlap fully in time.

To calculate the Level A harassment isopleths for one impact and one vibratory hammer operating simultaneously, sources were treated as though they were non-overlapping. The isopleths associated with the individual source which results in the largest Level A harassment isopleths were conservatively used for both sources to account for periods of overlapping activities.

To calculate Level A harassment isopleths for two simultaneous vibratory hammers, the NMFS User Spreadsheet was used with modified inputs to account for accumulation, weighting, and source overlap in space and time. Using the rules of dB addition described above (*i.e.*, if the difference between the two source levels is between 0 and 1 dB, 3 dB are added to the higher sound source level), the combined sound source level for the simultaneous vibratory installation of two 48-in steel piles, or two 36-in steel piles, or a 36-in and a 48-in steel pile is 173 dB RMS in all cases.

TABLE 7—USER SPREADSHEET INPUTS: SINGLE PILE DRIVING SCENARIOS

Location	Pile size	Spreadsheet tab used	Weighting factor adjustment (kHz)	Piles per day	Duration to drive a single pile (minutes)	Strikes
Installation						
Morgan Shore Approach HDD (MP 12.59).	24	A.1 Vibratory pile driving	2.5	4	15	N/A
	36			4		
	48			4		
Neptune Power Cable Crossing (MP 13.84).	36	E.1 Impact pile driving	2	4	N/A	2,500
	10	A.1 Vibratory pile driving		4		
				4		
MP 14.5 to MP 16.5	24	A.1 Vibratory pile driving	2.5	5	15	N/A
MP 28.0 to MP 29.36	34	A.1 Vibratory pile driving	2.5	4	15	N/A
HDD Ambrose West Side (MP 29.4) ..	24	A.1 Vibratory pile driving	2.5	6	15	N/A
	36			2		
	48			4		
	60			2		
		E.1 Impact pile driving		2		
HDD Ambrose East Side (MP 30.48)	24	A.1 Vibratory pile driving	2.5	5	15	3,382
	36			3		
	48			8		
	60			1		
		E.1 Impact pile driving		2		
MP 34.5 to MP 35.04	34	A.1 Vibratory pile driving	2.5	2	15	N/A
		E.1 Impact pile driving		2		
Neptune PC Crossing (MP 35.04)	10	A.1 Vibratory pile driving	2.5	2	15	N/A
Removal						
Morgan Shore Approach HDD (MP 12.59).	24	A.1 Vibratory pile driving	2.5	5	4	N/A
	36			30	8	
	48			15	3	

TABLE 7—USER SPREADSHEET INPUTS: SINGLE PILE DRIVING SCENARIOS—Continued

Location	Pile size	Spreadsheet tab used	Weighting factor adjustment (kHz)	Piles per day	Duration to drive a single pile (minutes)	Strikes
Neptune PC Crossing (MP 13.84)	10	A.1 Vibratory pile driving	2.5	15	4	N/A
MP 14.5 to MP 16.5	24	A.1 Vibratory pile driving	2.5	15	11	N/A
MP 28.0 to MP 29.36	34	A.1 Vibratory pile driving	2.5	30	6	N/A
HDD Ambrose West Side (MP 29.4) ..	24	A.1 Vibratory pile driving	2.5	5	6	N/A
	36			15	3	
	48			15	8	
	60			30	8	
HDD Ambrose East Side (MP 30.48)	24	A.1 Vibratory pile driving	2.5	15	22	N/A
	36				3	
	48				8	
	60				1	
MP 34.5 to MP 35.04	34	A.1 Vibratory pile driving	2.5	15	2	N/A
Neptune PC Crossing (35.04)	10	A.1 Vibratory pile driving	2.5	15	2	N/A

TABLE 8—USER SPREADSHEET INPUTS: SIMULTANEOUS PILE DRIVING SCENARIOS

Location	Pile sizes (inches) and methods	Spreadsheet tab used	Weighting factor adjustment (kHz)	Piles per day	Duration to drive a single pile (minutes)	Strikes
Installation						
Morgan Shore Approach HDD (MP 12.59).	36 impact, 36 impact	E.1 Impact pile driving	2	1	N/A	15,000
HDD Ambrose West Side (MP 29.4).	60 impact, 48 vibratory	E.1 Impact pile driving	2	2	N/A	3,382
HDD Ambrose East Side (MP 30.48).	48 vibratory, 48 vibratory	A.1 Vibratory pile driving	2.5	1	60	N/A
Removal						
Morgan Shore Approach HDD (MP 12.59).	36 vibratory, 36 vibratory	A.1 Vibratory pile driving	2.5	1	40	N/A
HDD Ambrose West Side (MP 29.4).	36 vibratory, 48 vibratory	A.1 Vibratory pile driving	2.5	1	60	N/A
HDD Ambrose East Side (MP 30.48).	48 vibratory, 48 vibratory	A.1 Vibratory pile driving	2.5	1	60	N/A

NMFS has established Level B harassment thresholds of 160 dB re1μPa (rms) for impulsive sounds (*e.g.*, impact pile driving) and 120 dB re1μPa (rms) for non-impulsive sounds (*e.g.*, vibratory driving and removal). Based on the predicted source levels associated with various pile sizes (table 6) the distances from the pile driving/removal equipment to the Level B harassment thresholds were calculated, using the distance to the 160 dB threshold for the impact hammer and the distance to the 120 dB threshold for

the vibratory device, at the representative pile locations (table 9). It should be noted that while sound levels associated with the Level B harassment threshold for vibratory driving/removal were estimated to propagate as far as 34,146 m from pile installation and removal activities based on modeling, it is likely that the noise produced from vibratory activities associated with the project would be masked by background noise before reaching this distance, as the Port of New York and New Jersey, which represents the busiest port on the

east coast of the United States and the third busiest port in the United States, is located near the project area and sounds from the port and from vessel traffic propagate throughout the project area. However, take estimates conservatively assume propagation of project-related noise to the full extent of the modeled isopleth distance to the Level B harassment threshold. The modeled distances to isopleths associated with Level B harassment thresholds for impact and vibratory driving are shown in table 9.

TABLE 9—PROJECTED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS (m) (AND ASSOCIATED AREAS¹ (km²) BY MARINE MAMMAL HEARING GROUP

Location	Pile size (inches)	Hammer type	Level A harassment zones (m) (areas km ²)				Level B harassment zone
			LF	HF	VHF	PW	
Installation							
Morgan Shore Approach HDD (MP 12.59).	24	Vibratory	5	1.9	4.1	6.4	2,929
	36		36.7	14.1	30.0	47.3	21,544
	48		36.7	14.1	30.0	47.3	1,584
	36	Impact	4,618.4	589.3	7,147.0	4,102.8	2,512
Neptune PC Crossing (MP 13.84).	36 and 36	Impact and Impact	6,052 (34.20)	772 (1.72)	9,365 (59.13)	5,376 (29.19)	21,544
	10	Vibratory	3.7	1.4	3.0	4.7	2,154
MP 14.5 to MP 16.5	24	Vibratory	5.8	2.2	4.7	7.5	2,929
MP 28.0 to MP 29.36	34	Vibratory	36.7	14.1	30.0	47.3	21,544

TABLE 9—PROJECTED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ISOPLETHS (m) (AND ASSOCIATED AREAS ¹ (km²) BY MARINE MAMMAL HEARING GROUP—Continued

Location	Pile size (inches)	Hammer type	Level A harassment zones (m) (areas km ²)				Level B harassment zone
			LF	HF	VHF	PW	
HDD Ambrose West Side (MP 29.4).	24	Vibratory	6.5	2.5	5.3	8.4	2,929
	36		23.1	8.9	18.9	29.8	21,544
	48		36.7	14.1	30.0	47.3	21,544
	60		23.1	8.9	18.9	29.8	21,544
		Impact	4,837.6	617.2	7,486.1	4,297.5	2,154
	60 and 48	Impact and Vibratory	4,837.6 (72.22) ..	617.2 (1.20)	7,486.1 (159.37)	4,297.5 (57.63)	34,146 (1502)
HDD Ambrose East Side (MP 30.48).	24	Vibratory	5.8	2.2	4.7	7.5	2,929
	36		30.3	11.6	24.8	39.0	21,544
	48		58.3	22.4	47.6	75.0	21,544
	60		14.6	5.6	11.9	18.8	21,544
	48 and 48	Vibratory and Vibratory	58.3	22.4	47.6	75.0	34,146 (1502)
	34	Vibratory	23.1	8.9	18.9	29.8	21,544
MP 34.5 to MP 35.04		Impact	2,909.4 (62.49) ..	371.2 (0.43)	4,502.3 (62.49)	2,584.6 (20.99)	1,585
Neptune PC Crossing (MP 35.04).	10	Vibratory	2.3	0.9	1.9	3.0	2,154 (14.58)
Removal							
Morgan Shore Approach HDD (MP 12.59).	24	Vibratory	2.4	0.9	2.0	3.1	2,929
	36		92.5	35.5	75.6	119.1	21,544
	48		30.3	11.6	24.8	39.0	21,544
	36 and 36	Vibratory and Vibratory	44.4	17.1	36.3	57.2	34,146 (1539)
Neptune PC Crossing (MP 13.84).	10	Vibratory	3.7	1.4	3.0	4.7	2,154
MP 14.5 to MP 16.5	24	Vibratory	9.8	3.8	8.0	12.6	2,929
MP 28.0 to MP 29.36	34	Vibratory	76.4	29.8	62.4	98.3	21,544
HDD Ambrose West Side (MP 29.4).	24	Vibratory	3.1	1.2	2.6	4.0	2,929
	36		30.3	11.6	24.8	39.0	21,544
	48		58.3	22.4	47.6	75.0	21,544
	60		92.5	35.5	75.6	119.1	21,544
	36 and 48	Vibratory and Vibratory	58.3	22.4	47.6	75.0	34,146
	24	Vibratory	15.6	6.0	12.7	20.0	2,929
HDD Ambrose East Side (MP 30.48).	36		30.3	11.6	24.8	39.0	21,544
	48		58.3	22.4	47.6	75.0	21,544
	60		14.6	5.6	11.9	18.8	21,544
	48 and 48	Vibratory and Vibratory	58.3	22.4	47.6	75.0	34,146
	34	Vibratory	23.1	8.9	18.9	29.8	21,544
	10	Vibratory	2.3	0.9	1.9	3.0	2,154

¹ Only areas relevant for take estimates (the largest Level B harassment zones at each location, and the largest Level A harassment zones associated with impact pile driving at each location) are presented.

Level A harassment zones are typically smaller than Level B harassment zones. However, during impact pile driving, the calculated Level A harassment isopleth is greater than the calculated Level B harassment isopleth for low frequency cetaceans, very high-frequency cetaceans and phocids (however, because all activities are assumed as potentially occurring on the same day, we functionally reference the largest Level A and Level B harassment zones for purposes of estimating take). Calculation of Level A harassment isopleths includes a duration component, which in the case of impact pile driving, is estimated through the total number of daily strikes and the associated pulse duration. For a stationary sound source such as impact pile driving, we assume here that an animal is exposed to all of the strikes expected within a 24-hour period. Calculation of a Level B harassment

zone does not include a duration component.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations. Additionally, we describe how the occurrence information is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

To estimate take during impact and vibratory pile driving and removal, Transco first generated an annual average density estimate for each noise-producing scenario, for each species, using Duke University Marine Geospatial Ecology Laboratory marine mammal habitat-based density data (<https://seamap.env.duke.edu/models/Duke/EC/>) (Roberts *et al.*, 2016; Roberts *et al.*, 2023, Roberts *et al.*, 2024). Instead of generating average annual density

estimates for each species for each noise producing scenario, NMFS subsequently created a single project area that encompassed the largest Level B harassment zones across each of the eight project locations. This project area was used as the basis for generating an annual average density estimate and an average density estimate between June and November, which corresponds to the planned project period, for each species. Specifically, in a Geographic Information System, for each month and each species, the density rasters were clipped to the polygon representing the above referenced project area. To generate the annual average density estimate for each species, the density estimates for each clipped density raster (January through December) were summed and divided by 12 (table 10). To generate the average density across June through November, the density values for each clipped density raster (June through November) were summed

and divided by 6. In both cases, the mean density values for each species

were selected to use as a basis for take estimates.

TABLE 10—MARINE MAMMAL DENSITY ESTIMATES GENERATED FOR THE TRANSCO NORTHEAST SUPPLY ENHANCEMENT PROJECT AREA

Marine mammal species	Mean densities (January–December) animals/100 km ²	Mean densities (June–November) animals/100 km ²
North Atlantic Right Whale	0.021304616299007	0.0030074206269121
Fin Whale	0.034273800129881	0.019738282989868
Humpback Whale	0.057397781000022	0.032971508482719
Minke Whale	0.094349173218718	0.027476606940787
Sei Whale	0.013016774291886	0.0056379703117625
Pilot Whale spp guild ²	0.0010383579896433	0.0010383579896433
Atlantic Spotted Dolphin	0.012827813937997	0.025403273029717
Atlantic White-Sided Dolphin	0.1092249846683	0.068747673449369
Bottlenose Dolphin ¹	5.2491380360819	8.0931224515361
Common Dolphin	0.9122067405692	0.63518957481269
Harbor Porpoise	0.8396537609158	0.022988098221005
Seal guild ³	8.6582116388505	8.0272698748496

¹ The Duke University density data treats all bottlenose dolphins as a single group and as such are not subset between the Migratory Coastal stocks and the Offshore stocks by the 20-meter isobath.

² The Duke University density data for pilot whale *spp.* is not broken up for each species and only a single density file is available. The density here represents the entire guild and will be the same for the annual mean or the June to November analysis.

³ The Duke University data for pinnipeds is not broken up for each species that could occur and represents the density for the guild.

In addition to consulting the output of marine mammal habitat-based density models, NMFS also consulted the following data sets: (1) Monitoring data associated with Transco's LNYBL Maintenance Project in Sandy Hook Channel, New Jersey, in which PSO's monitored for marine mammals on 59 days between mid-July and late October 2024 in Raritan and Lower New York Bays; and, (2) group sizes derived from NOAA Atlantic Marine Assessment Program for Protected Species data from 2010–2019 shipboard distance sampling surveys (Palka *et al.*, 2021).

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization. Generally, take estimates are the product of density, ensonified area, and number of days of pile driving work. Specifically, take estimates are calculated by multiplying the expected densities of marine mammals in the activity area(s) by the area of water likely to be ensonified above the NMFS defined threshold levels in a single day

(24-hr period) and the number of construction days planned. A summary of this method is illustrated in the following formula:

$$\text{Estimated Take} = D \times \text{ZOI} \times \# \text{ of construction days}$$

Where:

D = density estimate for each species (individuals/km²) within the ZOI. (Note that since densities in Roberts *et al.* (2023, 2024) are provided in individuals per 100 square km, they were converted to individuals per square km for ease of use in generating take estimates).

ZOI = maximum daily ensonified area to relevant thresholds (km²)

To estimate take, Transco initially proposed to multiply location-specific annual average density estimates for each species by the ZOI associated with each noise-producing activity, by the number of construction days estimated for each noise-producing activity (based on pile size and location). Activity-specific take estimates were then summed to generate an overall take estimate for each species across the project.

Because any activity could occur on any construction day, NMFS instead multiplied the density estimate

generated for the entire project area by the largest ZOI associated with each of the eight project locations by the total number of construction days planned at each location. The resulting location-specific take estimates were summed to generate an overall take estimate for each species across the project. To be conservative, NMFS compared the results using the annual average density estimate for each species and the average density estimate for June through November and selected the largest result to use as the basis for its proposed take authorization.

NMFS used the same equation to calculate take by Level A harassment, with the ZOIs referring to the largest hearing group specific Level A harassment zones at each location, during impact pile driving activities only. Because Transco plans to shut down at distances greater than the Level A harassment zones during vibratory activities, only impact pile driving activities were included in estimates of take by Level A harassment.

The ZOIs and total construction days used in density-based take analyses are presented in the tables 11 and 12.

TABLE 11—THE ZOI'S AND TOTAL CONSTRUCTION DAYS USED IN DENSITY-BASED ESTIMATES OF TAKE BY LEVEL B HARASSMENT

Location	ZOIs at each representative pile driving location (km ²) (and associated isopleths (m))	Total construction days associated with vibratory pile driving (installation and removal) ¹ at each representative pile driving location (and associated isopleths (m))
Morgan Shore Approach HDD (MP 12.59)	373 km ² (34,146 m)	21
Neptune Power Cable Crossing (MP 13.84)	15 km ² (2,154 m)	4
MP 14.5 to MP 16.5	24 km ² (2,929 m)	7
MP 28.0 to MP 29.36	761 km ² (21,544 m)	5
HDD Ambrose West Side (MP 29.4)	1502 km ² (34,146 m)	13
HDD Ambrose East Side (MP 30.48)	1502 km ² (34,146 m)	14
MP 34.5 to MP 35.04	857 km ² (21,544 m)	5
Neptune Power Cable Crossing (MP 35.04)	15 km ² (2,154 m)	2

¹ Total construction days have been rounded up.

TABLE 12—THE ZOI'S AND TOTAL CONSTRUCTION DAYS USED IN DENSITY-BASED ESTIMATES OF TAKE BY LEVEL A HARASSMENT

Location	ZOI representing the largest hearing group specific Level A harassment zones (km ²) at each location during impact pile driving (and associated isopleths (m))				Total construction days associated with impact pile driving ¹
	LF	HF	VHF	PW	
Morgan Shore Approach HDD (MP 12.59)	34.2 km ² (6,052 m)	1.72 km ² (722 m) ..	59.13 km ² (9,365 m).	29.19 km ² (5,376 m).	7
HDD Ambrose West Side (MP 29.4)	72.23 km ² (4,838 m).	1.20 km ² (617 m) ..	159.37 km ² (7,486 m).	57.63 km ² (4,298 m).	4
MP 34.5 to MP 35.04	26.59 km ² (2,909 m).	0.43 km ² (371 m) ..	62.49 km ² (4,502 m).	20.99 km ² (2,585 m).	3

¹ Total construction days have been rounded up.

Monitoring data reported by PSO's during Transco's LNYBL Maintenance project in Raritan Bay, Lower New York Bay, and the Atlantic Ocean, in which PSOs monitored for marine mammals on 59 days between July and October 2024, were also consulted to inform estimates of take by Level A harassment.

A total of eight sightings of 10 humpback whales were observed within 4,000 m of the pile driving source, translating to approximately one sighting of humpback whales per week. The maximum group size reported during this project was two humpback whales. As such, NMFS proposes to authorize take by Level A harassment of one group of two humpback whales each week that impact pile driving activities are planned (two weeks). Therefore, NMFS proposes to authorize four takes by Level A harassment of humpback whale (1 group × 2 humpback whales × 2 weeks of impact pile driving).

During Transco's LNYBL project, PSOs also reported an average of 6 bottlenose or unidentified dolphins each day occurring within 770 m of the

pile driving source, which represents the largest Level A harassment zones associated with impact pile driving proposed for this project. As such, NMFS proposed to authorize six takes by Level A harassment for each construction day that impact pile driving is planned (14 days). Therefore, NMFS proposes to authorize 84 takes by Level A harassment of bottlenose dolphins (6 takes of bottlenose dolphins × 14 construction days = 84 takes by Level A harassment of bottlenose dolphin).

Additional data regarding average group sizes from survey effort in the region was considered to ensure adequate take estimates are evaluated. Take estimates for several species were adjusted based on average group sizes derived from NOAA Atlantic Marine Assessment Program for Protected Species data from 2010–2019 shipboard distance sampling surveys (Palka *et al.*, 2021). This is particularly true for uncommon or rare species with very low densities in the models. The calculated take estimates were adjusted for species as follows:

- Pilot whales (long-finned and short-finned): Only one take by Level B harassment was estimated. Takes proposed for authorization were increased to the average number of pilot whales in a group reported in Palka *et al.*, 2021 (n = 14) and applied to both stocks; and

- Atlantic spotted dolphin: Only 14 takes by Level B harassment were estimated. Takes proposed for authorization were increased to the average number of dolphins in a group reported in Palka *et al.*, 2021 (n = 25).

For bottlenose dolphins, the density data presented by Roberts *et al.*, (2023, 2024) does not differentiate between stocks. Thus, the take estimate for bottlenose dolphins calculated by the method described above resulted in an estimate of the total number of bottlenose dolphins expected to be taken, from all stocks. However, as described above, both the Western North Atlantic Northern Migratory Coastal stock and the Western North Atlantic Offshore stock have the potential to occur in the project area. Because approximately 50 percent of the

project area occurs in waters shallower than 20 m, the isobaths at which we expect segregation of these stocks (Garrison *et al.*, 2017), we assign take to each stock accordingly. Thus, we assume that 50 percent of the total

proposed authorized bottlenose dolphin takes would accrue to the Western North Atlantic Offshore stock, and 50 percent to the Western North Atlantic Northern Migratory Coastal stock (table 13).

Finally, takes by Level B harassment are modified to deduct the proposed amount of take by Level A harassment in order to avoid double-counting in the estimate of total takes for each species or stock.

TABLE 13—TAKE BY STOCK AND HARASSMENT TYPE AND AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Level B take proposed for authorization	Level A take proposed for authorization	Total take proposed for authorization	% Stock
North Atlantic Right Whale	Western Atlantic	12	0	12	<3.2
Fin Whale	Western North Atlantic	19	0	19	<1
Humpback Whale	Gulf of Maine	29	4	33	<1
Minke Whale	Canadian East Coast	53	1	54	<1
Sei Whale	Nova Scotia	7	0	7	<1
Pilot Whale, Long-finned	Western N Atlantic	14	0	14	<1
Pilot Whale, Short-finned	Western N Atlantic				
Atlantic Spotted Dolphin	Western N Atlantic	25	0	25	<1
Atlantic White-sided Dolphin	Western N Atlantic	62	0	62	<1
Bottlenose Dolphin	Western N Atlantic Migratory Coastal	2,295	42	2,253	35
	Western N Atlantic Offshore	2,296	42	2,254	3.5
Common Dolphin	Western N Atlantic	518	0	518	<1
Harbor Porpoise	Gulf of Maine/Bay of Fundy	465	11	465	<1
Gray Seal	Western N Atlantic	4,868	44	4,912	17.6
Harbor Seal	Western N Atlantic				8
Harp Seal	Western N Atlantic				<1

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, and impact on operations.

The mitigation requirements described in the following were proposed by Transco in its adequate and complete application or are the result of subsequent coordination between NMFS and Transco. Transco 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.

Vessel Strike Avoidance Measures

In addition to complying with existing vessel speed restrictions for North Atlantic right whales, Transco intends to comply with voluntary programs NMFS uses to notify vessel operators to slow down to avoid right

whales. All project related vessels, regardless of size, will operate at 10 knots (18.5 km/hr) or less when traveling in an SMA (active in portions of the project area between November 1 and April 30). Additionally, at all times and locations, vessel operators and crews would use the following protocols:

- Maintain a vigilant watch for right whales and slow down or stop the vessel to avoid striking the animal(s);
- Conform to the regulations prohibiting approach of right whales closer than 500 yards (460 m) (50 CFR 224.103 (c));
- Adhere to rules for DMAs if they are designated by NMFS in the project area during the project.

Shutdown Zones

For all pile driving and removal activities, Transco would implement shutdowns within designated zones. 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). Shutdown zones vary based on the activity type and marine mammal hearing group (tables 14 and 15).

In cases where it would be challenging to detect marine mammals at the Level A harassment isopleth, (*e.g.*, all hearing groups during impact pile driving activities), and where shutting down at the Level A harassment zone

would create practicability concerns due to the distances at which species would need to be detected (*e.g.*, high frequency cetaceans during impact pile driving), smaller shutdown zones have been proposed (table 15)).

Construction supervisors and crews, PSOs, and relevant Transco staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m 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. If an activity 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 zone indicated in tables 14 and 15, or 15 minutes have passed without re-detection of the animal.

Finally, construction activities must be halted upon observation of a species for which incidental take is not

authorized or a species for which incidental take has been authorized but the authorized number of takes has been met entering or within any harassment zone. If a marine mammal species for which take is not authorized enters a harassment zone, all in-water activities will cease until the animal leaves the zone or has not been observed for at least 15 minutes. Pile driving will proceed if the unauthorized species is observed leaving the harassment zone or if 15 minutes have passed since the last observation.

TABLE 14—PROPOSED SHUTDOWN ZONES DURING VIBRATORY PILE DRIVING AND REMOVAL

Site	Pile size (inches)	Installation or removal method	Shutdown for all hearing groups, install and removal (m)
Morgan Shore Approach HDD (MP 12.59)	24	Vibratory	10
	36	Vibratory	120
	36, 36	Vibratory, Vibratory ..	60
	48	Vibratory	50
Neptune PC Crossing (MP 13.84)	10	Vibratory	10
MP 14.5 to MP 16.5	24	Vibratory	20
MP 28.0 to MP 29.36	34	Vibratory	100
HDD Ambrose West Side (MP 29.4)	24	Vibratory	10
	36	Vibratory	40
	48	Vibratory	80
	36, 48	Vibratory, Vibratory ..	80
	60	Vibratory	120
HDD Ambrose East Side (MP 30.48)	24	Vibratory	20
	36	Vibratory	40
	48	Vibratory	80
	48, 48	Vibratory, Vibratory ..	80
	60	Vibratory	20
MP 34.5 to MP 35.04	34	Vibratory	30
Neptune PC Crossing (MP 35.04)	10	Vibratory	10

TABLE 15—PROPOSED SHUTDOWN ZONES DURING IMPACT PILE DRIVING
[m]

Location	Pile types	Activity	Hearing group-specific shutdown zones (m)			
			LF	HF	VHF	PW
HDD Morgan Offshore (MP 12.59)	36-inch 36, 36	Impact	2000	200	200	150
		Impact, Im-				
		pact.				
HDD Ambrose West Side (MP 29.4)	60	Impact.				
	60, 48	Impact, Vi-				
		bratory.				
MP 34.5 to MP 35.04	34	Impact.				

PSOs

The number and placement of PSOs during all construction activities (described in the Proposed Monitoring and Reporting section) would ensure that the shutdown zones are generally visible, such that PSOs are reasonably confident of their ability to observe species at relevant distances. Transco would employ at least two PSOs at each

active pile driving site during all pile driving activities.

Monitoring for Level A and Level B Harassment

PSOs would monitor the shutdown zones and beyond to the extent that PSOs can see. Monitoring beyond the shutdown zones enables observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus

prepare for a potential cessation of activity should the animal enter the shutdown zone. Transco also plans to take measures beyond visual observations to ensure that they are aware of marine mammal locations by monitoring media throughout the day including, but not limited to, Whale Alert, Whale Map, Right Whale Sightings Advisory System (RWSAS), and U.S. Coast Guard very high

frequency (VHF) Channel 16 (see Monitoring and Reporting section).

Pre-and-Post-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown zones and as much of the harassment zones as possible for a period of 30 minutes. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones are clear of marine mammals for which take is authorized. If the shutdown zone for which take is authorized is obscured by fog or poor lighting conditions, in-water construction activity will not be initiated until the entire shutdown zone is visible. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals. If a marine mammal is observed entering or within shutdown zones, pile driving activity 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 zone or 15 minutes have passed without re-detection of the animal. If a marine mammal for which take by Level B harassment is authorized is present in the Level B harassment zone, activities may begin. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence.

Soft Start

The use of soft-start procedures during impact pile driving are believed 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. For impact pile driving, contractors would be required to provide an initial set of three strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure would be conducted a total of three times before impact pile driving begins. 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 is not required during vibratory pile driving activities.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS,

NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

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 Transco in its adequate and complete application or are the result of subsequent coordination between NMFS and Transco. Transco has agreed that all of the monitoring and reporting measures are practicable. NMFS describes those below as proposed requirements, and has included them in the proposed IHA.

Visual Monitoring

Marine mammal monitoring during pile driving activities must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- PSOs must 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 must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute other relevant experience, education (degree in biological science or related field) or training for experience performing the duties of a PSO during construction activities pursuant to NMFS-issued take authorization;
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator will be designated. The lead observer will be required to have prior experience working as a marine mammal observer during construction activity pursuant to a NMFS-issued incidental take authorization; and,
- PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

PSOs should also have the following qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including 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, the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and,

- 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.

Visual monitoring would be conducted by trained PSOs positioned at suitable vantage points to generally be able to observe the entirety of the shutdown zones. Transco would place at least two PSOs at each active pile driving site during all pile driving and removal activities. PSOs would be stationed either on the construction barge or a separate support vessel. PSOs would monitor for marine mammals 360 degrees around their respective vessels.

Monitoring would be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, PSOs will record all incidents of marine mammal occurrence, regardless of distance from activity, and will document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

North Atlantic Right Whale and Other Marine Mammal Awareness

Throughout each day, Transco plans to use available sources of information on North Atlantic right whale and other marine mammals, including but not limited to Whale Alert, Whale Map, RWSAS, and U.S. Coast Guard very high frequency (VHF) Channel 16, to receive notifications of any marine mammal sightings and information associated with any DMAs. Maintaining frequent daily awareness of North Atlantic right whale presence in the area, through Transco's ongoing visual monitoring efforts and opportunistic data sources (outside of Transco's efforts), and subsequent coordination for disseminating that information across project personnel affords increased protection of North Atlantic right whales and other marine mammals by alerting project personnel and the marine mammal monitoring team to a higher likelihood of encountering these species, potentially increasing the efficacy of mitigation efforts.

Reporting

Transco would submit a draft marine mammal monitoring report to NMFS within 90 days after the completion of pile driving activities, or 60 days prior to a requested date of issuance of any future IHAs for the project, or other projects at the same location, whichever comes first. The marine mammal

monitoring report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report will include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including: (1) the number and type of piles that were driven and the method (*e.g.*, impact or vibratory); and (2) total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and 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: (1) name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; (2) time of sighting; (3) 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; (4) distance and location of each observed marine mammal relative to the pile being driven for each sighting; (5) estimated number of animals (min/max/best estimate); (6) estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); (7) animal's closest point of approach and estimated time spent within the harassment zone; (8) 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);
- Number of marine mammals detected within the harassment zones, by species; and,
- Detailed information about implementation of any mitigation (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no

comments are received from NMFS within 30 calendar days of receipt of the draft report, the report shall be considered final. All PSO data would be submitted electronically in a format that can be queried such as a spreadsheet or database and would be submitted with the draft marine mammal report.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Transco must report the incident to the NMFS Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov* and *itp.fleming@noaa.gov*) and Greater Atlantic Regional Fisheries Office (GARFO) Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Transco must immediately cease the activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of this IHA. Transco must not resume their activities until notified by NMFS. The report must 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 majority of our analysis applies to all the species listed in table 3, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving and removal associated with this 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 B harassment and, for some species, Level A harassment from underwater sounds generated by pile driving and removal. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

No serious injury or mortality is expected, even in the absence of required mitigation measures, given the nature of the activities. Further, for eight species of marine mammals, no take by Level A harassment is anticipated, due to the rarity of the species near the project area. The likelihood of take by Level A harassment occurring is further reduced by Transco's plans to implement mitigation measures such as shutdown zones that encompass all or a portion of the Level A harassment zones (see Proposed Mitigation section).

Level A harassment is proposed to be authorized for humpback whale, minke whale, bottlenose dolphin, harbor porpoise, and pinnipeds that may occur in the project area (gray seal, harbor seal, and harp seal). Any take by Level A harassment is expected to arise from, at most, a small degree of AUD INJ (i.e., minor degradation of hearing

capabilities within regions of hearing that align most completely with the energy produced by impact pile driving such as the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Additionally, the amount of take by Level A harassment proposed for authorization is very low. NMFS expects no more than 4 takes by Level A harassment for humpback whale; 1 take by Level A harassment for minke whale; and 11 takes by Level A harassment for harbor porpoise. The proposed amount of take by Level A harassment for bottlenose dolphin and the guild of pinnipeds that may occur in the project area are a bit larger—42 takes and 44 takes, respectively. However, for all hearing groups, if hearing impairment occurs, it is most likely that the affected animal would lose only a few dB in its hearing sensitivity. Due to the small degree anticipated, any AUD INJ potentially incurred would not be expected to affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

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. However, since the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual's long-term ability to forage and communicate with conspecifics, and would therefore not likely impact reproduction or survival of any individual marine mammal, let alone adversely affect rates of recruitment or survival of the species or stock.

Effects on individuals that are taken by Level B harassment in the form of behavioral disruption, on the basis of reports in the literature as well as monitoring from other similar activities, would likely be limited to reactions such as avoidance, increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (e.g., Thorson and Reyff, 2006). Most likely, individuals would simply move away from the sound source and temporarily avoid the area where pile driving is occurring. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activities are occurring. We expect that

any avoidance of the project areas by marine mammals would be temporary in nature and that any marine mammals that avoid the project areas during construction would not be permanently displaced. Short-term avoidance of the project areas and energetic impacts of interrupted foraging or other important behaviors is unlikely to affect the reproduction or survival of individual marine mammals, and the effects of behavioral disturbance on individuals is not likely to accrue in a manner that would affect the rates of recruitment or survival of any affected stock.

Some individual marine mammals in the project area, such as harbor seals or bottlenose dolphins, may be present and be subject to repeated exposure to sound from pile driving activities on multiple days. However, pile driving and extraction is not expected to occur on every day, and these individuals would likely return to normal behavior during gaps in pile driving activity within each day of construction and in between work days. As discussed above, individuals could temporarily relocate during construction activities to reduce exposure to elevated sound levels from the project. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any effects on rates of reproduction and survival of the stock.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause a low level of turbidity in the water column and some fish may leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected (with the exception of right whales, there are no habitats of known particular importance to marine mammals), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

There is a BIA for migrating right whales that intersects with the offshore portion of the project area (LaBrecque *et al.*, 2015; Van Parijs *et al.*, 2015), but it is active between March and April and November and December, when most of the project activities are not planned to occur. This suggests that impacts from the project would have minimal to no impact on important right whale habitat and would therefore not affect reproduction and survival. While there are plans for project activities to occur

in November, and Transco has also accounted for the potential that the project schedule could shift into any time of year, most of the North Atlantic right whales observed in the New York Bight, when present, are detected in deeper waters of the continental shelf, much further offshore (Zoidis *et al.*, 2021; Morrison and Taggart, 2021, accessed July 25, 2025). Given the nature of migratory behavior (*e.g.*, continuous path), as well as the low number of total takes, we anticipate that few, if any, of the instances of take would represent repeat takes of any individual.

As described above, North Atlantic right, humpback, and minke whales are experiencing ongoing UMEs, and an ongoing UME for gray and harbor seals is pending closure. However, we do not expect authorized takes to exacerbate or compound upon these ongoing and closure pending UMEs. As discussed above, very little injury, serious injury or mortality is expected or authorized, and the impact of Level A and Level B harassment takes of these species will be minimized through the incorporation of mitigation measures. The UMEs do not provide cause for concern regarding population-level impacts. Despite the UMEs, the relevant population of humpback whales (the West Indies breeding population, or DPS), minke whales, and relevant pinniped species (gray and harbor seals) remain healthy.

For North Atlantic right whales, no injury as a result of the proposed project is expected or proposed for authorization, and Level B harassment takes of right whales are expected to be in the form of avoidance of the immediate area of construction. In addition, the number of exposures above the Level B harassment threshold are minimal (*i.e.*, 12). As no injury or mortality is expected or proposed for authorization, the proposed authorized takes of right whales would not exacerbate or compound the ongoing UME in any way.

Finally, 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 these stocks' annual rates of recruitment or survival. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities would have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and would therefore not result in population-level impacts.

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 authorized;
- No take by Level A harassment is proposed for 7 species;
- Take by Level A harassment would be in very small amounts for most species and of low severity;
- Proposed takes by Level B harassment are relatively low for most stocks. Level B harassment would primarily be in the form of behavioral disturbance, resulting in avoidance of the project areas around where impact or vibratory pile driving is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints on their populations;
- The lack of anticipated significant or long-term negative effects to marine mammal habitat;
- Effects on species that serve as prey for marine mammals from the activities 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 from either project;
- The ensonified areas are small relative to the overall habitat ranges of all species and stocks, and overlap with known areas of important habitat is minimal;
- Transco would implement mitigation measures including visual monitoring and shutdown zones to minimize the numbers of marine mammals exposed to injurious levels of sound.

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.

For all stocks, except for the Western North Atlantic Migratory Coastal stock of bottlenose dolphin, the proposed number of takes is less than one-third of the best available population abundance estimate (*i.e.*, less than 1 percent for 12 stocks, and less than 3.5 percent for 3 stocks, and less than 18 percent for 2 stocks) (table 13).

The total number of authorized takes for bottlenose dolphins, if assumed to accrue solely to new individuals of the northern migratory coastal stock, is 35 percent of the total stock abundance, which is currently estimated as 6,639. However, these numbers represent the estimated incidents of take, not the number of individuals taken. That is, it is highly likely that a relatively small subset of these bottlenose dolphins, given their range extends well beyond the project area, will be harassed by project activities.

Given that the specified activity will be stationary within an area not recognized as being of any special significance that would serve to attract or aggregate dolphins, we therefore believe that the estimated numbers of takes, were they to occur, likely represent repeated exposures of a much smaller number of bottlenose dolphins and that these estimated incidents of take represent small numbers of bottlenose dolphins.

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 IHAs, NMFS OPR consults internally whenever we propose to authorize take for endangered or threatened species, in this case with NMFS' GARFO. NMFS OPR is proposing to authorize take of North Atlantic right whale, fin whale, and sei whale, which are listed under the ESA.

The Permits and Conservation Division has requested initiation of section 7 consultation with NMFS GARFO for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Transco for conducting Transco's Northeast Supply Enhancement Project in Raritan Bay, Lower New York Bay, and the Atlantic Ocean (New York Bight region), 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: August 5, 2025.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2025-15014 Filed 8-6-25; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Pacific Coast Groundfish Trawl Rationalization Program Permit and License Information Collection

AGENCY: National Oceanic & Atmospheric Administration (NOAA), 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 October 6, 2025.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at NOAA.PRA@noaa.gov. Please reference OMB Control Number 0648-0620 in the subject line of your comments. All comments received are part of the public record and will generally be posted on <https://www.regulations.gov> without change. 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 Jahnava Duryea, Groundfish IFQ Permits Coordinator, Southwest Fisheries Science Center, 110 McAllister Way, Santa Cruz, CA 95060, (916) 930-3725 or via email at jahnava.duryea@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for renewal of an approved information collection.

The National Marine Fisheries Service (NMFS) requests comments on the extension of a currently approved information collection for the West

Coast Region's Pacific Coast Groundfish Trawl Rationalization Program.

The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, provides that the Secretary of Commerce is responsible for the conservation and management of marine fisheries resources in the Exclusive Economic Zone (3–200 miles offshore) of the United States. NMFS West Coast Region manages the Pacific Coast Groundfish Fishery in the Exclusive Economic Zone (EEZ) off the coast of Washington, Oregon, and California under the Pacific Coast Groundfish Fishery Management Plan (FMP).

In January 2011, NMFS implemented a trawl rationalization program, which is a catch share program, for the Pacific Coast Groundfish Limited Entry Trawl Fishery. The program was implemented through Amendments 20 and 21 to the Pacific Coast Groundfish FMP and the corresponding implementing regulations at 50 CFR part 660. Amendment 20 established the trawl rationalization program that consists of an individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and non-whiting sectors) and cooperative programs for the at-sea mothership and catcher/processor trawl fleets (whiting only). Amendment 21 set long-term allocations for the limited entry trawl sectors of certain groundfish species.

Under the trawl rationalization program, new permits, accounts, endorsements and licenses were established. These consist of quota share (QS) permits/accounts, vessel accounts, first receiver site licenses, mothership endorsements on certain limited entry trawl permits, mothership catcher vessel endorsements on certain limited entry trawl permits, catcher/processor endorsements on certain limited entry trawl permits, a mothership cooperative permit, and a catcher/processor cooperative permit. NMFS collects information from program participants in order to: (1) establish new permits, accounts, and licenses; (2) renew permits, accounts, and licenses; (3) allow trading of QS percentages and quota pounds (QP) in online QS and vessel accounts, and allow transfer of catch history assignments between limited entry trawl permits; (4) track compliance with program control limits; and (5) implement other features of the regulations pertaining to permits and licenses.

As part of its fishery management responsibilities, NMFS requires this information to determine whether a respondent complies with regulations that pertain to issuance and renewal of

permits, and transfer and use of quotas. Identification of the participants of the trawl rationalization program, their gear types, descriptions of their vessels, and activity levels are needed to control and determine the extent of fishing and to track inseason quota use. Collection of this information also allows NMFS to equitably manage annual shorebased trawl allocations for the fishery and enforce control limits such that no person may own or control, or have a controlling influence over, quota for any individual species that exceeds the Shorebased IFQ Program accumulation limits.

II. Method of Collection

Information is collected by email and electronically through our Individual Fishing Quota (IFQ) Program for Pacific Coast Groundfish online portal, as well as a small portion submitted via mail.

The following information is collected by email: QS permit application forms; vessel account registration requests; trawl identification of ownership interest forms for new applicants, mothership catcher vessel endorsed limited entry permit owners, and mothership permit owners; mothership permit change of vessel registration, permit owner, or vessel owner application forms; mothership cooperative permit application forms; change of mothership catcher vessel endorsement and catch history assignment registration forms; catcher/processor cooperative permit application forms; and QS abandonment requests. Approximately 1% of the proceeding forms are received via regular mail by account holders.

The following information is collected electronically: QS permit renewals; late QS permit renewals; QS percent transfers; QP transfers from a QS account to a vessel account; vessel account renewals; late vessel account renewals; QP transfers from a vessel account to another vessel account; trawl identification of ownership interest forms for online QS and vessel account renewals; first receiver site license application forms (new applicants and re-registrations); and mothership permit renewals, and material change forms.

III. Data

OMB Control Number: 0648–0620.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations; non-profit institutions; State, local, or tribal government.

Estimated Number of Respondents: 392.

Estimated Time per Response: QS permit/account application form—20 minutes; QS permit/account online renewal—10 minutes; QS permit/account late renewal form—15 minutes; QS transfer—10 minutes; QP transfer from QS account to vessel account—5 minutes; vessel account registration request—15 minutes; vessel account online renewal—10 minutes; vessel account late renewal form—15 minutes; QP transfer from vessel account to another vessel account—5 minutes; trawl identification of ownership interest form for new entrants—45 minutes; trawl identification of ownership interest form for renewals—3.2 minutes; first receiver site license application form for new entrants—200 minutes; first receiver site license application form for re-registering license holders—100 minutes; mothership permit renewal form—10 minutes; mothership permit change of vessel registration, permit owner, or vessel owner application form—35 minutes; mothership cooperative permit application form—230 minutes; change of mothership catcher vessel endorsement and catch history assignment registration form—35 minutes; catcher/processor cooperative permit application form—110 minutes; QS abandonment request—10 minutes.

Estimated Total Annual Burden Hours: 808.

Estimated Total Annual Cost to Public: \$15,724.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: The program was implemented through Amendments 20 and 21 to the Pacific Coast Groundfish FMP and the corresponding implementing regulations at 50 CFR part 660.

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 information collection request. 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 Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2025–15040 Filed 8–6–25; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE971]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Pile Driving and Removal To Improve the Auke Bay East Ferry Terminal

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from the Alaska Department of Transportation and Public Facilities (ADOT&PF) for the reissuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates. The initial IHA authorized take of eleven species of marine mammals, by harassment only, incidental to construction activities associated with the Auke Bay East Ferry Terminal in Juneau, Alaska. The project has been delayed and none of the work associated with the initial IHA has been conducted. The initial IHA was effective from October 1, 2024 through September 30, 2025. ADOT&PF has requested reissuance with new effective dates of October 1, 2026 through September 30, 2027. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting

remains the same as included in the initial IHA. NMFS is, therefore, issuing a second identical IHA to cover the incidental take analyzed and authorized in the initial IHA.

DATES: This authorization is effective from October 1, 2026 through September 30, 2027.

ADDRESSES: An electronic copy of the final 2024 IHA previously issued to ADOT&PF, the ADOT&PF's application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting <https://www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-department-transportation-pile-driving-and-removal>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct 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 issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 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.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, 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).

Summary of Request

On January 16, 2024, NMFS published final notice of our issuance of an IHA authorizing take of marine mammals incidental to the construction activities associated with the Auke Bay East Ferry Terminal in Juneau, Alaska (89 FR 2584). The effective dates of that IHA were October 1, 2024 through September 30, 2025. On May 28, 2025, ADOT&PF informed NMFS that the project would be delayed by two years. None of the work identified in the initial IHA (*e.g.*, pile driving and removal) has occurred. The request was for NMFS to reissue an identical IHA that would be effective from October 1, 2026 through September 30, 2027, in order to conduct the construction work that was analyzed and authorized through the previously issued IHA. Therefore, reissuance of the IHA is appropriate.

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

ADOT&PF is proposing maintenance improvements to the existing Alaska Marine Highway System Auke Bay East Berth marine terminal. The activity includes removal of existing piles and the installation of both temporary and permanent piles of various sizes. In-water construction activities associated with the project will include impact and vibratory pile driving and removal. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the initial IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Species that are expected to be taken by the planned activity include humpback whale (*Megaptera novaeangliae*), killer whale (*Orcinus orca*), minke whale (*Balaenoptera acutorostrata*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), harbor porpoise (*Phocoena phocoena*),

Dall's porpoise (*Phocoenoides dalli*), Steller sea lion (*Eumetopias jubatus*), California sea lion (*Zalophus californianus*), northern fur seal (*Callorhinus ursinus*), harbor seal (*Phoca vitulina*), and northern elephant seal (*Mirounga angustirostris*). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The data inputs and methods of estimating take are identical to those used in the initial IHA. NMFS has reviewed recent Stock Assessment Reports (SAR), information on relevant Unusual Mortality Events, and recent scientific literature. The northern fur seal stock numbers were updated in the draft 2024 SAR. The population estimate and minimum populations estimates have slightly decreased since the initial IHA was issued to 612,765 and 518,651 animals respectively. The potential biological removal has also decreased slightly to 11,151 individuals and the estimated annual mortality/serious injury has also decreased slightly to 296 individuals. NMFS has determined that this new information does not affect our original analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the initial 2024 IHA for ADOT&PF's construction work (89 FR 2584, January 16, 2024), ADOT&PF's application, the **Federal Register** notice of the proposed IHA (88 FR 22411, April 13, 2023), and all associated references and documents.

Determinations

ADOT&PF will conduct activities as analyzed in the initial 2024 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact small numbers standards and authorized under the initial IHA and despite the slight decrease in northern fur seal population that would not change either of those findings. The reissued 2024 IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA, and there is no new information suggesting that our analyses or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes

will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) ADOT&PF's activities will not have an unmitigable adverse impact on taking for subsistence purposes.

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 with respect to environmental consequences on the human environment.

Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has determined that the application of this categorical exclusion remains appropriate for this reissued IHA.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure 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 IHAs, NMFS consults internally, in this case with the Alaska Regional Office, whenever we propose to authorize take for endangered or threatened species.

The effects of this proposed Federal action were adequately analyzed in NMFS' Biological Opinion for the Auke Bay East Ferry Terminal Project, dated December 22, 2023, which concluded that the take NMFS proposed to authorize through this IHA would not jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify any designated critical habitat.

Authorization

NMFS has issued an IHA to ADOT&PF for in-water construction activities associated with the specified activity from October 1, 2026 through September 30, 2027. All previously described mitigation, monitoring, and reporting requirements from the initial 2024 IHA are incorporated.

Dated: August 4, 2025.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2025-15042 Filed 8-6-25; 8:45 am]

BILLING CODE 3510-22-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to from the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Date added to and deleted from the Procurement List: September 07, 2025.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 489-1322 or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Additions

On May 16, 2025, June 6, 2025, June 13, 2025, and June 20, 2025, the Committee for Purchase From People Who Are Blind or Severely Disabled (operating as the U.S. AbilityOne Commission) published an initial notice of proposed additions to the Procurement List. (90 FR 21013, 90 FR 24103, 90 FR 25030, and 90 FR 26035). The Committee determined that the services listed below are suitable for procurement by the Federal Government and has added this services to the Procurement List as a mandatory purchase for the contracting activities listed. In accordance with 41 CFR 51-5.3(b), the mandatory purchase requirement is limited to the contracting activity listed at the location listed, and in accordance with 41 CFR 51-5.2, the Committee has authorized the nonprofit agency listed as the mandatory source of supply. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service(s) and impact of the additions on the current or most recent contractors, the

Committee has determined that the service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service(s) to the Government.
2. The action will result in authorizing small entities to furnish the service(s) to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service(s)

Service Type: Custodial Service

Mandatory for: National Park Service, Pearl Harbor National Memorial, Shoreside Visitor Facilities Honolulu, HI

Authorized Source of Supply: Network Enterprises, Inc., Honolulu, HI

Contracting Activity: NATIONAL PARK SERVICE, NATIONAL PARK SERVICE

Service Type: Grounds Maintenance

Mandatory for: GSA PBS Region 9, Frank Hagel Federal Building, Richmond, CA

Authorized Source of Supply: PRIDE Industries, Roseville, CA

Contracting Activity: PUBLIC BUILDINGS SERVICE, PBS R9 AMD SERVICES CONTRACTING BRANCH

Service Type: Scanning Support Services

Mandatory for: US Customs and Border Protection, Office of Human Resources Management, Talent Management Directorate, Processing and Servicing Center, Major General Emmett J. Bean Federal Center, Indianapolis, IN

Authorized Source of Supply: Coleman Professional Services, Kent, OH

Contracting Activity: U.S. CUSTOMS AND BORDER PROTECTION, MISSION SUPPORT CTR DIV

Service Type: Facility Support Services

Mandatory for: US Census Bureau, Headquarters (USCB), Bowie Computer Center (BCC), and Franconia Warehouse, Suitland and Bowie MD, & Springfield VA

Authorized Source of Supply: ServiceSource, Inc., Oakton, VA

Contracting Activity: US CENSUS BUREAU, DEPT OF COMMERCE CENSUS

Service Type: Janitorial Service

Mandatory for: The United States Geological Survey Western Fisheries Research Center (WFRS) Marrowstone Marine Field Station, Norland, WA

Authorized Source of Supply: Skookum Educational Programs, Bremerton, WA

Contracting Activity: US GEOLOGICAL SURVEY, OFFICE OF ACQUISITION GRANTS

Service Type: Postal Service Center Operations

Mandatory for: US Air Force, Postal Service Center, Altus Air Force Base, Altus AFB, OK

Authorized Source of Supply: VersAbility Resources, Inc., Hampton, VA

Contracting Activity: DEPT OF THE AIR FORCE, FA4419 97 CONS CC

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2025–14993 Filed 8–6–25; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

[ID# EISX–007–21–001–1733763715]

Record of Decision on Army Training Land Retention of State Lands at Kahuku Training Area, Kawaihoa-Poamoho Training Area, and Makua Military Reservation, Island of O'ahu, Hawai'i

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army (Army) signed the Record of Decision (ROD) on August 4, 2025, for the Environmental Impact Statement (EIS) Regarding Army Training Land Retention of State Lands at Kahuku Training Area (KTA), Kawaihoa-Poamoho Training Area (Poamoho), and Makua Military Reservation (MMR). The Army selected Alternative 2 at KTA and the No Action Alternative at Poamoho and MMR (the preferred alternative in the Final EIS). The ROD completes the National Environmental Policy Act (NEPA) process for the action.

ADDRESSES: The ROD, Final EIS, and informational materials are available on the EIS website at: <https://home.army.mil/hawaii/OahuEIS/documents>.

FOR FURTHER INFORMATION CONTACT: U.S. Army Garrison Hawai'i, Mr. Nathan Wilkes, Public Affairs Office, by telephone at (808) 787–2140 or by email at usarmy.hawaii.nepa@army.mil.

SUPPLEMENTARY INFORMATION: In accordance with NEPA, the ROD identifies the Army's selected alternative and the basis for its selection. The ROD is based on the

results of the Final EIS, which analyzed the environmental impacts associated with the proposed action. The Army published the Final EIS on May 16, 2025.

The Final EIS evaluated the potential impacts of a range of reasonable alternatives:

For KTA—(1) Full Retention (of approximately 1,150 acres); (2) Modified Retention (of approximately 450 acres);

For Poamoho—(1) Full Retention (of approximately 4,390 acres); (2) Modified Retention (of approximately 3,170 acres); and

For MMR—(1) Full Retention (of approximately 782 acres); (2) Modified Retention (of approximately 572 acres); (3) Minimum Retention (of approximately 162 acres and 2.4 miles of select range and firebreak roads).

The Final EIS also analyzed the potential impacts of the No Action Alternative, under which Army use of the land would cease altogether when the lease expires in 2029. The Army selects Alternative 2 at KTA (retention of approximately 450 acres) and the No Action Alternative at Poamoho and MMR.

The Final EIS analyzed: land use; biological resources; historic and cultural resources; cultural practices; hazardous substances and hazardous wastes; air quality and greenhouse gases; noise; geology, topography, and soils; water resources; socioeconomic; environmental justice; transportation and traffic; and human health and safety.

The Final EIS was prepared according to certain, now-rescinded Executive Orders, and the Council on Environmental Quality's NEPA implementing regulations and the Army's NEPA implementing regulations, which are also now rescinded. Because analysis regarding greenhouse gases and environmental justice was already provided to the public for comment in the Draft EIS, such analysis was included in the Final EIS for transparency and continuity.

The Army's decision to select Alternative 2 at KTA and the No Action Alternative at Poamoho and MMR was based on consideration of the full analyses of all alternatives contained in the Final EIS, comments provided during formal public comment and review periods, and an evaluation of the ability of each alternative to meet the purpose of and need for the proposed action. The Army will proceed with Alternative 2 at KTA and the No Action Alternative at Poamoho and MMR, as described in the Final EIS.

(Authority: 42 U.S.C. 4321 *et seq.* (1969)).

James W. Satterwhite, Jr.,
U.S. Army Federal Register Liaison Officer.
[FR Doc. 2025–15034 Filed 8–6–25; 8:45 am]
BILLING CODE 3711–CC–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0128]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Mandatory Civil Rights Data Collection

AGENCY: Office of Civil Rights (OCR), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before September 8, 2025.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting “Department of Education” under “Currently Under Review,” then check the “Only Show ICR for Public Comment” checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the “View Information Collection (IC) List” link. Supporting statements and other supporting documentation may be found by clicking on the “View Supporting Statement and Other Documents” link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Sala Green, 202–900–8558.

SUPPLEMENTARY INFORMATION: 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: Mandatory Civil Rights Data Collection.

OMB Control Number: 1870–0504.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 17,717.

Total Estimated Number of Annual Burden Hours: 1,762,790.

Abstract: The collection, use, and reporting of education data is an integral component of the mission of the U.S. Department of Education (Department). The Department has collected civil rights data about the nation’s public schools via the Civil Rights Data Collection (CRDC) since 1968. As with previous CRDC collections, the purpose of the 2025–26 and 2027–28 CRDCs is to obtain vital data related to the civil rights laws’ requirement that public local educational agencies (LEA) and elementary and secondary schools provide equal educational opportunity. The Department has analyzed the uses of many data elements collected in the 2020–21 CRDC and sought advice from experts across the Department to refine, improve, and where appropriate, add or remove data elements from the collection. CRDC data definitions and metrics are consistent with other mandatory collections across the Department wherever possible. The Department seeks the Office of Management and Budget’s approval under the Paperwork Reduction Act to collect from LEAs the elementary and secondary education data described in the sections of Attachment A. The Department requests that LEAs and other stakeholders review and comment on the proposed changes (detailed in Supporting Statement A, Attachments A–1, A–2, A–3, and A–4, and Attachment B).

Ross Santy,

Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2025–15038 Filed 8–6–25; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Revision

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for revision and extension pursuant to the provisions of the Paperwork Reduction Act of 1995. The information collection requests revision and a three-year extension of its Procurement Requirements, OMB Control Number 1910–4100. The proposed collection will collect procurement information necessary to administer and manage DOE’s procurement and acquisition programs.

DATES: Comments regarding this proposed information collection must be received on or before September 8, 2025. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 881–8585.

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:

Attila Csoma, Mr. Csoma may be contacted by email at Attila.Csoma@hq.doe.gov, or by telephone at (240) 449–5619.

SUPPLEMENTARY INFORMATION:

Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–4100;

(2) *Information Collection Request*

Titled: Procurement Requirements;

(3) *Type of Review*: Revision;

(4) *Purpose*: The Code of Federal Regulations (CFR); Title 48 Federal Acquisition Regulations System; Chapter 9 Department of Energy (DOE); Subchapter H Clauses and Forms; Part 952—Solicitation Provisions and Contract Clauses; and Subchapter I Agency Supplementary Regulations; Part 970 DOE Management and Operating Contracts; Section 970.52 Solicitation Provisions and Contract Clauses for Management and Operating Contracts requires DOE to collect certain types of information from those seeking to do business with the Department or those awarded contracts by the Department. This package contains information collections necessary for the solicitation, award, administration, and closeout of procurement contracts.

(5) *Annual Estimated Number of Respondents*: 7,441;

(6) *Annual Estimated Number of Total Responses*: 7,672;

(7) *Annual Estimated Number of Burden Hours*: 667,056;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden*: \$70,844,015.

Statutory Authority: 42 U.S.C. 2201.

Signing Authority

This document of the Department of Energy was signed on July 18, 2025, by Janella Davis, Acting Director, Office of Acquisition Management and Senior Procurement Executive, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 5, 2025.

Treena V. Garrett,

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

[FR Doc. 2025–15013 Filed 8–6–25; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25–525–000]

TTC Connector, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on July 21, 2025, TTC Connector, LLC (TTC Connector), 213 Timber View Drive, Boerne, Texas 78006, filed an application under section 7(c) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's regulations requesting authorization to construct, own, and operate the proposed TTC Connector Natural Gas Pipeline to be located in Colorado and Wharton Counties, Texas (TTC Connector Project). The Project consists of (1) a new 25-mile, 20-inch-diameter natural gas pipeline between the pipeline system of Tres Palacios Gas Storage, LLC (Tres Palacios) and the Coastal Bend Header System of Gulf South Pipeline Company, LLC (Gulf South); (2) related interconnections with Tres Palacios to receive and deliver gas and interconnections with Trunkline Gas Company (Trunkline) and Gulf South to deliver gas; and (3) a 11,000 horsepower (hp) gas-fired compressor station downstream of its Tres Palacios interconnection.

TTC also requests (1) a blanket certificate, pursuant to Part 157, Subpart F of the Commission's regulations, authorizing the construction of certain facilities; (2) a blanket certificate, pursuant to Part 284, Subpart G of the Commission's regulations, authorizing open access transportation; (3) approval of TTC Connector's pro forma FERC gas tariff; (4) approval of a negotiated rate agreement with TTC Connector's anchor shipper; and (5) waivers of certain regulatory requirements, as further described in its application. The Project will provide up to 300,000 dekatherms per day (Dth/d) of firm transportation service to the Project's anchor shipper, BP Energy Company (BP Energy).¹ TTC Connector estimates the total cost of the Project to be \$114,310,882, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal**

¹ Based on the need of the Project's anchor shipper, gas from TTC Connector's compressor station will either be delivered on a firm basis directly back to Tres Palacios for a maximum delivery of 300,000 Dth/day, to the Coastal Bend Header of Gulf South for a maximum delivery of 300,000 Dth/day or to Trunkline for a maximum of 120,000 Dth/day.

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 proposed project should be directed to Mr. Mark Fuqua, President, TTC Connector, LLC, 213 Timber View Drive, Boerne, Texas 78006, by phone at (713) 253–6848, or by email at MFuqua@ttconnector.com.

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,² within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, 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.

² 18 CFR 157.9.

The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on August 25, 2025. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, community organizations, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)³ and 385.211⁴ of the Commission's regulations under the NGA, any person⁵ may file a protest to the application. Protests must comply with the requirements specified in section 385.2001⁶ 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 August 25, 2025.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP25-525-000 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 a project;

(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 Project docket number (CP25-525-000).

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other 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.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project 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,⁷ has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁸ and the regulations under the NGA⁹ by the intervention deadline

for the project, which is August 25, 2025. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP25-525-000 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 Project docket number CP25-525-000.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other 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 applicant either by mail at: Mr. Mark Fuqua, President, TTC Connector, LLC, 213 Timber View Drive, Boerne, Texas 78006 or by email (with a link to the document) at MFuqua@ttconnector.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC

³ 18 CFR 157.10(a)(4).

⁴ 18 CFR 385.211.

⁵ Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

⁶ 18 CFR 385.2001.

⁷ 18 CFR 385.102(d).

⁸ 18 CFR 385.214.

⁹ 18 CFR 157.10.

Online. Service can be via email with a link to the document.

All timely, unopposed¹⁰ motions to intervene are automatically granted by operation of Rule 214(c)(1).¹¹ 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.¹² A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208-FERC, 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 August 25, 2025.

Dated: August 4, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025-15005 Filed 8-6-25; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

¹⁰ The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

¹¹ 18 CFR 385.214(c)(1).

¹² 18 CFR 385.214(b)(3) and (d).

Docket Numbers: EG25-425-000.
Applicants: Ellsworth Energy Storage, LLC.

Description: Ellsworth Energy Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 8/4/25.

Accession Number: 20250804-5120.

Comment Date: 5 p.m. ET 8/25/25.

Docket Numbers: EG25-426-000.

Applicants: Carousel Wind III, LLC.

Description: Carousel Wind III, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 8/4/25.

Accession Number: 20250804-5128.

Comment Date: 5 p.m. ET 8/25/25.

Docket Numbers: EG25-427-000.

Applicants: Carousel Wind IV, LLC.

Description: Carousel Wind IV, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 8/4/25.

Accession Number: 20250804-5129.

Comment Date: 5 p.m. ET 8/25/25.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-2475-038; ER10-1520-024; ER10-1521-024; ER10-2474-037; ER10-3246-031; ER11-4666-011; ER11-4667-011; ER12-295-010; ER13-1266-058; ER15-2211-055; ER22-1385-018; ER23-674-014; ER23-676-014; ER24-1587-007.

Applicants: AlbertaEx, L.P., BHE Power Watch, LLC, BHE Wind Watch, LLC, BHER Market Operations, LLC., MidAmerican Energy Services, LLC, CalEnergy, LLC, BHE Rim Rock Wind, LLC, BHE Glacier Wind 2, LLC, LLC, BHE Glacier Wind 1, LLC, PacifiCorp, Sierra Pacific Power Company, Occidental Power Marketing, L.P., Occidental Power Services, Inc., Nevada Power Company.

Description: Notice of Non-Material Change in Status of Nevada Power Company, et al.

Filed Date: 7/31/25.

Accession Number: 20250731-5266.

Comment Date: 5 p.m. ET 8/21/25.

Docket Numbers: ER25-2454-001.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: Compliance filing: 2025-08-04 Compliance Att X—Expedited Resource Addition Study (ERAS) to be effective 8/6/2025.

Filed Date: 8/4/25.

Accession Number: 20250804-5046.

Comment Date: 5 p.m. ET 8/25/25.

Docket Numbers: ER25-2512-001.

Applicants: Faraday Solar B LLC.

Description: Tariff Amendment: Amendment to Faraday Solar B MBR Application to be effective 6/15/2025.

Filed Date: 8/4/25.

Accession Number: 20250804-5139.

Comment Date: 5 p.m. ET 8/25/25.

Docket Numbers: ER25-3076-000.

Applicants: Arlington Valley Solar Energy, LLC.

Description: Initial Rate Filing: Market Based Rate to be effective 8/4/2025.

Filed Date: 8/1/25.

Accession Number: 20250801-5193.

Comment Date: 5 p.m. ET 8/22/25.

Docket Numbers: ER25-3077-000.

Applicants: Entergy Arkansas, LLC.

Description: 205(d) Rate Filing: State Tax Rate Change ADIT to be effective 10/1/2025.

Filed Date: 8/1/25.

Accession Number: 20250801-5198.

Comment Date: 5 p.m. ET 8/22/25.

Docket Numbers: ER25-3078-000.

Applicants: Kearsarge Orleans BESS LLC.

Description: Initial Rate Filing: KS_Orleans_BEES_MBRA_App to be effective 10/1/2025.

Filed Date: 8/1/25.

Accession Number: 20250801-5205.

Comment Date: 5 p.m. ET 8/22/25.

Docket Numbers: ER25-3079-000.

Applicants: Kearsarge Sterling LLC.

Description: Initial Rate Filing: KS_Sterling_MBRA_App to be effective 10/1/2025.

Filed Date: 8/4/25.

Accession Number: 20250804-5001.

Comment Date: 5 p.m. ET 8/25/25.

Docket Numbers: ER25-3080-000.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3390 SWPA & GridLiance High Plains Inter Agr Cancellation to be effective 7/31/2025.

Filed Date: 8/4/25.

Accession Number: 20250804-5009.

Comment Date: 5 p.m. ET 8/25/25.

Docket Numbers: ER25-3082-000.

Applicants: Southern California

Edison Company.

Description: Notice of Termination of Interconnection Agreement of Southern California Edison Company.

Filed Date: 7/30/25.

Accession Number: 20250730-5233.

Comment Date: 5 p.m. ET 8/20/25.

Docket Numbers: ER25-3083-000.

Applicants: Southern California

Edison Company.

Description: Notice of Termination of Interconnection Agreement of Southern California Edison Company.

Filed Date: 7/30/25.

Accession Number: 20250730-5234.

Comment Date: 5 p.m. ET 8/20/25.

Docket Numbers: ER25-3084-000.

Applicants: Ameren Illinois

Company, Ameren Transmission Company of Illinois.

Description: 205(d) Rate Filing: Ameren Transmission Company of Illinois submits tariff filing per 35.13(a)(2)(iii) Filing of a Joint Use Agreement to be effective 10/4/2025.

Filed Date: 8/4/25.

Accession Number: 20250804–5130.

Comment Date: 5 p.m. ET 8/25/25.

Docket Numbers: ER25–3085–000.

Applicants: Ameren Illinois Company.

Description: 205(d) Rate Filing: Filing of a Certificate of Concurrence to be effective 10/4/2025.

Filed Date: 8/4/25.

Accession Number: 20250804–5136.

Comment Date: 5 p.m. ET 8/25/25.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES25–54–000.

Applicants: AEP Texas Inc.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of AEP Texas Inc.

Filed Date: 7/31/25.

Accession Number: 20250731–5268.

Comment Date: 5 p.m. ET 8/21/25.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR25–1–001.

Applicants: North American Electric Reliability Corporation.

Description: Compliance Filing of North American Electric Reliability Corporation in Response to the May 20, 2025 Commission Order.

Filed Date: 7/31/25.

Accession Number: 20250731–5267.

Comment Date: 5 p.m. ET 8/21/25.

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.

The Commission's Office of Public Participation (OPP) supports meaningful

public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, community organization, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: August 4, 2025.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2025–15003 Filed 8–6–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI24–6–000]

Paradigm Shift Hydro, LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI24–6–000.

c. *Date Filed:* December 5, 2023.

d. *Applicant:* Paradigm Shift Hydro, LLC.

e. *Name of Project:* Last Chance Energy Project.

f. *Location:* The proposed Last Chance Energy Project would be located near the town of Alpine in Brewster and Jeff Davis Counties, Texas.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Jonathan Petrillo, 270 Bellevue Avenue, PMB #1053, Newport, RI 02840; telephone: (203) 623–4637; email: jon@paradigmshifthydro.com.

i. *FERC Contact:* Maryam Akhavan, (202) 502–6110, or Maryam.Akhavan@ferc.gov.

j. *Deadline for filing comments, protests, and motions to intervene is:* September 3, 2025 5 p.m. Eastern Time

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the

eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number DI24–6–000. Comments emailed to Commission staff are not considered part of the Commission record.

k. *Description of Project:* The proposed Last Chance Energy Project is a closed-loop pumped storage hydropower facility that would consist of: (1) a 1900-foot-long and 50-foot-high dam impounding a 1,250-acre-feet upper reservoir at a full pool elevation of 4,750 feet above mean sea level covering 50 acres; (2) a 3000-foot-long and 50-foot-high dam impounding a 1,875 acre-feet lower reservoir at a full pool elevation of 4,000 feet above mean sea level covering 75 acres; (3) two parallel pipes, each 10-foot-diameter and 6000-foot-long; (4) two vertical shafts, each 10-foot-diameter and 100-foot-high; (5) an approximately 200-foot-long and 25-foot-diameter pump intake tunnel located in the lower reservoir; (4) an approximately 100-foot-wide, 150-foot-long, and 75-foot-tall reinforced concrete and steel powerhouse; (5) four turbines, each with a generating capacity of approximately 75 megawatts (MW); (6) a system of industrial pumps to transfer water from the lower to upper reservoir; (7) a 7.5-mile-long overhead transmission line interconnecting with an existing AEP substation; and (8) appurtenant facilities. The applicant indicates that it would develop groundwater withdrawal wells tapping into the Igneous Aquifer and use the groundwater for the initial fill and make-up water needs.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the project would affect the interests of interstate or foreign commerce. The Commission also determines whether or not the project: (1) would be located on a navigable

waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) would be located on a non-navigable stream over which Congress has Commerce Clause jurisdiction and would be constructed or enlarged after 1935.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must bear in all capital letters the title "COMMENTS", "PROTESTS", and "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: August 4, 2025.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2025-15006 Filed 8-6-25; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR25-63-000.

Applicants: Bridgeline Holdings, L.P.

Description: 284.123 Rate Filing: Informational Filing Pertaining to Market-Based Rate Authority to be effective N/A.

Filed Date: 8/1/25.

Accession Number: 20250801-5155.

Comment Date: 5 p.m. ET 8/22/25.

Docket Numbers: PR25-64-000.

Applicants: Jefferson Island Storage & Hub, L.L.C.

Description: 284.123 Rate Filing: Informational Filing Pertaining to Market-Based Rate Authority to be effective N/A.

Filed Date: 8/1/25.

Accession Number: 20250801-5158.

Comment Date: 5 p.m. ET 8/22/25.

Docket Numbers: RP25-1056-000.

Applicants: Kinetica Energy Express, LLC.

Description: 4(d) Rate Filing: Reservation of Capacity for Future Expansions Modification to be effective 9/1/2025.

Filed Date: 8/1/25.

Accession Number: 20250801-5159.

Comment Date: 5 p.m. ET 8/13/25.

Docket Numbers: RP25-1057-000.

Applicants: Midship Pipeline Company, LLC.

Description: 4(d) Rate Filing: Midship Pipeline Non-Conforming Contract Agreements filing to be effective 9/1/2025.

Filed Date: 8/1/25.

Accession Number: 20250801-5169.

Comment Date: 5 p.m. ET 8/13/25.

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.

Filings in Existing Proceedings

Docket Numbers: RP25-473-002.

Applicants: National Grid LNG, LLC.

Description: Compliance filing: 2025-08-01 Motion to Place Suspended Tariff Records Into Effect to be effective 8/1/2025.

Filed Date: 8/1/25.

Accession Number: 20250801-5156.

Comment Date: 5 p.m. ET 8/13/25.

Docket Numbers: RP25-813-001.

Applicants: National Grid LNG, LLC.

Description: Compliance filing: 2025-08-01—Motion to Put Sec. 34 Record into Effect to be effective 8/1/2025.

Filed Date: 8/1/25.

Accession Number: 20250801-5203.

Comment Date: 5 p.m. ET 8/13/25.

Docket Numbers: RP25-1027-001.

Applicants: Midcontinent Express Pipeline LLC.

Description: Tariff Amendment: MEP July 2025 NRA Amendment Filing to be effective 8/1/2025.

Filed Date: 8/1/25.

Accession Number: 20250801-5147.

Comment Date: 5 p.m. ET 8/13/25.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, community organizations, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: August 4, 2025.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2025-15004 Filed 8-6-25; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 15408–000]

New England Hydropower Company, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 3, 2025, New England Hydropower Company, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Black Rock Dam Hydroelectric Project (Black Rock Project) on the Schuylkill River in Chester and Montgomery Counties, near the Borough of Phoenixville and the Village of Mont Clare in Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Black Rock Project would consist of the following: (1) an existing 400-foot-long, 11-foot-high concrete capped timber crib dam; (2) an existing impoundment having a surface area of 184 acres and a storage capacity of 221 acre-feet at an elevation of 89 feet North American Vertical Datum of 1988 (NAVD88); (3) two new 24-foot-wide, 87-foot-long turbine bays each housing two turbine-generator units—each unit with a capacity of 300 kilowatts (kW) for a total capacity of 1.2 megawatts (MW); (4) a new 16-foot-wide, 35-foot-long electrical control building; (5) a new 600-foot-long transmission line; and (6) appurtenant facilities. The proposed project would have an annual generation of 6,000 megawatt-hours.

Applicant Contact: Michael Kerr, New England Hydropower Company, LLC, 100 Cummings Center, Suite 451C, Beverly, MA 01915; phone: (978) 360–2547.

FERC Contact: Monir Chowdhury; phone: (202) 502–6736.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: on or before 5:00 p.m. Eastern Time on October 3, 2025. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent,

and competing applications using the Commission's eFiling system at <https://ferconline.ferc.gov/FERCOOnline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. For assistance, please contact FERC Online Support at FERCOOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, community organizations, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

More information about this project, including a copy of the application, can be viewed or printed on the “eLibrary” link of the Commission's website at <https://elibrary.ferc.gov/eLibrary/search>. Enter the docket number (P–15408) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 4, 2025

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025–15008 Filed 8–6–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 2232–925]

Duke Energy Carolinas, LLC; Notice of Application for Temporary Variance Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection.

a. *Application Type:* Temporary Variance from Flow Release.

b. *Project No.:* 2232–925.

c. *Date Filed:* April 7, 2025, and supplemented May 22, 2025.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project—Lookout Shoals Development.

f. *Location:* The Lookout Shoals Development is located near the town of Claremont in Iredell and Catawba counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Brett Hartis, Senior Project Manager Water Strategy, Hydro Licensing, and Lake Services, 525 South Tryon Street, DEP–35B, Charlotte, NC 28202, (980) 875–5424.

i. *FERC Contact:* Robert Ballantine, (202) 502–6289, robert.ballantine@ferc.gov.

j. *Cooperating agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* September 3, 2025.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/doc-sfiling/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier

must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include the docket number P–2232–925. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. Description of Request: The applicant requests Commission approval for a temporary variance from the 80 cubic feet per second (cfs) minimum continuous flow release requirement at the Lookout Shoals Development from mid-September, 2025 through February 28, 2026. The licensee needs to perform maintenance on the junior unit headgate and replace the low pressure water system at the development. In order to perform these maintenance activities, the junior units must be taken out of service. The junior units are the means by which the required minimum continuous flow is released. During the maintenance project, the licensee proposes to provide flow from the dam by pulsing a larger unit for one hour on and two hours off (at a minimum) or, if water is available, to run a larger unit continuously (approximately 1,050 cfs). The licensee consulted with the North Carolina Wildlife Resources Commission, North Carolina Department of Environmental Quality—Division of Water Resources, and U.S. Fish and Wildlife Service regarding the variance and the proposed mitigative flow release method. During this consultation, the licensee and the resource agencies agreed to the pulse flow strategy to mitigate the deviations from flow release license requirements, confirming that no negative effects to the environment are expected.

m. Locations of the Application: This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances

related to this or other pending projects. For assistance, call 1–866–208–3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. Comments, Motions to Intervene, or Protests: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. Filing and Service of Responsive Documents: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, community organizations, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: August 4, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025–15007 Filed 8–6–25; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2025–0585; FRL–12876–01–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA or the Act), notice is given of a proposed consent decree in *Committee for a Better Arvin, et al. v. U.S. EPA, et al.*, No. 3:25–cv–03326–MMC. On April 14, 2025, Plaintiffs Committee for a Better Arvin, Healthy Environment for All Lives, Medical Advocates for Healthy Air and Sierra Club filed a complaint in the United States District Court for the Northern District of California, alleging that the Environmental Protection Agency (EPA) failed to perform certain non-discretionary duties in accordance with the Act to determine whether the San Joaquin Valley area attained, or failed to attain, the 1997 ozone national ambient air quality standards (NAAQS) by the applicable attainment date, and to take final action on a state implementation plan (SIP) revision submitted by the State of California pertaining to the contingency measures requirement for purposes of the 1997 ozone NAAQS in the San Joaquin Valley area. The EPA is providing notice of this proposed consent decree, which would resolve all claims in the case by establishing deadlines for the EPA to take final actions as specified in the decree.

DATES: Written comments on the proposed consent decree must be received by September 8, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2025–0585, online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Additional Information about Commenting on the Proposed Consent Decree" heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Geoffrey L. Wilcox, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 564–5601; email address wilcox.geoffrey@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Obtaining a Copy of the Proposed Consent Decree**

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2025–0585) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center 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 is (202) 566–1744 and the telephone number for the OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

II. Additional Information About the Proposed Consent Decree

The proposed consent decree would establish a deadline for the EPA to take action to determine whether the San Joaquin Valley nonattainment area attained, or failed to attain, the 1997 ozone NAAQS by the applicable attainment date. The EPA continues to determine whether nonattainment areas for the revoked 1997 ozone NAAQS attain, or fail to attain, the 1997 ozone NAAQS by the applicable attainment dates for anti-backsliding purposes to address an applicable requirement for nonattainment contingency measures and CAA section 185 fee programs. 40 CFR 51.1105(d)(2)(iii).

The proposed consent decree would also establish a deadline for the EPA to take action pursuant to CAA section 110(k) on a SIP revision titled “California Smog Check Contingency

Measure State Implementation Plan Revision” (“Smog Check Contingency Measure SIP”), submitted by the State of California on November 13, 2023. The Smog Check Contingency Measure SIP addresses the attainment contingency measure requirements for the San Joaquin Valley area for the 1997 ozone NAAQS.

The proposed consent decree would require the EPA to sign a notice of final rulemaking determining whether San Joaquin Valley attained, or failed to attain, the 1997 ozone NAAQS by the applicable attainment date by September 15, 2025. The proposed consent decree would also require the EPA to sign a notice of final rulemaking taking final action on the Smog Check Contingency Measure SIP submission (with respect to the attainment contingency measure requirements for the San Joaquin Valley area for the 1997 ozone NAAQS) by January 23, 2026. In both instances, the proposed consent decree would require the EPA, within 15 business days of signature, to send the required signed notices of final rulemaking to the Office of Federal Register for review and publication.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. The EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2025–0585, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this 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) 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, 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 additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, the EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows the EPA to contact you in case the EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in the EPA’s electronic public docket. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to the EPA electronically is the EPA’s preferred method for receiving comments. The electronic public docket system is an “anonymous access” system, which means the EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” The EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

[FR Doc. 2025–14978 Filed 8–6–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-12891-01-R8]

Clean Air Act Operating Permit Program; Order on Petition for Objection to State Operating Permit for Young Gas Storage Company, Ltd.'s Young Compressor Station**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of final order on petition.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an order dated May 30, 2025, denying a petition dated October 15, 2024, from Center for Biological Diversity. The petition requested that the EPA object to a Clean Air Act (CAA) operating permit issued by the Colorado Department of Public Health and Environment's Air Pollution Control Division (Division) authorizing Young Gas Storage Company, Ltd. (Young Gas Storage) to operate the Young Compressor Station in Morgan County, Colorado.

FOR FURTHER INFORMATION CONTACT: Matthew Pollard, EPA Region 8, telephone number: (303) 312-6878, email address: pollard.matthew@epa.gov. The final order and petition are available electronically at: <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>.

SUPPLEMENTARY INFORMATION: The EPA received a petition from the Center for Biological Diversity dated October 15, 2024, requesting that the EPA object to the issuance of operating permit no. 96OPMR177, issued by the Division to Young Gas Storage in Morgan County, Colorado. On May 30, 2025, the EPA Administrator issued an order denying the petition. The order itself explains the basis for the EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than October 6, 2025.

Cyrus Western,*Regional Administrator, Region 8.*

[FR Doc. 2025-14981 Filed 8-6-25; 8:45 am]

BILLING CODE 6560-50-P**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OLEM-2025-0391; FRL-12904-01-OLEM]

Hazardous Waste Electronic Manifest System ("e-Manifest") Advisory Board; Notice of Public Meeting**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) will convene the Hazardous Waste Electronic System ("e-Manifest") Advisory Board for a three (3) day virtual public meeting. The purpose of the meeting is for EPA to seek the Board's consultation and recommendations regarding the e-Manifest system (Meeting Theme: "Accelerating the Future: Phasing out Paper Manifests to Unlock the Full Potential of e-Manifest").

DATES: The meeting will be held on September 23-25, 2025, from approximately 10:00 a.m. to 5:00 p.m. EDT on each day.

ADDRESSES: This public meeting will be conducted virtually. Registration is required to attend and/or participate (as public commenter) in this public meeting. Please refer to the e-Manifest Advisory Board website <https://www.epa.gov/e-manifest/hazardous-waste-electronic-manifest-system-e-manifest-advisory-board> for information on how to register either as a public audience attendee or as an oral public commenter.

Comments: To make oral comments during the public meeting and be included on the meeting agenda, please register by noon on September 16, 2025. Registration instructions will be posted on the e-Manifest Advisory Board website at <https://www.epa.gov/e-manifest/hazardous-waste-electronic-manifest-system-e-manifest-advisory-board>. Any written comments submitted for the e-Manifest Advisory Board meeting on or before September 16, 2025, should be submitted in the public docket under Docket ID No. EPA-HQ-OLEM-2025-0391 at <https://www.regulations.gov/>. Written comments submitted to the public docket on or before September 16, 2025, will be provided to the e-Manifest Advisory Board for their consideration before the meeting. Anyone who wishes to submit comments after September 16, 2025, must send their written public comments or their oral comment requests directly to the Designated Federal Officer (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For

additional instructions, see section I.B. under **SUPPLEMENTARY INFORMATION.**

Special accommodations: For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least ten (10) days prior to the meeting to give the EPA as much time as possible to process your request.

FOR FURTHER INFORMATION CONTACT: Fred Jenkins, DFO, Office of Resource Conservation and Recovery, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW, Washington, DC 20460, telephone number: (202) 566-0344, email address: jenkins.fred@epa.gov.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. The full agenda and meeting materials will be available in the docket for the meeting and at the e-Manifest Advisory Board website at <https://www.epa.gov/e-manifest/hazardous-waste-electronic-manifest-system-e-manifest-advisory-board>. This public meeting will be conducted virtually. Registration is required to attend and/or participate in this public meeting. Registration instructions will be posted on the e-Manifest Advisory Board website at <https://www.epa.gov/e-manifest/hazardous-waste-electronic-manifest-system-e-manifest-advisory-board>. In the event the Agency needs to make subsequent changes to this meeting, the Agency will post future notices to its e-Manifest Advisory Board meeting website (<https://www.epa.gov/e-manifest/hazardous-waste-electronic-manifest-system-e-manifest-advisory-board>). The Agency strongly encourages the public to refer to the e-Manifest website for the latest meeting information, as sudden changes may be necessary.

General Information**A. Does this action apply to me?**

This action is directed to the public in general. This action may be of particular interest to persons who are or may be subject to the Hazardous Waste Electronic Manifest (e-Manifest) Establishment Act.

B. How may I participate in this meeting?

You may participate in this meeting by providing public comments via the instructions in this document. To ensure proper receipt of your public comments by the EPA, it is imperative that you submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2025-0391, at <https://www.regulations.gov/>

www.regulations.gov/. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. 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) 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 (e.g., on the web, cloud, or other file sharing system). For additional submission methods, 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>.

Written comments: The Agency encourages written comments be submitted electronically via <https://www.regulations.gov/>, into Docket ID No. EPA-HQ-OLEM-2025-0391 on or before September 16, 2025, to provide the e-Manifest Advisory Board the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after September 16, 2025, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

Oral comments: The Agency encourages each individual or group wishing to make brief oral comments to the e-Manifest Advisory Board to please register as an oral commenter for the meeting at the e-Manifest Advisory Board website, <https://www.epa.gov/e-manifest/hazardous-waste-electronic-manifest-system-e-manifest-advisory-board>, by noon on September 16, 2025, to be included on the meeting agenda. Anyone submitting oral public comments request after September 16, 2025, should also contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Requests to present oral comments will be accepted until the date of the meeting. Registration is required to attend and/or participate as an oral public commenter in this public meeting. Please refer to the e-Manifest Advisory Board website at <https://www.epa.gov/e-manifest/hazardous-waste-electronic-manifest-system-e-manifest-advisory-board> for information on how to register either as an oral public commenter or public audience attendee. To the extent that time

permits, the Chair of the e-Manifest Advisory Board may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) that the individual represents, and any requirements for audiovisual presentation support. Oral comments before the e-Manifest Advisory Board are limited to approximately five (5) minutes unless prior arrangements have been made. In addition, each speaker should provide a copy of their comments and presentation to the DFO so that they can be distributed to the e-Manifest Advisory Board at the meeting.

C. Purpose of the e-Manifest Advisory Board

The Hazardous Waste Electronic Manifest System Advisory Board is established in accordance with the provisions of the Hazardous Waste Electronic Manifest Establishment Act (e-Manifest Act), 42 U.S.C. 6939g, and the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The e-Manifest Advisory Board is in the public interest and supports the EPA in performing its duties and responsibilities. The Advisory Board shall meet annually to discuss, evaluate the effectiveness of, and provide recommendations about the system to the EPA Administrator.

The sole duty of the Advisory Board is to provide advice and recommendations to the EPA Administrator or designee. As required by the e-Manifest Act, the e-Manifest Advisory Board is composed of nine (9) members. One (1) member is the EPA Administrator (or a designee), who serves as Chairperson of the Advisory Board. The rest of the committee is composed of:

- At least two (2) members who have expertise in information technology;
- At least three (3) members who have experience in using or represent users of the manifest system to track the transportation of hazardous waste under the e-Manifest Act;
- At least three (3) members who are State representatives responsible for processing manifests.

All members of the e-Manifest Advisory Board, except for the EPA Administrator, are appointed as Expert members or Representative members.

D. Public Meeting

As directed by Congress, EPA launched “e-Manifest” in 2018 to modernize the nation’s cradle-to-grave hazardous waste tracking process. By enabling the transition from a paper-

intensive process to an electronic system, the EPA estimates e-Manifest will ultimately save state and industry users more than \$50 million annually, once electronic manifests are widely adopted. However, only a very small fraction of the two million manifests received annually by EPA are electronic manifests, despite years of system improvements and outreach to industry. EPA seeks to establish a clear timeline for phasing out paper manifests, providing a consistent goalpost for industry and propelling the program forward to the future of electronic manifests.

E. e-Manifest Advisory Board Documents and Meeting Minutes

The meeting background paper, related supporting materials, charge/questions to the Advisory Board, the Advisory Board membership roster (i.e., members attending this meeting), and the meeting agenda will be available by approximately mid-August of 2025. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available at <https://www.regulations.gov/> via the Docket ID No. EPA-HQ-OLEM-2025-0391 and at the e-Manifest Advisory Board website at: <https://www.epa.gov/e-manifest/hazardous-waste-electronic-manifest-system-e-manifest-advisory-board>.

The e-Manifest Advisory Board will prepare meeting minutes summarizing its recommendations to the Agency approximately ninety (90) days after the meeting. The meeting minutes will be posted on the e-Manifest Advisory Board website, or they may be obtained from the public docket at <https://www.regulations.gov/> via the Docket ID No. EPA-HQ-OLEM-2025-0391.

Dated: July 30, 2025.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2025-14977 Filed 8-6-25; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OA-2025-0261, FRL-12857-01-OA]

Request for Nominations to the Children’s Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a range of qualified candidates for consideration for appointment to its Children's Health Protection Advisory Committee (CHPAC). EPA anticipates filling vacancies by March 1, 2026. EPA may use additional sources to solicit nominees.

DATES: Submit nominations by October 6, 2025 by email to chpac@epa.gov or mail to Becky Cook-Shyovitz, Alternate Designated Federal Officer, Office of Children's Health Protection, U.S. Environmental Protection Agency, Mail Code 1107T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Becky Cook-Shyovitz, Alternate Designated Federal Officer, U.S. EPA; telephone (202) 564-4340 or chpac@epa.gov.

SUPPLEMENTARY INFORMATION:

Background: CHPAC is chartered under the Federal Advisory Committee Act (FACA), Public Law 92-463. EPA established this Committee in 1997 to provide independent advice to the EPA Administrator on a broad range of environmental issues affecting children's health.

The EPA Administrator appoints members for three-year terms with a cap on service at six years. The Committee meets 2-3 times annually and the average workload is approximately 10 to 15 hours per month. EPA provides reimbursement for travel and other incidental expenses associated with official government business, but members must be able to cover expenses prior to reimbursement.

The CHPAC is looking for representatives from industry; tribal, state, county and local government; school systems; academia; health care providers (including pediatricians, obstetric professionals, occupational medicine practitioners and community nurses); and non-governmental organizations.

The types of experience necessary includes: children's environmental health and development; epidemiology and toxicology; role of environmental chemicals in childhood diseases such as asthma, obesity and attention-deficit/hyperactivity disorder (ADHD); prenatal environmental exposures and adverse health outcomes; specific environmental exposures to chemicals such as lead, mercury and other heavy metals that adversely impact children's health; tribal children's environmental health; research; air quality (indoor and

outdoor); water quality; EPA regulation development; risk assessment; exposure assessment; science policy; public health information tracking; and outreach and risk communication.

EPA is looking for background and experience that would contribute to the diversity of perspectives on the committee (e.g., geographic, economic, social, cultural, racial, ethnicity, educational, and other considerations).

Nominees must have the ability to volunteer time to attend meetings 2-3 times a year in Washington, DC, participate in teleconference meetings, develop recommendations to the EPA Administrator, and prepare reports and advice letters.

Nominations must include the following information:

- Brief statement describing the nominee's interest in serving on the CHPAC.
- Short biography (no more than one page) describing the professional and educational qualifications, including a list of relevant activities, and any current or previous service on federal advisory committees.
- Statement about the perspective the nominee brings to the committee.
- Current contact information for the nominee, including name, organization (and position within that organization), business address, email address, and telephone number.
- Candidates may self-nominate; one letter of support is welcome.

Rebecca Cook-Shyovitz,

Alternate Designated Federal Officer, Office of Children's Health Protection.

[FR Doc. 2025-14985 Filed 8-6-25; 8:45 am]

BILLING CODE 6560-50-P

EXPORT-IMPORT BANK

[Public Notice: EIB-2025-2025-0010]

Receipt of Request(s) To Increase the Amount of the Long-Term General Guarantee on the Interest of Secured Notes Issued by the Private Export Funding Corporation (PEFCO)

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public that Export-Import Bank of the United States ("EXIM") is expected to consider one or more requests to increase the amount of the long-term general guarantee on the interest of Secured Notes issued by the Private Export Funding Corporation (PEFCO). Comments received within the comment period specified below will be

presented to the EXIM Board of Directors prior to any final action during the fiscal year ending on September 30, 2026.

DATES: Comments must be received on or before September 2, 2025 to be assured of consideration before any final decision on one or more additional guarantees during the course of Fiscal Year 2026.

ADDRESSES: Comments may be submitted through *Regulations.gov* at www.regulations.gov. To submit a comment, enter EIB-2025-0010 under the heading "Enter Keyword or ID" and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any), and EIB-2025-0010 on any attached document.

SUPPLEMENTARY INFORMATION:

Reference: AP003048AA.

Brief Description of Nature and Purpose of the Facility: EXIM may consider one or more general guarantees on the interest of Secured Notes issued by the Private Export Funding Corporation (PEFCO), in accordance with both the Guarantee and Credit Agreement, as Amended, and the Guarantee Agreement between EXIM and PEFCO. The purpose of the guarantee(s) of interest on the Secured Notes is to facilitate private funding from the U.S. capital markets for EXIM-guaranteed export finance transactions.

Total Amount of Guarantees: The exact number is not determinable due to market-determined pricing and uncertainty as to the amount and timing of Secured Notes to be issued; however, it could potentially be in excess of \$100 million for Secured Notes issued during the course of Fiscal Year 2026.

Reasons for the Facility and Methods of Operation: The general guarantee serves to guarantee interest on PEFCO's issuance of Secured Notes. The principal amount of the Secured Notes is secured by a collateral pool of U.S. government-risk debt and securities, including EXIM-guaranteed loans. The proceeds from the Secured Notes are used to fund additional EXIM-guaranteed loans and provide a liquid secondary market for EXIM-guaranteed loans.

Party Requesting Guarantee: Private Export Funding Corporation (PEFCO).

Information on Decision: Information on the final decision for this transaction will be available in the "Summary Minutes of Meetings of Board of

Directors'' on <https://www.exim.gov/news/meeting-minutes>.

Deidre Hodge,

Assistant Corporate Secretary.

[FR Doc. 2025-15029 Filed 8-6-25; 8:45 am]

BILLING CODE 6690-01-P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Public Meeting To Discuss the Proposed Draft Staff Implementation Guidance 64.1: Guidance for Implementation of SFFAS 64, Management's Discussion and Analysis

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the staff of the Federal Accounting Standards Advisory Board (FASAB) will convene a public meeting on September 4, 2025, from 9:30 a.m. until 11:30 a.m. to discuss proposed draft Staff Implementation Guidance 64.1: *Guidance for Implementation of SFFAS 64, Management's Discussion and Analysis, Rescinding and Replacing SFFAS 15*. The meeting will be held in room 5N30 at the Government Accountability Office, located at 441 G Street NW, Washington, DC 20548 and virtually by Zoom. Those interested in attending should contact Ms. Robin Gilliam, Assistant Director, at mda@fasab.gov no later than August 28, 2025. Any interested person may attend the public meeting as an observer.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Washington, DC 20548, or call (202) 512-7350.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001-1014)

Dated: August 5, 2025.

Monica R. Valentine,

Executive Director.

[FR Doc. 2025-15027 Filed 8-6-25; 8:45 am]

BILLING CODE 1610-02-P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Appointments Panel Meeting

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Appointments Panel, a subcommittee of the Federal Accounting

Standards Advisory Board (FASAB), will hold meetings on August 27, 2025. The Appointments Panel makes recommendations regarding appointments for nonfederal member positions.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Washington, DC 20548, or call (202) 512-7350.

SUPPLEMENTARY INFORMATION: The meetings are closed to the public. The reason for the closure is that matters covered by 5 U.S.C. 552b(c)(2) and (6) will be discussed. Any such discussions will involve matters that relate solely to internal personnel rules and practices of the sponsor agencies and the disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. 1009(d), portions of advisory committee meetings may be closed to the public where the head of the agency to which the advisory committee reports determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code. The determination shall be in writing and shall contain the reasons for the determination. A determination has been made in writing by the U.S. Government Accountability Office, the U.S. Department of the Treasury, and the Office of Management and Budget, as required by section 10(d) of FACA, that such portions of the meetings may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001-1014)

Dated: August 5, 2025.

Monica R. Valentine,

Executive Director.

[FR Doc. 2025-15026 Filed 8-6-25; 8:45 am]

BILLING CODE 1610-02-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0737; FR ID 306910]

Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before October 6, 2025. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501-3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060-0737.

Title: Disclosure Requirements for Information Services Provided Under a Presubscription or Comparable Arrangement.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,000 respondents; 1,000 responses.

Estimated Time per Response: 4.5 hours.

Frequency of Response: Annual and on occasion reporting requirements; Third party disclosure requirement.

Obligation to Respond: Voluntary.

Total Annual Burden: 4,500 hours.

Total Annual Cost: No cost.

Needs and Uses: Section 64.1501(b) of the Commission's rules defines a presubscription or comparable arrangement as a contractual agreement in which an information service provider makes specified disclosures to consumers when offering "presubscribed" information services.

The disclosures are intended to ensure that consumers receive information regarding the terms and conditions associated with these services before they enter into contracts to subscribe to them.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2025-14968 Filed 8-6-25; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0185; FR ID 306693]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before October 6, 2025. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0185.

Title: Section 73.3613, Availability of Contracts.

Form Number: N/A.

Respondents: Business or other for-profit entities and Not-for-profit institutions.

Number of Respondents and Responses: 2,400 respondents; 2,400 responses.

Estimated Time per Response: 0.25 to 0.5 hours.

Frequency of Response: On-occasion reporting requirement, Recordkeeping requirement, Third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 154(i) and 303

the Communications Act of 1934, as amended.

Total Annual Burden: 975 hours.

Total Annual Cost: \$135,000.

Needs and Uses: 47 CFR 73.3613 requires each licensee or permittee of a commercial or noncommercial AM, FM, TV or International broadcast station shall provide the FCC with copies of the following contracts, instruments, and documents together with amendments, supplements, and cancellations (with the substance of oral contracts reported in writing), within 7 days of a request by the FCC.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2025-14969 Filed 8-6-25; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, August 14, 2025, 10:00 a.m.

PLACE: Hybrid meeting: 1050 First Street NE Washington, DC (12th floor) and virtual.

STATUS: The August 14, 2025 Open Meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: Myles Martin, Deputy Press Officer
Telephone: (202) 694-1221.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2025-15017 Filed 8-5-25; 11:15 am]

BILLING CODE 6715-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, August 12, 2025 at 10:30 a.m.

PLACE: 1050 First Street NE, Washington, DC and virtual (this meeting will be a hybrid meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION:

Myles Martin, Deputy Press Officer,
Telephone: (202) 694-1221.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Deputy Secretary of the Commission.

[FR Doc. 2025-15015 Filed 8-5-25; 11:15 am]

BILLING CODE 6715-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2025-N-2195]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection related to humanitarian use devices (HUDs) and humanitarian device exemption (HDE).

DATES: Either electronic or written comments on the collection of information must be submitted by October 6, 2025.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 6, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand Delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2025-N-2195 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Humanitarian Use Devices." 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: Amber Sanford Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-8867, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed 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) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Humanitarian Use Devices—21 CFR Part 814

OMB Control Number 0910-0332—
Extension

This collection of information implements the humanitarian use devices (HUDs) provision of section 520(m) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(m)) and part 814, subpart H (21 CFR part 814, subpart H). Under section 520(m) of the FD&C Act, FDA is authorized to exempt an HUD from the effectiveness requirements of sections 514 and 515 of the FD&C Act (21 U.S.C. 360d and 360e) provided that the device: (1) is designed to treat or diagnose a disease or condition that affects no more than 8,000 individuals in the United States; (2) would not be available to a person with a disease or condition unless an exemption is granted and there is no comparable device other than another HUD approved under this exemption that is available to treat or diagnose such disease or condition; and (3) will not expose patients to an unreasonable or significant risk of illness or injury and the probable benefit to health from the use of the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

Respondents may submit a humanitarian device exemption (HDE) application seeking exemption from the effectiveness requirements of sections 514 and 515 of the FD&C Act as authorized by section 520(m)(2) of the FD&C Act. The information collected will assist FDA in making determinations on the following: (1) whether to grant HUD designation of a medical device; (2) whether to exempt an HUD from the effectiveness

requirements under sections 514 and 515 of the FD&C Act, provided that the device meets requirements set forth under section 520(m) of the FD&C Act; and (3) whether to grant marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making a determination on the factors listed previously in this document. Further, the collected information would also enable FDA to determine whether the holder of an HUD is in compliance with the HUD provisions under section 520(m) of the FD&C Act.

HUDs approved under a HDE cannot be sold for an amount that exceeds the costs of research and development, fabrication, and distribution of the device (*i.e.*, for profit), except in narrow circumstances. Section 520(m)(6)(A)(i) of the FD&C Act, provides that a HUD approved under an HDE is eligible to be sold for profit if the device meets certain criteria: The device is intended for the treatment or diagnosis of a disease or condition that occurs in pediatric patients or in a pediatric subpopulation, and such device is labeled for use in pediatric patients or in a pediatric subpopulation in which the disease or condition occurs; or the device is intended for the treatment or diagnosis of a disease or condition that does not occur in pediatric patients, or that occurs in pediatric patients in such numbers that the development of the device for such patients is impossible, highly impracticable, or unsafe.

Section 520(m)(6)(A)(ii) provides that the Secretary of Health and Human Services (the Secretary) will assign an annual distribution number (ADN) for devices that meet the eligibility criteria to be permitted to be sold for profit. The ADN is defined as the number of devices “reasonably needed to treat, diagnose, or cure a population of 8,000 individuals in the United States,” and therefore shall be based on the following information in a HDE application: the number of devices reasonably necessary to treat such individuals.

Section 520(m)(6)(A)(iii) provides that an HDE holder immediately notify the agency if the number of devices distributed during any calendar year exceeds the ADN. Section 520(m)(6)(C) provides that an HDE holder may petition to modify the ADN if additional information arises.

The FDA issued guidance entitled “Humanitarian Device Exemption (HDE) Program (September 2019)” (<http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm110203.pdf>), which addresses commonly asked questions about HDEs and HUDs,

including FDA actions on HDE applications, post-approval requirements, and special considerations for devices marketed under the HDE Program. The guidance document reflects changes in the HDE Program resulting from statutory amendments made by the 21st Century Cures Act (Cures Act) and explains the criteria FDA considers to determine if “probable benefit” has been demonstrated as part of the Agency's decision-making process regarding marketing authorization for a HUD. This guidance document also reflects amendments made to the HDE provision of the FD&C Act by the FDA Reauthorization Act of 2017 (FDARA).

Section 402(j)(5)(B) (42 U.S.C. 282(j)(5)(b)) of the Public Health Service Act (PHS Act), requires a certification to accompany human drug, biological, and device product submissions made to FDA. Specifically, at the time of submission of an application under sections 505, 515, or 520(m) of the FD&C Act (21 U.S.C. 354, 360e, or 360j(m)), or under section 351 of the PHS Act (42 U.S.C. 262), or submission of a report under section 510(k) of the FD&C Act (21 U.S.C. 360(k)), such application or submission must be accompanied by a certification that all applicable requirements of section 402(j) of the PHS Act have been met. Relevant regulations are found in 21 CFR parts 814, subpart H (humanitarian use devices—HUDs), and discussed in FDA's notice of implementation of the certification on December 12, 2007 (72 FR 70599). Certification is made via form FDA 3674, “Certification of Compliance” (<https://www.fda.gov/media/134964/download>)—Under 42 U.S.C. 282(j)(5)(B), with Requirements of *ClinicalTrials.gov* Data Bank.”

HUDs are subject to the general restriction that no profit may be made on their use. For HUDs labeled for use in certain populations, FDA exempts a certain number of these devices each year from the prohibition on profit. This number is known as the annual distribution number (ADN). The information gathered by this collection enables FDA to set this number. Failure to collect this information would prevent FDA from assigning an ADN.

The information is submitted to FDA as an “eCopy” via FDA's Center for Devices and Radiological Health (CDRH) Customer Collaboration Portal (<https://www.fda.gov/medical-devices/industry-medical-devices/send-and-track-medical-device-premarket-submissions-online-cdrh-portal>). Instructions and information regarding eCopy submission are available on FDA's website at <https://www.fda.gov/medical->

devices/how-study-and-market-your-device/ecopy-medical-device-submissions and in the FDA guidance document, “eCopy Program for Medical

Device Submissions” (<https://www.fda.gov/regulatory-information/search-fda-guidance-documents/ecopy-program-medical-device-submissions>).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN^{1 2}

Activity/21 CFR part/form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Humanitarian Use Devices; 21 CFR Part 814					
Request for HUD designation—814.102	23	1	23	40	920
Certification of Compliance (form FDA 3674) ²	4	1	4	.75 (45 minutes) ..	3
HDE Application—814.104	3	1	3	328	984
HDE Amendments and resubmitted HDEs—814.106 ...	3	3	9	50	450
HDE Supplements—814.108	30	1	30	80	2,400
Procedures for review of an HDE, including a request for withdrawal—814.116.	1	1	1	1	1
Notification of withdrawal of institutional review board approval—814.124(b).	1	1	1	2	2
Periodic reports—814.126(b)(1)	36	4	144	120	17,280
Total					22,040
Information to Accompany Humanitarian Device Exemption Applications and Annual Distribution Number Reporting Requirements					
Pediatric Subpopulation and Patient Information—515A(a)(2) of the FD&C Act.	1	1	1	100	100
Exemption from Profit Prohibition Information—520(m)(6)(A)(i) and (ii) of the FD&C Act.	1	1	1	50	50
Request for Determination of Eligibility Criteria—613(b) of FDASIA.	1	1	1	10	10
ADN Notification—520(m)(6)(A)(iii) of the FD&C Act	1	1	1	100	100
ADN Modification—520(m)(6)(C) of the FD&C Act	1	1	1	100	100
Total					360
Reporting Total					22,400

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² Form FDA 3674 is approved under OMB Control No. 0910–0120. This ICR includes burden only for HUD submissions.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

Activity/21 CFR part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Humanitarian Use Devices; 21 CFR Part 814					
HDE Records—814.126(b)(2)	81	1	81	2	162

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN¹

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Humanitarian Use Devices; 21 CFR Part 814					
Notification of emergency use—814.124(a)	22	1	22	1	22

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall decrease of 321 hours and a corresponding decrease of 63 responses. The total hour burden for this information collection is estimated to be

22,584 hours. In a nonmaterial/non-substantive change request (83–C), approved 3/24/2023, we consolidated the information collection activity previously approved under OMB control number 0910–0661 into this

information collection. This includes information collection associated with the annual distribution number reporting requirements related to pediatric patients and pediatric populations under section 613 of the

Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144), which amended section 520(m) of the FD&C Act.

Dated: July 31, 2025.

Grace R. Graham

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–14945 Filed 8–6–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2025–N–2149]

Agency Information Collection Activities; Proposed Collection; Comment Request; Collection of Conflict-of-Interest Information for Participation in Food and Drug Administration Non-Employee Fellowship and Traineeship Programs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on collection of conflict-of-interest information for participation in FDA non-employee fellowship and traineeship programs.

DATES: Submit either electronic or written comments on the collection of information by October 6, 2025.

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 October 6, 2025. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 6, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2025–N–2149 for “Agency Information Collection Activities; Proposed Collection; Comment Request; Collection of Conflict-of-Interest Information for Participation in Food and Drug Administration Non-Employee Fellowship and Traineeship Programs.” 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: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information,

including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed 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) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Collection of Conflict-of-Interest Information for Participation in Food and Drug Administration Non-Employee Fellowship and Traineeship Programs

OMB Control Number 0910-0882—Extension

This information collection supports Food and Drug Administration's (FDA, us, or we) non-employee fellowship and traineeship programs. In compliance with 44 U.S.C. 3507, FDA will submit to the Office of Management and Budget a request to review and approve a collection of information: "Collection of Conflict-of-Interest Information for Participation in FDA Non-Employee Fellowship and Traineeship Programs." Section 742 (b) of the Food, Drug and Cosmetic Act (21 U.S.C. 379l(b)) allows FDA to conduct and support intramural training programs through non-employee fellowship and traineeship programs. This form provides the FDA with information about financial investments and relationships from non-employee scientists who participate in FDA fellowship and traineeship programs. We developed Form FDA

4083 to collect information from participants in FDA fellowship and traineeship programs. The form requests certain information about financial interests and current relationships: (1) description of the financial interest; (2) the type of financial interest (*e.g.*, stocks, bonds, stock options); (3) if the financial interest is an employee benefit from prior employment; (4) value of financial interest; (5) who owns the financial interest (*e.g.*, self, spouse, minor children); (6) employment relationship with an FDA significantly regulated organization (SRO); (7) and service as a consultant to an FDA SRO, and/or proprietary interest(s) in one of more product(s) regulated by FDA, including patent, trademark, copyright, or licensing agreement. The purpose of the financial information is for FDA to determine if there is a conflict-of-interest between the Fellow's or Trainee's financial and relationship interests and their activities at FDA. The collection of information is mandatory to participate in FDA's fellowship and traineeship programs.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Form FDA 4083—Report of Financial Interests and Other Relationships for Non-Employee Scientists at FDA					
Oak Ridge Institute for Science and Education Fellowship	500	1	500	1	500
Traineeship Program	500	1	500	1	500
Total .....	.....	.....	.....	.....	1,000

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall decrease of 50 hours and a corresponding decrease of 50 responses. Since the last OMB approval, the Reagan-Udall Fellowship at FDA has been terminated.

Dated: July 31, 2025.

Grace R. Graham

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025-14948 Filed 8-6-25; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2025-N-2220]

Agency Information Collection Activities; Proposed Collection; Comment Request; Testing Communications on Medical Devices and Radiation-Emitting Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the

Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the generic clearance for testing communications on medical devices and radiation-emitting products by FDA's Center for Devices and Radiological Health (CDRH). This generic ICR facilitates CDRH's efforts to assess the need for communications on specific topics and to assist in the development and modification of communication messages to promote public health and compliance with regulations.

DATES: Either electronic or written comments on the collection of information must be submitted by October 6, 2025.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 6, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2025-N-2220 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Testing Communications On Medical Devices and Radiation-Emitting Products." 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:

Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-8867, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined

in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed 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) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Testing Communications on Medical Devices and Radiation-Emitting Products

OMB Control Number 0910-0678—Extension

FDA is authorized by section 1003(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)) to conduct educational and public information programs. FDA must conduct needed research to ensure that such programs have the highest likelihood of being effective. Improving communications by FDA's Center for Devices and Radiological Health (CDRH) involves many research methods, including individual in-depth interviews, mall-intercept interviews, focus groups, self-administered surveys, gatekeeper reviews, and omnibus telephone surveys.

The information collected will serve three major purposes. First, as formative research it will provide critical knowledge needed about target audiences to develop messages and campaigns about product use. Knowledge of consumer, caregiver, and healthcare professional decision-making processes will provide a better

understanding of target audiences that FDA needs to design effective communication strategies, messages, and labels.

Second, as initial testing, the collected information will allow FDA to assess the potential effectiveness of messages and materials in reaching and successfully communicating with intended audiences. Testing messages with a sample of the target audience will allow FDA to refine messages while still in the developmental stage.

Respondents will be asked to give their reaction to the messages in either individual or group settings.

Third, as evaluative research, the collected information will allow FDA to ascertain the effectiveness of the messages and the distribution method in achieving the objectives of the message campaign. Evaluation of message campaigns is a vital link in continuous improvement of communications at FDA.

FDA expects to conduct studies under this generic information collection using a variety of research methods. We estimate that the burden to respondents will average 16 minutes each (varying from 5 minutes to 90 minutes). FDA estimates the burden of this collection of information based on prior experience with the various types of data collection methods described earlier.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN¹

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Individual In-Depth Interviews	420	1	420	0.75 (45 minutes)	315
General Public Focus Group Interviews	288	1	288	1.50	432
Intercept Interviews: Central Location	200	1	200	0.25 (15 minutes)	50
Intercept Interviews: Telephone	4,000	1	4,000	0.08 (5 minutes)	320
Self-Administered Surveys	2,400	1	2,400	0.25 (15 minutes)	600
Gatekeeper Reviews	400	1	400	0.50 (30 minutes)	200
Omnibus Surveys	1,200	1	1,200	0.17 (10 minutes)	204
TOTAL (General Public)	8,908				2,121
Healthcare Professional Individual In-Depth Interviews	72	1	72	0.75 (45 minutes)	54
Healthcare Professional Focus Group Interviews	144	1	144	1.50	216
TOTAL (Healthcare Professionals)	216				270
TOTAL (Overall)	9,124				2,391

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: July 31, 2025.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025-14946 Filed 8-6-25; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Center Program Performance Period Extensions

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of the extension of the standard performance period for health center grantees from 3 to 4 years and

request for information from current recipients.

SUMMARY: HRSA is extending health center grantees' performance periods to a total of 4 years. The change from a 3-year performance period to a 4-year performance period will provide current health centers additional time to serve their service area before they apply for a new award and will provide a funding amount consistent with what would have been made available through the Service Area Competition (SAC). The extended performance period supports HRSA's commitment to continuity in access to comprehensive primary care and will not impact HRSA's ability to ensure that health centers comply with Health Center Program requirements. This update will not change the statutory requirement that health centers that fail to comply with Health Center Program requirements will receive a 1-year performance period if a new project period is awarded.

FOR FURTHER INFORMATION CONTACT: Matt Kozar, Division Director, Office of Program and Policy Development, Bureau of Primary Care, HRSA, at mkozar@hrsa.gov and 301-443-1034.

SUPPLEMENTARY INFORMATION: The 194 health center awardees, as listed in the table below, will receive a 1-year Extension with Funds for a total 4-year performance period.

- *Amount of Award(s):* 192 non-competitive awards for approximately \$828 million.
- *Project Period:* January 1, 2023, to December 31, 2026; February 1, 2023, to January 31, 2027.
- *Assistance Listing Number:* 93.224.
- *Award Instrument:* Grant—Non-competing Continuation.
- *Authority:* Section 330 of the Public Health Service Act, as amended (42 U.S.C. 254b, as amended).

Table 1. Recipients and award amounts grant Number	Budget period start	Name	City	State	Est award amount
H80CS01138	Jan	Bethel Family Clinic	Bethel	AK	\$1,840,427
H80CS04434	Jan	Native Village of Eyak	Cordova	AK	1,840,661
H80CS01130	Jan	Norton Sound Health Corporation	Nome	AK	3,141,641
H80CS00020	Jan	Alabama Regional Medical Services	Birmingham	AL	5,127,920
H80CS00230	Jan	El Rio Santa Cruz Neighborhood Health Center, Inc.	Tucson	AZ	10,074,355
H80CS26606	Jan	Horizon Health and Wellness, Inc	Apache Junction	AZ	1,816,493
H80CS26604	Jan	Neighborhood Outreach Access to Health	Phoenix	AZ	3,090,888
H80CS00651	Jan	North Country Healthcare, Inc	Flagstaff	AZ	6,746,754
H80CS04321	Jan	Sunset Community Health Center	Somerton	AZ	6,167,152
H80CS00142	Jan	AltaMed Health Services Corporation	Los Angeles	CA	18,049,823
H80CS08739	Jan	Avenal Community Health Center	Lemoore	CA	3,718,335
H80CS00138	Jan	Community Medical Centers, Inc	Stockton	CA	8,375,519
H80CS26608	Jan	Coppertower Family Medical Center, Inc	Cloverdale	CA	1,215,617
H80CS00628	Jan	Mendocino Community Health Clinic, Inc	Ukiah	CA	5,449,353
H80CS26624	Jan	Pomona Community Health Center	Pomona	CA	2,701,790
H80CS26609	Jan	Ritter Center	San Rafael	CA	1,347,670
H80CS00226	Jan	Salud Para La Gente	Watsonville	CA	4,816,103
H80CS00049	Jan	San Francisco Community Clinic Consortium	San Francisco	CA	7,433,077
H80CS00223	Jan	Tiburcio Vasquez Health Center, Inc	Union City	CA	2,588,719
H80CS00137	Jan	United Health Centers of The San Joaquin Valley.	Fresno	CA	13,254,279
H80CS26617	Jan	Via Care Community Health Center, Inc	Los Angeles	CA	2,578,738
H80CS00040	Jan	The Colorado Coalition for the Homeless	Denver	CO	8,832,842
H80CS00212	Jan	Peak Vista Community Health Centers	Colorado Springs	CO	9,909,055
H80CS00134	Jan	Valley Wide Health Systems, Inc	Alamosa	CO	8,056,605
H80CS00155	Jan	Generations Family Health Center, Inc	Willimantic	CT	4,048,775
H80CS00026	Jan	Camillus Health Center, Inc	Miami	FL	4,259,012
H80CS00178	Jan	Central Florida Family Health Center, Inc	Sanford	FL	5,860,129
H80CS25684	Jan	Health Care District of Palm Beach County ...	West Palm Beach	FL	7,278,563
H80CS00097	Jan	MCR Health, Inc	Palmetto	FL	9,737,629
H80CS00182	Jan	Miami Beach Community Health Center, Inc	Miami Beach	FL	7,826,762
H80CS00187	Jan	Treasure Coast Community Health, Inc	Fellsmere	FL	4,167,714
H80CS08780	Jan	Diversity Health Center, Inc	Hinesville	GA	2,141,846
H80CS00022	Jan	Saint Joseph's Mercy Care Services	Atlanta	GA	5,683,526
H80CS00678	Jan	Valley Healthcare System, Inc	Columbus	GA	3,098,570
H80CS06641	Jan	Ko'olauloa Health Center	Kahuku	HI	1,957,949
H80CS06667	Jan	Community Health Center of Fort Dodge, Inc	Fort Dodge	IA	1,949,691
H80CS00113	Jan	Crusaders Central Clinic Association	Rockford	IL	6,924,055
H80CS00114	Jan	HealthNet, Inc	Indianapolis	IN	8,594,547
H80CS00102	Jan	Family Health Centers, Inc	Louisville	KY	6,912,875
H80CS00083	Jan	Park Duvalle Community Health Center, Inc	Louisville	KY	5,435,002
H80CS00206	Jan	Catahoula Parish Hospital District #2	Sicily Island	LA	2,515,789
H80CS26580	Jan	Common Ground Health Clinic	Gretna	LA	1,548,517
H80CS00129	Jan	Excelth, Incorporated	New Orleans	LA	5,849,119
H80CS00006	Jan	Boston Health Care for the Homeless Pro- gram, Inc.	Boston	MA	4,685,451
H80CS00734	Jan	Chase Brexton Health Services, Inc	Baltimore	MD	4,015,116
H80CS00017	Jan	Health Care for the Homeless, Inc	Baltimore	MD	6,211,119
H80CS26633	Jan	Owensville Primary Care, Inc	West River	MD	1,378,296
H80CS00068	Jan	Total Health Care, Inc	Baltimore	MD	9,320,756
H80CS08738	Jan	Covenant Community Care, Inc	Detroit	MI	4,347,804
H80CS00033	Jan	Detroit Health Care For The Homeless	Detroit	MI	5,273,464
H80CS26564	Jan	South Central Missouri Community Health Center.	Rolla	MO	2,269,295
H80CS00084	Jan	Central Mississippi Civic Improvement Asso- ciation, Inc.	Jackson	MS	7,974,380
H80CS00188	Jan	Coastal Family Health Center, Inc	Biloxi	MS	9,027,387
H80CS00009	Jan	City of Newark, New Jersey	Newark	NJ	4,076,227
H80CS00164	Jan	Community Health Care, Inc	Bridgeton	NJ	8,326,868
H80CS00036	Jan	Albuquerque Health Care for the Homeless, Inc.	Albuquerque	NM	3,225,622
H80CS21582	Jan	Anthony L. Jordan Health Corporation	Rochester	NY	4,449,956
H80CS00007	Jan	Care For The Homeless	New York	NY	6,605,634
H80CS00171	Jan	Neighborhood Health Center of WNY, Inc	Buffalo	NY	3,785,704
H80CS00166	Jan	Northern Oswego County Health Services, Inc.	Pulaski	NY	3,001,661
H80CS00029	Jan	Care Alliance	Cleveland	OH	4,635,985
H80CS00118	Jan	Columbus Neighborhood Health Center, Inc	Columbus	OH	7,011,836
H80CS00201	Jan	Healthsource Of Ohio, Inc	Loveland	OH	8,334,320

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H80CS00193	Jan	Hopewell Health Centers, Inc	Chillicothe	OH	5,439,208
H80CS00196	Jan	Ohio North East Health Systems, Inc	Youngstown	OH	4,713,674
H80CS26577	Jan	Talbert House Health Center	Franklin	OH	1,884,196
H80CS26585	Jan	Community Health Center of Northeast Okla- homa, Inc.	Jay	OK	1,428,265
H80CS00149	Jan	County of Multnomah	Portland	OR	9,809,194
H80CS00162	Jan	Centro De Servicios Primarios De Salud, Inc	Florida	PR	1,895,587
H80CS02467	Jan	Republic of Palau	Koror	PW	1,375,337
H80CS00154	Jan	Blackstone Valley Community Health Care, Inc.	Pawtucket	RI	3,200,860
H80CS00057	Jan	Providence Community Health Centers, Inc ..	Providence	RI	7,212,115
H80CS00216	Jan	Community Health Center of the Black Hills, Inc.	Rapid City	SD	3,043,104
H80CS00135	Jan	Horizon Health Care, Inc	Howard	SD	9,784,983
H80CS00219	Jan	City of Sioux Falls	Sioux Falls	SD	3,048,204
H80CS00128	Jan	Centro De Salud Familiar La Fe, Inc	El Paso	TX	6,234,258
H80CS00203	Jan	La Esperanza Clinic, Inc	San Angelo	TX	3,238,333
H80CS00126	Jan	Regence Health Network, Inc	Plainview	TX	5,972,736
H80CS00073	Jan	Peninsula Institute for Community Health, Inc ..	Newport News	VA	6,953,702
H80CS00147	Jan	Columbia Basin Health Association	Othello	WA	6,707,625
H80CS00319	Jan	Community Health Association of Spokane ...	Spokane	WA	7,791,273
H80CS00677	Jan	Peninsula Community Health Services	Bremerton	WA	3,148,785
H80CS26599	Feb	Kodiak Area Native Association	Kodiak	AK	2,514,761
H80CS26588	Feb	Christ Health Center, Inc	Birmingham	AL	1,375,147
H80CS00795	Feb	Health Services, Inc	Montgomery	AL	8,136,046
H80CS26611	Feb	The Achievable Foundation	Culver City	CA	735,054
H80CS00787	Feb	Asian Pacific Health Care Venture, Inc	Los Angeles	CA	4,902,955
H80CS26616	Feb	Benevolence Industries, Inc	Los Angeles	CA	2,222,955
H80CS00052	Feb	Children's Hospital & Research Center at Oakland.	Oakland	CA	2,424,630
H80CS26607	Feb	Greenville Rancheria	Greenville	CA	1,530,107
H80CS26619	Feb	Kedren Community Health Center, Inc	Los Angeles	CA	1,206,507
H80CS06674	Feb	Los Angeles Christian Health Centers	Los Angeles	CA	5,087,536
H80CS26621	Feb	Los Angeles LGBT Center	Los Angeles	CA	2,200,370
H80CS26622	Feb	Nhan Hoa Comprehensive Health Care Clin- ic, Inc.	Garden Grove	CA	1,283,149
H80CS26623	Feb	Operation Samahan, Inc	National City	CA	2,686,587
H80CS26625	Feb	Santa Barbara Neighborhood Clinics	Santa Barbara	CA	2,042,112
H80CS00048	Feb	County of Santa Cruz	Santa Cruz	CA	2,852,721
H80CS26627	Feb	Serve the People, Inc	Santa Ana	CA	2,667,302
H80CS08730	Feb	Westside Family Health Center	Culver City	CA	2,249,634
H80CS00690	Feb	Clinica Campesina Family Health Services ...	Lafayette	CO	8,956,325
H80CS00618	Feb	Borinquen Health Care Center, Inc	Miami	FL	7,968,464
H80CS26589	Feb	The Center for Family and Child Enrichment, Inc.	Miami	FL	1,514,528
H80CS00423	Feb	Central Florida Health Care, Inc	Winter Haven	FL	9,356,810
H80CS00809	Feb	Community Health Centers, Inc	Winter Garden	FL	8,861,436
H80CS26590	Feb	EMPOWER U, Inc	Miami	FL	1,696,296
H80CS26626	Feb	FoundCare Inc	West Palm Beach	FL	2,680,886
H80CS00732	Feb	Jessie Trice Community Health System, Inc ..	Miami	FL	10,972,059
H80CS00019	Feb	North Broward Hospital District	Fort Lauderdale	FL	3,202,758
H80CS00081	Feb	Rural Health Care, Incorporated	Palatka	FL	6,680,788
H80CS00393	Feb	CareConnect Health, Inc	Richland	GA	7,501,495
H80CS26591	Feb	Center for Pan Asian Community Services, Inc.	Atlanta	GA	2,248,570
H80CS26592	Feb	Coastal Community Health Services, Inc	Brunswick	GA	2,449,791
H80CS26593	Feb	Good Samaritan Health Center of Cobb, Inc ..	Marietta	GA	1,540,918
H80CS26594	Feb	Health Education, Assessment and Leader- ship, Inc.	Atlanta	GA	2,536,129
H80CS00807	Feb	Waianae District Comprehensive Health and Hospital Board, Inc.	Waianae	HI	3,990,277
H80CS00670	Feb	Community Health Care, Inc	Davenport	IA	5,063,179
H80CS00815	Feb	Peoples Community Health Clinic, Inc	Waterloo	IA	3,348,320
H80CS26601	Feb	Family Medicine Residency of Idaho	Boise	ID	1,480,731
H80CS00556	Feb	Valley Family Health Care, Inc	Payette	ID	4,554,206
H80CS26565	Feb	Hamdard Center for Health & Human Serv- ices NFP.	Addison	IL	1,514,484
H80CS00324	Feb	University of Illinois	Chicago	IL	4,387,891
H80CS26566	Feb	Jane Pauley Community Health Center, Inc ..	Indianapolis	IN	3,459,278
H80CS26568	Feb	Southlake Community Mental Health Center, Inc.	Merrillville	IN	2,153,263

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H80CS26569	Feb	Wabash Valley Health Center, Inc	Terre Haute	IN	1,174,333
H80CS00619	Feb	Big Sandy Health Care, Inc	Prestonsburg	KY	3,851,985
H80CS26595	Feb	Pennyroyal Healthcare Service Inc	Princeton	KY	1,857,174
H80CS26579	Feb	C A S S E Dental Health Institute	Shreveport	LA	2,555,332
H80CS26581	Feb	Jefferson Parish Human Services Authority ..	Metairie	LA	1,385,065
H80CS08764	Feb	Morehouse Community Medical Centers, Inc	Bastrop	LA	2,613,881
H80CS26582	Feb	MQVN Community Development Corp	New Orleans	LA	1,438,250
H80CS26583	Feb	NO/AIDS Task Force	New Orleans	LA	2,326,502
H80CS00378	Feb	Charles River Community Health, Inc	Boston	MA	3,702,429
H80CS26638	Feb	Island Health, Inc	Edgartown	MA	1,412,934
H80CS00001	Feb	City of Springfield	Springfield	MA	2,362,888
H80CS00067	Feb	Park West Health Systems, Inc	Baltimore	MD	4,365,120
H80CS00030	Feb	County of Ingham	Lansing	MI	2,773,592
H80CS26511	Feb	Upper Great Lakes Family Health Center	Hancock	MI	3,256,108
H80CS00028	Feb	Hennepin County	Minneapolis	MN	2,289,115
H80CS26563	Feb	Compass Health, Inc	Clinton	MO	10,776,978
H80CS26560	Feb	East Central Missouri Behavioral Health Services, Inc.	Mexico	MO	1,264,246
H80CS26561	Feb	Health Care Coalition of Lafayette County	Lexington	MO	2,975,818
H80CS00671	Feb	Northwest Health Services, Inc	Saint Joseph	MO	5,204,660
H80CS00633	Feb	Access Family Health Services, Inc	Smithville	MS	2,398,543
H80CS00704	Feb	Montana Migrant & Seasonal Farm Workers Council, Inc.	Billings	MT	3,523,076
H80CS26596	Feb	Ocracoke Health Center, Inc	Ocracoke	NC	956,895
H80CS00490	Feb	The Stedman-Wade Health Services, Inc	Wade	NC	2,035,716
H80CS26562	Feb	Heartland Health Center, Inc	Grand Island	NE	1,438,898
H80CS26640	Feb	Mid-State Health Center	Plymouth	NH	1,679,642
H80CS00380	Feb	Southern Jersey Family Medical Centers, Inc	Hammonton	NJ	7,189,854
H80CS04211	Feb	Zufall Health Center, Inc	Dover	NJ	6,272,425
H80CS26605	Feb	Northern Nevada HIV Outpatient Program, Education and Services.	Reno	NV	1,778,657
H80CS00313	Feb	Hudson River Healthcare, Inc	Peekskill	NY	21,524,887
H80CS26630	Feb	Jericho Road Ministries, Inc	Buffalo	NY	1,635,945
H80CS26631	Feb	La Casa De Salud Inc	Bronx	NY	3,181,047
H80CS26574	Feb	Asian Services in Action, Inc	Akron	OH	1,529,543
H80CS00399	Feb	The Community Action Committee of Pike County.	Piketon	OH	4,402,783
H80CS00816	Feb	Ohio Hills Health Services	Barnesville	OH	2,242,146
H80CS26578	Feb	County of Wood	Bowling Green	OH	1,181,543
H80CS00320	Feb	Community Health Centers, Inc	Spencer	OK	7,575,782
H80CS26602	Feb	Bandon Community Health Center	Bandon	OR	1,395,291
H80CS00705	Feb	Centerville Clinics, Inc	Fredericktown	PA	5,640,164
H80CS26635	Feb	Project H.O.M.E	Philadelphia	PA	1,667,917
H80CS00707	Feb	Rural Health Corporation of Northeastern Pennsylvania.	Wilkes Barre	PA	3,058,937
H80CS00389	Feb	Spectrum Health Services, Inc	Philadelphia	PA	3,448,095
H80CS00379	Feb	Corporacion de Servicios de Salud y Medicina Avanzada.	Cidra	PR	7,069,774
H80CS00382	Feb	Morovis Community Health Center, Inc	Morovis	PR	3,712,502
H80CS00712	Feb	Prymed Medical Care, Inc	Ciales	PR	3,016,725
H80CS00454	Feb	Thundermist Health Center	Woonsocket	RI	5,482,872
H80CS26597	Feb	Care Net of Lancaster	Lancaster	SC	1,628,092
H80CS00750	Feb	Community Medicine Foundation, Inc	Rock Hill	SC	2,934,738
H80CS00730	Feb	Eau Claire Cooperative Health Center	Columbia	SC	7,264,357
H80CS00578	Feb	New Horizon Family Health Services, Inc	Greenville	SC	5,800,227
H80CS00333	Feb	Lake County Primary Care	Tiptonville	TN	2,283,896
H80CS26598	Feb	Maury Regional Hospital	Columbia	TN	1,261,121
H80CS00762	Feb	Ocoee Regional Health Corporation	Benton	TN	1,940,628
H80CS26644	Feb	Utah Partners for Health	Midvale	UT	1,735,438
H80CS00331	Feb	Bland County Medical Clinic, Inc	Bastian	VA	1,800,345
H80CS00018	Feb	Daily Planet, Inc	Richmond	VA	3,100,806
H80CS26636	Feb	Rockbridge Area Free Clinic	Lexington	VA	1,531,934
H80CS00386	Feb	Stony Creek Community Health Center	Stony Creek	VA	398,394
H80CS26641	Feb	Battenkill Valley Health Center, Inc	Arlington	VT	1,481,503
H80CS26642	Feb	Five-Town Health Alliance, Inc	Bristol	VT	1,559,455
H80CS26798	Feb	Gifford Health Care, Inc	Randolph	VT	1,704,120
H80CS00647	Feb	Country Doctor Community Clinic	Seattle	WA	3,244,516
H80CS00437	Feb	International Community Health Services	Seattle	WA	2,832,480
H80CS26603	Feb	The N. A. T. I. V. E. Project	Spokane	WA	1,355,489
H80CS00493	Feb	New Health Programs Association	Chewelah	WA	2,690,337

Table 1. Recipients and award amounts grant Number	Budget period start	Name	City	State	Est award amount
H80CS00639	Feb	Yakima Valley Farm Workers Clinic	Toppenish	WA	20,025,936
H80CS00035	Feb	New Community Clinic, Inc. Ltd	Green Bay	WI	2,546,831
H80CS00034	Feb	Outreach Community Health Centers, Inc	Milwaukee	WI	3,168,321
H80CS00384	Feb	Monroe County Health Department	Union	WV	2,532,477
H80CS26637	Feb	Williamson Health & Wellness Center, Inc	Williamson	WV	1,885,235

Purpose/Justification: Health centers currently receive a 3-year performance period when they successfully compete and receive Health Center Program funding through a SAC. HRSA will begin to move health centers with a current 3-year performance period to a 4-year performance period starting in fiscal year (FY) 2026 to:

- Reduce the burden on health centers by extending the timing of their SAC application submission from every 3 years to every 4 years.
- Provide HRSA with increased operational flexibility and accountability by distributing the review and processing of SACs, program analysis and recommendations, and operational site visits more evenly across the 4-year funding cycles of health center competitive awards while further ensuring the integrity of compliance reviews and funding decisions for the Health Center Program.
- Increase the continuity of patient access to comprehensive primary health care services by committing each health center to provide services for a longer time frame in each service area, while remaining aligned with current grants requirements and policies.

Over the next 3 years, health centers with a current 3-year performance period will receive a 4-year performance period, either through a 1-year Extension with Funds to their existing performance period or through a new 4-year performance period when they apply to serve an available service area and successfully compete and receive funding through a SAC. Health centers with a current performance period of January 1, 2023, through December 31, 2025, and February 1, 2023, through January 31, 2026, that receive an Extension with Funds will not be required to submit a Budget Period Progress Report Non-Competing Continuation (BPR) prior to their next scheduled SAC application but rather will submit equivalent information via a Request for Information. The 1-year performance period extension will result in a 4-year performance period, which reduces the administrative burden for health centers, increases operational flexibility and

accountability for HRSA, and ensures continuity of access to comprehensive primary care for health center patients.

HRSA will provide health centers that have a January or February budget period start date and are scheduled to compete for their service area in FY 2026 with a 1-year Extension with Funds. This award action will initiate the process that eventually provides all compliant health center awardees with a 4-year performance period and creates a balanced number of health centers that compete for their service area over each 4-year funding cycle. Not supporting this approach would require differentiated performance periods that would provide some health centers with a 3-year performance period and others with a 4-year performance period, thereby creating differing expectations and requirements for health centers and their patients in the continuity of access to comprehensive primary health care services in their service area.

Request for Recipient Response: This action extends the performance period with funds to Health Center Program awards. Awards with a current performance period of January 1, 2023, through December 31, 2025, and February 1, 2023, through January 31, 2026, will be extended by 12 months to December 31, 2026, and January 31, 2027, respectively. These extensions will prevent interruptions in access to critical health care services in the health centers' communities and shift performance periods from 3 years to 4 years. To process this action, current health center grantees must respond to this request for information (RFI) within the specified timeframe by providing a SF-424A, Budget Narrative, Form 1C, Form 3, Project Narrative Update, and Supplemental Award Update (if applicable), as detailed below.

Activities/Requirements: Activities and work funded under this 1-year extension are within the scope of the current award. All of the terms and conditions of the current award apply to activities and work supported by this 1-year extension.

Required Submission Response: Health center awardees must submit the response to this RFI in HRSA's

Electronic Handbook. If HRSA does not receive a response to the RFI by the deadline, or the response to the RFI is incomplete or non-responsive, there may be a delay or lapse in the issuance of funding. The response should not exceed 20 pages, single spaced, and must include the following information.

1. SF-424A: Budget Information Form

Upload an SF-424A: BUDGET INFORMATION FORM attachment.

Section A: Budget Summary: Verify the pre-populated list of Health Center Program funding types:

- Community Health Center (CHC)
- Migratory and Seasonal Agricultural Workers (MSAW)
- Homeless Population (HP)
- Residents of Public Housing (RPH)

If the funding types are incorrect, make necessary adjustments. In the Federal column, provide the funding request for each Health Center Program funding type (CHC, MSAW, HP, RPH). The total federal funding requested across all Health Center Program funding types must equal the "Recommended Federal Budget" amount. This amount should correspond with the recommended future support amount (Item 33) on your most recent H80 NOA.

Note: This RFI submission may not be used to request changes to the total award, funding type(s), or Health Center Program funds allocation between funding types. *Funding must be requested and will be awarded proportionately for all funding types as currently funded under the Health Center Program.*

In the Non-Federal column, provide the total non-federal funding sources for each type of Health Center Program (CHC, MSAW, HP, RPH). The total for the Non-Federal column should equal the Total Non-Federal value on Form 3: Income Analysis (located at <https://bphc.hrsa.gov/sites/default/files/bphc/funding/bpr-form-3.pdf>).

Section B: Object Class Categories: Provide the object class category breakdown (i.e., line-item budget) for FY 2026 budgeted funds. Include federal funding in the first column and non-federal funding in the second

column. Each line represents a distinct object class category that must be addressed in the Budget Narrative. Indirect costs may only be claimed with an approved indirect cost rate (see details in the Budget Narrative section below).

Section C: Non-Federal Resources: Provide a breakdown of non-federal funds by funding source (e.g., state, local) for each type of Health Center Program funding (CHC, MSAW, HP, RPH). If you are a state agency, leave the State column blank and include state funding in the Applicant column. Program income in this section must be consistent with the Total Program Income presented in Form 3: Income Analysis.

Salary Rate Limitation

As required by the current appropriations act, “[n]one of the funds appropriated in this title shall be used to pay the salary of an individual, through a grant or other extramural mechanism, at a rate over Executive Level II.” Effective January 2025, the salary rate limitation is \$225,700 (see <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/25Tables/exec/html/EX.aspx>). As required by law, salary rate limitations may apply in future years and will be updated.

2. Budget Narrative

Upload a budget narrative attachment for the 12-month extension period that explains the amounts requested for each line in Section B, Object Class Categories of the SF-424A Budget Information Form. The Budget Narrative must itemize both your federal request and non-federal resources.

The budget narrative must describe how each line-item will support achieving the project objectives. Refer to 45 CFR 75 (2 CFR 200; see <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-75#part-75>) for information on allowable costs. Include detailed calculations explaining how each line-item expense within each cost category is derived (e.g., number of visits, cost per unit). Include a description for each item in the “other” category.

Include the following in the Budget Narrative:

Personnel Costs: Explain personnel costs and list each staff member who will be supported by Health Center Program funds, name (if possible), position title, percentage of full-time equivalency, and annual salary.

Reminder: An individual’s base salary, per se, is NOT constrained by the statutory provision for a salary

limitation. The rate limitation limits the amount that may be awarded and charged to the HRSA grant. Provide an individual’s actual base salary if it exceeds the cap. Refer to the Sample Budget Narrative on <https://bphc.hrsa.gov/funding/funding-opportunities/budget-period-progress-report-bpr-noncompeting-continuation-ncc>.

Fringe Benefits: List the components that make up the fringe benefit rate (e.g., health insurance, taxes, unemployment insurance, life insurance, retirement plans, and tuition reimbursement). The fringe benefits should be directly proportional to the personnel costs allocated for the project.

Travel: List travel costs according to local and long-distance travel. For local travel, outline the mileage rate, number of miles, reason for travel, and staff members/consumers completing the travel. The budget should also reflect the travel expenses (e.g., airfare, lodging, parking, per diem, etc.) for each person and the trip associated with participating in meetings and other proposed training or workshops. Name the traveler(s) if possible, describe the purpose of the travel, and provide the number of trips involved, the destinations, and the number of individuals for whom funds are requested.

Equipment: List equipment costs and justify the need for the equipment to carry out the program’s goals. Extensive justification and a detailed status of current equipment must be provided when requesting funds to purchase items that meet the definition of equipment (a unit cost of \$10,000 or more and a useful life of 1 or more years).

Supplies: List the items that will be used to implement the proposed project. Separate items into three categories: office supplies (e.g., paper, pencils), medical supplies (e.g., syringes, blood tubes, gloves), and educational supplies (e.g., brochures, videos). Items must be listed separately. Equipment items such as laptops, tablets, and desktop computers are classified as a supply if the acquisition cost is under the \$10,000 per unit cost threshold.

Contractual/Subawards/Consultant: Provide a clear justification, including how you estimated the costs and the specific contract/subaward deliverables. Attach a summary of contracts with the Budget Narrative. Make sure that your organization has an established and adequate procurement system with fully developed written procedures for awarding and monitoring all contracts/subawards. Recipients must notify potential subrecipients that entities

receiving subawards must be registered in the system for award management (SAM) and provide the recipient with their Unique Entity Identifier number (see 2 CFR part 25; <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25>).

In your budget:

- For consultant services, list the total costs for all consultant services. Identify each consultant, the services they will perform, the total number of days, travel costs, and total estimated costs.

- For subawards to entities that will help carry out the work of the grant, describe how you monitor their work to ensure the funds are being properly used.

- **Note:** You should not provide line-item details on proposed contracts; rather, provide the basis for your cost estimate for the contract.

Per the Suspension and Debarment rules in the Uniform Administrative Requirements, as implemented by HRSA under 2 CFR 200.214, non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR parts 180 and 376. These regulations restrict awards, subawards, and contracts with certain parties debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Other: Include all costs that do not fit into any other category and provide an explanation for each cost in this category (e.g., Electronic Health Record provider licenses, audit, legal counsel). In some cases, rent, utilities, and insurance fall under this category if they are not included in an approved indirect cost rate.

Indirect Costs: Indirect costs are costs you charge across more than one project that cannot be easily separated by project. To charge indirect costs you can select one of two methods:

Method 1—Approved rate. You currently have an indirect cost rate approved by your cognizant federal agency. If indirect costs are included in the budget, attach a copy of the indirect cost rate agreement in the Budget Narrative attachment.

Method 2—De minimis rate. Per 2 CFR 200.414(f) (see <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-E/subject-group-ECFRd93f2a98b1f6455/section-200.414>), if you have never received a negotiated indirect cost rate, you may elect to charge a *de minimis* rate. If you choose this method, costs included in the indirect cost pool must not be charged as direct costs. This rate is 15

percent of modified total direct costs. See 2 CFR 200.1 ([https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200#p-200.1\(Modified%20Total%20Direct%20Cost%20\(MTDC\)\)\)](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200#p-200.1(Modified%20Total%20Direct%20Cost%20(MTDC))))) for the definition of modified total direct costs. You can use this rate indefinitely.

3. Form 1C—Documents on File

Form 1C—Documents on File (see <https://bphc.hrsa.gov/sites/default/files/bphc/funding/bpr-form-1c.pdf>) collects information about key documents that support the implementation of Health Center Program requirements and other applicable funding requirements. These requirements are outlined in the Health Center Program Compliance Manual (see <https://bphc.hrsa.gov/compliance/compliance-manual>), Notices of Funding Opportunity, Executive Orders, terms and conditions, and other grants policies and regulations. Please note that Form 1C does not require listing all health center documents (e.g., internal policies and procedures, clinical protocols, or legal documents). Detailed instructions for completing Form 1C: Documents on File are available in the BPR User Guide and on <https://bphc.hrsa.gov/funding/funding-opportunities/budget-period-progress-report-bpr-noncompeting-continuation-ncc>.

4. Form 3—Income Analysis

Form 3—Income Analysis (see <https://bphc.hrsa.gov/sites/default/files/bphc/funding/bpr-form-3.pdf>) must be uploaded and include the projected income from all sources other than the Health Center Program award for the upcoming budget period. Form 3 is divided into (1) Patient Service Revenue—Program Income and (2) Other Income—Other Federal, State, Local, and Other Income. Instructions for completing Form 3: Income Analysis are included in the BPR User Guide and on <https://bphc.hrsa.gov/funding/funding-opportunities/budget-period-progress-report-bpr-noncompeting-continuation-ncc>.

5. Project Narrative Update

Submit a Project Narrative Update attachment. You will address your organizational and patient capacity. For each section, your narrative should include:

- A summary of progress and changes to date,
- Expected progress for the rest of the FY 2025 budget period, and
- Projected changes for the upcoming FY 2026 budget period.

Your response in each section is limited to 2,000 characters (including spaces). This is approximately one page.

1. *Organizational Capacity:* Discuss your progress and any major changes or barriers to organizational capacity since the last application, either SAC or BPR. Describe how changes have impacted or may impact progress. Address the following key areas:

- Staffing, including key management vacancies.
- Operations, including major changes in policies and procedures. You must explain how responses to findings of noncompliance have changed/ improved your standards of operation or practice, for example, findings identified in your last SAC or operational site visit, or other conditions on your award (if applicable).
- Financial status, including the most current audit findings.

2. *Patient Capacity:* Discuss any changes to the service area or to your project that have impacted or may impact patient capacity. Describe factors that have contributed to any downward patient trend (greater than a 5 percent decrease) and plans for reaching the projected patient target goal. Plans could include (but are not limited to) changes in scope, successor-in-interest arrangements, or contract or agreement updates. Detailed instructions for completing the Patient Capacity section are available in Appendix A of the BPR Instructions on the BPR TA web page, <https://bphc.hrsa.gov/funding/funding-opportunities/budget-period-progress-report-bpr-noncompeting-continuation-ncc>.

6. Supplemental Award Update

If HRSA's Bureau of Primary Healthcare awarded your organization funding for any supplemental awards since FY 2023, upload an update on your progress toward meeting the objectives of each award. Do not include other HRSA or federal supplemental awards in this section. Include awards rolled into your base funding.

For each supplemental award received, describe how available data demonstrates progress toward achieving the supplemental funding objectives. This may include Uniform Data System data showing increases in patients, visits, or services, as well as scope of project data reflecting expanded service hours or the addition of new services.

Your updates should include, but are not limited to the following supplemental awards within the last three FY (since FY 2023):

- *School-Based Service Expansion*
 - FY 2023

- *Primary Care HIV Prevention*
 - FY 2023
- *Early Childhood Development*
 - FY 2023
- *Behavioral Health Service Expansion*
 - FY 2024
- *Expanded Hours*
 - FY 2025

For each supplemental award update, limit your response to 500 words. If you have questions about supplemental awards, contact us using the BPHC Contact Form, <https://hrsa.my.site.com/support/s/>.

Submission Deadline: Submit the response to this request via HRSA's Electronic Handbook no later than XX:XX PM ET on XX/XX/20XX.

System for Award Management: Recipients must continue to maintain active SAM registration with current information during all times that they have an active federal award, an active application, or an active plan under consideration by an agency (unless you are an individual or federal agency that is exempted from those requirements under 2 CFR 25.110(b) or (c), or you have an exception approved by the agency under 2 CFR 25.110(d)). For your SAM registration, you must submit a notarized letter appointing the authorized Entity Administrator.

Intergovernmental Review: This funding is subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100.

Review Criteria and Process: HRSA will conduct a review of the submitted response in accordance with HRSA guidelines. HRSA reserves the right to request clarification; a resubmission of the budget, narrative and forms, or additional information if the submission is not fully responsive to any of the requirements, or if ineligible activities are proposed. Following the review of all applicable information, HRSA review and awards management officials will determine if special conditions are required, and what level of funding is appropriate. Award decisions and funding levels are discretionary and are not subject to appeal. Continued funding depends on congressional appropriation of funds, satisfactory performance, and a decision that continued funding would be in the government's best interest.

As part of HRSA's required review of risk posed by applicants for this program, as described in 2 CFR 200.206 (see <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-C/section-200.206>), HRSA will consider additional factors. These factors include, but are not limited to, past performance and the results of

HRSA's assessment of the financial stability of your organization. HRSA reserves the right to conduct site visits and/or use the current compliance status to inform final funding decisions.

Award Notice: HRSA anticipates issuing the Notice of Award approximately 30 days prior to your budget period start date.

Thomas J. Engels,
Administrator.

[FR Doc. 2025–15036 Filed 8–6–25; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Pediatric Mental Health Care Access Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Announcing supplements for Pediatric Mental Health Care Access Program (PMHCA) award recipients to continue expansion activities and

ensure consistent funding is offered across all award recipients.

SUMMARY: HRSA is announcing supplemental funding for 19 PMHCA (U4A) award recipients to continue to address the national surge in behavioral health needs among children and adolescents. These supplemental awards, funded through fiscal year (FY) 2025 appropriations, will ensure consistent support across all 29 PMHCA recipients. While 10 recipients previously received forward funding of supplemental funds, 19 did not due to availability of funds; this supplemental funding will bring parity across the program. HRSA previously provided supplemental funding to these 19 recipients for similar activities in FY 2023 and FY 2024. With this support, recipients will continue to enhance the behavioral health workforce capacity in pediatric primary care, school settings, and emergency departments to address the growing behavioral health needs among children and adolescents.

FOR FURTHER INFORMATION CONTACT: Lauren Ramos, Director of Division of Maternal and Child Health Workforce Development, Health Resources and

Services Administration, at Iramos@hrsa.gov or 301–443–6091.

SUPPLEMENTARY INFORMATION: Intended Recipient(s) of the Award: Nineteen PMHCA award recipients will be eligible to receive supplemental awards to continue to address the national surge in behavioral health needs among children and adolescents. These award recipients are listed in Table 1. *Note:* These 19 PMHCA award recipients received \$115,291 of total available funds for this funding action in January 2025. HRSA will award the remaining \$139,709 available for the funding action upon the publishing of this **Federal Register** notice. A statutory requirement at 42 U.S.C. 254c–19(f) (§ 330M(f) of the Public Health Service Act) requires that PMHCA award recipients match federal funding with a 20 percent non-federal match.

Amount of Non-Competitive Award(s): Total \$2,654,471 for 19 awards (average \$139,709 per award).

Project Period: September 30, 2025, to September 29, 2026.

Assistance Listing Number: 93.110.

Award Instrument: Non-competitive Supplement for Services.

Authority: 42 U.S.C. 254c–19 (§ 330M of the Public Health Service Act).

TABLE 1—19 U4A RECIPIENTS AND AWARD AMOUNTS

Original award number	Organization name	Supplement/ increase to base for 19 U4A PMHCA awardees	Total funding (Federal + non-Federal)
U4AMC53375	My Health Resources of Tarrant County	\$139,709	\$167,651
U4AMC53368	Kentucky Cabinet for Health and Family Services	139,709	167,651
U4AMC53366	West Virginia Department of Health and Human Resources	139,709	167,651
U4AMC53370	New Mexico Department of Health	139,709	167,651
U4AMC53373	Indiana Family and Social Services Administration	139,709	167,651
U4AMC53377	Republic Of Palau	139,709	167,651
U4AMC53379	Red Lake Band of Chippewa Indians	139,709	167,651
U4AMC53384	Virgin Islands Department of Health Group	139,709	167,651
U4AMC53361	Illinois Department of Public Health	139,709	167,651
U4AMC53359	Commonwealth Healthcare Corporation	139,709	167,651
U4AMC53376	Oklahoma Department of Mental Health and Substance Abuse Services	139,709	167,651
U4AMC53374	Minnesota Department of Health	139,709	167,651
U4AMC53358	Chickasaw Nation	139,709	167,651
U4AMC53372	Vermont Agency of Human Services	139,709	167,651
U4AMC53381	South Carolina Department of Mental Health	139,709	167,651
U4AMC53382	Tennessee Department of Health	139,709	167,651
U4AMC53369	Louisiana Department of Health	139,709	167,651
U4AMC54741	Wyoming Department of Health	139,709	167,651
U4AMC53364	FSM Department of Health and Social Affairs	139,709	167,651

Purpose/Justification: HRSA is issuing non-competitive supplemental funds in FY 2025 for 19 PMHCA award recipients to continue to address behavioral health needs among children and adolescents. HRSA provided Bipartisan Safer Communities Act emergency expansion awards in FY

2022 to 29 PMHCA U4A award recipients to expand PMHCA services to new providers and practices and to school-based and emergency department settings. In FY 2023, 10 PMHCA award recipients received 36 months of forward funding of supplemental funds to continue

expansion activities for the remaining period of performance (September 30, 2023, to September 29, 2026). One award recipient received 12 months of forward funding of supplemental funds for the same purpose for FY 2023 (September 30, 2023, to September 29, 2024). Forward funding of supplemental

funds was offered to these recipients with the intent to offer the remaining 19 PMHCA award recipients with the same level of funding through annual supplements in FY 2024 and FY 2025.

HRSA will offer supplemental funding for all 29 PMHCA U4A current award recipients in a manner that ensures all 29 award recipients are offered the same total amount of funding over a 3-year timeframe. If PMHCA current award recipients decline supplemental funding, that declined funding will be distributed among remaining recipients as allowable. The intended date of supplemental funding is September 30, 2025, to September 29, 2026, which falls within the current period of performance. In FY 2025, annual appropriation funds for PMHCA award recipients will be tracked separately from concurrent PMHCA awards.

PMHCA program award recipients will continue to expand the reach and capacity of PMHCA programs started in FY 2022 to provide training and teleconsult support to pediatric primary care providers and providers in other settings, including emergency departments and educational agencies and schools. The above activities are within the original scope of the PMHCA program (HRSA–22–121, and HRSA–21–122).

Thomas J. Engels,
Administrator.

[FR Doc. 2025–15033 Filed 8–6–25; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

340B Program Notice: Application Process for the 340B Rebate Model Pilot Program; Correction

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Announcement of application process for the 340B Rebate Model Pilot Program and request for public comment; Correction.

SUMMARY: The U.S. Department of Health and Human Services (HHS) Health Resources and Service Administration (HRSA), Office of Pharmacy Affairs (OPA), which administers the 340B Drug Pricing Program (340B Program), is issuing this Notice to announce the availability of a 340B Rebate Model Pilot Program as a voluntary mechanism for qualifying

drug manufacturers to effectuate the 340B ceiling price on select drugs to all covered entities, and to collect comments on the structure and application process of the 340B Rebate Model Pilot Program, as outlined in this Notice. OPA will consider comments received but is under no obligation to respond to or act on the comments. This Notice is effective immediately as published, unless revised by a future notice. OPA reserves the right to issue revisions or addenda to this Notice at a later date (including, but not limited to, revisions or addenda informed by public comment).

DATES: Submit comments no later than September 8, 2025.

ADDRESSES: Electronic comments should be submitted *Federal eRulemaking Portal*: <https://www.regulations.gov>. Follow the instructions on the website for submitting comments. Include the HHS Docket No. HRSA–2025–14619 in your comments. All comments received will be posted without change to <https://www.regulations.gov>. Please do not include any personally identifiable or confidential business information you do not want publicly disclosed.

FOR FURTHER INFORMATION CONTACT: Chantelle Britton, Director, Office of Pharmacy Affairs, HRSA, 5600 Fishers Lane, Mail Stop 14W52, Rockville, MD 20857; email: 340Bpricing@hrsa.gov; telephone 301–594–4353.

SUPPLEMENTARY INFORMATION: OPA has received inquiries from manufacturers related to different proposed rebate models for the 340B Program, primarily to address 340B and Maximum Fair Price (MFP) deduplication,¹ but also to facilitate other aims such as the prevention of 340B Medicaid duplicate discounts and diversion.

A “rebate” for purposes of this pilot program, means a reimbursement made

¹ As stated in Medicare Drug Price Negotiation Program: Revised Guidance, Implementation of Sections 1191–1198 of the Social Security Act for Initial Price Applicability Year 2026, “in accordance with section 1193(d)(1) of the Social Security Act, the Primary Manufacturer of a selected drug is not required to provide access to the Maximum Fair Price (MFP) for a selected drug to MFP-eligible individuals who are eligible to be furnished, administered, or dispensed such selected drug at a covered entity described in section 340B(a)(4) of the (Public Health Service (PHS)) Act if the selected drug is subject to an agreement described in section 340B(a)(1) of the PHSA and the 340B ceiling price (defined in section 340B(a)(1) of the PHSA) is lower than the MFP for such selected drug. Under section 1193(d)(2) of the Social Security Act, the Primary Manufacturer is required to provide access to the MFP to 340B covered entities in a deduplicated amount to the 340B ceiling price if the MFP for the selected drug is lower than the 340B ceiling price for the selected drug.”

from the manufacturer to the covered entity in the amount of the standard acquisition cost (*i.e.*, wholesale acquisition cost) of a covered outpatient drug less the statutory 340B ceiling price as defined at section 340B(a)(1) of the Public Health Service Act (PHSA).

Whereas the 340B Program has traditionally operated as an upfront discount program (*i.e.*, a covered entity purchases a covered outpatient drug at the discounted 340B price), under a rebate model, a covered entity would pay for the drug at a higher price upfront and then later receive a post-purchase rebate that reflects the difference between the higher initial price and the 340B price. Section 340B(a)(1) of the PHSA states, “[t]he Secretary shall enter into an agreement with each manufacturer of covered outpatient drugs under which the amount required to be paid (taking into account any rebate or discount, as provided by the Secretary) to the manufacturer for covered outpatient drugs . . . purchased by a covered entity . . . does not exceed [designated prices].” As the Department has previously informed stakeholders, implementing a rebate model without Secretarial approval would violate section 340B(a)(1) of the PHSA.

Due to the significant amount of feedback received from (or on behalf of) manufacturers and covered entities regarding implementation of rebate models, and in light of the fact that rebate models could fundamentally shift how the 340B Program has operated for over 30 years, OPA is inviting certain drug manufacturers, that meet the criteria described below, to apply for participation in a voluntary 340B Rebate Model Pilot Program for a minimum of 1 year. OPA is introducing this pilot program to test the rebate model on a select group of drugs (as described below) in a methodical and thoughtful approach to ensure a fair and transparent 340B rebate model process for all stakeholders involved. OPA is also implementing this pilot to better understand the merits and shortcomings of the rebate model from stakeholders’ perspectives, and to inform OPA consideration of any future 340B rebate models consistent with the 340B statute and the Administration’s goals.

The scope of this voluntary 340B Rebate Model Pilot Program will be limited to the NDC–11s included on the CMS Medicare Drug Price Negotiation Selected Drug List,² regardless of payer.

² Medicare Drug Price Negotiation Selected Drug List, available at <https://www.cms.gov/files/zip/medicare-drug-price-negotiation-selected-drug-list.zip>.

The first call to submit plans for OPA review is for the manufacturers with Medicare Drug Price Negotiation Program (MDPNP) Agreements with CMS for initial price applicability year 2026.³ Manufacturer plans for participation in the 340B Rebate Model Pilot Program should be submitted to 340Bpricing@hrsa.gov no later than September 15, 2025. Approvals will be made by October 15, 2025, for a January 1, 2026, effective date. Manufacturers may not implement plans without first receiving approval in accordance with section 340B(a)(1) of the PHSA. OPA may announce a call for plans from manufacturers with MDPNP Agreements for other applicability years, at a later time.

After assessment of the pilot, which will include OPA's evaluation of data and reports received from the participating manufacturers on the effectiveness of the model and covered entity and other stakeholder feedback, OPA may consider expanding the rebate pilot to other drugs purchased under the 340B Program. Additional information about manufacturer reporting and stakeholder feedback opportunities will be provided in the future.

Manufacturer plans for the 340B Rebate Model Pilot Program should include the criteria outlined below. Manufacturer plans that exceed or go beyond these criteria should include detailed justification and will be subject to additional review by OPA prior to implementation. OPA will review submitted plans and notify manufacturers if they are approved to participate in the 340B Rebate Model Pilot Program. Submitted plans should not exceed 1,000 words and should address all of the criteria below. OPA reserves the right to revoke approval of a manufacturer plan at any time if a manufacturer is not in compliance with the criteria outlined in the "Rebate Model Pilot Program Criteria" below.

OPA is seeking public comment on all aspects of this Notice and the 340B Rebate Model Pilot Program. Specifically, commenters are encouraged to include supporting data and sources underpinning any factual claims. Commenters should also consider the following questions when providing comment on this Notice and the Pilot Program:

- Are there any additional flexibilities to maximize efficiency and efficacy for participating manufacturers

that should be considered in the pilot design?

- Are there any additional safeguards to mitigate adverse, unintended impacts for covered entities that should be considered in the pilot design?

- Are there any additional data or reporting elements that should be required to improve implementation and evaluation of the pilot?

- Are there any potential implementation issues not yet sufficiently accounted for in the pilot design (e.g., logistical or administrative burdens)?

Rebate Model Pilot Program Criteria

General Requirements

1. Plan should include assurances that all costs for data submission through an Information Technology (IT) platform be borne by the manufacturer and no additional administrative costs of running the rebate model shall be passed onto the covered entities.

2. Plan should allow for 60 calendar days' notice to covered entities and other impacted stakeholders before implementation of a rebate model, with instructions for registering for any IT platforms.

3. Plan should allow for covered entities to order the selected drugs under existing distribution mechanisms (e.g., 340B wholesaler accounts with pre-rebate prices loaded) to ensure purchases flow through existing infrastructure.

4. Plan should provide a technical assistance/customer service component and ensure that opportunities to engage with the manufacturer in good faith regarding questions or concerns are made available to covered entities through both the IT platform and a point of contact at the manufacturer.

5. Plan should ensure that the IT platform has assurances in place to ensure that the data is secure and protected and collection of the data is limited to the elements listed below that are necessary for providing 340B rebates pursuant to section 340B(a)(1) of the PHSA.

6. Plan should ensure that the IT platform has mechanisms in place to protect patient identifying information, which is required to be maintained in a manner consistent with the Health Insurance Portability and Accountability Act of 1996 and any other applicable privacy and data security laws.

Reporting Requirements

7. Plan should ensure that covered entities are allowed to submit and report data (as detailed below) for up to 45

calendar days from date of dispense, with allowances for extenuating circumstances and other exceptions, including adjustments when a 340B status change occurs on a claim.

8. Plan should ensure that the IT platform will have the capacity to receive data that will filter and use only the data required to effectuate the rebate (e.g., if drugs other than selected drugs under the MDPNP are submitted, the platform will be able to identify and discard unneeded data).

9. Plan should ensure that the IT platform will have the capability to provide real-time reconciliation reports for covered entities to be informed of the rebate status of submitted claims.

10. A manufacturer should agree to provide OPA with periodic reports consistent with the information outlined in this Notice, in a format and manner specified by OPA (instructions forthcoming). Such reports should detail data on purchases provided through rebates, information related to claim delays and denials, and other information that may evaluate the effectiveness of the rebate model.

Rebates

11. Plan should specify if rebates are paid at the package level, or at the unit level.

12. Plan should ensure that all rebates are paid to the covered entity (or denied, with documentation in support) within 10 calendar days of data submission.

13. Plan should ensure that 340B rebates are not denied based on compliance concerns with diversion or Medicaid duplicate discounts, pursuant to sections 340B(a)(5)(A) and (B) of the Public Health Service Act and should provide for rationale and specific documentation for reasons claims are denied (e.g., deduplication for MFP or 340B rebate provided to another covered entity on the same claim). If a manufacturer has concerns regarding diversion or Medicaid duplicate discounts, the manufacturer should raise those concerns directly with OPA or utilize the 340B statutory mechanisms, such as audits and administrative dispute resolution (ADR), for addressing such issues. Covered entities are also afforded opportunities to raise concerns with OPA if there are issues with rebate delays and denials, or any other administrative or logistical issues emerging through implementation of the rebate model.

14. Plan should ensure that 340B rebates are only paid on sales of drugs selected under the MDPNP, regardless of payer.

³ The Fact Sheet for Negotiated Prices for Applicability Year 2026 includes the list of Primary Manufacturers with selected drugs, available at <https://www.cms.gov/files/document/fact-sheet-negotiated-prices-initial-price-applicability-year-2026.pdf>.

Data

15. All data requested as part of the Plan should be limited to only the following readily available pharmacy claim fields:

- a. Date of Service
- b. Date Prescribed
- c. RX number
- d. Fill Number
- e. 11 Digit National Drug Code (NDC)
- f. Quantity Dispensed
- g. Prescriber ID
- h. Service Provider ID
- i. 340B ID
- j. Rx Bank Identification Number (BIN)
- k. Rx Processor Control Number (PCN)

Thomas J. Engels,

Administrator.

[FR Doc. 2025-14998 Filed 8-6-25; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Enrollment and Re-Certification of Entities in the 340B Drug Pricing Program, OMB No. 0915-0327—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than October 6, 2025.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or by mail to the HRSA Information Collection Clearance Officer, Room 14NWH04, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email paperwork@hrsa.gov or call Samantha Miller, the HRSA Information Collection Clearance Officer, at (301) 443-3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information collection request title for reference.

Information Collection Request Title: Enrollment and Re-Certification of Entities in the 340B Drug Pricing Program, OMB No. 0915-0327—Revision.

Abstract: Section 602 of Public Law 102-585, the Veterans Health Care Act of 1992, enacted section 340B of the Public Health Service (PHS) Act, which instructs HHS to enter into a Pharmaceutical Pricing Agreement (PPA) with manufacturers of covered outpatient drugs. Manufacturers are also required by section 1927(a)(5)(A) of the Social Security Act to enter into agreements with the Secretary of HHS (Secretary) that comply with section 340B of the PHS Act if they participate in the Medicaid Drug Rebate Program. When a drug manufacturer signs a PPA, it is opting into the 340B Drug Pricing Program (340B Program), and it agrees to the statutory requirement that prices charged for covered outpatient drugs to covered entities will not exceed statutorily defined 340B ceiling prices. When an eligible covered entity voluntarily decides to enroll and participate in the 340B Program, it accepts responsibility for ensuring compliance with all provisions of the 340B Program, including all associated costs. Covered entities that choose to participate in the 340B Program must comply with the requirements of section 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) of the PHS Act prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate. Further, section 340B(a)(5)(B) of the PHS Act prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the covered entity.

Need and Proposed Use of the Information: To ensure the ongoing responsibility to administer the 340B Program while maintaining efficiency, transparency, and integrity, HRSA developed a process of registration for covered entities to enable it to address specific statutory mandates. Specifically, section 340B(a)(9) of the PHS Act requires HRSA to notify manufacturers of the identities of covered entities and of their status pertaining to certification and annual recertification in the 340B Program pursuant to section 340B(a)(7) and the establishment of a mechanism to prevent duplicate discounts as outlined at section 340B(a)(5)(A)(ii) of the PHS Act.

In addition, section 340B(a)(1) of the PHS Act requires each participating manufacturer to enter into an agreement with the Secretary to offer covered outpatient drugs to 340B covered entities.

Finally, section 340B(d)(1)(B)(i) of the PHS Act requires the development of a system to enable the Secretary to verify the accuracy of ceiling prices calculated by manufacturers under subsection (a)(1) and charged to covered entities.

HRSA is requesting approval for existing information collections. HRSA notes that the previously approved collections are mostly unchanged, except some forms have been revised to increase program efficiency and integrity. Below are descriptions of each form and any resulting revisions that are captured in both the registration and pricing component of the 340B Office of Pharmacy Affairs Information System (OPAIS).

Enrollment/Registration/Recertification

To enroll and certify the eligibility of federally funded grantees and other safety net health care providers, HRSA requires covered entities to submit administrative information (e.g., shipping and billing arrangements, Medicaid participation), certifying information (e.g., Medicare Cost Report information, documentation supporting the hospital's selected classification), and attestation from appropriate grantee-level or entity-level authorizing officials and primary contacts. To maintain accurate records, HRSA requests entities submit modifications to any administrative information that they submitted when initially enrolling into the Program. Covered entities participating in the 340B Program have an ongoing responsibility to immediately notify HRSA in the event of any change in eligibility for the 340B Program. Covered entities must comply with the statutory mandates of the Program and, at least annually, they need to certify the accuracy of the information provided and continued maintenance of their eligibility.

Registration and annual recertification information is entered into the 340B OPAIS by covered entities and verified by HRSA staff according to 340B Program requirements. The following forms are being revised:

(1) 340B Registration, Recertification and Change Requests for Shipping Address: HRSA is providing additional clarification for covered entities to complete the shipping address section in 340B OPAIS to improve transparency and assist in determining the exact shipping address location and relationship to the covered entity. The

information collected will help determine whether the shipping address is a pharmacy, health care delivery site, or other receiving location. The information collected will also help determine if the location should be listed as a shipping address or potentially registered separately in OPAIS as a contract pharmacy or covered entity. Reviewing shipping addresses has become difficult and inefficient for both the covered entity and HRSA because it can involve sending the task back to the covered entity, sometimes multiple times, before HRSA can appropriately act on the task. The burden will not be significantly affected since the requested language facilitates a more efficient review with fewer exchanges between the covered entity and HRSA.

(2) 340B Registration and Recertification for Sexually Transmitted Disease (STD) and Tuberculosis (TB) Grantees: HRSA is requesting that STD and TB grantees provide supporting documentation to demonstrate 340B eligibility pursuant to section 340B(a)(4)(K) of the PHS Act during initial registration as well as during recertification if requested to ensure compliance. The requested documentation will include a copy of the federal grant notice of award that identifies the grantor, grant number, period of funding, and recipient information. If the entity is a subgrantee then they will also need to provide a copy of the executed written subrecipient agreement that includes the name and address of the recipient and subrecipient, the grant and notice of funding opportunity number, and the terms and conditions of support. This new requirement streamlines the verification process and enhances program integrity for STD and TB entity types. This requirement will slightly increase the burden on covered entities since eligible covered entities should already have this documentation readily available prior to registering and recertifying for the 340B Program.

(3) 340B Program Registrations, Recertifications, and Change Requests for Family Planning: HRSA is requesting to collect the time period that assistance was received for Family Planning covered entities. The addition of these fields is consistent with information collected from Ryan White, STD, and TB entities at registration and recertification and will support HRSA's ability to verify a Family Planning covered entity's eligibility in the 340B Program as outlined in section 340B(a)(4)(C) of the PHS Act. This collection of time period information is a minor addition that will not

significantly affect the burden on covered entities, as the time period when assistance was received is a readily available data point for Family Planning covered entities.

(4) 340B Recertification and Change Requests for Street Address: HRSA is providing additional clarification for covered entities that revise their street address in 340B OPAIS to assist in determining continued eligibility as outlined in section 340B(a)(4) of the PHS Act. OPAIS will prompt the covered entity to state if they are still receiving federal funding that makes them eligible for the 340B Program and/or if the service remains open at the old address. The answers to these questions will help determine the next appropriate action taken by the covered entity and HRSA. The collection of this information will not increase the burden on covered entities because it provides increased transparency and facilitates a more efficient review with fewer exchanges between the covered entity and HRSA.

(5) 340B Program Registrations, Recertifications, and Change Requests for Urban Indian and Tribal Contract/Compact with IHS (FQHC628) Covered Entities: HRSA is requesting the Tribal Agreement number in OPAIS for registrations and recertifications for Urban Indian and FQHC638 covered entities. This helps increase program integrity by providing information that can be used to verify the eligibility of a specific grant for a specific entity. This collection of information is not expected to significantly increase burden as this information is readily available to covered entities on the agreements they have with their granting organization.

(6) 340B Program Registrations, Recertifications, and Change Requests for Hospitals: HRSA is revising a hospital qualification field in OPAIS from the language "File Date" to "Date/Time Prepared" to match Centers for Medicare & Medicaid Services (CMS) language on Worksheet S of a hospital's most recently filed Medicare Cost Report (MCR). This eliminates confusion for covered entities and clarifies what HRSA considers the "file date." This update will not change the burden on covered entities.

(7) 340B Program Registrations, Recertifications, and Change Requests for Hospitals: HRSA is revising a hospital qualification field in OPAIS from the language "Medicare Provider Number" to "CMS Certification Number" to match CMS language on Worksheet S of the hospital's most recently filed MCR. This provides consistency with CMS language as they no longer use the term "Medicare

Provider Number." This update does not impact burden on covered entities as there is no action needed to be taken on the covered entities' part for this change to occur.

(8) 340B Program Registrations for Hospitals: HRSA is clarifying Worksheet S instructions for hospitals to include a copy of their signed, dated, and electronically encrypted Worksheet S from the latest filed MCR. This language will be updated on the initial registration instructions as well as in the actual registration. This updated language clarifies the exact documentation required for submission which results in fewer exchanges with covered entities. This update does not impact burden on covered entities.

(9) 340B Program Registrations for Hospitals: HRSA is revising an instructional update and clarifying the registration form language for trial balance and cost center information to clarify that entities should submit a trial balance that clearly indicates unique and separate reimbursable outpatient costs and charges for each service being registered. This update will not change the burden on covered entities as there is no new or revised collection requirement.

Contract Pharmacy Certification

There are no changes being made to Contract Pharmacy Certification from prior submissions. There is no change in burden on the covered entities.

PPA and Addendum

There are no changes being made to PPA and Addendum from prior submissions. There is no change in burden on the manufacturers.

Pricing Data Submission, Validation, and Dissemination

There are no changes being made to Pricing Data Submission, Validation, and Dissemination from prior submissions. There is no change in burden on the manufacturers.

Likely Respondents: Drug manufacturers and covered entities.

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 utilize 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	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours ****
Hospital Enrollment, Additions & Recertifications					
340B Program Registrations & Certifications for Hospitals *	172	1	172	2.00	344
Certifications to Enroll Hospital Outpatient Facilities *	1,036	6	6,216	0.50	3,108
Hospital Annual Recertifications *	2,699	13	35,087	0.25	8,772
Registrations and Recertifications for Covered Entities Other Than Hospitals					
340B Registrations for Community Health Centers *	350	3	1,050	1.00	1,050
340B Registrations for STD/TB Clinics **	341	1	341	1.25	426
340B Registrations for Various Other Eligible Entity Types ***	177	1	177	1.25	177
Community Health Center Annual Recertifications *	1,840	7	12,880	0.25	3,220
STD and TB Annual Recertifications *	6,412	1	6,412	0.25	1,603
Annual Recertification for entities other than Hospitals, Community Health Centers, and STD/TB Clinics *	3,407	1	3,407	0.25	852
Contracted Pharmacy Services Registration & Recertifications					
Contracted Pharmacy Services Registration	4,376	11	48,136	1.00	48,136
Other Information Collections					
Submission of Administrative Changes for any Covered Entity *	24,829	1	24,829	0.25	6,207
Submission of Administrative Changes for any Manufacturer	471	1	471	0.50	236
PPA and Addendum	73	1	73	1.00	73
Total	46,183	.....	133,251	.....	74,204

* Minor revisions to the language on the forms since the last OMB submission, but burden has not been impacted.

** Average Burden was increased from 1 to 1.25, compared to the prior version of this package.

*** Average Burden was increased from 1 to 1.25, compared to the prior version of this package. This is due to an additional field being added for Family Planning covered entities.

**** Total Burden Hours are rounded up to the nearest whole number.

HRSA specifically requests comments on (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.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2025-14955 Filed 8-6-25; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below. Individuals who plan to attend in-person or view the virtual meeting and need special assistance or other reasonable accommodation should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: <https://videocast.nih.gov/>.

A portion of this meeting 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: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 4, 2025.

Closed: 9:00 a.m. to 10:50 a.m.

Agenda: To review and evaluate grant applications.

Open: 11:00 a.m. to 3:00 p.m.

Agenda: Presentations and other business of the Council.

Address: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive,

Bethesda, MD 20817, In Person and Virtual Meeting.

Contact Person: Philippe Marmillot, Ph.D. Director, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700B Rockledge Drive, Room 2118, Bethesda, MD 20892, (301) 443-2861, marmillotp@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://www.niaaa.nih.gov/AboutNIAAA/AdvisoryCouncil/Pages/default.aspx>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: August 4, 2025.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025-14957 Filed 8-6-25; 8:45 am]

BILLING CODE 4140-01-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; PAR Panel: Medical Imaging, Radiation, Metabolism and Electrophysiology Instrumentation S10 Grant Programs.

Date: September 16-17, 2025.

Time: 10:00 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: Evon Sami Abisaid, Ph.D., Scientific Review Officer, Division of

Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827-0399, ereifejes@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA-DC-25-005: In Vivo High-Resolution Imaging for Inner Ear Visualization.

Date: September 24, 2025.

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, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, debanjan.goswami@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; NIH Research Enhancement Award (R15) in Oncological Sciences.

Date: September 25, 2025.

Time: 9:00 a.m. to 3:00 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: Shree Ram Singh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 672-6175, singhshr@mail.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: August 1, 2025.

Sterlyn H Gibson,

Program Specialist, Office of Federal Advisory Committee Policy.

[FR Doc. 2025-14953 Filed 8-6-25; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other

reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov/>).

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Institute On Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: October 27-29, 2026.

Closed: October 27, 2026, 8:00 a.m. to 9:00 a.m.

Agenda: Executive Session and Board Business.

Address: National Institutes of Health, Biomedical Research Center, 3rd Floor, Room 3C211/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (In Person and Virtual Meeting).

Open: October 27, 2026, 9:00 a.m. to 11:45 a.m.

Agenda: Review of Labs and PI's.

Address: National Institute of Aging, 10 Center Drive, Baltimore, MD 21224 (In Person and Virtual Meeting).

Closed: October 27, 2026, 11:45 a.m. to 2:15 p.m.

Agenda: Review of Labs and PI's.

Address: National Institutes of Health, Biomedical Research Center, 3rd Floor, Room 3C211/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (In Person and Virtual Meeting).

Open: October 27, 2026, 2:15 p.m. to 3:15 p.m.

Agenda: Review of Labs and PI's.

Address: National Institute of Aging, 10 Center Drive, Baltimore, MD 21224 (In Person and Virtual Meeting).

Closed: October 27, 2026, 3:15 p.m. to 5:00 p.m.

Agenda: Review of Labs and PI's; Executive Session; Adjournment.

Address: National Institutes of Health, Biomedical Research Center, 3rd Floor, Room 3C211/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (In Person and Virtual Meeting).

Closed: October 28, 2026, 8:00 a.m. to 9:00 a.m.

Agenda: Executive Session; Board Business.

Address: National Institutes of Health, Biomedical Research Center, 3rd Floor, Room 3C211/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (In Person and Virtual Meeting).

Open: October 28, 2026, 9:00 a.m. to 11:00 a.m.

Agenda: Review of Labs and PI's.

Address: National Institute of Aging, 10 Center Drive, Baltimore, MD 21224 (In Person and Virtual Meeting).

Closed: October 28, 2026, 11:00 a.m. to 4:30 p.m.

Agenda: Review of Lab's and PT's; Executive Session; Adjournment.

Address: National Institutes of Health, Biomedical Research Center, 3rd Floor, Room 3C211/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (In Person and Virtual Meeting).

Closed: October 29, 2026, 8:00 a.m. to 9:00 a.m.

Agenda: Executive Session; Board Business.

Address: National Institutes of Health, Biomedical Research Center, 3rd Floor, Room 3C211/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (In Person and Virtual Meeting).

Open: October 29, 2026, 9:00 a.m. to 11:00 a.m.

Agenda: Review of Labs and PT's.

Address: National Institute of Aging, 10 Center Drive, Baltimore, MD 21224 (In Person and Virtual Meeting).

Closed: October 29, 2026, 11:00 a.m. to 4:30 p.m.

Agenda: Review of Lab's and PT's; Executive Session; Adjournment.

Address: National Institutes of Health, Biomedical Research Center, 3rd Floor, Room 3C211/Virtual, 251 Bayview Blvd., Baltimore, MD 21224 (In Person and Virtual Meeting).

Contact Person: Luigi Ferrucci, M.D., Ph.D., Scientific Director, National Institute of Aging, National Institutes of Health, 251 Bayview Boulevard, Suite 100, Room 4C225, Baltimore, MD 21224, 410-558-8110, LF27Z@NIH.GOV.

In the interest of security, NIH has procedures at <https://security.nih.gov/visitors/Pages/visitor-campus-access.aspx> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 4, 2025.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025-14959 Filed 8-6-25; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; the National Institute of Mental Health Data Archive (NDA) Data Access Closeout Report, NIMH

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 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 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Andrew Hooper, National Institute of Mental Health (NIMH) Project Clearance Liaison, Science Policy and Evaluation Branch, Office of Science Policy, Planning and Communications, NIMH, Neuroscience Center, 6001 Executive Boulevard, MSC 9667, Bethesda, Maryland 20892, call (301) 480-8433, or email your request, including your mailing address, to nimhprapubliccomments@mail.nih.gov. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed

collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, 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) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: The National Institute of Mental Health Data Archive (NDA) Data Access Closeout Report, NEW, OMB #0925-XXXX, exp., date XX/XX/XXXX, National Institutes of Health (NIH).

Need and Use of Information Collection: This request serves as notice that the National Institutes of Health (NIH) plans to continue supporting the research community's utilization of the NIMH Data Archive (NDA) through the addition of the Data Access Closeout Report, which collects information about researchers who are completing an approved term of access to shared data in the NDA. The NDA is an infrastructure for sharing human subjects research data and tools to further collaboration and scientific discovery. The information collected in the Closeout Report is needed to monitor the expiration of permissions to access NDA data, track and report on permissions and requests, confirm destruction of all copies of accessed data, ensure that the terms of access are followed, and provide appropriate attribution for data contributions, and communicate important information about the NDA.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 471.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Researchers	941	1	30/60	471
Total .....	.....	941	.....	471

Dated: August 4, 2025.

Andrew A. Hooper,

Project Clearance Liaison, National Institute of Mental Health, National Institutes of Health.

[FR Doc. 2025–14950 Filed 8–6–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodation, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: <https://videocast.nih.gov/>.

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: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: September 16, 2025.

Open: 09:00 a.m. to 1:00 p.m.

Agenda: Report from the Institute Director, Council Members and other Institute staff.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Room 1135/45/55, Rockville, MD 20852.

Closed: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Room 1135/45/55, Rockville, MD 20852.

Meeting Format: In Person.

Contact Person: Anna Taylor, Ph.D., Associate Director for Research Administration, Office of Research Administration, National Institute of Biomedical Imaging and Bioengineering,

6707 Democracy Boulevard, Bethesda, MD 20892, (240) 402–5683, anna.taylor@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <https://www.nibib.nih.gov/about-nibib/advisory-council>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health.)

Dated: August 4, 2025.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–14958 Filed 8–6–25; 8:45 am]

BILLING CODE 4140–01–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: Cell Biology Integrated Review Group Development—2 Study Section.

Date: October 20–21, 2025.

Time: 9:00 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: Rass M. Shaiyiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, shaiyiq@csr.nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Maximizing

Investigators' Research Award C Study Section.

Date: October 27–28, 2025.

Time: 10:00 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: Jimok Kim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–8559, jimok.kim@nih.gov.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Pathobiology of Kidney Disease Study Section.

Date: October 28–29, 2025.

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: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, (301) 435–1198, sahaia@csr.nih.gov.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, Regeneration and Rhythmicity Study Section.

Date: October 28–29, 2025.

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: Jacek Topczewski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002A1, Bethesda, MD 20892, (301) 594–7574, topczewskij2@csr.nih.gov.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.

Date: October 29–30, 2025.

Time: 9:00 a.m. to 8:00 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: Christine Jean DiDonato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1014J, Bethesda, MD 20892, (301) 435–1042, didonatocj@csr.nih.gov.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Biochemical and Cellular Oncogenesis Study Section.

Date: October 29–30, 2025.

Time: 10:00 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: Jian Cao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827-5902, caojn@csr.nih.gov.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Digestive System Host Defense, Microbial Interactions and Immune and Inflammatory Disease Study Section.

Date: October 30–31, 2025.

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: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, Bethesda, MD 20892-7818, (301) 435-0682, zhaoa2@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immunology-Oncology.

Date: October 30–31, 2025.

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: Jing Chen, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1080, Bethesda, MD 20892-4874, chenjing@mail.nih.gov.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Hepatobiliary Pathophysiology Study Section.

Date: October 30–31, 2025.

Time: 9:00 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: Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156, Bethesda, MD 20892, 301-827-4417, jianxinh@csr.nih.gov.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Tumor Host Interactions Study Section.

Date: October 30–31, 2025.

Time: 9:30 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: Angela Y. Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 710–C, MSC 7806, Bethesda, MD 20892, (301) 435-1715, nga@csr.nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.

Date: October 30–31, 2025.

Time: 10:00 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: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301-435-1022, balasundaramd@csr.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: August 4, 2025.

Sterlyn H. Gibson,

Program Specialist, Office of Federal Advisory Committee Policy.

[FR Doc. 2025-14956 Filed 8-6-25; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, August 14, 2025, 10:00 a.m. to August 14, 2025, 05:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on July 17, 2025, 90 FR 33391 Doc No. 2025-13353.

This meeting is being amended to change the contact person from Dr. Beverly W. Duncan to Dr. Jennifer Villa, Scientific Review Officer, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301)-496-5436, jennifer.villa@nih.gov. The meeting is closed to the public.

Dated: August 1, 2025.

Sterlyn H. Gibson,

Program Specialist, Office of Federal Advisory Committee Policy.

[FR Doc. 2025-14952 Filed 8-6-25; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

FOR FURTHER INFORMATION CONTACT:

Anastasia Flanagan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240-276-2600 (voice); Anastasia.Flanagan@samhsa.hhs.gov (email).

SUPPLEMENTARY INFORMATION:

The Department of Health and Human Services (HHS) publishes a notice listing all HHS-certified laboratories and Instrumented Initial Testing Facilities (IITFs) in the **Federal Register** during the first week of each month, in accordance with Section 9.19 of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and Section 9.17 of the Mandatory Guidelines using Oral Fluid. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at <https://www.samhsa.gov/workplace/drug-testing-resources/certified-lab-list>.

HHS separately notifies Federal agencies of the laboratories and IITFs currently certified to meet the standards of the Mandatory Guidelines using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); January 23, 2017 (82 FR 7920); and on October 12, 2023 (88 FR 70768).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020, and subsequently revised in the **Federal Register** on October 12, 2023 (88 FR 70814).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for Federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards.

HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid effective October 10, 2023 (88 FR 70814), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190, (Formerly: Gamma-Dynacare Medical Laboratories)

Note: DOT does not allow IITFs to test DOT-regulated specimens.

HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine effective February 1, 2024 (88 FR 70768), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Desert Tox, LLC, 5425 E Bell Rd, Suite 125, Scottsdale, AZ, 85254, 602–457–5411/623–748–5045

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only

Omega Laboratories, Inc., 2150 Dunwin Drive, Unit 1 & 2, Mississauga, ON, Canada L5L 5M8, 289–919–3188

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

Anastasia D. Flanagan,
Public Health Advisor, Division of Workplace Programs.

[FR Doc. 2025–15031 Filed 8–6–25; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[PO #4820000251; Order #02412-014-004-047181.0]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Free Use Application and Permit for Vegetative or Mineral Materials

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Land Management (BLM) proposes to renew Office of Management and Budget (OMB) approval for an information collection.

DATES: Interested persons are invited to submit comments on or before September 8, 2025.

ADDRESSES: Written comments and recommendations for this information collection request (ICR) 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: Tim Barnes, HQ-320 Mineral Materials Lead. Phone number: 541-588-0853; email: tbarnes@blm.gov. 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 <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on new, proposed, revised and continuing collections of information. This helps the BLM assess impacts of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BLM information collection requirements and ensure requested data are provided 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 January 3, 2025 (90 FR 332). No comments were received in response to that notice.

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 the proposed ICR described below. The BLM is especially interested in public comment addressing the following:

(1) 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) 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 the agency could minimize the burden of the collection of information on those who are to respond, including 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 submitted 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 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: The BLM seeks to renew OMB approval for free use vegetative permits. These permits are available for mining claimants; Federal, State, or Territorial agencies; municipalities; and associations or corporations not organized for profit, provided they certify that the materials will not be used for commercial or industrial purposes. Free use permits for mineral materials are available to any Federal, State, or Territorial agency, unit, or subdivision, including municipalities, or any non-profit organization.

OMB Control Number 1004-0001 authorizes the BLM to collect information to continue the use of separate permit forms for the free use of vegetative materials and mineral materials. This OMB control number is currently scheduled to expire on December 31, 2025. The BLM requests

that OMB renew this OMB control number for an additional 3 years.

Title of Collection: Free Use Application and Permit for Vegetative or Mineral Materials (43 CFR parts 3600, 3620, and 5510).

OMB Control Number: 1004-0001.

Form Numbers: 3604-1a and b, Free Use Application and Permit for Mineral Materials and 5510-1, Free Use Application and Permit for Vegetative Materials.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals seeking authorization for free use of mineral or vegetative materials.

Total Estimated Number of Annual Respondents: 146.

Total Estimated Number of Annual Responses: 146.

Estimated Completion Time per Response: 30 minutes.

Total Estimated Number of Annual Burden Hours: 73.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: \$0.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, 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 PRA of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin A. King,

Information Collection Clearance Officer

[FR Doc. 2025-14943 Filed 8-6-25; 8:45 am]

BILLING CODE 4310-84-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1409]

Certain Storage Containers and Toolboxes, Organizers, Component Boxes, and Coolers; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on August 1, 2025, the presiding administrative law judge (“ALJ”) issued an Initial Determination on Violation of Section 337. The ALJ also issued a Recommended Determination on Remedy and Bonding should a violation be found in the above-captioned investigation. The Commission is

soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public and interested government agencies only.

FOR FURTHER INFORMATION CONTACT:

Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order directed to certain storage containers and toolboxes, organizers, component boxes, and coolers imported, sold for importation, and/or sold after importation by respondent Klein Tools, Inc. and a cease and desist order directed to respondent Klein Tools, Inc. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public and interested government agencies are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on

Remedy and Bonding issued in this investigation on August 1, 2025. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, 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 recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended 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 recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on September 2, 2025.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above pursuant to 19 CFR 210.4(f). Submissions should refer to the investigation number ("Inv. No. 337-TA-1409") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party

wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 5, 2025.

Lisa Barton,
Secretary to the Commission.

[FR Doc. 2025-15030 Filed 8-6-25; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-731 and 731-TA-1700 (Final)]

Low Speed Personal Transportation Vehicles From China; Determinations

On the basis of the record ¹ developed in the subject investigations, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that an industry in the United States is materially injured by reason of imports of low speed personal transportation vehicles from China, provided for in subheadings 8703.10.50, 8703.90.01,

¹ The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

8706.00.15, and 8707.10.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (“Commerce”) to be sold in the United States at less than fair value (“LTFV”), and imports of the subject merchandise from China that have been found to be subsidized by the government of China.^{2 3}

Background

The Commission instituted these investigations effective June 20, 2024, following receipt of petitions filed with the Commission and Commerce by the American Personal Transportation Vehicle Manufacturers Coalition.⁴ The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of low speed personal transportation vehicles from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission’s investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington DC, and by publishing the notice in the **Federal Register** on February 11, 2025 (90 FR 9345). The Commission conducted its hearing on June 12, 2025. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on August 4, 2025. The views of the Commission are contained in USITC Publication 5652 (August 2025), entitled *Low Speed Personal Transportation Vehicles from China: Investigation Nos. 701-TA-731 and 731-TA-1700 (Final)*.

By order of the Commission.

² 90 FR 26530, June 23, 2025; 90 FR 26536, June 23, 2025.

³ The Commission also finds that imports subject to Commerce’s affirmative critical circumstances determination are likely to undermine seriously the remedial effect of the countervailing and antidumping duty orders on how speed personal transportation vehicles from China (Commissioner David S. Johanson dissenting).

⁴ The American Personal Transportation Vehicle Manufacturers Coalition is composed of Club Car, LLC, Evans, Georgia, and Textron Specialized Vehicles, Inc., Augusta, Georgia.

Issued: August 4, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025–14995 Filed 8–6–25; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation. No 337–TA–1456]

Certain Mobile Cellular Communications Devices; 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 July 3, 2025, under section 337 of the Tariff Act of 1930, as amended, on behalf of Pantech Corporation of the Republic of Korea. A supplement was filed on July 30, 2025. The 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 mobile cellular communications devices by reason of the infringement of certain claims of U.S. Patent No. 9,548,839 (“the ‘839 patent”); U.S. Patent No. 11,659,503 (“the ‘503 patent”); U.S. Patent No. 11,051,344 (“the ‘344 patent”); and U.S. Patent No. 12,267,876 (“the ‘876 patent”). The 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 orders.

ADDRESSES: The 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: Pathenia M. Proctor, The Office of

Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

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 (2025).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 4, 2025, *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 9–12 of the ‘839 patent; claims 5, 7, and 8 of the ‘503 patent; claims 2 and 6 of the ‘344 patent; and claims 4–6 of the ‘876 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 “smartphones, tablets, and laptop computers that are compliant with LTE, LTE Advanced, and/or 5G cellular network standards”;

(3) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding Administrative Law Judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(4) 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: Pantech Corporation, 13 Saimdang-ro 8-gil, Suite 402–J420, Seocho-gu, Seoul 06640, Republic of Korea

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

OnePlus Technology (Shenzhen) Co., Ltd., 18F, Tairan Building, Block C, Tairan 8th Road, Chegongmiao, Futian District, Shenzhen, Guangdong, 518040, China

OnePlus USA Corp., 5000 Riverside Drive, Ste. 300, Irving, TX 75039

Lenovo Group Ltd., No. 6 Chuang Ye Road, Haidan District, Shangdi Information Industry Base, Beijing 100085, China

Lenovo (United States) Inc., 1009 Think Place, Morrisville, NC 27650

Motorola Mobility LLC, 600 N U.S. Highway 45, Libertyville, IL 60048

TCL Industries Holdings Co., Ltd., 22/F, TCL Technology Building, No. 17, Huifeng Third Road, Zhongkai Hi-Tech Development District, Huizhou City, Guangdong, China, 516006

TCL Electronics Holdings Ltd., 5th Floor, Building 22E, 22 Science Park East Avenue, Hong Kong Science Park, Shatin, New Territories, Hong Kong

TCL Communication Ltd., 5/F, Building 22E, 22 Science Park East Avenue, Hong Kong Science Park, Shatin, New Territories, Hong Kong

TCL Communication Technology Holdings Ltd., 22/F, TCL Technology Building, No. 17, Huifeng Third Road, Zhongkai Hi-Tech Development District, Huizhou City, Guangdong, China, 516006

TCL Mobile International Ltd., 5/F, Building 22E, 22 Science Park East Avenue, Hong Kong Science Park, Shatin, New Territories, Hong Kong

Huizhou TCL Mobile Communication Co., Ltd., 86 Hechang 7th West Road, Zhongkai Hi-Tech Development Zone, Huizhou, Guangdong, China, 516006

TCL Mobile Communication (HK) Company Ltd., 5/F, Building 22E, 22 Science Park East Avenue, Hong Kong Science Park, Shatin, New Territories, Hong Kong

Tinno USA, Inc., 2301 W Plano Pkwy #102, Plano, TX 75075

Shenzhen Tinno Mobile Technology Corp., 27-001 South Side of Tianlong Mobile Headquarters Building, Tongfa South Road, Xili Community, Xili Street, Nanshan District, Shenzhen, Guangdong, China 518000

HMD Global, Karaportti 2, FIN-02610, Espoo, Finland

HMD Global OY, Bertel Jungin aukio 9, 02600, Espoo, Finland

HMD America, Inc., 1200 Brickell Ave., Suite 510, Miami, FL 33131

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge,

U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents 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 complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the 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 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: August 4, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025-14996 Filed 8-6-25; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation. No. 337-TA-1457]

Certain Pre-Stretched Synthetic Braiding Hair and Packaging Therefor (II); 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 July 3, 2025, under section 337 of the Tariff Act of 1930, as amended, on behalf of JBS Hair, Inc. of Atlanta, Georgia. The 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 pre-

stretched synthetic braiding hair and packaging therefor by reason of the infringement of certain claims of U.S. Patent No. 10,786,026 ("the '026 patent"); U.S. Patent No. 10,945,478 ("the '478 patent"); U.S. Patent No. 10,980,301 ("the '301 Patent"); U.S. Patent No. 12,127,616 ("the '616 Patent"). The 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 general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The 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: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

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 (2025).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 5, 2025, *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 and 9-11 of the '026 patent; claim 20 of the '478 patent; claims 1, 4-9 and 11 of the '301 patent; and claims 11-13 of the '616 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 "bundled synthetic braiding hair products";

(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:

JBS Hair, Inc., 3587 Oakcliff Road, Atlanta, GA 30340-3014.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sun Taiyang Co., Ltd. (d/b/a Outre®), 85 Oxford Drive, Moonachie, NJ 07074.

Beauty Elements Corporation (d/b/a Bijouz®), 5517 NW 163rd Street, Miami Gardens, FL 33014.

Hair Zone, Inc. (d/b/a Sensationnel®), 10 State Street, Moonachie, NJ 07074.

Beauty Essence, Inc. (d/b/a Supreme™ Hair US), 60 Oxford Drive, Moonachie, NJ 07074.

SLI Production Corp. (d/b/a It's a Wig!), 7 Capital Drive, Moonachie, NJ 07074.

Royal Imex, Inc. (d/b/a Zury® Hollywood), 12605 Clark Street, Santa Fe Springs, CA 90670.

GS Imports, Inc. (d/b/a Golden State Imports, Inc.), 7112 Alondra Blvd., Paramount, CA 90723.

Eve Hair, Inc., 3935 Paramount Blvd., Lakewood, CA 90712.

Midway International, Inc., (d/b/a BOBBI BOSS), 13131 E. 166th Street, Cerritos, CA 90703.

Mayde Beauty Inc., 85 Harbor Road, Port Washington, NY 11050.

Hair Plus Trading Co., Inc. (d/b/a Femi Collection), 1327 Northbrook Parkway Ste 410, Suwanee, GA 30024.

Optimum Solution Group LLC (d/b/a Oh Yes Hair), 4070 Buford Hwy, Suite #4, Duluth, GA 30096.

Chade Fashions, Inc., 6400 W Gross Point Road, Niles, IL 60714.

Mane Concept Inc., 24 Empire Blvd., Moonachie, New Jersey 07074.

Beauty Plus Trading Co., Inc. (d/b/a Janet Collection™), 210 W. Commercial Avenue, Moonachie, NJ 07074.

Model Model Hair Fashion, Inc., 85 Harbor Road, Port Washington, NY 11050.

New Jigu Trading Corp. (d/b/a Harlem 125®), 10 Harbor Road, Port Washington, NY 11050.

Shake N Go Fashion, Inc., 85 Harbor Road, Port Washington, NY 11050.

Amekor Industries, Inc. (d/b/a Vivica A. Fox® Hair Collection), 500 Brook Road Ste 100, Conshohocken, PA 19428.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents 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 complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the 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 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: August 5, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025-15028 Filed 8-6-25; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-729-730 and 731-TA-1698-1699 (Final)]

Brake Drums From China and Turkey; Determinations

On the basis of the record ¹ developed in the subject investigations, the United

¹ The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that an industry in the United States is materially injured by reason of imports of brake drums from China and Turkey, provided for in subheading 8708.30.50 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV") and subsidized by the governments of China and Turkey.²

Background

The Commission instituted these investigations effective June 20, 2024, following receipt of petitions filed with the Commission and Commerce by Webb Wheel Products, Inc., Cullman, Alabama. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of brake drums from China and Turkey were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 7, 2025 (90 FR 9162). The Commission conducted its hearing on June 17, 2025.

The Commission made these determinations pursuant to §§ 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on August 4, 2025. The views of the Commission are contained in USITC Publication 5651 (August 2025), entitled *Brake Drums from China and Turkey: Investigation Nos. 701-TA-729-730 and 731-TA-1698-1699 (Final)*.

By order of the Commission.

Issued: August 4, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025-14994 Filed 8-6-25; 8:45 am]

BILLING CODE 7020-02-P

² 90 FR 25999, 26002, 26008, and 26011 (June 18, 2025).

DEPARTMENT OF JUSTICE**[OMB Number 1125–0016]****Agency Information Collection Activities; Proposed eCollection eComments Requested; Title—Unfair Immigration-Related Employment Practices Complaint Form (Form EOIR–58)****AGENCY:** Executive Office for Immigration Review, Department of Justice.**ACTION:** 30-Day notice.

SUMMARY: The Executive Office for Immigration Review (EOIR), Department of Justice (DOJ), will be submitting the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until September 8, 2025.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Justine Fuga, Associate General Counsel, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone: (703) 305–0265, Justine.Fuga@usdoj.gov, eoir.pra.comments@usdoj.gov.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register** on June 5, 2025, allowing a 60-day comment period.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- 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 responses.

Written comments and recommendations for this 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 and entering either the title of the information collection or the OMB Control Number 1125–0016. This ICR may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collections submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Extension and Revision of a previously approved collection.
2. *Title of the Form/Collection:* Unfair Immigration-Related Employment Practices Complaint Form.
3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is EOIR–58, and the sponsoring DOJ component is EOIR.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected Public: Individuals who wish to file a complaint alleging unfair immigration-related employment practices under INA § 274B.

Abstract: Section 274B of the INA prohibits employment discrimination on the basis of citizenship status or national origin; retaliation or intimidation by an employer against an individual seeking to exercise his or her right under this section; and “document abuse” or over-documentation by the employer, which occurs when the employer asks an applicant or employee for more or different documents than required for employment eligibility verification under INA § 274A, with the

intent of discriminating against the employee in violation of section 274B. Individuals who believe that they have suffered discrimination in violation of section 274B may file a charge with the DOJ Immigrant and Employee Rights Section (IER). The IER then has 120 days to determine whether to file a complaint with OCAHO on behalf of the individual charging party. If the IER chooses not to file a complaint, the individual may then file his or her own complaint directly with OCAHO. This information collection may be used by an individual to file his or her own complaint with OCAHO. The Form EOIR–58 elicits, in a uniform manner, all of the required information for OCAHO to assign a section 274B complaint to an Administrative Law Judge for adjudication. Non-substantive revisions are being made throughout the form and instructions to improve formatting, clarity, and grammar. EOIR has also made changes updating the IER mailing address, revising the Privacy Act notice to include a citation to OCAHO's System of Record Notice (SORN), and revising the amount of time estimated to complete the form. Additionally, to account for anticipated expansion of electronic filing capabilities in the future, EOIR is also revising the instructions to clarify differences in filing procedures for those forms filed by mail versus forms filed electronically.

5. *Obligation to Respond:* The information collected by this form is required to file a complaint under INA § 274B. However, using this form is voluntary and individuals may alternatively file a written submission alleging unfair immigration-related employment practices under INA § 274B, provided that the alternative submission format meets the requirements for OCAHO complaints as set forth in 28 CFR 68.7.

6. *Total Estimated Number of Respondents:* 38.

7. *Estimated Time per Respondent:* 60 minutes (1 hour).

8. *Frequency:* Once a year.

9. *Total Estimated Annual Time Burden:* 38 hours.

10. *Total Estimated Annual Other Costs Burden:* The total maximum estimated cost burden to the public associated with this collection is \$3,715.26. While respondents may submit the Form EOIR–58 to OCAHO via email, which would result in no filing fee, printing, or mailing costs to the respondent, most filed Forms EOIR–58 are submitted to OCAHO by United States mail. The average Form EOIR–58 submission consists of 150 pages (five copies of the application and supporting

evidence including the IER complaint and IER letter informing the individual that they may file Form EOIR-58 with OCAHO) at an estimated average printing cost of ten cents per page, for a total print cost of \$15.00 per response. The current Priority Mail postage cost to mail one complete Form EOIR-58 package is estimated at \$10.10. There are no filing fees for EOIR-58. There are no labor costs for unrepresented (pro se) individuals because the form may be completed solely by the individual. However, if an individual chooses to obtain representation to complete and file the Form EOIR-58, the cost to the individual will include the average hourly wage for attorneys based on the U.S. Bureau of Labor Statistics average estimate of \$72.67 per hour for every hour the attorney spends completing the form. Therefore, the maximum total estimated cost burden to the public is \$3,715.26 $((\$15.00 + \$10.10 + \$72.67) \times 38 \text{ responses})$. EOIR OCAHO continues to work towards implementing full electronic processing with the anticipated implementation of its electronic filing system, which would eliminate the copying and postage costs for filing this form. Until the OCAHO electronic filing system is fully implemented, the affected public may avoid these costs by submitting the Form EOIR-58 via email.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W-218 Washington, DC 20530.

Dated: August 5, 2025.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2025-15002 Filed 8-6-25; 8:45 am]

BILLING CODE 4410-30-P

DEPARTMENT OF JUSTICE

[Docket No. OLP181]

Notice of Request for Certification of Alabama Capital Counsel Mechanism

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice advises the public that the State of Alabama has requested certification of its capital counsel mechanism by the Attorney General and that public comments may be submitted to the Department of Justice regarding Alabama's request.

DATES: Written and electronic comments must be submitted on or before October

6, 2025. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. OLP181" on all electronic and written correspondence. The Department encourages that all comments be submitted electronically through <http://www.regulations.gov> using the electronic comment form provided on that site. Paper comments that duplicate the electronic submission should not be submitted. Individuals who wish to submit written comments may send those to the contact listed in the **FOR FURTHER INFORMATION** section immediately below.

FOR FURTHER INFORMATION CONTACT: Levi Lall, Counsel, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530; telephone 202-598-0771.

SUPPLEMENTARY INFORMATION:

Chapter 154 of title 28, United States Code, provides special procedures for federal habeas corpus review of cases brought by indigent prisoners in State custody who are subject to capital sentences. These special procedures may be available to a State only if the Attorney General of the United States has certified that the State has established a qualifying mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings for indigent capital prisoners. *28 U.S.C. 2261, 2265; 28 CFR part 26.*

This notice advises the public, pursuant to *28 CFR 26.23(b)*, that the State of Alabama has requested certification of its capital counsel mechanism by the Attorney General. Public comment is solicited regarding Alabama's request. Alabama's request and supporting materials may be viewed at <https://www.justice.gov/olp/pending-requests-final-decisions>.

Dated: August 4, 2025.

Nicholas J. Schilling Jr.,

Supervisory Official, Office of Legal Policy.

[FR Doc. 2025-15035 Filed 8-6-25; 8:45 am]

BILLING CODE 4410-BB-P

DEPARTMENT OF JUSTICE

[OMB Number 1125-0021]

Agency Information Collection Activities; Proposed Collection eComments Requested; Title—Notice of Entry of Limited Appearance for Document Assistance Before the Board of Immigration Appeals (Form EOIR-60); and Notice of Entry of Limited Appearance for Document Assistance Before the Immigration Court (Form EOIR-61)

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

ACTION: 30-Day notice.

SUMMARY: The Executive Office for Immigration Review (EOIR), Department of Justice (DOJ), will be submitting the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until September 8, 2025.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Justine Fuga, Associate General Counsel, Office of the General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone: (703) 305-0265, Justine.Fuga@usdoj.gov, eoir.pra.comments@usdoj.gov.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register** on June 3, 2025, allowing a 60-day comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and/or
- 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 responses.

Written comments and recommendations for this 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 and entering either the title of the information collection or the OMB Control Number 1125–0016. This ICR may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collections submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Extension and Revision of a previously approved collection.
2. *Title of the Form/Collection:* Notice of Entry of Limited Appearance for Document Assistance Before the Board of Immigration Appeals; and Notice of Entry of Limited Appearance for Document Assistance Before the Immigration Court.
3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The agency form numbers are EOIR–60 and EOIR–61, and the sponsoring DOJ component is EOIR.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected Public: Individuals, Attorneys and Representatives entering a limited appearance to assist a pro se respondent with a legal filing or other document to be filed with EOIR.

Abstract: This information collection reauthorization and revision is

necessary to allow an attorney or representative to notify the Board of Immigration Appeals (Board) or the Immigration Court that he or she is entering a limited appearance to assist a pro se respondent with a legal filing or other document to be filed with EOIR. Pursuant to the Final Rule, Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances, 87 FR 56247 (Sept. 14, 2022) (effective Nov. 14, 2022), amending the regulations at 8 CFR 1003.2(g)(1), 1003.17(b) and (c), and 1003.38(g)(2), the agency received OMB approval to issue separate stand-alone forms for the entry of a limited appearance for document assistance before each adjudicatory component as the most appropriate method for the collection of this information. The separate forms EOIR–60 and EOIR–61 are intended to provide greater clarity to the practitioners using the forms, the pro se respondents who are only engaging with the practitioners in a limited capacity, and for the EOIR staff processing the forms. EOIR is revising the forms to account for expanded electronic filing options with the launch of the online EOIR Courts and Appeals System (ECAS) Respondent Access Portal (RAP) in July 2024. EOIR made revisions to Forms EOIR–60 and EOIR–61 to include updates to remove the mail only filing restrictions and inform the users that they may review the EOIR Policy Manual for filing guidance. The Proof of Service section has been revised to include an option for individuals to indicate that they are serving the opposing party electronically through ECAS. The Privacy Act notice is also revised to correct the citation to the system of records notice (SORN) for the Attorney Discipline System, JUSTICE/EOIR–003, published at 85 FR 32423 (May 29, 2020), and to inform respondents that limited case information is also available online in English or Spanish through the EOIR Automated Case Information System at <https://acis.eoir.justice.gov/en/>. Finally, a sentence was added to the second page of the Form EOIR–60 to clarify and emphasize that limited appearances for document assistance are not available in Department of Homeland Security (DHS) proceedings that the Board has jurisdiction over.

5. *Obligation to Respond:* This information collection is mandatory and required to enter an appearance before EOIR as authorized by 8 U.S.C. 1229(a), 1362 and 8 CFR 1003.38. Failure to provide the requested information will

result in an inability to enter a limited appearance for document assistance.

6. *Total Estimated Number of Respondents:* It is estimated that 40 respondents will complete Form EOIR–60 filed with the Board. It is estimated that 22,018 respondents will complete Form EOIR–61 filed with the Immigration Courts.

7. *Estimated Time per Respondent:* 6 minutes (0.1 hour).

8. *Frequency:* Once a year.

9. *Total Estimated Annual Time Burden:* The total annual burden hours for Forms EOIR–60 and EOIR–61 is 2,206 hours.

10. *Total Estimated Annual Other Costs Burden:* There are no capital or start-up costs associated with these forms. There are no fees to file the forms. The forms may be filed electronically to eliminate printing and postage costs. Attorneys or other authorized representatives are expected to complete the forms. The United States Bureau of Labor Statistics estimates the median hourly fee for attorneys at \$72.67. Therefore, the cost for an attorney or other authorized representative to complete the form in 6 minutes is estimated at \$7.27 per submission (\$72.67 per hour × 0.10 hours × 1 response = \$7.27 per response). The total annual estimated cost burden to individuals is \$160,310.02 (2,206 total estimated burden hours × \$72.67 per hour).

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: August 5, 2025.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2025–15001 Filed 8–6–25; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[Docket No. OLP180]

Notice of Request for Certification of Tennessee Capital Counsel Mechanism

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice advises the public that the State of Tennessee has requested certification of its capital counsel mechanism by the Attorney General and that public comments may be submitted to the Department of Justice regarding Tennessee’s request.

DATES: Written and electronic comments must be submitted on or before October 6, 2025. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. OLP180" on all electronic and written correspondence. The Department encourages that all comments be submitted electronically through <http://www.regulations.gov> using the electronic comment form provided on that site. Paper comments that duplicate the electronic submission should not be submitted. Individuals who wish to submit written comments may send those to the contact listed in the **FOR FURTHER INFORMATION** section immediately below.

FOR FURTHER INFORMATION CONTACT: Levi Lall, Counsel, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530; telephone 202-598-0771.

SUPPLEMENTARY INFORMATION:

Chapter 154 of title 28, United States Code, provides special procedures for federal habeas corpus review of cases brought by indigent prisoners in State custody who are subject to capital sentences. These special procedures may be available to a State only if the Attorney General of the United States has certified that the State has established a qualifying mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings for indigent capital prisoners. *28 U.S.C. 2261, 2265; 28 CFR part 26.*

This notice advises the public, pursuant to *28 CFR 26.23(b)*, that the State of Tennessee has requested certification of its capital counsel mechanism by the Attorney General. Public comment is solicited regarding Tennessee's request. Tennessee's request and supporting materials may be viewed at <https://www.justice.gov/olp/pending-requests-final-decisions>.

Dated: August 4, 2025.

Nicholas J. Schilling Jr.,
Supervisory Official, Office of Legal Policy.
[FR Doc. 2025-15037 Filed 8-6-25; 8:45 am]

BILLING CODE 4410-BB-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Employer Welfare Arrangement Administrative Law Judge Administrative Hearing Procedures

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before September 8, 2025.

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: Michael Howell by telephone at 202-693-6782, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: Section 521 of ERISA, 29 U.S.C. 1151, provides that the Secretary of Labor may issue ex parte cease and desist orders when it appears to the Secretary that the alleged conduct of a multiple employer welfare arrangement (MEWA) under section 3(40) of the Act, 29 U.S.C. 1002(40), is fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury. Section 521(b) provides that a person that is adversely affected by the issuance of a cease and desist order may request an administrative hearing regarding the order. The Department has promulgated a final regulation that is the subject of this information collection request, which describes the procedures before an administrative law judge (ALJ) when a person seeks an administrative hearing for review of such an order.

Under section 2571.3 of the rule, the party that is subject to a cease and desist order issued under ERISA section 521 has the burden to initiate an adjudicatory proceeding before an ALJ.

Section 2571.3 governs the service of documents necessary to initiate ALJ proceedings by such a party on the Secretary of Labor and the ALJ. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 6, 2025 (90 FR 671).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See 5 CFR 1320.5(a) and 1320.6.*

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-EBSA.

Title of Collection: Multiple Employer Welfare Arrangement Administrative Law Judge Administrative Hearing Procedures.

OMB Control Number: 1210-0148.

Affected Public: Private sector.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Time Burden: 1,220 hours.

Total Estimated Annual Other Costs Burden: \$500.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,
Senior Paperwork Reduction Act Analyst.
[FR Doc. 2025-14988 Filed 8-6-25; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR**Wage and Hour Division****Agency Information Collection Activities; Comment Request; Paid Sick Leave for Federal Contractors**

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department) is soliciting comments concerning a proposed extension of the information collection request (ICR) titled "Paid Sick Leave for Federal Contractors." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA). The Department proposes to extend the approval of this existing information collection without change to existing requirements.

This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 6, 2025.

ADDRESSES: You may submit comments identified by Control Number 1235-0029, by either one of the following methods:

- *Email:* WHDPRAComments@dol.gov;

- *Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Daniel Navarrete, 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; 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.

SUPPLEMENTARY INFORMATION:**I. Background**

On September 7, 2015, President Barack Obama signed Executive Order 13706, "Establishing Paid Sick Leave for Federal Contractors." 80 FR 54697. The Executive Order established paid sick leave for Federal Contractors. Executive Order 13706 stated that the Federal Government's procurement interests in efficiency and cost savings are promoted when the Federal Government contracts with sources that ensure workers on those contracts can earn paid sick leave. The Executive Order therefore required parties who contract with the Federal Government to provide their employees with up to 7 days of paid sick time annually, including paid time allowing for family care. The Executive Order directed the Secretary to issue regulations by September 30, 2016, to the extent permitted by law and consistent with the requirements of 40 U.S.C. 121, to implement the Order's requirements. The Final Rule established standards and procedures for implementing and enforcing the paid sick leave requirements of Executive Order 13706. 81 FR 67598.

Among other requirements, the regulations at 29 CFR 13 require employers subject to the Order to make and maintain records for notifications to employees on leave accrual and requests to use paid sick leave, dates and amounts of paid sick leave used, written responses to requests to use paid sick leave, records relating to certification and documentation where an employer requires this from an employee using at least 3 consecutive days of leave, tracking of or calculations related to an employee's accrual or use of paid sick leave, the relevant covered contract, pay and benefits provided to an employee using leave, and any financial payment for unused sick leave made to an employee on separation from employment.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays

a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The Department obtains OMB approval for this information collection under Control Number 1235-0029.

OMB authorization for an ICR cannot be for more than 3 years without renewal, and the current approval for this collection will expire on December 31, 2025. The Department seeks to extend PRA authorization for this information collection for 3 more years, without any change to existing requirements.

Interested parties are encouraged to send comments to the Department at the address shown in the **ADDRESSES** section within 60 days of publication of this notice in the **Federal Register**. To help ensure appropriate consideration, comments should mention OMB Control Number 1235-0029.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Enhance the quality, utility, and clarity of the information to be collected;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Minimize the burden of the collection of information on those who are to respond, including 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.

III. Current Actions

The Department of Labor seeks approval for an extension of this information collection to ensure effective administration of paid sick leave programs for federal contractors.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Paid Sick Leave for Federal Contractors.

OMB Control Number: 1235-0029.

Affected Public: Private Sector: Businesses or other for-profits; not-for-profit institutions.

Total Respondents: 1,321,800.
Total Annual Responses: 39,049,277.
Estimated Total Burden Hours:
769,122.

Estimated Time per Response: Varies with type of request.

Frequency: On occasion.

Total Burden Costs (Operations/Maintenance): \$1,629,180.13.

Dated: August 4, 2025.

Daniel Navarrete,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2025-15023 Filed 8-6-25; 8:45 am]

BILLING CODE 4510-27-P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities; Comment Request; Information Collections: Labor Standards for Federal Service Contracts

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department) is soliciting comments concerning a proposed extension of the information collection request (ICR) titled, "Labor Standards for Federal Service Contracts." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA). The Department proposes to extend its information collection without change to existing requirements. The PRA comment process helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 6, 2025.

ADDRESSES: You may submit comments identified by Control Number 1235-0007 by either one of the following methods:

- Email: WHDPRAComments@dol.gov;

- Mail, Hand Delivery, Courier: Division of Regulations, Legislation, and

Interpretation, Wage and Hour, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request.

FOR FURTHER INFORMATION CONTACT:

Daniel Navarrete, 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; 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.

SUPPLEMENTARY INFORMATION:

I. Background

The Department's Wage and Hour Division (WHD) administers the McNamara-O'Hara Service Contract Act (SCA or Act), 41 U.S.C. 351 *et seq.* The SCA applies to every contract entered into by the United States or the District of Columbia, the principal purpose of which is to furnish services to the United States through the use of service employees. The SCA requires contractors and subcontractors performing services on covered federal or District of Columbia contracts in excess of \$2,500 to pay service employees in various classes no less than the monetary wage rates and fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. Safety and health standards also apply to such contracts. WHD enforces the compensation requirements of the SCA.

A. Vacation Benefit Seniority List

Section 2(a) of the SCA provides that every contract subject to the Act must contain a provision specifying the minimum monetary wages and fringe benefits to be paid to the various classes

of service employees performing work on the contract. Many wage determinations issued for recurring services performed at the same federal facility provide for certain vested fringe benefits (*e.g.*, vacations), which are based on the employee's total length of service with a contractor or any predecessor contractor. *See* 29 CFR 4.162. When found to prevail, such fringe benefits are incorporated in wage determinations and are usually stated as "one-week paid vacation after one year's service with a contractor or successor, two weeks after two years," etc. These provisions ensure that employees receive the vacation benefit payments that they have earned and accrued by requiring that such payments be made by successor contractors who hire the same employees who have worked over the years at the same facility in the same locality for predecessor contractors.

B. Conformance Record

Section 2(a) of the SCA provides that every contract subject to the Act must contain a provision specifying the minimum monetary wage and fringe benefits to be paid the various classes of service employees employed on the contract work. *See* 41 U.S.C. 351, *et seq.* Problems sometimes arise (1) when employees are working on service contracts in job classifications that the Department was not previously informed about and (2) when there are job classifications for which no wage data are available.

Section 4.6(b)(2) of 29 CFR part 4 provides a process for "conforming" (*i.e.*, adding) classifications and wage rates to the wage determinations for classes of service employees not previously listed on a wage determination but where employees are actually working on an SCA covered contract. This process ensures that the requirements of section 2(a) of the Act are fulfilled and that a formal record exists as part of the contract which documents the wage rate and fringe benefits to be paid for a conformed classification while a service employee(s) is employed on the contract.

The contracting officer is required to review each contractor-proposed conformance to determine if the unlisted classes have been properly classified by the contractor so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications (and wages) listed in the wage determination. *See* 29 CFR 4.6(b)(2). Moreover, the contracting agency is required to forward the

conformance action to WHD for review and approval. *Id.*

C. Indexing

In any case where a contract succeeds a contract under which a class was previously conformed, the contractor may use an optional procedure known as indexing (*i.e.*, adjusting) to determine a new wage rate for a previously conformed class. See 29 CFR 4.6(b)(2)(iv)(B). This procedure does not require the Department's approval, but it requires the contractor to notify the contracting agency in writing that a previously conformed class has been indexed and to include information describing how the new rate was computed. *Id.*

D. Submission of Collective Bargaining Agreement (CBA)

Sections 2(a) and 4(c) of the SCA provide that any contractor that *succeeds* a contract subject to the Act and under which substantially the same services are furnished shall pay any service workers employed on the contract no less than the wages and fringe benefits to which such workers would have been entitled if employed under the *predecessor* contract. See 29 CFR 4.163(a).

29 CFR 4.6(l)(1) requires a predecessor contractor to provide to the contracting officer a copy of any CBA governing the wages and fringe benefits paid service employees performing work on the contract during the contract period. The contracting agency submits these CBAs to WHD where they are used in issuing wage determinations for successor contracts subject to sections 2(a) and 4(c) of the SCA. See 29 CFR 4.4(c).

WHD uses this information to determine whether covered employers have complied with various legal requirements of the laws administered by the agency. The Department seeks approval to extend this information collection related to labor standards for federal service contracts.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Enhance the quality, utility, and clarity of the information to be collected;
- Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used; or

- 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.

III. Current Actions

The Department of Labor seeks an approval for the extension of this information collection that requires employers to make, maintain, and preserve records in accordance with statutory and regulatory requirements.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Labor Standards for Federal

Service Contracts Regulations.

OMB Control Number: 1235–0007.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Total Respondents: 128,330.

Total Annual Responses: 128,330.

Estimated Total Burden Hours: 127,289.

Frequency: On occasion.

Total Burden Cost (Capital/Startup): \$0.

Total Burden Costs (Operation/Maintenance): \$0.

Dated: August 04, 2025.

Daniel Navarrete,

Director, Division of Regulations, Legislation, and Interpretation.

[FR Doc. 2025–15024 Filed 8–6–25; 8:45 am]

BILLING CODE 4510–27–P

NUCLEAR REGULATORY COMMISSION

[NRC–2025–0080]

Draft Regulatory Guide: Qualification of Safety-Related Cables and Field Splices for Production and Utilization Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft Regulatory Guide (DG), DG–1442, “Qualification of Safety-Related Cables and Field Splices for Production and Utilization Facilities.” This DG is proposed Revision 1 of Regulatory Guide (RG) 1.211 of the same name. The proposed revision describes an approach that is acceptable to the

staff of the NRC to meet regulatory requirements for the environmental qualification of safety related cables and field splices in production and utilization facilities. It endorses, subject to the conditions described in Section C of the DG, Institute of Electrical and Electronic Engineers (IEEE) Standard (Std.) 383–2023, “IEEE Standard for Qualifying Electric Cables and Splices for Nuclear Facilities.”

DATES: Submit comments by September 8, 2025. 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.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2025–0080. Address questions about Docket IDs in [Regulations.gov](https://www.regulations.gov) to Bridget Curran; telephone: 301–415–1003; email: Bridget.Curran@nrc.gov. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Edmund Kleeh, Office of Nuclear Reactor Regulation, telephone: 301–415–2964; email: Edmund.Kleeh@nrc.gov and Vance Petrella, Office of Nuclear Regulatory Research, telephone: 301–415–1048; email: Vance.Petrella@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2025–0080 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2025–0080.

• *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 Web-based ADAMS 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 DG "Qualification of Safety-Related Cables and Field Splices for Production and Utilization Facilities" is available in ADAMS under Accession No. ML24358A029.

• *NRC's PDR*: The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2025-0080 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. Additional Information

The NRC is issuing for public comment a DG in the NRC's "Regulatory Guide" series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain

techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The DG, entitled "Qualification of Safety-Related Cables and Field Splices for Production and Utilization Facilities," is temporarily identified by its task number, DG-1442.

The DG is proposed Revision 1 of RG 1.211 of the same name. The proposed revision endorses, subject to the conditions described in Section C of this DG, IEEE Std. 383-2023 and applies to production and utilization facilities licensed under parts 50 and 52 of title 10 of the *Code of Federal Regulations* (10 CFR) within the scope of this RG. The previous version of this DG endorsed, with certain clarifications, IEEE Std. 383-2003. In 2023, the IEEE revised IEEE Std. 383 to provide greater guidance for cable and splice qualification and to clarify the existing principles of qualification provided by International Electrotechnical Commission (IEC)/IEEE Std. 60780-323-2016, "Nuclear facilities—Electrical equipment important to safety—Qualification," Edition 1.

The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML24358A030). The staff developed a regulatory analysis to assess the value of issuing or revising a RG as well as alternative courses of action.

III. Backfitting, Forward Fitting, and Issue Finality

Licensees generally are not required to comply with the guidance in this proposed RG. If the NRC proposes to use this RG in an action that would constitute backfitting, as that term is defined in 10 CFR 50.109, "Backfitting," and as described in NRC Management Directive (MD) 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests"; affect the issue finality of an approval issued under 10 CFR part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants"; or constitute forward fitting, as that term is defined in MD 8.4, then the NRC staff will apply the applicable policy in MD 8.4 to justify the action. If a licensee believes that the NRC is using this DG in a manner inconsistent with the discussion in this Implementation section, then the licensee may inform the NRC staff in accordance with MD 8.4.

IV. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for

improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at <https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html>. Suggestions will be considered in future updates and enhancements to the "Regulatory Guide" series.

V. Executive Order (E.O.) 12866

The Office of Information and Regulatory Affairs determined that this draft DG is not a significant regulatory action under E.O. 12866.

Dated: August 4, 2025.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2025-14951 Filed 8-6-25; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025-1602 and K2025-1594]

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:* August 11, 2025.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Public Proceeding(s)
- III. Summary Proceeding(s)

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 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.

II. Public Proceeding(s)

1. *Docket No(s)*: MC2025–1602 and K2025–1594; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1397 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 1, 2025; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Christopher Mohr; *Comments Due*: August 11, 2025.

III. Summary Proceeding(s)

None. See Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,
Primary Certifying Official.

[FR Doc. 2025–14942 Filed 8–6–25; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. K2025–16]

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:* August 12, 2025.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

II. Public Proceeding(s)
III. Summary Proceeding(s)

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 of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are

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).

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).

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.

II. Public Proceeding(s)

1. *Docket No(s)*: K2025–16; *Filing Title*: USPS Request Concerning Amendment One to Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 431, with Materials Filed Under Seal; *Filing Acceptance Date*: August 4, 2025; *Filing Authority*: 39 CFR 3035.105 and 39 CFR 3041.505; *Public Representative*: Jennaca Upperman; *Comments Due*: August 12, 2025.

III. Summary Proceeding(s)

None. See Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Primary Certifying Official.

[FR Doc. 2025–15032 Filed 8–6–25; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–103628; File No. SR–CboeEDGA–2025–023]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Provide a Temporary Discount for Historical U.S. Equity Short Volume and Trade Reports

August 4, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on July 29, 2025, Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) proposes to amend its Fee Schedule to provide a temporary discount on fees assessed to EDGA Members and non-Members that purchase \$20,000 or more of ad hoc purchases of historical U.S. Equity Short Volume and Trades Reports. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/edga/) and at the Exchange’s Office of the Secretary.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update its Fee Schedule to provide a temporary 20% discount on fees assessed to EDGA Members (“Members”)³ and non-Members that purchase \$20,000 or more of ad hoc purchases of historical U.S. Equity Short Volume and Trades Reports (“Short Volume Reports”), effective July 29, 2025 through September 30, 2025.

By way of background, the Short Volume Report is an end-of-day report that summarizes certain equity trading

activity on the Exchange, including trade date,⁴ total volume,⁵ short volume,⁶ and sell short exempt volume,⁷ by symbol.⁸ The Short Volume Report also includes an end-of-month report that provides a record of all short sale transactions for the month, including trade date and time (in microseconds),⁹ trade size,¹⁰ trade price,¹¹ and type of short sale execution,¹² by symbol and exchange.¹³ The Short Volume Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC (“LiveVol”), a wholly owned subsidiary of the Exchange’s parent company, Cboe Global Markets, Inc., makes the Short Volume Report available for purchase to Users on the LiveVol DataShop website (datashop.cboe.com). Both the end-of-day report and end-of-month report are included in the cost of the Short Volume Report and are available for purchase by both Members as well as non-Members on an annual or monthly¹⁴ basis. The monthly fee is \$750 per Internal Distributor¹⁵ and

⁴ “Trade date” is the date of trading activity in yyyy-mm-dd format.

⁵ “Total volume” is the total number of shares transacted.

⁶ “Short volume” is the total number of shares sold short.

⁷ “Short exempt volume” is the total number of shares sold short classified as exempt.

⁸ “Symbol” refers to the Cboe formatted symbol in which the trading activity occurred. See https://cdn.cboe.com/resources/membership/US_Symbolology_Reference.pdf.

⁹ “Trade date and time” is the date and time of trading activity in yyyy-mm-dd hh:mm:ss.000000 ET format.

¹⁰ “Trade size” is the number of shares transacted.

¹¹ “Trade price” is the price at which shares were transacted.

¹² “Short type” is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction. A short sale transaction is a transaction in which a seller sells a security which the seller does not own, or the seller has borrowed for its own account (see 17 CFR 242.200). A short sale exempt transaction is a short sale transaction that is exempt from the short sale price test restrictions of Regulation SHO Rule 201 (see 17 CFR 242.201(c)).

¹³ “Exchange” is the market identifier (Z = BZX, Y = BYX, X = EDGX, A = EDGA).

¹⁴ The monthly fees for the Report are assessed on a rolling period based on the original subscription date. For example, if a User subscribes to the Report on October 24, 2023, the monthly fee will cover the period of October 24, 2023, through November 23, 2023. If the User cancels its subscription prior to November 23, 2023, and no refund is issued, the User will continue to receive both the end-of-day and end-of-month components of the Report for the subscription period.

¹⁵ An Internal Distributor of an Exchange Market Data product is a Distributor that receives the

Continued

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Rule 1.5(n) (“Member”). The term “Member” shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

\$1,250 per External Distributor.¹⁶ Additionally, the Exchange offers historical reports containing both the end-of-day volume and end-of-month trading activity. The fee per month of historical data is \$500. The Short Volume Report provided on a historical basis is only for display use redistribution (*e.g.*, the data may be redistributed on the User's platform). Therefore, Users of the historical data may not charge separately for data included in the Short Volume Report or incorporate such data into their product. The Exchange notes that the Short Volume Report is subject to direct competition from other exchanges, as other exchanges offer similar products for a fee.¹⁷

The Exchange proposes to provide a temporary pricing incentive program in which Members or Non-Members that purchase historical Short Volume Reports will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the Exchange proposes to provide a 20% discount for ad-hoc purchases of historical Short Volume Reports of \$20,000 or more.¹⁸ The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange. The Exchange intends to introduce the discount program beginning July 29, 2025, with the program remaining in effect through September 30, 2025. The Exchange also notes that it has previously adopted the same discount program and proposes to update the Fees Schedule with the new program dates accordingly.¹⁹

Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity. *See* Cboe EDGA U.S. Equities Exchange Fee Schedule.

¹⁶ An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity. *See* Cboe EDGA U.S. Equities Exchange Fee Schedule.

¹⁷ *See* the Nasdaq Fee Schedule, Equity 7, Section 152. *See also*, the TAQ Group Short Sales (Monthly File) and Short Volume product, offered by the New York Stock Exchange LLC ("NYSE") and affiliated equity markets (the "NYSE Group") at NYSE Exchange Proprietary Market Data | TAQ NYSE Group Short Sales.

¹⁸ The discount will apply on an order-by-order basis. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, *i.e.*, receive a 20% discount of \$5,000).

¹⁹ *See e.g.*, Securities Exchange Act Release No. 88195 (December 14, 2023), 88 FR 88193 (December 20, 2023) (SR-CboeEDGA-2023-021) and Securities Exchange Act Release No. 100334 (June 14, 2024),

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²¹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,²³ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations ("SROs") and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee changes will further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The Exchange believes the dissemination of historical short volume data via historical Short Volume Reports benefits investors through increased transparency and may promote better informed trading, as well as research and studies of the equities industry. Nevertheless, the Exchange notes that such data is not necessary for trading

and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer the same type of data content through similar reports.²⁴

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered equities exchanges that trade equities. Based on publicly available information, no single equities exchange has more than 15% of the equity market share.²⁵ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."²⁶ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supercompetitive fees. In the event that a market participant views one exchange's data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. equities industry as the Exchange seeks to adopt fees to attract purchasers of historical Short Volume Reports.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases historical Short Volume Reports is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of historical Short Volume Reports. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the historical Short Volume Reports at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage users to purchase historical Short Volume Reports. Further, the proposed discount is intended to promote increased use of the Exchange's historical Short Volume Reports by

²⁴ *See supra* note 17.

²⁵ *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (October 3, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

²⁶ *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

89 FR 52161 (June 21, 2024) (SR-CboeEDGA-2024-024).

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² *Id.*

²³ 15 U.S.C. 78f(b)(4).

defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who purchase historical Short Volume Reports. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the historical Short Volume Reports, and the Exchange is not required to make historical Short Volume Reports available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange previously adopted similar discount programs.²⁷

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 operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, including the adoption of similar discounts to those fees, the Exchange believes that the degree to which fee changes (including discounts and rebates) in this market may impose any burden on competition is extremely limited. As discussed above, the Exchange's historical Short Volume Reports offering is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of historical Short Volume Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange's efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the

Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Short Volume Reports.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁸ and paragraph (f) of Rule 19b-4²⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGA-2025-023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-CboeEDGA-2025-023. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use

only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGA-2025-023 and should be submitted on or before August 28, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2025-14963 Filed 8-6-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103627; File No. SR-CboeEDGX-2025-062]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fee Schedule To Provide a Temporary Discount for Historical U.S. Equity Short Volume and Trade Reports

August 4, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 29, 2025, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") proposes to amend its Fee Schedule to provide a temporary discount on fees assessed to EDGX Members and non-Members that purchase \$20,000 or more of ad hoc purchases of historical U.S. Equity Short

²⁷ See e.g., Securities Exchange Act Release No. 88195 (December 14, 2023), 88 FR 88193 (December 20, 2023) (SR-CboeEDGA-2023-021) and Securities Exchange Act Release No. 100334 (June 14, 2024), 89 FR 52161 (June 21, 2024) (SR-CboeEDGA-2024-024).

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f).

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Volume and Trades Reports. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/) and at the Exchange's Office of the Secretary.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to update its Fee Schedule to provide a temporary 20% discount on fees assessed to EDGX Members ("Members")³ and non-Members that purchase \$20,000 or more of ad hoc purchases of historical U.S. Equity Short Volume and Trades Reports ("Short Volume Reports"), effective July 29, 2025 through September 30, 2025.

By way of background, the Short Volume Report is an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade date,⁴ total volume,⁵ short volume,⁶ and sell short exempt volume,⁷ by symbol.⁸ The Short Volume

Report also includes an end-of-month report that provides a record of all short sale transactions for the month, including trade date and time (in microseconds),⁹ trade size,¹⁰ trade price,¹¹ and type of short sale execution,¹² by symbol and exchange.¹³ The Short Volume Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC ("LiveVol"), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., makes the Short Volume Report available for purchase to Users on the LiveVol DataShop website (datashop.cboe.com). Both the end-of-day report and end-of-month report are included in the cost of the Short Volume Report and are available for purchase by both Members as well as non-Members on an annual or monthly¹⁴ basis. The monthly fee is \$750 per Internal Distributor¹⁵ and \$1,250 per External Distributor.¹⁶ Additionally, the Exchange offers historical reports containing both the end-of-day volume and end-of-month trading activity. The fee per month of historical data is \$500. The Short

⁹ "Trade date and time" is the date and time of trading activity in yyyy-mm-dd hh:mm:ss.000000 ET format.

¹⁰ "Trade size" is the number of shares transacted.

¹¹ "Trade price" is the price at which shares were transacted.

¹² "Short type" is a data field that will indicate whether the transaction was a short sale or short sale exempt transaction. A short sale transaction is a transaction in which a seller sells a security which the seller does not own, or the seller has borrowed for its own account (see 17 CFR 242.200). A short sale exempt transaction is a short sale transaction that is exempt from the short sale price test restrictions of Regulation SHO Rule 201 (see 17 CFR 242.201(c)).

¹³ "Exchange" is the market identifier (Z = BZX, Y = BYX, X = EDGX, A = EDGA).

¹⁴ The monthly fees for the Report are assessed on a rolling period based on the original subscription date. For example, if a User subscribes to the Report on October 24, 2023, the monthly fee will cover the period of October 24, 2023, through November 23, 2023. If the User cancels its subscription prior to November 23, 2023, and no refund is issued, the User will continue to receive both the end-of-day and end-of-month components of the Report for the subscription period.

¹⁵ An Internal Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor's own entity. See Cboe EDGX U.S. Equities Exchange Fee Schedule.

¹⁶ An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity. See Cboe EDGX U.S. Equities Exchange Fee Schedule.

Volume Report provided on a historical basis is only for display use redistribution (e.g., the data may be provided on the User's platform). Therefore, Users of the historical data may not charge separately for data included in the Short Volume Report or incorporate such data into their product. The Exchange notes that the Short Volume Report is subject to direct competition from other exchanges, as other exchanges offer similar products for a fee.¹⁷

The Exchange proposes to provide a temporary pricing incentive program in which Members or Non-Members that purchase historical Short Volume Reports will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the Exchange proposes to provide a temporary 20% discount for ad-hoc purchases of historical Short Volume Reports of \$20,000 or more.¹⁸ The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange. The Exchange intends to introduce the discount program beginning July 29, 2025, with the program remaining in effect through September 30, 2025. The Exchange also notes that it has previously adopted the same discount program and proposes to update the Fees Schedule with the new program dates accordingly.¹⁹

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²¹ requirements that the rules of

¹⁷ See the Nasdaq Fee Schedule, Equity 7, Section 152. See also, the TAQ Group Short Sales (Monthly File) and Short Volume product, offered by the New York Stock Exchange LLC ("NYSE") and affiliated equity markets (the "NYSE Group") at NYSE Exchange Proprietary Market Data | TAQ NYSE Group Short Sales.

¹⁸ The discount will apply on an order-by-order basis. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, i.e. receive a 20% discount of \$5,000).

¹⁹ See Securities Exchange Act Release No. 99185 (December 14, 2023), 88 FR 88182 (December 20, 2023) (SR-CboeEDGX-2023-072) and Securities Exchange Act Release No. 100333 (June 14, 2024), 89 FR 52115 (June 21, 2024) (SR-CboeEDGX-2024-034).

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

³ See Rule 1.5(n) ("Member"). The term "Member" shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

⁴ "Trade date" is the date of trading activity in yyyy-mm-dd format.

⁵ "Total volume" is the total number of shares transacted.

⁶ "Short volume" is the total number of shares sold short.

⁷ "Short exempt volume" is the total number of shares sold short classified as exempt.

⁸ "Symbol" refers to the Cboe formatted symbol in which the trading activity occurred. See https://cdn.cboe.com/resources/membership/US_Symbolology_Reference.pdf.

an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,²³ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee changes will further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The Exchange believes the dissemination of historical short volume data via historical Short Volume Reports benefits investors through increased transparency and may promote better informed trading, as well as research and studies of the equities industry. Nevertheless, the Exchange notes that such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer the same type of data content through similar reports.²⁴

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered equities exchanges that trade equities. Based on publicly available information, no single equities exchange has more than 15% of

the equity market share.²⁵ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁶ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supercompetitive fees. In the event that a market participant views one exchange’s data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. equities industry as the Exchange seeks to adopt fees to attract purchasers of historical Short Volume Reports.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases historical Short Volume Reports is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of historical Short Volume Reports. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the historical Short Volume Reports at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage users to purchase historical Short Volume Reports. Further, the proposed discount is intended to promote increased use of the Exchange’s historical Short Volume Reports by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who purchase historical Short Volume Reports. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market

participant is required to purchase the historical Short Volume Reports, and the Exchange is not required to make historical Short Volume Reports available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above, the Exchange has previously adopted similar discount programs.²⁷

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 operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, including the adoption of similar discount to those fees, the Exchange believes that the degree to which fee changes (including discounts and rebates) in this market may impose any burden on competition is extremely limited. As discussed above, the Exchange’s historical Short Volume Reports offering is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of historical Short Volume Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange’s efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of historical Short Volume Reports.

²⁵ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (July 28, 2025), available at https://www.cboe.com/us/equities/market_statistics/.

²⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²⁷ See e.g., Securities Exchange Act Release No. 99185 (December 14, 2023), 88 FR 88182 (December 20, 2023) (SR-CboeEDGX–2023–072) and Securities Exchange Act Release No. 100333 (June 14, 2024), 89 FR 52115 (June 21, 2024) (SR-CboeEDGX–2024–034).

²² *Id.*

²³ 15 U.S.C. 78f(b)(4).

²⁴ See *supra* note 17.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁸ and paragraph (f) of Rule 19b-4²⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2025-062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-CboeEDGX-2025-062. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGX-2025-062 and should be submitted on or before August 28, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2025-14964 Filed 8-6-25; 8:45 am]

BILLING CODE 8011-01-P

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following form has been submitted to the Office of Management and Budget (OMB) for amending the Privacy Act Statement in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Forms 1

Title: Selective Service System Registration Form 1.

Purpose: Used to register males and establish a database for use in identifying manpower to the military services during a national emergency.

Respondents: All 18-year-old males who are United States citizens and those male immigrants residing in the United States at the time of their 18th birthday.

Frequency: Registration with the Selective Service System is a one-time occurrence.

Burden: A burden of two minutes or less on the individual respondent.

Change: Privacy Act Statement.

Copies of the above-identified forms can be obtained upon written request to the Selective Service System, Public & Intergovernmental Affairs Directorate, 1501 Wilson Boulevard, Arlington, Virginia 22209.

Written comments and recommendations for the proposed changes to the Privacy Act Statement should be sent within 60 days of the publication of this notice to: Daniel A. Lauretano, Sr., General Counsel/Federal Register Liaison, Selective Service

System, 1501 Wilson Boulevard, Arlington, Virginia 22209.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Daniel A. Lauretano, Sr.,
General Counsel/Federal Register Liaison.
[FR Doc. 2025-14954 Filed 8-6-25; 8:45 am]

BILLING CODE 8015-01-P

DEPARTMENT OF STATE

[Public Notice: 12794]

Proposal To Extend the Cultural Property Agreement Between the United States and Türkiye

ACTION: Public notice.

SUMMARY: Proposal to extend the *Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Turkey Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of Turkey* ("the Türkiye Agreement").

FOR FURTHER INFORMATION CONTACT: Andrew Zonderman, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 632-9459; culprop@state.gov; include "Türkiye" in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Acting Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension of the Türkiye Agreement is hereby proposed.

A copy of the Türkiye Agreement, the Designated List of categories of material currently restricted from import into the United States, and related information can be found at the Cultural Heritage Center website: <https://www.state.gov/current-agreements-and-import-restrictions/>.

Virginia R. Herrmann,
Alternate Designated Federal Officer, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2025-15021 Filed 8-6-25; 8:45 am]

BILLING CODE 4710-05-P

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f).

³⁰ 17 CFR 200.30-3(a)(12).

DEPARTMENT OF STATE**[Public Notice 12787]****30-Day Notice of Proposed Information Collection: Foreign Diplomatic Services Application**

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: *Submit* comments up to September 8, 2025.

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:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to OFM Executive Director Adriana Spain, who may be reached at 202–695–8255 or at OFM_FrontOffice@state.gov.

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Foreign Diplomatic Services Application.

• *OMB Control Number:* OMB control number 1405–0105.

• *Type of Request:* Extension of a Currently Approved Collection.

• *Originating Office:* Office of Foreign Missions/OFM.

• *Form Numbers:* DS–98, DS–99, DS–100, DS–101, DS–102, DS–104, DS–1504, DS–1972D, DS–1972T, DS–2003, DS–2004, DS–2005, DS–2006, DS–2008, DS–4138, DS–4139, DS–4140, DS–4284, DS–4285, DS–7675.

• *Respondents:* Foreign Mission Personnel.

• *Estimated Number of Respondents:* 121,729.

• *Estimated Number of Responses:* 121,729.

• *Average Time per Response:* 12.5 minutes.

• *Total Estimated Burden Time:* 23,500 hours.

• *Frequency:* annually.

• *Obligation to Respond:* Mandatory and/or Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• 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.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Information collection tools for gathering data from foreign missions, including electronic data collection (e-Gov), have been combined into one request called the “Foreign Diplomatic Services Applications.” These tools help the Office of Foreign Missions and the Office of the Chief of Protocol gather the information they need to manage benefits, privileges, and immunities for foreign missions and eligible applicants. This program allows them to apply for benefits from the U.S. Department of State, as provided by the Foreign Missions Act.

Methodology

Information may be received via email or electronic submission through eGov at <https://egov.ofm.state.gov/>.

Adriana Spain,

Executive Director, Office of Foreign Missions, Department of State.

[FR Doc. 2025–14997 Filed 8–6–25; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE**[Public Notice: 12793]****Proposal To Extend the Cultural Property Agreement Between the United States and Colombia**

ACTION: Notice.

SUMMARY: Proposal to extend the Agreement Between the Government of the United States of America and the Government of the Republic of Colombia Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Materials of the Republic of Colombia (“the Colombia Agreement”).

FOR FURTHER INFORMATION CONTACT:

Idabelle Paterson, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 632–9459; culprop@state.gov; include “Colombia” in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Acting Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension of the Colombia Agreement is hereby proposed. A copy of the Colombia Agreement, the Designated List of categories of material currently restricted from import into the United States, and related information can be found at the Cultural Heritage Center website: <https://www.state.gov/current-agreements-and-import-restrictions/>.

Virginia R. Herrmann,

Alternate Designated Federal Officer, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2025–15020 Filed 8–6–25; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE**[Public Notice: 12784]****Advisory Committee on Historical Diplomatic Documentation—Notice of Meeting Cancellation**

The September 8–9 and December 8–9 meetings of the Advisory Committee on Historical Diplomatic Documentation are cancelled. The Department will make a decision about the March 2026 meeting at a later time.

(Authority: 5 U.S.C. 1001 *et seq.* and 22 U.S.C. 2651a)

John C. Powers,

Acting Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, U.S. Department of State.

Approved:	FSI/OH—John Powers	(JCP).
Drafted:	FSI/OH—Ashley Schofield, 240–353–9443.	
Cleared:	FSI/OH—Kathleen Rasmussen	(ok).
	A/SKS—Timothy Kootz	(ok).
	L/M—Alice Kottmyer	(ok).
	CGFS—Phyllis Jordan	(ok).
	CGFS/GAO—Julianne Shinnick	(ok).
	GPA—Charles Bouldin	(ok).

[FR Doc. 2025–14961 Filed 8–6–25; 8:45 am]

BILLING CODE 4710–34–P

DEPARTMENT OF STATE

[Public Notice: 12792]

Proposal To Extend Emergency Import Restrictions Imposed on Archaeological and Ethnological Material From Afghanistan

ACTION: Public notice.

SUMMARY: Proposal to extend the emergency import restrictions unilaterally imposed by the United States on archaeological and ethnological material from Afghanistan, pursuant to 19 U.S.C. 2603.

FOR FURTHER INFORMATION CONTACT: Anashya Srinivasan, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 632–9459; culprop@state.gov; include “Afghanistan” in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Acting Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension of the emergency import restrictions on archaeological and ethnological material from Afghanistan is hereby proposed.

The emergency import restrictions and the Designated List of categories of material currently restricted from import into the United States can be found at the Cultural Heritage Center website: <https://www.state.gov/current-agreements-and-import-restrictions/>.

Virginia R. Herrmann,

Alternate Designated Federal Officer, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2025–15019 Filed 8–6–25; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12791]

Notice of Receipt of Request from the Government of the Republic of Cameroon Under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

ACTION: Notice.

SUMMARY: Notice of request from Cameroon for cultural property protection.

FOR FURTHER INFORMATION CONTACT: Evan Binkley, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 632–9459; culprop@state.gov; include “Cameroon” in the subject line.

SUPPLEMENTARY INFORMATION: The Government of the Republic of Cameroon submitted a request to the Government of the United States on July 29, 2024, under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Cameroon’s request seeks U.S. import restrictions on archaeological and ethnological materials representing Cameroon’s cultural patrimony. The Cultural Heritage Center website will provide instructions for public comment and additional information on the request, including categories of material that may be included in import restrictions: <https://www.state.gov/cultural-property-advisory-committee-meeting-september-15-17-2025>.

This notice is published pursuant to authority vested in the Acting Assistant Secretary of State for Educational and Cultural Affairs and pursuant to 19 U.S.C. 2602(f)(1).

Virginia R. Herrmann,

Alternate Designated Federal Officer, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2025–15018 Filed 8–6–25; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12790]

Cultural Property Advisory Committee Meeting

ACTION: Notice of meeting.

SUMMARY: The Department of State announces the location, dates, times, and agenda for the next meeting of the Cultural Property Advisory Committee (“the Committee”).

DATES AND TIMES:

The Committee will meet from September 15–17, 2025, from 9:00 a.m. to 5:00 p.m. (EDT).

ADDRESSES: The Committee will meet in person. The public will participate via videoconference.

Participation: The public may participate in, or observe, the virtual open session on September 15, 2025, from 2:00 p.m. to 3:00 p.m. (EDT). More information below.

FOR FURTHER INFORMATION CONTACT:

Andrew Zonderman, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 632–9459; (culprop@state.gov).

SUPPLEMENTARY INFORMATION: The Acting Assistant Secretary for the Bureau of Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee (“the Committee”) in accordance with the Convention on Cultural Property Implementation Act (19 U.S.C. 2601–2613) (“the Act”). A portion of this meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Meeting Agenda: The Committee will review a request from the Government of the Republic of Cameroon seeking a bilateral cultural property agreement with the United States; the proposed extension of the emergency import restrictions unilaterally imposed by the United States on archaeological and ethnological material from Afghanistan, pursuant to 19 U.S.C. 2603; the proposed extension of the agreement with the Government of the Republic of Colombia; and the proposed extension of the agreement with the Government of the Republic of Türkiye. In addition, the Committee will review the

effectiveness of other cultural property agreements and emergency actions currently in force, pursuant to 19 U.S.C. 2605(g).

The Open Session: The public can observe the virtual open session on September 15, 2025 from 2:00 p.m. to 3:00 p.m. (EDT). Registered participants may provide oral comments during this session. The Department provides specific instructions on how to observe or provide oral comments at the open session at <https://www.state.gov/cultural-property-advisory-committee-meeting-september-15-17-2025/>.

Oral Comments: Register to speak at the open session by sending an email with your name and organizational affiliation, as well as any requests for reasonable accommodation, by September 8, 2025. Those who submit written comments in advance of the meeting are not required to make an oral comment during the open session. The Committee will review written comments if received by 11:59 p.m. (EDT) on September 8, 2025. Written comments may be submitted in two ways, depending on whether they contain confidential information:

■ **General Comments:** For general comments, use <https://www.regulations.gov>, enter the docket DOS-2025-0203, and follow the prompts.

■ **Confidential Comments:** For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please email submissions to culprop@state.gov. Include “Cameroon,” “Afghanistan,” “Colombia,” and/or “Türkiye” in the subject line.

■ **Disclaimer:** The Cultural Heritage Center website contains additional information about each agenda item, including categories of archaeological and ethnological material that may be included in import restrictions: <https://www.state.gov/cultural-property-advisory-committee-meeting-september-15-17-2025/>. Comments should relate specifically to the determinations specified in the Act at 19 U.S.C. 2602(a)(1). Written comments submitted via [regulations.gov](https://www.regulations.gov) are not private and are posted at <https://www.regulations.gov>. Because written comments cannot be edited to remove any personally identifying or contact information, we caution against including any such information in an electronic submission without appropriate permission to disclose that information (including trade secrets and commercial or financial information that is privileged or confidential within the meaning of 19 U.S.C. 2605(i)(1)). We request that any party soliciting or

aggregating written comments from other persons inform those persons that the Department will not edit their comments to remove any identifying or contact information and that they therefore should not include any such information in their comments that they do not want publicly disclosed.

Virginia R. Herrmann,

Alternate Designated Federal Officer, Cultural Property Advisory Committee, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2025-15025 Filed 8-6-25; 8:45 am]

BILLING CODE 4710-05-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36489, Docket No. FD 36723, Docket No. FD 36723 (Sub-No. 1)]

Savannah Industrial Transportation, LLC—Operation Exemption—In Effingham County, Ga.; Savannah Industrial Logistics, LLC—Construction Exemption—In Effingham County, Ga.; Savannah Industrial Transportation, LLC—Lease and Operation Exemption—Line of Savannah Industrial Logistics, LLC—In Effingham County, Ga.

In a filing submitted on September 28, 2023, Savannah Industrial Logistics, LLC (SIL), a noncarrier affiliate of Savannah Industrial Transportation, LLC (SIT), seeks an after-the-fact exemption, under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 10901 for the construction of a rail line (the Line) located in an industrial park (the Facility) near Rincon, in Effingham County, Ga. (Pet. 1, Sept. 28, 2023, FD 36723 et al.) The Line, which has no mileposts, extends from a connection with Norfolk Southern Railway Company (NSR) near NSR milepost 16.6 to a connection with CSX Transportation, Inc. (CSXT), near CSXT milepost S484.0, a distance of approximately 11,404 feet. (*Id.* at 4.)

In the same filing, SIT seeks an after-the-fact exemption, under section 10502, from the prior approval requirements of section 10901 to lease and operate the Line pursuant to a lease with SIL. (*See* Pet. 2, Sept. 28, 2023, FD 36723 et al.) SIT and SIL are each holdings of OmniTRAX Holdings Combined, Inc. (OmniTRAX). (*Id.* at 2 n.1.)

By decision served on December 27, 2023, the Board instituted a proceeding under 49 U.S.C. 10502(b) in both dockets. *Savannah Indus. Transp.—Lease & Operation Exemption—Line of Savannah Indus. Logistics in Effingham Cnty., Ga.*, FD 36723 et al., slip op. at

2 (STB served Dec. 27, 2023). No comments opposing either petition have been filed.

The Board’s Office of Environmental Analysis (OEA) issued a Draft Environmental Assessment (Draft EA) in both dockets on April 11, 2025, in which it analyzed the potential environmental impacts of the construction and operation of the Line and requested public comments, as required by the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4370m–11. A Final Environmental Assessment (Final EA), which incorporated the Draft EA by reference and responded to the only comment received on the Draft EA, was issued on May 23, 2025. The Final EA recommended that one environmental condition be imposed to avoid, minimize, or mitigate the potential environmental impacts of the after-the-fact construction and lease and operation of the Line.

After considering both the rail transportation merits and the potential environmental impacts, the Board will grant SIL’s petition for exemption for after-the-fact authority to construct the Line and SIT’s petition for exemption for after-the-fact authority to lease and operate the Line, subject to the environmental mitigation measure recommended in the Final EA.

Background

Before the petitions in Docket Nos. FD 36723 and FD 36723 (Sub-No. 1) were filed, SIT filed a petition for an exemption from the prior approval requirements of section 10901 to operate as a common carrier over the Line, which it leased from SIL. (Pet. 1, May 11, 2021, FD 36489.)¹ SIT stated that SIL completed construction of the Line in 2020 as part of a larger project involving the Facility, which is located approximately 11 miles northwest of the Port of Savannah, Ga., and has access to existing NSR and CSXT rail lines. (*Id.* at 2–3.) The petition stated that the Facility’s dual access to NSR and CSXT “ma[de] the location highly attractive to rail shippers,” and SIL and SIT “expect[ed] to be able to attract numerous railroad service-dependent customers to the Facility.” (*Id.* at 3.)

According to SIT, the Line was constructed without Board authority because, during the planning and construction of the Facility and the Line, SIT and SIL anticipated that SIT would function as a private switching carrier within the Facility. (*Id.* at 3, 5–

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

6.) SIT's petition stated that it believed at that time that acting as a private carrier would offer certain cost and administrative advantages over becoming a common carrier. (*Id.* at 3, 6.) SIT asserted that it had anticipated that NSR and CSXT would be the origin or destination carriers on the waybills for shipments to or from the Facility. (*Id.* at 3.) According to SIT, NSR and CSXT had proposed to pay SIT a per-car private carriage switching allowance for SIT's placement and retrieval of cars within the Facility, which was initially acceptable to SIT. (*Id.* at 3, 6.) SIT represented that after the Line was completed, it discovered that NSR and CSXT intended to transmit payment to SIT for its services only once or twice a year. (*Id.*) SIT stated that being paid, at best, twice a year would not provide it with the cash flow necessary to sustain its operations. (*Id.* at 6.) SIT determined that it would be paid more regularly if it became a common carrier, which prompted it to seek Board authority to operate the Line. (*Id.*)

In a decision served August 1, 2023, the Board found that, based on OmniTRAX's prior statements to OEA and other evidence filed in the case, SIT and its parent company, OmniTRAX, intended to operate the Line as a common carrier rail line, for which Board authority should have been obtained under section 10901 before construction commenced. *See Savannah Indus. Transp., LLC—Operation Exemption—in Effingham Cnty., Ga. (August 2023 Decision)*, FD 36489, slip op. at 4–5 (STB served Aug. 1, 2023). As a result, the Board held SIT's petition for operating authority in abeyance and ordered SIL to file for after-the-fact construction authority and SIT to file for after-the-fact acquisition authority. *Id.* at 7–8. The Board also granted SIT a limited exemption to continue providing service to any shippers located on the Line as of August 1, 2023, during the pendency of the after-the-fact authority proceedings. *Id.* at 6, 7. On August 30, 2023, SIT informed the Board that, as of that date, it was providing rail service to only one shipper on the Line, Quantix SCS, Inc. (Quantix), f/k/a A&R Logistics, Inc. (SIT Suppl. 1, Aug. 30, 2023, FD 36489.)

As noted above, on September 28, 2023, SIL and SIT submitted a joint filing in Docket Nos. FD 36723 and FD 36723 (Sub-No. 1), seeking after-the-fact exemptions permitting SIL to construct, and SIT to lease and operate, the Line.²

² Because SIL would become a rail carrier if its request for after-the-fact authority to construct the Track were granted, OmniTRAX and HGS Railway Holdings, Inc. (together, Omni-HGS), both

On December 27, 2023, the Board instituted a proceeding under section 10502(b) in those dockets and held SIT's petition for lease and operating authority in abeyance during the pendency of SIL's construction proceeding. *See Savannah Indus. Transp.*, FD 36723 et al., slip op. at 2 (STB served Dec. 27, 2023).³

In their requests for after-the-fact construction and lease and operation authority, SIL and SIT state that exemptions under section 10502 from the prior approval requirements of section 10901 would, among other things, ensure the development and continuation of a sound rail transportation system by fostering effective competition among rail carriers and with other modes to meet the needs of the public. (Pet. 8, Sept. 28, 2023, FD 36723 et al.) They state that the requested exemptions would foster continued alternative transportation options for all current and future tenants at the Facility who are, and will be, afforded nearby connections to NSR and CSXT. (*Id.*) SIL and SIT further assert that applications for construction and lease and operation authority under section 10901 are not necessary to carry out the rail transportation policy (RTP), *see* 49 U.S.C. 10101, that the exemptions would promote several provisions of the RTP, and that requiring applications under section 10901 is not necessary to protect shippers from an abuse of market power. (Pet. 8–10, Sept. 28, 2023, FD 36723 et al.)

Discussion

Rail Transportation Policy Analysis. The construction of a new rail line requires prior Board authorization, either through a certificate under section 10901 or, as requested here, an exemption under 49 U.S.C. 10502(a)

noncarriers, filed a verified notice of exemption to continue in control of SIL upon SIL becoming a rail carrier. *See OmniTRAX Holdings Combined, Inc.—Continuance in Control Exemption—Savannah Indus. Logistics, LLC*, FD 36723 (Sub-No. 2). Notice of the exemption was served and published in the **Federal Register** on October 13, 2023 (88 FR 71,071), and the exemption became effective on October 28, 2023. Omni-HGS filed for authority to continue in control of SIT in 2021 when SIT filed for operating authority in Docket No. FD 36489. *See OmniTRAX Holdings Combined, Inc.—Control Exemption—Savannah Indus. Transp., LLC*, FD 36490 (STB served May 27, 2021) (86 FR 28,671).

³ In a decision served on May 28, 2024, the Board denied a petition from SIL and SIT seeking authority for SIT to serve additional shippers during the pending construction and lease and operation proceedings. *See Savannah Indus. Transp.*, FD 36489 et al., slip op. at 3 (STB served May 28, 2024). The Board reiterated that the *August 2023 Decision* allowed SIT to provide rail service only to Quantix—the one shipper that was already located on the line and receiving rail service. *Id.*

from the prior approval requirements of section 10901. “In either case, the [statute] expresses a clear presumption in favor of approving railways.” *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 145 S. Ct. 1497, 1519 (2025) (Sotomayor, J., concurring); *see also N. Plains Res. Council v. STB*, 668 F.3d 1067, 1091–92 (9th Cir. 2011) (agreeing that there is a statutory “presumption for construction”); *Mid States Coal. for Progress v. STB*, 345 F.3d 520, 552 (8th Cir. 2003) (same). Under 49 U.S.C. 10901(c), the Board must grant a rail construction proposal unless it finds the proposal is “inconsistent with the public convenience and necessity.” *See Alaska R.R.—Constr. & Operation Exemption—A Rail Line Extension to Port MacKenzie, Alaska*, FD 35095, slip op. at 5 (STB served Nov. 21, 2011) (describing the Board's construction exemption process), *aff'd sub nom. Alaska Survival v. STB*, 705 F.3d 1073 (9th Cir. 2013). In addition, the lease and operation of a rail line by a Class III rail carrier requires prior approval from the Board under 49 U.S.C. 10902 or, as requested here, an exemption under section 10502(a) from the prior approval requirements of section 10902.⁴

Under section 10502(a), the Board shall, to the maximum extent permissible, exempt a proposal to construct a new rail line from the prior approval requirements of section 10901 when the Board finds that: (1) those procedures are not necessary to carry out the RTP; and (2) either (a) the proposal is of limited scope, or (b) the full application procedures are not necessary to protect shippers from an abuse of market power. The same exemption standard applies to a proposal to lease and operate a rail line filed by a Class II or Class III rail carrier that would otherwise require approval under section 10902.

Based on the record, the proposed after-the-fact construction, lease, and operation—which are unopposed—qualify for exemptions under section 10502 from the formal application procedures of section 10901 and 10902. Detailed scrutiny of the proposed transactions through applications for review under sections 10901 and 10902 is not necessary here to carry out the RTP. The record shows that the Line

⁴ Although SIT filed its petition for lease and operation authority under 49 U.S.C. 10901, SIT has been operating as a Class III rail carrier pursuant to the limited exemption granted to it by the Board in *August 2023 Decision*, FD 36489, slip op. at 6, 7. SIT's petition is therefore more appropriately considered under section 10902, which applies to lease and operation transactions, among other transaction types, filed by Class II and Class III rail carriers.

would provide a rail transportation option to current and future tenants at the Facility. By providing the Facility's shippers with a freight rail option that does not currently exist (except for the limited exemption previously granted to serve Quantix during the pendency of these proceedings), the Line would foster the development and continuation of a sound rail transportation system with effective competition and coordination between rail carriers and other transportation modes and meet the needs of the public (49 U.S.C. 10101(4), (5)). Also, by supporting truck-to-rail diversions, the rail transportation on the Line would increase energy efficiency across modes, thereby encouraging and promoting energy conservation (49 U.S.C. 10101(14)). In addition, exempting the proposed transactions would promote the RTP by minimizing the need for federal regulatory control over the rail transportation system, reducing regulatory barriers to entry, and providing for the expeditious handling and resolution of regulatory proceedings (49 U.S.C. 10101(2), (7), (15)). Other aspects of the RTP will not be adversely affected. No issues about the Line's current or future financial viability have been raised.

Moreover, consideration of the proposed construction of the Line under section 10901 and the proposed lease and operation of the Line under section 10902 is not necessary to protect shippers from an abuse of market power.⁵ As explained, the Line would enhance competition, thereby creating an alternative mode of transportation for current and future shippers at the Facility.⁶

Environmental Analysis. NEPA requires federal agencies to examine the environmental impacts of proposed federal actions and to inform the public concerning those effects. *See Balt. Gas & Elec. Co. v. Nat. Res. Def. Council*, 462 U.S. 87, 97 (1983). Under NEPA and related environmental laws, the Board must consider significant potential beneficial and adverse environmental impacts in deciding whether to authorize the construction of a new rail line as proposed, deny the proposal, or grant it with conditions (including environmental mitigation conditions). *Lone Star R.R.—Track Constr. &*

Operation Exemption—in Howard Cnty., Tex., FD 35874, slip op, at 4 (STB served Mar. 3, 2016). The Board has “substantial discretion” in assessing the facts relevant to its environmental review and the relevant impacts. *Seven Cnty.*, 145 S. Ct. at 1512. It also has “broad latitude” to “draw a ‘manageable line’” regarding the scope if its inquiry. *Id.* at 1513 (citing *DOT v. Public Citizen*, 541 U.S. 752, 767 (2004)). NEPA does not require that the Board evaluate potential environmental effects arising from “future or geographically separate projects,” “particularly” those over which the Board does not “exercise regulatory authority.” *Seven Cnty.*, 145 S. Ct. at 1515–17; *see also id.* at 1515 (“Importantly the textually mandated focus of NEPA is the ‘proposed action’—that is, the project at hand, not other future or geographically separate projects that may be built (or expanded) as a result of or in the wake of the immediate project under consideration.”) (citing 42 U.S.C. 4332(2)(C)).

Moreover, while NEPA prescribes a process that must be followed, it does not mandate a particular result. *See Seven Cnty.*, 145 S. Ct. at 1510 (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). Nor does NEPA otherwise impose any “substantive constraints on the agency’s ultimate decision to build, fund, or approve a proposed project.” *Seven Cnty.*, 145 S. Ct. at 1511; *see also Robertson*, 490 U.S. at 350–51. Rather, in making such decisions the Board may “weigh environmental consequences as [it] reasonably sees fit under its governing statute and any relevant substantive environmental laws,” and may conclude that “other values outweigh the environmental costs.” *See Seven Cnty.*, 145 S. Ct. at 1507, 1510 (citing *Robertson*, 490 U.S. at 350).

OEA has conducted a thorough environmental and historic review in this case. The Draft EA considered both the proposed action (after-the-fact construction and lease and operation as a common carrier)⁷ and the no-action alternative (in which operations would cease). (Draft EA S–2–S–3.) OEA analyzed both the potential environmental impacts that could have resulted from construction of the Line, where possible, and the environmental potential impacts that could result from the continued operation of the Line. (Draft EA S–3.) In the Draft EA, OEA concluded that the proposed action would have no or de minimis impacts

in most environmental resource areas, including air quality, energy, transportation, land use, noise, hazardous materials, and cultural resources, (*id.* at S3 to S4), and that it would have had minor impacts on biological resources from construction of the Line and would have de minimis impacts from continued operations, (*id.* at 43). OEA also concluded that the proposed action would have minimal impacts on water and recommended one mitigation measure, requiring SIT to inspect all project-related culverts semi-annually (or more frequently, as seasonal flows dictate) for debris accumulation and remove and properly dispose of debris, to further minimize or avoid impacts to water from continued rail operations. (*Id.* at 51, 63.) In addition, OEA explained in the Draft EA that an Environmental Impact Statement (EIS) is unnecessary and that an EA is the appropriate level of environmental documentation for these proceedings. (*Id.* at 4–5.)

OEA received one comment on the Draft EA from the U.S. Fish and Wildlife Service (USFWS), indicating that it had no concerns with the statements or Endangered Species Act (ESA) determinations in the Draft EA. (*See* Final EA 2.) USFWS reaffirmed its earlier comment in response to OEA’s preliminary consultation that the project is not anticipated to impact species listed under the ESA. (*Id.*) The Final EA, issued on May 23, 2025, summarized USFWS’s new comment and determined that the comment did not require any changes to the analysis in the Draft EA or the recommended mitigation. (*Id.* at 2, 5.)

The Board will adopt the analysis and conclusions made by OEA in both the Draft EA and Final EA, including OEA’s final recommended environmental mitigation measure set forth in the Appendix to this decision. The Board is satisfied that OEA has taken the requisite hard look at the potential environmental impacts associated with the after-the-fact construction and lease and operation of the Line and properly determined that, with the final recommended environmental mitigation, the proposed action will not result in potentially significant environmental impacts, and that preparation of an EIS is unnecessary.

Employee Protection. Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 10901(c) states that when authorizing a transaction governed by section 10901 the Board may require compliance with conditions

⁵ Given this finding regarding the lack of need for shipper protection, the Board need not determine whether the transaction is limited in scope. 49 U.S.C. 10502(a)(2).

⁶ In light of the lease and operation exemption in Docket No. FD 36723 (Sub-No. 1), the Board finds SIT’s previously filed petition for operating authority in Docket No. FD 36489 to be moot, and that proceeding will be discontinued.

⁷ As explained above and in the Draft EA, the proposed action would not involve any new rail construction, as the Line was constructed in 2020.

“other than labor protective conditions” that are necessary in the public interest. Further, 49 U.S.C. 10902(d) precludes the Board from imposing labor protection for Class III carriers (such as SIT) receiving authority under 49 U.S.C. 10902. Accordingly, the Board may not impose labor protective conditions here.

Conclusion

The after-the-fact construction and lease and operation of the Line will give shippers an additional freight rail option, which will support competition to meet the needs of the public, and there will be no potential for significant environmental effects. After carefully considering the transportation merits and OEA’s environmental analysis and recommendations, the Board, considering the entire record, finds that the petitions for after-the-fact exemptions for SIL’s construction of the Line and SIT’s lease and operation of the Line should be granted, subject to compliance with the environmental mitigation measure recommended in the Final EA and set forth in the Appendix to this decision.

This action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts SIL’s construction of the Line from the prior approval requirements of 49 U.S.C. 10901.

2. Under 49 U.S.C. 10502, the Board exempts SIT’s lease and operation of the Line from the prior approval requirements of 49 U.S.C. 10902.

3. Docket No. FD 36489 is discontinued.

4. The Board adopts the environmental mitigation measure set forth in the Appendix to this decision and imposes it as a condition to the exemptions granted here.

5. Notice will be published in the **Federal Register**.

6. Petitions for reconsideration must be filed by August 27, 2025.

7. This decision is effective September 6, 2025.

Decided: August 4, 2025.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz. Board Member Primus concurred with a separate expression.

Board Member Primus, concurring:

I support today’s decision, which will finally allow customers, in addition to Quantix, to benefit from SIT’s common carrier service within the Facility, over five years after the Line was constructed. This long delay was the result of SIL and its parent, OmniTRAX’s, ill-fated decision to

construct the Line ostensibly as private track, despite earlier representations to OEA that the Line would be jurisdictional common carrier track. Moreover, once the Board ordered SIL and SIT to seek after-the-fact authority for the construction and acquisition of the Line, the proceedings were further delayed because SIL and SIT took six months to select a third-party contractor to assist OEA in conducting the environmental review.

OmniTRAX, a sophisticated entity with considerable experience in the rail industry, should have known that Board authority was necessary prior to commencing construction of this Line. The resulting delay has been detrimental not only to the parties involved in these proceedings, but also to potential customers interested in locating within the Facility to take advantage of the connections to the larger NSR and CSXT networks. I sincerely hope that the experience of this case will dissuade any future attempts to evade the Board’s licensing processes and the accompanying environmental review.

Appendix

Water Resources

WAT-MM-1. During rail operations, SIT shall ensure that all culverts and bridges along the previously constructed rail line are clear of debris to avoid flow blockages, flow alteration, and increased flooding. SIT shall inspect all culverts and bridges semi-annually (or more frequently, as seasonal flows dictate) for debris accumulation and shall remove and properly dispose of debris promptly.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2025-15012 Filed 8-6-25; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Project in State

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of limitation on claims for judicial review.

SUMMARY: The FHWA, on behalf of the State of California Department of Transportation (Caltrans), is issuing this notice to announce actions taken by Caltrans and other Federal agencies that are final agency actions. These actions relate to the proposed project (05-1S590). The project will install All-Way-

Stop-Control at the U.S. Route 101 southbound ramp intersection at the Main Street Overcrossing in the community of Chualar. The project will also remove 11 existing at-grade median openings along U.S. Route 101, north of Chualar, and replace them with permanent concrete median barrier and three beam median barrier, where flooding concerns exist.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency actions on the listed highway project will be barred unless the claim is filed on or before January 5, 2026. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

ADDRESSES: The Type 2 Categorical Exclusion and additional project documents can be viewed by contacting Caltrans District 5 Office of Environmental Management, 50 Higuera Street, San Luis Obispo, CA 93401, during normal business hours are 8 a.m. to 5 p.m. (Eastern Standard Time), Monday through Friday, except State holidays.

FOR FURTHER INFORMATION CONTACT: Matt Fowler, Senior Environmental Planner; 805-779-0793; email: matt.c.fowler@dot.ca.gov.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, and as subsequently renewed on May 27, 2022, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, or approvals for the proposed improvement highway project. The actions by Caltrans and other Federal agencies on the project, and the laws under which such actions were taken are described in the Type 2 Categorical Exclusion approved on June 12, 2025, and in other project records for the listed project. The Type 2 Categorical Exclusion and other documents for the listed project are available by contacting Caltrans at the address provided above.

The project subject to this notice is:

Project Location: The project limits include U.S. Route 101 between the unincorporated community of Chualar (post mile 76.8) and the city of Salinas (post mile 84.7) in the State of California.

Project Actions: This notice applies to the Type 2 Categorical Exclusion and all

other Federal agency licenses, permits, or approvals for the listed project as of the issuance date of this notice including but not limited to the Section 4(f) Resource Programmatic Approval and all laws under which such actions were taken, including but not limited to:

1. *General*: National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128]; 23 CFR part 771.

2. *Air*: Clean Air Act (CAA) [42 U.S.C. 7401–7671(q)], with the exception of project level conformity determinations [42 U.S.C. 7506].

3. *Noise*: Noise Control Act of 1972 [42 U.S.C. 4901–4918]; 23 CFR part 772.

4. *Land*: Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; 23 CFR part 774; Land and Water Conservation Fund (LWCF) [54 U.S.C. 200302–200310].

5. *Wildlife*: Endangered Species Act (ESA) [16 U.S.C. 1531–1544 and 1536]; Marine Mammal Protection Act [16 U.S.C. 1361–1423h], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(f)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801–1891d], with Essential Fish Habitat requirements [16 U.S.C. 1855(b)(2)].

6. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 3006101 *et seq.*]; Archaeological Resources Protection Act of 1979 (ARPA) [16 U.S.C. 470(aa)–470(II)]; Preservation of Historical and Archaeological Data [54 U.S.C. 312501–312508]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013; 18 U.S.C. 1170].

7. *Social and Economic*: Civil Rights Act of 1964 [42 U.S.C. 2000 d–2000d–1]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

8. *Wetlands and Water Resources*: Clean Water Act (Section 319, Section 401, Section 404) [33 U.S.C. 1251–1387]; Coastal Barriers Resources Act (CBRA) [16 U.S.C. 3501–3510]; Coastal Zone Management Act (CZMA) [16 U.S.C. 1451–1466]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation, [23 U.S.C. 119(g) and

133(b)(3)]; Flood Disaster Protection Act [42 U.S.C. 4001–4130].

9. *Hazardous Materials*:

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

10. *Executive Orders*: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139(l)(1)).

Antonio Johnson,

Director of Planning, Environmental and Right of Way Federal Highway Administration, California Division.

[FR Doc. 2025–14973 Filed 8–6–25; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Project in State

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of limitation on claims for judicial review.

SUMMARY: The FHWA, on behalf of the State Department of Transportation (California DOT), is issuing this notice to announce actions taken by California DOT and other Federal agencies that are final agency actions. These actions relate to the proposed project to rehabilitate the Caldecott Tunnel Bores 1, 2 and 3. The project will preserve the structural integrity of the tunnel, improve ventilation performance and fire-fighting operational response, and extend its service life.

DATES: By this notice, the FHWA, on behalf of California DOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency actions on the listed highway project will be barred unless the claim is filed on or before January 5, 2026. If the

Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

ADDRESSES: The Environmental Assessment Finding of No Significant Impact (EA FONSI) and additional project documents can be viewed and downloaded from the project website at: <https://dot.ca.gov/caltrans-near-me/district-4/d4-projects/d4-caldecott-tunnel-upgrade> or by contacting California DOT Office of Environmental Analysis, see contact information below, during normal business hours 8 a.m. to 5 p.m. (Eastern Standard Time), Monday through Friday, except State holidays.

FOR FURTHER INFORMATION CONTACT:

Brycelyn Hendrix, Environmental Scientist, 510–435–4190, brycelyn.hendrix@dot.ca.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that California DOT and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, or approvals for the proposed improvement highway project. The actions by California DOT and other Federal agencies on the project, and the laws under which such actions were taken are described in the EA FONSI approved on June 26th, 2025 and in other project records for the listed project. The EA FONSI and other documents for the listed project are available by contacting California DOT at the address provided above.

The project subject to this notice is:

Project Location: The project limits include State Route 24 between postmiles R5.80/R6.24 and R0.00/R0.60 in the cities of Oakland and Orinda in Contra Costa and Alameda Counties, State of California.

Project Actions: This notice applies to the EA FONSI and all other Federal agency licenses, permits, or approvals for the listed project as of the issuance date of this notice including but not limited to the Section 4(f) Resource Individual Approval and all laws under which such actions were taken, including but not limited to:

1. *General*: National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128]; 23 CFR part 771.

2. *Air*: Clean Air Act (CAA) [42 U.S.C. 7401–7671(q)], with the exception of project level conformity determinations [42 U.S.C. 7506].

3. *Noise*: Noise Control Act of 1972 [42 U.S.C. 4901–4918]; 23 CFR part 772.

4. *Land*: Section 4(f) of the Department of Transportation Act of

1966 [23 U.S.C. 138 and 49 U.S.C. 303]; 23 CFR part 774; Land and Water Conservation Fund (LWCF) [54 U.S.C. 200302–200310].

5. *Wildlife*: Endangered Species Act (ESA) [16 U.S.C. 1531–1544 and 1536]; Marine Mammal Protection Act [16 U.S.C. 1361–1423h], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(f)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801–1891d], with Essential Fish Habitat requirements [16 U.S.C. 1855(b)(2)].

6. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 3006101 *et seq.*]; Archaeological Resources Protection Act of 1979 (ARPA) [16 U.S.C. 470(aa)–470(II)]; Preservation of Historical and Archaeological Data [54 U.S.C. 312501–312508]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013; 18 U.S.C. 1170].

7. *Social and Economic*: Civil Rights Act of 1964 [42 U.S.C. 2000 d–2000d–1]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

8. *Wetlands and Water Resources*: Clean Water Act (Section 319, Section 401, Section 404) [33 U.S.C. 1251–1387]; Coastal Barriers Resources Act (CBRA) [16 U.S.C. 3501–3510]; Coastal Zone Management Act (CZMA) [16 U.S.C. 1451–1466]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation, [23 U.S.C. 119(g) and 133(b)(3)]; Flood Disaster Protection Act [42 U.S.C. 4001–4130].

9. *Hazardous Materials*: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

10. *Executive Orders*: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139(l)(1)).

Antonio Johnson,

Director of Planning, Environmental and Right of Way Federal Highway Administration, California Division.

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BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA on behalf of the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, on United States Highway 101 (US 101) at the existing Old Bayshore Highway and Brokaw Road ramps, on Zanker Road and Bering Drive to the north of US 101, and on North Fourth Street and Skyport Drive to the south of US 101 in San Jose, State of California, in the County of Santa Clara. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C.139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 5, 2026. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:

Caltrans: Brian Gassner, Environmental Branch Chief, 111 Grand Avenue, Oakland, CA 94612, M–F (8 a.m.–4 p.m.), 510–506–0372, brian.gassner@dot.ca.gov.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given

that Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: US 101/Zanker Road/Skyport Drive/Fourth Street Improvement Project, primarily consisting of (1) constructing an overcrossing above US 101 that would connect Zanker Road on the north with North Fourth Street and Skyport Drive on the south; (2) replacing the existing nonstandard ramps on northbound US 101 at Old Bayshore Highway and Brokaw Road with new ramps at Bering Drive that meet higher design standards; and (3) incorporating bicycle and pedestrian facilities into the project's design. The actions by the FHWA, and the laws under which such actions were taken, are described in the Environmental Assessment with Finding of No Significant Impact (EA/FONSI). The EA/FONSI and other project records are available by contacting Caltrans at the address provided above. The EA/FONSI can be viewed and downloaded from the project website at www.vta.org/101zanker. The EA/FONSI can also be viewed at the Joyce Ellington Branch of the San Jose Public Library, 491 E. Empire Street, San Jose, CA 95112 in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*
2. Clean Air Act Amendments of 1990 (CAAA)
3. Clean Water Act of 1977 and 1987
4. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA)
5. Noise Control Act of 1972
6. Endangered Species Act of 1973
7. Executive Order 13112, Invasive Species (February 3, 1999)
8. Migratory Bird Treaty Act of 1918, as amended
9. Executive Order 11988, Floodplain Management (May 24, 1977)
10. Title VI of the Civil Rights Act of 1964, as amended
11. Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended
12. National Historic Preservation Act of 1966, as amended (Section 106)

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372

regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Antonio Johnson,

Director of Planning, Environmental and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2025-14975 Filed 8-6-25; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Project in California

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of limitation on claims for judicial review.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (CADOT), is issuing this notice to announce actions taken by CADOT, as a cooperating agency, that are final agency actions. These actions relate to CADOT's right of way (ROW) involved in the proposed light rail transit (LRT) line that will extend through southeast Los Angeles County. The project will encroach onto CADOT ROW at four freeways: Interstate (I) 605, State Route (SR) 91, I-710 via an at-grade configuration, and I-105 via an aerial configuration.

DATES: By this notice, the FHWA, on behalf of CADOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency actions on the listed highway project will be barred unless the claim is filed on or before January 5, 2026. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

ADDRESSES: The Record of Decision (ROD) issued by CADOT as a cooperating agency is solely for the project's encroachment into CADOT ROW, and additional project documents can be viewed and downloaded from the project website at: https://urldefense.com/v3/_https://www.drop

[box.com/scl/fo/ybljy9b9ws8p2ftyclmd/ADc9b38TcD4Yn1SOR30wv5w/Reports*20and*20Info?rlkey=son9cvk90twv5dvcyr05i4van&Good evening, The House Calendar for Monday, July 21, 2025, has been processed. Thank you, e=1&subfolder=nav_tracking=1&st=t4tatrrg&dl=0_ ;JSU!!LWi6xHDyrA!7yoeQts-zx-4IOiFkgIBopFMD7NeZMSYfmQOJ9CTI6ULHl0EUyv8zo8BKxdRQz6zG18_wCK35YZF-Y\\$.](https://box.com/scl/fo/ybljy9b9ws8p2ftyclmd/ADc9b38TcD4Yn1SOR30wv5w/Reports*20and*20Info?rlkey=son9cvk90twv5dvcyr05i4van&Good%20evening%2C%20The%20House%20Calendar%20for%20Monday%2C%20July%2021%2C%202025%2C%20has%20been%20processed%20Thank%20you%2C%20e=1&subfolder=nav_tracking=1&st=t4tatrrg&dl=0_)

FOR FURTHER INFORMATION CONTACT:

Thoa Le, Senior Environmental Scientist, telephone: (213) 269-0238, email: thoa.le@dot.ca.gov during normal business hours from 9 a.m. to 5 p.m.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and the CADOT assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that CADOT has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, or approvals for the proposed LRT project. The actions by CADOT and the laws under which such actions were taken reference potential impacts and determinations as described in the adopted Final Environmental Impact Statement (FEIS) for the project, which was approved by FTA on March 28, 2024; the ROD issued by Caltrans on June 17, 2025; and in other project records for the listed project. The CADOT ROD and other documents for the listed project are available by contacting CADOT at the address provided above.

The project subject to this notice is:

Project Location: The project limits include encroachment onto CADOT ROW at four freeways: I-605, SR-91, I-710 via an at-grade configuration, and I-105 via at an aerial configuration. These crossings are located in the Cities of Cerritos, Bellflower, South Gate, and Paramount.

Project Actions: This notice applies to the CADOT ROD and all agency licenses, permits, or approvals for the listed project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128]; 23 CFR part 771.

2. *Air:* Clean Air Act (CAA) [42 U.S.C. 7401-7671(q)], with the exception of project level conformity determinations [42 U.S.C. 7506].

3. *Noise:* Noise Control Act of 1972 [42 U.S.C. 4901-4918]; 23 CFR part 772.

4. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; 23 CFR part 774; Land and Water Conservation Fund (LWCF) [54 U.S.C. 200302-200310].

5. *Wildlife:* Endangered Species Act (ESA) [16 U.S.C. 1531-1544 and 1536]; Marine Mammal Protection Act [16 U.S.C. 1361-1423h], Anadromous Fish Conservation Act [16 U.S.C. 757(a)-757(f)]; Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703-712]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801-1891d], with Essential Fish Habitat requirements [16 U.S.C. 1855(b)(2)].

6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 3006101 *et seq.*]; Archaeological Resources Protection Act of 1979 (ARPA) [16 U.S.C. 470(aa)-470(II)]; Preservation of Historical and Archaeological Data [54 U.S.C. 312501-312508]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013; 18 U.S.C. 1170].

7. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000d-2000d-1]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209].

8. *Wetlands and Water Resources:* Clean Water Act (Section 319, Section 401, Section 404) [33 U.S.C. 1251-1387]; Coastal Barriers Resources Act (CBRA) [16 U.S.C. 3501-3510]; Coastal Zone Management Act (CZMA) [16 U.S.C. 1451-1466]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f-300j-26]; Rivers and Harbors Act of 1899 [33 U.S.C. 401-406]; Wild and Scenic Rivers Act [16 U.S.C. 1271-1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation, [23 U.S.C. 119(g) and 133(b)(3)]; Flood Disaster Protection Act [42 U.S.C. 4001-4130].

9. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

10. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 11593

Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139(l)(1)).

Antonio Johnson,
Director of Planning, Environmental and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2025–14974 Filed 8–6–25; 8:45 am]

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Part II

Office of Management and Budget

Office of Federal Procurement Policy

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Chapter 1

[Docket No. FAR–2025–0051, Sequence No. 2]

**Federal Acquisition Regulation;
Federal Acquisition Circular 2025–05;
Introduction**

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management

and Budget; Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by OFPP, DoD, GSA, and NASA (collectively referred to as the Federal Acquisition Regulatory Council) in this Federal Acquisition Circular (FAC) 2025–05. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents, which follow.

ADDRESSES: The FAC, including the SECG, is available at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For clarification in relation to the FAR cases listed in the table below, contact FARPolicy@gsa.gov or call 202–969–4075. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov.

RULES LISTED IN FAC 2025–05

Item	Subject	FAR case
I	Clarification of System for Award Management Preaward Registration Requirements	2023–018
II	Technical Amendments.	

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2025–05 amends the FAR as follows:

Item I—Clarification of System for Award Management Preaward Registration Requirements (FAR Case 2023–018)

This final rule adopts, without change, an interim rule that amended the FAR to change System for Award Management preaward registration requirements. Offerors are required to be registered at the time of proposal submission and at time of award, rather than continuously in between. This change is expected to have a positive impact on small businesses who have a minor lapse in registration.

Item II—Technical Amendments

Administrative changes are made at FAR 32.907, 43.101, and 52.247–60.

William F. Clark,
Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2025–05 is issued under the authority of the Administrator for Federal Procurement Policy, the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other

directive material contained in FAC 2025–05 are effective August 7, 2025.

Mathew Blum,
Acting Administrator for Federal Procurement Policy Office of Management and Budget.

John M. Tenaglia,
Principal Director, Defense Pricing, Contracting, and Acquisition Policy, Department of Defense.

Jeffrey A. Koses,
Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Karla Smith Jackson,
Assistant Administrator for Procurement, Senior Procurement Executive/Deputy CAO, National Aeronautics and Space Administration.

[FR Doc. 2025–14976 Filed 8–6–25; 8:45 am]

BILLING CODE 6820–EP–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Part 52

[FAC 2025–05, FAR Case 2023–018; Item I; Docket No. FAR–2023–0018; Sequence No. 1]

RIN 9000–AO66

**Federal Acquisition Regulation:
Clarification of System for Award
Management Preaward Registration
Requirements**

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget; Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: OFPP, DoD, GSA, and NASA (collectively referred to as the Federal Acquisition Regulatory Council, or FAR Council) have adopted as final, without changes, an interim rule that amended the Federal Acquisition Regulation (FAR) to clarify System for Award Management preaward registration requirements.

DATES: Effective August 7, 2025.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact FARpolicy@gsa.gov or call 202–969–4075. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2025–05, FAR Case 2023–018.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule at 89 FR 89472 on November 12, 2024, to revise the solicitation provision at FAR 52.204–7, System for Award Management, to clarify System for Award Management (SAM) preaward registration requirements in paragraph (b)(1) of the provision. The interim rule clarified that the offeror must be registered at time of offer submission and at time of contract award but would not be required to be registered in between those two points in time. For further details please see the interim rule. Five respondents submitted comments on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows; however, no changes were made to the rule because of those comments.

A. Summary of significant changes: There are no significant changes from the interim rule.

B. Analysis of public comments:

Comment: A respondent expressed a preference for contractor registration to only be at the time of award, versus at offer submission and award. The respondent noted concern for small businesses and new entrants who may not be aware of the registration requirement until responding to a specific solicitation and having comparatively limited time to become registered.

Response: The Councils appreciate and share the respondent's interest in supporting accessibility to the Federal contracting marketplace. This rule does not impose a new requirement and does not introduce any impediment for business. It clarifies that offerors are not required to be registered continuously between offer submission and contract award. It decreases burden from current interpretations of the preaward requirement. A previous final rule

published in the **Federal Register** at 83 FR 48691 on September 26, 2018, addressed the requirement for registration at the time of offer submission.

Comment: A respondent expressed opposition to the rule, stating that if an entity chooses to engage in business with the Government, it is incumbent upon them to maintain their registration. The respondent caveated that sentiment with an exception for lapses due to Government fault.

Response: The Councils appreciate the respondent's perspective and concur with the general sentiment that it is an entity's responsibility to manage registration validity. The interim rule published in the **Federal Register** at 89 FR 89472 on November 12, 2024, references the continuous, active registration as being the anticipated normal state expected of offerors and contractors conducting business with the Federal Government. However, the Councils found several challenges with the interpretation of an uninterrupted, continuous registration during the entirety of the preaward period with failure to do so rendering an offeror ineligible for award. Those challenges were discussed in the interim rule published at 89 FR 89472 on November 12, 2024.

Comment: A couple of respondents provided comments with no clear relationship to the rule.

Response: These comments are outside the scope of this FAR rule.

Comment: A respondent included an excerpt of text from the interim rule published in the **Federal Register** at 89 FR 89472 on November 12, 2024, but did not include a recommendation or question.

Response: No response necessary.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rule amends the provision at FAR 52.204–7, System for Award Management. However, this rule does not impose any new requirements on contracts at or below the SAT, for commercial products (including COTS items), or for commercial services. The provision continues to apply to acquisitions at or below the SAT, acquisitions for commercial products (including COTS items), and commercial services.

IV. Expected Impact of the Rule

This rule is expected to benefit both the Government and industry by

clarifying preaward registration requirements. The clarification is expected to mitigate the risk of litigation and mission delays.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Executive Order 14192

This rule is neither a regulatory nor a deregulatory action for purposes of E.O. 14192, Unleashing Prosperity Through Deregulation. This final rule finalizes the interim rule without change and, therefore, neither increases nor decreases the cost of the interim rule.

VII. Congressional Review Act

Pursuant to the Congressional Review Act, the FAR Council will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2).

VIII. Regulatory Flexibility Act

The FAR Council has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612.

1. Statement of the need for, and the objectives of, the rule.

The Office of Federal Procurement Policy (OFPP), the Department of Defense (DoD), the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) (collectively referred to as the Federal Acquisition Regulatory Council, or FAR Council) are amending the Federal Acquisition Regulation (FAR) to clarify System for Award Management (SAM) preaward registration requirements. The interim rule changed the provision at FAR 52.204–7, System for Award Management, to clarify that an offeror must be registered at time of offer submission and at time of contract award but would not be required to be registered in between those two points in time. The current language has led to interpretations that have disrupted Government procurements and resulted in

lost business opportunities for some companies, including small businesses.

2. Statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made to the rules as a result of such comments.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis provided in the interim rule.

3. Description of and an estimate of the number of small entities to which the rule will apply.

This final rule impacts all entities that do business with the Federal Government, including the approximately 400,000 small business registrants in the System for Award Management.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule.

The final rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

5. Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes.

There are no known significant alternative approaches to the final rule, and no further steps available to minimize impact on small entities—there is no significant economic impact on them.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

IX. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) applies to the information collection described in this rule; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under Office of Management Budget Control Number 9000–0189, Certain Federal Acquisition Regulation Part 4 Requirements.

List of Subjects in 48 CFR Part 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Interim Rule Adopted as Final Without Change

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ Accordingly, the interim rule amending 48 CFR part 52, which published in the **Federal Register** at 89

FR 89472 on November 12, 2024, is adopted as a final rule without change.

[FR Doc. 2025–14990 Filed 8–6–25; 8:45 am]

BILLING CODE 6820–EP–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32, 43, and 52

[FAC 2025–05; Item II; Docket No. FAR–2025–0052; Sequence No. 2]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget; Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends the Federal Acquisition Regulation (FAR) to make needed editorial changes.

DATES: Effective August 7, 2025.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact FAR Policy at 202–969–4075 or by email at FARPolicy@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2025–05, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes editorial changes to 48 CFR parts 32, 43, and 52.

List of Subjects in 48 CFR Parts 32, 43, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, OFPP, DoD, GSA, and NASA amend 48 CFR parts 32, 43, and 52 as set forth below:

PART 32—CONTRACT FINANCING

■ 1. The authority citation for 48 CFR part 32 is revised to read as follows:

Authority: 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C.

chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

32.907 [Amended]

■ 2. Amend section 32.907 in paragraph (e) by removing the last sentence.

PART 43—CONTRACT MODIFICATIONS

■ 3. The authority citation for 48 CFR part 43 is revised to read as follows:

Authority: 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

■ 4. Revise section 43.101 to read as follows:

43.101 Definitions.

As used in this part—

Administrative change means a unilateral (see 43.103(b)) contract change, in writing, that does not affect the substantive rights of the parties (*e.g.*, a change in the paying office or the appropriation data).

Effective date means—

(1) For a solicitation amendment, change order, or administrative change, the effective date shall be the issue date of the amendment, change order, or administrative change.

(2) For a supplemental agreement, the effective date shall be the date agreed upon by the contracting parties.

(3) For a modification issued as a confirming notice of termination for the convenience of the Government, the effective date of the confirming notice shall be the same as the effective date of the initial notice.

(4) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date shall be the same as the effective date of the termination for default.

(5) For a modification confirming the termination contracting officer's previous letter determination of the amount due in settlement of a contract termination for convenience, the effective date shall be the same as the effective date of the previous letter determination.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

■ 6. Amend section 52.247–60 by—

■ a. Revising the date of the clause and paragraphs (a)(1)(x) and (xi); and

■ b. Removing the sentence following paragraph (b).

The revisions read as follows:

52.247–60 Guaranteed Shipping Characteristics.

* * * * *

GUARANTEED SHIPPING CHARACTERISTICS (AUG 2025)

(a) * * *

(1) * * *

(x) Number of containers or pallets/skids per railcar _____*

(A) Size of railcar _____

(B) Type of railcar _____

(xi) Number of containers or pallets/skids per trailer _____*

(A) Size of trailer _____ Ft

(B) Type of trailer _____

* Number of complete units (line item) to be shipped in carrier's equipment.

* * * * *

[FR Doc. 2025–14991 Filed 8–6–25; 8:45 am]

BILLING CODE 6820–EP–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2025–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2025–05; Small Entity Compliance Guide

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget; Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide (SECG).

SUMMARY: This document is issued under the joint authority of OFPP, DoD,

GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2025–05, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding these rules by referring to FAC 2025–05, which precedes this document.

DATES: August 7, 2025.

ADDRESSES: The FAC, including the SECG, is available at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For clarification in relation to the FAR cases listed in the table below, contact FARPolicy@gsa.gov or call 202–969–4075. Please cite FAC 2025–05 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or GSAREgSec@gsa.gov. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

RULES LISTED IN FAC 2025–05

Item	Subject	FAR case
* I	Clarification of System for Award Management Preaward Registration Requirements	2023–018
II	Technical Amendments.	

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2025–05 amends the FAR as follows:

Item I—Clarification of System for Award Management Preaward Registration Requirements (FAR Case 2023–018)

This final rule adopts, without change, an interim rule that amended the FAR to change System for Award Management preaward registration requirements. Offerors are required to be registered at the time of proposal submission and at time of award, rather than continuously in between. This change is expected to have a positive

impact on small businesses who have a minor lapse in registration.

Item II—Technical Amendments

Administrative changes are made at FAR 32.907, 43.101, and 52.247–60.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 36, 43, 45, et al.

Department of Homeland Security

Transportation Security Administration

49 CFR Parts 1540 and 1544

Normalizing Unmanned Aircraft Systems Beyond Visual Line of Sight Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

14 CFR Parts 36, 43, 45, 48, 89, 91, 107, 108, 119, 133, 135, 137, and 146

[Docket No. FAA-2025-1908; Notice No. 25-07]

RIN 2120-AL82

DEPARTMENT OF HOMELAND SECURITY**Transportation Security Administration**

49 CFR Parts 1540 and 1544

RIN 1652-AA80

Normalizing Unmanned Aircraft Systems Beyond Visual Line of Sight Operations

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, and Transportation Security Administration (TSA), Department of Homeland Security.

ACTION: Notice of proposed rulemaking (NPRM)

SUMMARY: This action proposes performance-based regulations to enable the design and operation of unmanned aircraft systems (UAS) at low altitudes beyond visual line of sight (BVLOS) and for third-party services, including UAS Traffic Management (UTM), that support these operations. The FAA Reauthorization Act of 2024 directs the development of this proposed rule. This proposed rule is necessary to support the integration of UAS into the national airspace system (NAS). This proposed rule is intended to provide a predictable and clear pathway for safe, routine, and scalable UAS operations that include package delivery, agriculture, aerial surveying, civic interest, operations training, demonstration, recreation, and flight testing. TSA proposes to make complementary changes to its regulations to ensure it can continue to impose security measures on these operations under its current regulatory structure for civil aviation.

DATES: Send comments on or before October 6, 2025.

ADDRESSES: Send comments identified by docket number FAA-2025-1908 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://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 (DOT), 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 <https://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.

FOR FURTHER INFORMATION CONTACT:

Michelle Ferritto, ARM-100, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20592; Phone: 844 359-6982; Email: 9-FAA-UAS-BVLOS-Rule@faa.gov.

SUPPLEMENTARY INFORMATION:**List of Abbreviations and Acronyms Frequently Used in This Document**

AAM—Advanced Air Mobility
 AC—Advisory Circular
 ACAS—Airborne Collision Avoidance System
 ADS—B Automatic Dependent Surveillance-Broadcast
 AE—Associated Elements
 AGL—Above Ground Level
 API—Application Programming Interface
 ARC—Aviation Rulemaking Committee
 ASOS—Automated Surface Observing System
 ASRS—Aviation Safety Reporting System
 ATC—Air Traffic Control
 ATM—Air Traffic Management
 AWOS—Automated Weather Observing System
 BVLOS—Beyond Visual Line of Sight
 C2—Command-and-Control
 CBI—Confidential Business Information
 CFR—Code of Federal Regulations
 CMSA—Conformance Monitoring for Situational Awareness
 COA—Certificate of Waiver or Authorization
 COMAT—Company Materials
 ConOps—Concept of Operations
 COS—Continued Operational Safety
 DAA—Detect and Avoid
 DOC—Declaration of Compliance
 DOT—Department of Transportation
 DSS—Discover and Synchronization Service
 EASA—European Union Aviation Safety Agency
 EC—Electronic Conspicuity
 FAA—Federal Aviation Administration
 FRIA—FAA-Recognized Identification Areas
 FSDO—Flight Standards District Office
 GA—General Aviation
 GCS—Ground Control Station
 GPS—Global Positioning Systems

HAZMAT—Hazardous Materials
 HIRF—High Intensity Radiated Field
 HME—Hazardous Materials Endorsement
 HMR—Hazardous Materials Regulations
 IBR—Incorporation by Reference
 ICAO—International Civil Aviation Organization
 IRFA—Initial Regulatory Flexibility Analysis
 IUEI—Intentional Unauthorized Electronic Interaction
 JARUS—Joint Authorities for Rulemaking on Unmanned Systems
 LAANC—Low Altitude Authorization and Notification Capability
 MAIS—Maximum Abbreviated Injury Scale
 METAR—Meteorological Aerodrome Report
 MIT/LL—Massachusetts Institute of Technology Lincoln Laboratory
 MOA—Memorandum of Agreement
 MOC—Means of Compliance
 MOPS—Minimum Operational Performance Standards
 MOSAIC—Modernization of Special Airworthiness Certification
 NAICS—North American Industry Classification System
 NAS—National Airspace System
 NASA—National Aeronautics and Space Administration
 nm—Nautical Miles
 NOTAM—Notice to Airmen
 NPRM—Notice of Proposed Rulemaking
 NTSB—National Transportation Safety Board
 NWS—National Weather Service
 OMB—Office of Management and Budget
 OpSpecs—Operation Specifications
 OST—Office of the Secretary of Transportation
 PAO—Public Aircraft Operation
 PHMSA—Pipeline and Hazardous Materials Safety Administration
 PNT—Positioning, Navigation, and Timing
 POI—Principal Operations Inspector
 RFA—Regulatory Flexibility Act
 RPA—Rule of Particular Applicability
 SAC—Special Airworthiness Certificate
 SARPS—Standards and Recommended Practices
 SBA—Small Business Administration
 SDSP—Supplemental Data Service Provider
 SMS—Safety Management System
 SOH—State of Health
 SORA—Specific Operations Risk Assessment
 SPSO—Service Provider Standard Order
 SRA—Safety Risk Assessment
 STA—Security Threat Assessment
 STEM—Science, Technology, Engineering, and Mathematics
 sUAS—Small UAS
 SUI—Simplified User Interaction
 sXu—System X for sUAS
 TAF—Terminal Area Forecast
 TRACON—Terminal Radar Approach Control
 TSA—Transportation Security Administration
 TSO—Technical Standards Order
 UA—Unmanned Aircraft
 UAS—Unmanned Aircraft System
 UAT—Universal Access Transceiver
 UES—Universal Enrollment Service(s)
 UFT—UTM Field Test
 UPP—UTM Pilot Program
 USS—Unmanned Aircraft System Service Supplier
 USSP—U-Space Service Provider

UTM—Unmanned Aircraft System Traffic Management
 VLOS—Visual Line of Sight
 VSL—Value of Statistical Life
 VTOL—Vertical Takeoff and Landing
 xTM—Extensible Traffic Management

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I. Executive Summary

A. Purpose of This Regulatory Action

This action proposes performance-based regulations for the design and operation of unmanned aircraft systems (UAS) beyond visual line of sight (BVLOS) and for third-party services that support these operations, including UAS Traffic Management (UTM). The purpose of this proposed rule is to enable the expansion of BVLOS UAS operations for commercial and recreational purposes at low altitudes in the national airspace system (NAS).¹ To

¹ Pursuant to 5 U.S.C. 553(b)(4), FAA has provided a summary of this proposed rule in the

date, the Federal Aviation Administration (FAA) has allowed some such operations through individualized exemptions and waivers to existing regulations. This NPRM leverages lessons learned from individual exemptions and waivers to create the repeatable, scalable regulatory framework FAA proposes here that would allow for wide-scale adoption of UAS technologies. This proposed rule would be the next phase of integrating UAS into the NAS and provide a predictable and clear pathway for operators to conduct expanded operations safely. Further, this proposed rule's Automated Data Service requirements would provide clarity for manufacturers and service providers producing UAS and offering key enabling services, such as UTM, to UAS operators. FAA anticipates that this proposed rulemaking will allow operators to conduct a variety of operations, including package delivery, agriculture, aerial surveying, civic interest (to include wildfire recovery, wildlife conservation, and public safety), flight training, demonstration, flight testing, and recreation.

Since the promulgation of 2016's operating requirements for small UAS in part 107, FAA has sought to incorporate more complex operations (*e.g.*, larger, and more automated aircraft operating BVLOS of the operator) safely into the NAS through appropriate regulatory means. In June 2021, FAA chartered the UAS BVLOS Aviation Rulemaking Committee (ARC), soliciting recommendations to support a regulatory framework reflective of the technological capabilities of UAS. In March 2022, the ARC provided FAA with recommendations on how BVLOS operations could be safely integrated into the NAS.

Further, in May of 2024, Congress passed FAA Reauthorization Act of 2024 (Public Law [Pub. L.] 118–63). Section 930 of Public Law 118–63 directs the FAA Administrator to issue a notice of proposed rulemaking (NPRM) and subsequent final rule establishing a performance-based regulatory pathway for UAS to operate BVLOS. In addition, section 932 directs the FAA Administrator to establish procedures to approve third-party service suppliers of UTM. As part of its ongoing efforts to integrate UAS operations into the NAS, and pursuant to 49 U.S.C. 44807, the FAA Administrator is proposing to amend FAA regulations to adopt specific rules

for BVLOS operations of UAS in the NAS.

Based on its experience over the past few years with enabling limited BVLOS operations through exemption or waiver and with the comprehensive set of recommendations from the UAS BVLOS ARC, FAA has developed the framework proposed in this rule to enable routine and scalable BVLOS operations in the NAS. This proposed framework would accommodate technologies as they evolve and mature using a performance-based regulatory framework.

In addition, the Transportation Security Administration (TSA) is proposing revisions to its regulations to ensure that the decision to regulate these UAS operations under part 108 does not inadvertently create a security gap under TSA regulations. Under this proposal, which has been developed in consultation with FAA, TSA would continue to ensure the security of the national airspace by imposing appropriate security requirements. TSA notes that in the sections of this preamble related to package delivery operations, TSA has included a request for comment regarding potential security program applicability in a final rule. This request for comment relates to a broader set of activities than package delivery operations. While FAA and TSA are issuing a joint proposed rulemaking, the agencies intend to concurrently issue separate final rules.

B. Overview of the Proposed Rule

This proposed rule would establish requirements for conducting UAS BVLOS operations in United States airspace. FAA anticipates many, though not all, operations under proposed part 108 will be commercial. This action would normalize certain low altitude UAS operations and expedite the introduction of BVLOS UAS operations in the NAS while ensuring the safety and efficiency of United States airspace. This proposed rule is the next step in integrating UAS into the NAS, which FAA anticipates would provide safety, societal, and economic benefits.

Section II of this preamble details the legal authority for this rulemaking, while section III of this preamble provides a background of prior rulemakings and policy efforts FAA has undertaken to allow UAS operations in the United States. Section IV of this preamble describes the approach FAA has proposed to integrate BVLOS UAS operations, including the novel approaches to authorizing aircraft and personnel proposed under part 108 and the framework for third-party service suppliers proposed by part 146. Section V of this preamble describes the

operational requirements applicable to all BVLOS operations conducted under part 108. These general operating requirements include the administrative requirements for the two tiers of operational authorization, permits and certificates, as discussed in section VIII of this preamble. Section VI of this preamble outlines FAA's approach for airspace management, including requirements for strategic deconfliction, detect and avoid (DAA), operations in uncontrolled and controlled airspace, operations over people, operations of multiple aircraft, and other conditions for safe operation.

This rule proposes a novel structure for operations personnel, as discussed in section VII of this preamble. Under this proposal, FAA would not require airman certificates but would require each operator—both permitted and certificated—to have an operations supervisor responsible for the overall safety of the operation. In addition, FAA proposes that operators must have qualified flight coordinators, who are individuals responsible for monitoring and, if necessary, intervening in an operation to ensure safe conditions. Whereas the operations supervisor has operational control over the entire operation, the flight coordinator(s) would have tactical oversight of individual aircraft.

FAA anticipates that the operations conducted under part 108 would have a variety of operational personnel positions and therefore does not propose to require any additional operations personnel positions. All operators would be responsible for identifying the necessary operations personnel to ensure the safety of the operation, in addition to ensuring that the operations personnel have the necessary knowledge and skills for their role. In this manner, responsibility is tied to the company operating the UAS rather than an individual that has limited control of the actual operation and can be removed from their position if necessary.

As noted above, section VIII of this preamble describes the permit and certificate structure proposed by this rule. Permitted operations would allow operators to conduct certain BVLOS operations using a streamlined approach under a permit issued by FAA. The permit structure would allow package delivery, agricultural operations, aerial surveying, civic interest, unmanned aircraft (UA) operations training, flight test, demonstration, and recreational operations, though subject to certain limitations on size, number of aircraft, and other operating requirements. Those operators conducting higher risk

threshold operations, due to size, weight, speed, or other parameters, would instead need to seek operational certification. Obtaining an operating certificate would allow for more complex package delivery, agricultural operations, aerial surveying, and civic interest operations than operating under an operating permit. Certificated operations would receive greater oversight from FAA but would also be able to use larger aircraft, have more aircraft, and have more flexibility to operate over people. Operations conducted under an operating certificate would require operators to develop a safety management system (SMS) and a training program for operations personnel.

Maintenance personnel would not be certificated under this proposed rule. Section IX of this preamble details the requirements for maintenance and maintenance personnel. Maintenance standards for these aircraft would be set by the manufacturer and be based on industry adopted consensus standards, and personnel that maintain them would be required to be competent in their duties and receive the training required by the manufacturer to perform those duties.

Sections X and XI of this preamble lay out the proposal for the new airworthiness acceptance process developed to allow for an efficient approval process of part 108 UAS, while maintaining the integrity of the NAS and the safety of the public. Using industry consensus standards, this action would establish a regulatory process for airworthiness acceptance of a UAS, consisting of a UA and its associated elements (AE), where the UA weighs not greater than 1,320 pounds (including anything attached to, or carried by the UA). Proposed part 108 would include new operational requirements for UA with airworthiness acceptance, enabling routine BVLOS operations without waivers or exemptions.

Section XII of this preamble discusses corresponding changes to related regulations in other parts of title 14 of the Code of Federal Regulations (CFR) including a noise regulatory approach for UAS operating under proposed part 108.

Finally, this action would create a defined regulatory approval pathway for third-party services and providers of those services—first to approve services that support UTM, and then eventually, to approve services that support extensible traffic management (xTM). FAA broadly defines all those service providers—be it third-party service suppliers or services self-provided by

the operators—as Automated Data Service Providers.²

As further discussed in section XIII of this preamble, FAA would create a new part 146 to establish the process by which FAA would regulate automated data service providers as well as their automated data services. The purpose of part 146 is to provide a regulatory framework for appropriate government oversight of automated data services that support aircraft operations, especially those conducted under part 108. At the same time, the framework is designed to be flexible enough to accommodate the natural evolution and development of the technologies and systems on which these services are based. Through proposed part 146, FAA would authorize automated data service providers certificated under part 146 to provide services that would manage UAS traffic and information necessary for safe and efficient operation in the airspace. The provision of such services would be crucial, given the projected increase in numbers of UAS operating in the NAS once part 108 is finalized. Under this proposal, strategic deconfliction and conformance monitoring services provided under part 146 would be key to the successful integration of UAS into the NAS and would be a requirement for several categories of UAS BVLOS operations under proposed part 108.

C. Summary of the Costs and Benefits

The benefits of the proposed rule are the economic, safety, and health values that would result from scaled BVLOS operations. These benefits derive from the increase in regulatory certainty and efficiency, and framework for scaled operations, that proposed rule would provide. FAA evaluates the benefits of the proposed rule qualitatively. Compared with operations under the current regulatory framework, this proposed rule may result in incremental costs to comply with requirements for design, production, and operations. There may also be cost implications to becoming certificated to provide automated data services. FAA provides potential unit costs and example total costs.

However, given that the proposed rule includes requirements that mirror current BVLOS exemptions while also

proposing several new requirements to mitigate risks inherent in expanded BVLOS operations, incremental costs are few, and benefits would likely exceed costs. See section XIV.A of this preamble for more information.

II. Authority for This Rulemaking

FAA's authority to issue rules on aviation safety is found in title 49 of the United States Code (U.S.C.), subtitle I, § 106 describes the authority of FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of FAA's authority.

This rulemaking is issued under the authority described in subtitle VII part A, subpart iii, § 44807, Special authority for certain UAS, which permits FAA Administrator³ to use a risk-based approach to determine if certain UAS may operate safely in the NAS. Section 44807(b) provides a list of factors that the FAA Administrator must consider when determining which types of UAS may operate safely in the NAS, including size, weight, speed, operational capability, proximity to airports and populated areas, operation over people, operation within visual line of sight (VLOS), or operation during the day or night. Section 44807(b) further requires the FAA Administrator to consider whether an airman certificate under § 44703, a type, production, airworthiness, or design and production certificate under section 44704 of chapter 447, or a Certificate of Waiver or Authorization (COA) is required. Per § 44807(c), when the FAA Administrator determines that certain UAS may operate safely in the NAS per that section, "the Administrator shall establish requirements, or a process to accept proposed requirements, for the safe and efficient operation of unmanned aircraft systems in the national airspace system."

In addition, FAA Reauthorization Act of 2024 (section 930 of Pub. L. 118–63) amended chapter 448 of title 49 of the U.S.C. by adding section 44811 to require the FAA Administrator to establish performance-based regulations for UAS to be used for BVLOS operations. The FAA Administrator must, at a minimum, establish acceptable risk levels for BVLOS operations; standards for remote pilots or UAS operators; an approval or acceptance process for UAS which may leverage special airworthiness certificates (SAC) or a manufacturer declaration of compliance (DOC) process; operating rules for UAS that are approved or accepted; protocols of

² The term Extensible Traffic Management (xTM) is used to refer to cooperative service environments in general and is comprised of UTM, AAM, etc. FAA further discusses these concepts in its Urban Air Mobility (UAM) Version 2.0 Concept of Operations (ConOps) (Apr. 26, 2023), available at www.faa.gov/sites/faa.gov/files/Urban%20Air%20Mobility%20%28UAM%29%20Concept%20of%20Operations%202.0_1.pdf.

³ See section 927 of FAA Reauthorization Act of 2024, Public Law 118–63.

networked information; and safety of manned aircraft operating in the NAS. However, § 44811 does not require the FAA Administrator to rescope any ongoing rulemaking efforts. This regulation is within the scope of these authorities.

The FAA Reauthorization Act of 2018 (Pub. L. 115–254), which adopted 49 U.S.C. 44808, requires FAA to conduct rulemaking to authorize the carriage of property by small UAS for compensation or hire within the United States. FAA intends this proposal will also address that requirement. Furthermore, this rulemaking is promulgated pursuant to 49 U.S.C. 40103(b)(1) and (2), which directs FAA to issue regulations: (1) to ensure the safety of aircraft and the efficient use of airspace; and (2) to govern the flight of aircraft for purposes of navigating, protecting, and identifying aircraft, and protecting individuals and property on the ground. In addition, 49 U.S.C. 44701(a)(5) charges FAA with promoting safe flight of civil aircraft by prescribing regulations FAA finds necessary for safety in air commerce and national security.

On June 6, 2025, the President issued Executive Order No. 14307, *Unleashing American Drone Dominance*, which directs that “the Secretary of Transportation, acting through the Administrator of the FAA, shall issue a proposed rule enabling routine BVLOS operations for UAS for commercial and public safety purposes.⁴ A final rule shall be published within 240 days of the date of this order, as appropriate.” FAA is publishing this proposed rule to fulfill that directive.

A. Section 44807 Statutory Findings

To determine whether certain UAS may operate safely in the NAS pursuant to 49 U.S.C. 44807, the Administrator must find that the operation of the UAS would not create a hazard to users of the NAS or the public. The Administrator must also determine whether a certificate under 49 U.S.C. 44703 (“Airman certificates”) or section 44704 (“Type certificates, production certificates, and airworthiness certificates, and design and production organization certificates”), or a certificate of waiver or certificate of authorization, is required for the operation of the UAS subject to this proposed rule. Using a risk-based approach, the Administrator has determined that UAS operations under this proposed rule would operate safely in the NAS; the individual findings

required by section 44807 are as follows.

1. Hazard to Users of the NAS or the Public

Section 44807(b)(1) requires the Administrator to determine which types of UAS operations, because of their size, weight, speed, operational capability, proximity to airports and populated areas, operation over people, and operation within or BVLOS, or operation during the day or night do not create a hazard to users of the NAS or the public.

The hazards to the NAS and the public from BVLOS UAS operations are twofold: the collision risk posed to other users of the NAS (including manned aviation and other UAS), and the risk of collision debris or a faulty UAS posed to persons and property on the ground. Here, these safety concerns would be mitigated by the provisions of this rule. The risks to other NAS users and to persons and property on the ground would be mitigated by the airworthiness acceptance process, the personnel regulations, the general operating rules, and the specific operating rules for operating permits and operating certificates. The risks to other NAS users are further mitigated with the use of strategic deconfliction and conformance monitoring. In addition, the risks to people and property on the ground are mitigated through the designation of population density categories (and the corresponding restrictions on certain operations to certain population density categories), the general prohibition of operations over open-air assemblies, and the hazardous material carriage restrictions.⁵

Accordingly, the Administrator has found that the UAS operations subject to this proposed rule would not create a hazard to users of the NAS or the public. FAA invites comments on this finding.

2. Certificate Requirements

In addition, 49 U.S.C. 44807(b)(2) requires the Administrator to determine whether the UAS operations subject to this proposed rule pose a safety risk sufficient to require airworthiness certification or airman certification.

i. Airworthiness Certification

The Administrator has determined that airworthiness certification should not be required for the UAS subject to this proposed rule. As discussed in

section X of this preamble, the proposed airworthiness acceptance regulatory framework would prevent incidents like loss of flight or control stemming from factors such as structural integrity, software and hardware functionality, performance attributes, and operational factors. Specifically, the proposed design and performance standards require the UAS to handle all expected flight and ground stresses during its operations without compromising the UAS’s safe operation.

From a risk perspective, FAA considers UAS operations under proposed part 108 fall between part 107 small UAS and aircraft with a SAC.⁶ Part 108, which encompasses BVLOS operations, presents higher risks than part 107 due to the potential for airspace conflicts with other users, operation of larger aircraft, operation over densely populated areas, and riskier operational use cases such as package delivery. The intrinsic risks associated with routine BVLOS operations of UAS require mitigations beyond what is required under part 107. Conversely, the SAC process would require a higher level of initial FAA oversight than would be necessary for BVLOS operations envisioned under part 108, because it would require FAA to conduct an airworthiness inspection of each UAS produced. Proposed part 108 airworthiness acceptance requirements described in section X aim to mitigate those risks and promote the safety of people on the ground and other airspace users. FAA determined the requirements proposed in section X are appropriate for UA without passengers or crew where airworthiness certification under 14 CFR part 21 is more appropriate to ensure the safety of those on board those aircraft.

Consequently, the regulatory and certification demands for BVLOS operations are more stringent than those for part 107 but less so than for light-sport aircraft. This intermediate positioning supports a balance between flexibility and safety. Therefore, the Administrator finds, pursuant to § 44807(b)(2), that airworthiness certification would be unnecessary for the UAS subject to this proposed rule. FAA invites comments on this finding.

ii. Airman Certification

The Administrator has also determined that airman certification

⁵ This rulemaking uses the definition of hazardous material as defined in 49 U.S.C. 5102(2) and 49 CFR 171.8.

⁶ FAA has proposed changes to the SAC process to enable enhancements in safety and performance and to increase privileges under a number of sport pilot and light-sport aircraft rules in the *Modernization of Special Airworthiness Certification* notice of proposed rulemaking, 88 FR 47650 (July 24, 2023).

should not be required because certification is not consistent with the envisioned UAS and operations subject to this proposed rule. On manned aircraft, the pilot is responsible for operational control and safety of flight from the flightdeck. Pilot responsibilities on the flightdeck are constructed around pilot control, including seeing and avoiding other aircraft, interacting with air traffic control (ATC), and monitoring instruments and displays. With the increasing autonomy of UAS, particularly those anticipated for use under this proposal, the role of the pilot has and will continue to decrease. The UAS industry has increasingly come to rely on technology, rather than human interaction or intervention, to ensure safe operation. Industry reliance on technology rather than human interaction is driven in part by the fact that UAS do not carry responsible persons that can control and ensure the safety of flight from within the aircraft.

As discussed herein, the proposed personnel provisions serve to provide personnel with the knowledge, training, and skills to operate the anticipated UAS safely under this proposed rule. In addition, other mitigating provisions of this rule would ensure that the risk posed by the UAS is offset by the design requirements (section XI of this preamble) and general operating requirements (section VI of this preamble) that further mitigate risk as operations increase in complexity. Therefore, the Administrator finds, pursuant to 49 U.S.C. 44807(b)(2), that airman certification would be unnecessary for the UAS and operations subject to this proposed rule. FAA invites comments on this finding.

B. Authority for Regulating Third-Party Services

Section 932 of FAA Reauthorization Act of 2024, Public Law 118–63, directs the FAA Administrator to establish procedures, including rulemaking, to approve third-party service suppliers. Those would include suppliers of UTM services to support the safe integration and commercial operation of UAS. In accordance with this provision, the Administrator must ensure, to the maximum extent practicable, that industry consensus standards are included as an acceptable means of compliance for third-party services. Consistent with this direction from Congress, FAA proposes to regulate third-party service suppliers and the use of third-party services.

FAA also has authority to regulate air agencies under chapter 447 of title 49, U.S.C. FAA may issue certificates to air

agencies (49 U.S.C. 44702) as well as “examine and rate” air agencies (49 U.S.C. 44707). Congress defined air agencies to include certain aviation schools (§ 44707(1)), repair stations (§ 44707(2)), and “other air agencies the Administrator decides are necessary in the public interest” (§ 44702(3)). FAA proposes to regulate automated data service providers that support aircraft operations using a distributed computational system under this authority to regulate air agencies.⁷ Regulation of these automated data service providers is necessary in the public interest. In 49 U.S.C. 40101(d), Congress identified the following matters for FAA to consider as being in the public interest: “assigning, maintaining, and enhancing safety and security” and “encouraging and developing civil aeronautics, including new aviation technology.” Enabling automated data services to mitigate the potential risk that BVLOS operations could pose to the NAS would enhance aviation safety and aid in the development of new aviation technology.

For further discussion on the legal authority of third-party services and FAA rulemaking procedure for regulating such services, see section XIII.B of this preamble.

C. Authority for Regulating Noise

In 49 U.S.C. 44715, FAA has the responsibility to “protect the public health and welfare from aircraft noise.” This responsibility came with broad authority to adopt regulations and noise standards to carry out this mandate. Historically, FAA has applied the part 36 noise certification regulations when the agency issued type certificates as provided in § 44715(a)(3).

However, FAA has authority to apply noise standards for aircraft with or without type certificates. As such, FAA is proposing in this rule to exercise that authority and use a regulatory approach for UAS operating under part 108 that would apply noise requirements as part of airworthiness acceptance.

For further discussion on the legal authority of FAA to regulate noise as part of the airworthiness acceptance process, see section XII.A of this preamble.

D. Transportation Security Administration Authority

The security of the nation’s transportation systems is vital to the economic health and security of the United States. Ensuring transportation security while promoting the movement

of legitimate travelers and commerce is a critical counter-terrorism mission assigned to TSA.

Following the attacks of September 11, 2001, Congress created TSA under the Aviation and Transportation Security Act (ATSA) and established the agency’s primary federal role to enhance security for all modes of transportation. The scope of TSA’s authority includes assessing security risks, developing security measures to address identified risks, and enforcing compliance with these measures. TSA has broad regulatory authority to issue, rescind, and revise regulations as necessary to carry out its transportation security functions.⁸

III. Background

A. Related FAA and Department of Transportation (DOT) Actions

FAA began developing its regulatory framework for UAS in 2012 after Congress passed the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95). Section 333 of Public Law 112–95 directed the Secretary of Transportation to determine which types of UAS do not create a hazard to users of the NAS or the public or pose a threat to national security. Based on such findings, Congress directed the Secretary to establish requirements for the safe operation of such UAS. Since the passage of Public Law 112–95, FAA has been incorporating limited UAS operations into the NAS using a phased, incremental, and risk-based approach to enable UAS operations through narrowly tailored regulations, individual grants of regulatory relief through FAA exemptions and waivers, and by authorizations based on discrete statutory authorities. Understanding the steps FAA has already taken to integrate UAS into the NAS is critical to understanding why these proposed regulations to enable scaled BVLOS operations is the appropriate next step in this phased approach.

1. Registration and Marking Requirements for Small Unmanned Aircraft

On December 16, 2015, FAA published the Registration and Marking Requirements for Small Unmanned Aircraft interim final rule (Registration Rule).⁹ The Registration Rule, which established 14 CFR part 48, enabled a simplified, web-based registration

⁸ See, e.g., 49 U.S.C. 114(j)(1), 44903(b).

⁹ *Registration and Marking Requirements for Small Unmanned Aircraft* interim final rule, 80 FR 78645 (Dec. 16, 2015).

⁷ 49 U.S.C. chapter 447.

system for small UA,¹⁰ as an alternative to the registration requirements found in 14 CFR part 47. The Registration Rule required all small UAS owners to register under the existing part 47 or 48 by March 31, 2016.

The Registration Rule also established marking requirements for small UA. In accordance with that rule, all small UA must display a unique identifier. Each small UA operated in accordance with part 107 must display a unique registration number, visible on inspection of the small UA.

2. Operation and Certification of Small Unmanned Aircraft Systems

On June 28, 2016, FAA and DOT jointly published the Operation and Certification of Small Unmanned Aircraft Systems final rule (the 2016 Final Rule) establishing 14 CFR part 107.¹¹ Part 107 created a regulatory structure allowing small UAS to operate within specified parameters without requiring airworthiness certification, exemption, or waiver. Part 107 established operational rules for certain routine civil operation of small UAS in the NAS in a safe manner. To mitigate risk to people and property on the ground and to other users of the airspace, the 2016 Final Rule established operating limitations for small UAS such as limiting operations to daylight and civil twilight, within confined areas, and within visual line-of-sight. The 2016 Final Rule also established airspace restrictions, remote pilot certification, visual observer requirements, and operating limitations. Finally, the 2016 Final Rule included a waiver provision¹² allowing individual operators to deviate from certain specifically identified operating limitations if FAA found the applicant could safely conduct the proposed operation under the terms of the COA.

3. Operation of Small Unmanned Aircraft Systems Over People

Published by FAA on January 15, 2021, the Operation of Small Unmanned Aircraft Systems Over People final rule¹³ allowed routine operations over

people in accordance with part 107 and routine operations at night under certain conditions without a waiver or exemption. Under regulations implemented by the rule, the requirements for routine operations over people vary depending on the level of risk that operations of small UA present to people on the ground. In the Operation of Small Unmanned Aircraft Systems Over People final rule, FAA established four categories of permissible operations over people based on the risk of injury they present: Category 1, Category 2, Category 3, and Category 4. Under this rule, operations over people (in accordance with the categories) are permitted with small UA that have an airworthiness certificate.

4. External Marking Requirement for Small Unmanned Aircraft

The External Marking Requirement for Small Unmanned Aircraft interim final rule (External Marking Rule, 2019) was published on February 13, 2019.¹⁴ The External Marking Rule requires small UA owners to display the unique identifier assigned by FAA upon completion of the registration process (registration number) on an external surface of the aircraft. Small UA owners are no longer permitted to enclose the FAA-issued registration number in a compartment on the aircraft, such as inside of a battery compartment.

5. Remote Identification of Unmanned Aircraft

The Remote Identification of Unmanned Aircraft final rule (Remote ID Final Rule) was published on January 15, 2021.¹⁵ The Remote ID Final Rule requires that UA broadcast certain identification, location, and performance information while in-flight. The remote identification of UA is necessary to ensure public safety and the safety and efficiency of the NAS. Remote identification provides airspace awareness to FAA, national security agencies, law enforcement entities, and other government officials. The broadcasted information can be used to distinguish compliant airspace users from those potentially posing a safety or security risk. The Remote ID Final Rule applies to UA flown for both recreational and commercial purposes. It allows operators to request authorization to operate without remote identification for aeronautical research

and other limited purposes. UA manufactured for operation in the NAS are subject to the production requirements of the Remote ID Final Rule. There are limited exceptions in the Remote ID regulations that allow manufacturing UA without remote identification, including home-built UA and United States Government UA, amongst others.

6. Modernization of Special Airworthiness Certification Notice of Proposed Rulemaking and the Safety Continuum

On July 24, 2023, FAA published the Modernization of Special Airworthiness Certification (MOSAIC) NPRM.¹⁶ The MOSAIC NPRM proposed enabling enhancements in safety and performance and would increase privileges under several sport pilot and light-sport aircraft rules. The proposed language in the MOSAIC NPRM would also expand the types and characteristics of aircraft that sport pilots may operate. The proposed changes would increase the suitability of light-sport category aircraft for flight training, limited aerial work, and personal travel. As the MOSAIC NPRM notes, FAA is updating the requirements for light-sport aircraft due to a developed understanding about the purposes and flexibilities of light sport aircraft. This development is framed in the context of the safety continuum. As noted in the MOSAIC NPRM, FAA bases the rigor of certification requirements and operational limitations on a safety continuum that looks at public exposure to risk for each aircraft and operation. As the risk increases due to increased operating privileges and aircraft capability, so do the requirements and corresponding rigor of requirements and procedures for aircraft and airman certification.¹⁷

The safety continuum represents the targeted level of safety because of FAA regulation, guidance, and oversight, which changes based on risk and societal expectations of safety. FAA uses the safety continuum to determine the appropriate level of regulatory oversight for a variety of aircraft, from small UAS to large transport category aircraft. The differing targeted level of safety balances the needs of the flying public, applicants, and operators while facilitating both the advancement of safety and the encouragement of technological innovation.

¹⁰ "Small UAS" is defined in 14 CFR 1.1 as an unmanned aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft.

¹¹ *Operation and Certification of Small Unmanned Aircraft Systems* final rule, 81 FR 42064 (Jun. 28, 2016).

¹² See 14 CFR 107.200 and 107.205.

¹³ *Operation of Small Unmanned Aircraft Systems over People* final rule, 86 FR 4314 (Jan. 15, 2021). *Operation of Small Unmanned Aircraft Systems Over People; Delay of Effective Date; Correction* final rule, 86 FR 11623 (Feb. 26, 2021); *Operation of Small Unmanned Aircraft Systems Over People; Delay; Withdrawal; Correction* final rule, 86 FR 3630 (Mar. 10, 2021).

¹⁴ *External Marking Requirement for Small Unmanned Aircraft* interim final rule, 84 FR 3669 (Feb. 13, 2019).

¹⁵ *Remote Identification of Unmanned Aircraft* final rule, 86 FR 4390 (Jan. 15, 2021); *Remote Identification of Unmanned Aircraft; Delay* final rule, 86 FR 13629 (Mar. 10, 2021).

¹⁶ *Modernization of Special Airworthiness Certification* notice of proposed rulemaking, 88 FR 47650 (Jul. 24, 2023).

¹⁷ 88 FR 47653.

Light-sport aircraft appear at the low end of the safety continuum for manned operations because of its aircraft design and recreational use. As a result, there is less FAA oversight. Given there is no pilot nor passengers on board UAs, FAA has decided UA operations involve less risk and should fall lower on the safety continuum than light sport aircraft. Therefore, UAS operations under parts 107 and 108 are positioned on the lower end of the safety continuum and FAA is proposing a level of oversight for part 108 operations are positioned between the oversight for part 107 small UAS and MOSAIC aircraft. The reasons for this placement and for more information as to risk, please see section III.A of this preamble.

B. Use of Exemptions, Type Certificates, and Waivers

The intent of this proposed rule is to provide a predictable, stable, and transparent regulatory construct that enables scaled BVLOS operations. Presently, UAS operators looking to conduct BVLOS operations require some level of regulatory relief by way of exemption or waiver.

1. Exemptions for UAS BVLOS operations

The exemption process has proven to be a useful tool for FAA to enable operations that cannot be conducted under part 107, particularly for operations using UA weighing 55 pounds or more.¹⁸ However, operating by exemption often requires navigating a labyrinth of regulations designed for both manned and unmanned aviation to determine from which regulations exemption should be sought to operate UAS BVLOS. Each exemption is specific to the operation that the petitioner is pursuing, but typically the exemptions include relief from certain requirements of parts 91 and 135 that are not compatible with UAS operations. This section describes the history of using the exemption process for UAS operations and what the exemption process requires. This background is intended to help draw out how this rulemaking will move UAS operations from the limits of “enablement though exemption”, which requires case-by-case assessment and contributes to the current “patchwork” of rules and exemption precedents that today’s operators rely on, to “enablement by rule”, in which a right-size regulatory framework could streamline how FAA

enables operation, manufacture, and supporting services of BVLOS UAS.

In the early 2010s, prior to the development and implementation of the regulatory framework of part 107 (the 2016 Final Rule), FAA relied on the flexibility provided in section 333 of Public Law 112–95 to allow certain UAS operations in the NAS by way of the FAA exemption process. Under the section 333 authority, the Secretary of Transportation was granted the authority to determine if an airworthiness certificate was necessary for safe operation of a UAS. While this statutory flexibility permitted FAA to issue thousands of exemptions, the regulatory framework resulting from the 2016 Final Rule created a much more stable, transparent, and scalable system for early civil UAS operations and this process of evolving from operation by exemption to operation by rule is a precursor to FAA’s objectives through this proposed rule.

Section 347 of the FAA Reauthorization Act of 2018 (Pub. L. 115–254) granted the Secretary the authority to determine, using a risk-based approach, which UAS may operate safely in the NAS. Congress further extended this discretionary authority to determine if an airworthiness certificate was necessary and clarified that the Secretary may determine if an airman certificate under section 44703 was necessary. This authority, codified at 49 U.S.C. 44809, was further extended in the FAA Reauthorization Act of 2024.¹⁹ The FAA Reauthorization Act of 2018 also established an additional avenue for limited recreational operations under 49 U.S.C. 44809.

Section 44807 grants the Administrator of FAA the authority to use a risk-based approach to determine if certain UAS may operate safely in the NAS on a case-by-case basis. The requirements for petitioning for an exemption are codified in 14 CFR part 11. Under 14 CFR 11.15, a petition for exemption is a request to FAA by an individual or entity (“petitioner”) asking for relief from the requirements of a regulation. Under 14 CFR 11.81, petitioners must include the following information in their petitions for exemption: name, mailing address, and other contact information (such as email or fax number); the specific section or sections of 14 CFR from which they are seeking exemption; the extent of relief

that is being sought and the reason for seeking relief; the reasons why granting this request would be in the public interest, that is, how this exemption would benefit the public as a whole; the reasons why granting the exemption would not adversely affect safety, or how the exemption would provide a level of safety at least equal to that provided by the rule from which exemption is sought; a summary that FAA can publish in the **Federal Register** that states the rule from which the exemption is sought along with a brief description of the nature of the exemption sought; any additional information, views, or arguments available to support the exemption request; and, if a petitioner wants to exercise the privileges of their exemption outside of the U.S., the reason why the petitioner needs to do so.

FAA recommends that the petitioner review all FAA guidance to ensure that the petition includes all necessary information, if relevant, including concept of operations, operations manual, emergency procedures, checklists, maintenance manual, training program, flight history (hours, cycles, accidents), and a safety risk analysis.²⁰ The safety risk analysis is required for all complex operations for any proposal that includes, but is not limited to, flight over or in the proximity of people, flight beyond visual line of sight, operation of multiple UAS, operations from a moving vehicle, package delivery, part 135 operations, or ground speeds. Guidance for the safety risk analysis can be found in FAA Order 8040.4, *Safety Risk Management Policy*, and FAA Order 8040.6, *UAS Safety Risk Management Policy*.

FAA has issued thousands of exemptions using the 49 U.S.C. 44807 authority described herein.²¹ Many of

²⁰ FAA, *Section 44807: Special Authority for Certain Unmanned Aircraft Systems* (Mar. 20, 2024), available at www.faa.gov/uas/advanced_operations/certification/section_44807.

²¹ Prior to the finalization of the 2016 Final Rule, FAA had granted numerous exemptions to unmanned aircraft operators for purposes such as experimental operations, agricultural operations, BVLOS and other various use-case applications. These exemptions were granted with minimal Part 61 pilot certification requirements to the remote pilot-in-command. Examples include unmanned aircraft agricultural operations only requiring the remote pilot-in-command to possess a private pilot certificate or even in later cases a minimum of remote pilot certificate, as opposed to similar operations with manned aircraft that require a commercial pilot certificate. The 2016 Final Rule obviated the need for exemptions for this particular relief for UA under 55 pounds with the establishment of a part 107 remote pilot certificate but did not extend to UA weighing 55 pounds or

¹⁸ The 55 lb. weight limit for UAS operating under part 107 is not waivable under § 107.205.

¹⁹ Per updates to 49 U.S.C. 44807 as provided by § 927 of FAA Reauthorization Act of 2024 (Pub. L. 118–63), the authority to determine if certain UAS are safe for operation in the NAS rests with the Administrator of the FAA rather than with the Secretary of Transportation.

these exemptions permit the use of UAS for agricultural operations, including thousands of exemptions enabling agricultural operations with UAS over 55 pounds. Agricultural spraying operations comprise the vast majority of exemptions for UAS above 55 pounds, with over 1,700 operator certificates issued for agricultural operations at the time of publication of this proposed rule. FAA-issued exemptions also include advanced UAS operations reflected in four precedent-setting exemptions issued in fall of 2023 expanding BVLOS operational capabilities and supporting the Unmanned Traffic Management Operational Evaluation.²² FAA has also issued several exemptions for UAS operators operating under part 135. Upon obtaining their exemption(s), operators must then seek operational approval, typically by obtaining an operating certificate under 14 CFR part 135 or 137, depending on the operation type.

Exemptions are issued on a case-by-case basis and each exemption petition is individually assessed by FAA. This process can be time and resource-intensive for operators. This proposed rule is intended to level the playing field for operators by offering a well-defined and purpose-built set of regulations for the operation, manufacture, and supporting services for BVLOS UAS operations. Furthermore, this proposed rule should foster innovation and growth among U.S. businesses in this market and simultaneously allow these businesses to serve a larger U.S. customer base.

more. The first exemption to substitute a part 61 commercial pilot certificate with a part 107 remote pilot certificate with additional training requirements under these circumstances was to DroneSeed Co., Exemption No. 17936. FAA subsequently issued several grants of exemption allowing the use of a remote pilot certificate for commercial operations with UA above 55 pounds, although requiring a second-class medical certificate. In November 2022, FAA issued a grant of exemption to Amazon Prime Air permitting them to conduct BVLOS operations with a UA weighing 55 pounds or more and requiring the pilot-in-command to hold a part 107 remote pilot certificate with a third-class medical certificate, Exemption No. 18601B.

²² See Phoenix Air Unmanned, LLC, Exemption No. 20973, Regulatory Docket No. FAA-2023-1827, available at www.regulations.gov/document/FAA-2023-1827-0009; uAvionix Corporation, Exemption No. 21097, Regulatory Docket No. FAA-2022-0921, available at www.regulations.gov/document/FAA-2022-0921-0013; Zipline International, Inc. Exemption No. 19111B, Regulatory Docket No. FAA-2020-0499, available at www.regulations.gov/document/FAA-2020-0499-0033; UPS Flight Forward, Exemption No. 18339D, Regulatory Docket No. FAA-2019-0628, available at www.regulations.gov/document/FAA-2019-0628-0029.

2. Type Certification for UAS

Furthermore, FAA also allows UAS manufacturers to pursue type certification for their UAS. However, the type certification process was not designed for UAS, which have shorter expected lifespans than manned aircraft, do not carry people, and are redesigned easily and often by manufacturers. As such, the type certification pathway may not be the most appropriate path for most of the operational uses envisioned for these aircraft. Like the exemption process, operators using a type certificated UAS must then seek operational approval, typically under 14 CFR part 135 or 137 depending on the operation type.

3. Current Use of Waivers for UAS

In addition, FAA continues to use the flexibility of the waiver process in issuing waivers for more complex operations under part 107. FAA has issued thousands of waivers since the 2016 Final Rule. Since the Operation of Small Unmanned Aircraft Over People final rule eliminated the need for most night waivers, the most common types of waivers granted in recent years have been for altitude limitations, BVLOS operations, operation of multiple UA, and operations over people. Waivers are processed faster than exemptions and submission and approval of them has improved as UAS operators have become more familiar with the appropriate safety cases. FAA recognizes the flexibility that comes with waivers and, as noted in various sections below, many of the proposed requirements of part 108 are subject to waiver.

C. Beyond Visual Line of Sight Aviation Rulemaking Committee

On June 8, 2021, FAA established the UAS Beyond Visual Line-of-Sight Operations ARC with the goal of providing recommendations to FAA for performance-based regulatory requirements to normalize safe, scalable, and economically viable UAS BVLOS operations that are not receiving the provisioning of Air Traffic Management (ATM) services.²³ This ARC took a holistic approach in recommending a performance-based regulatory framework for BVLOS operations.

FAA requested that, at a minimum, the ARC's recommendations clearly address requirements to support the

²³ FAA, *UAS Beyond Visual Line-of-Sight Operations Aviation Rulemaking Committee*, Aviation Rulemaking Committee Charter (Jun. 8, 2021), available at [www.faa.gov/regulations_policies/rulemaking/committees/documents/media/UAS%20BVLOS%20ARC%20Charter%20\(eff.%206-8-2021\).pdf](http://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/UAS%20BVLOS%20ARC%20Charter%20(eff.%206-8-2021).pdf).

following concept of operations (ConOps): long-line linear infrastructure inspections, industrial aerial data gathering, small package delivery, and precision agriculture aircraft operations, including crop spraying. The ARC did not specifically address aircraft or operations carrying passengers or crew, nor did it address the integration of operations for which ATM services are being provided.

The ARC's final report was submitted to FAA on March 10, 2022.²⁴ In this report, the ARC provided an extensive list of recommendations to FAA. Overall, the ARC recommended that FAA set an acceptable level of risk for UAS that is consistent across all types of operations being performed. The ARC also recommended a series of modifications to the right-of-way rules in Low Altitude Shielded Areas (within 100 feet of a structure or critical infrastructure as defined in 42 U.S.C. 5195c) and in Low Altitude Non-Shielded Areas (below 400 feet above ground level (AGL)) to accommodate UAS operations. The ARC's report provided comprehensive recommendations that the UAS industry argued would enable BVLOS operations by regulation, including package delivery by UAS, in a safe and economically viable manner. In addition, it provided recommendations for developing a regulatory approach to enable the use of third-party services to support UAS BVLOS operations.²⁵ As discussed throughout this preamble, FAA considered the recommendations provided by the BVLOS ARC in developing this proposed framework.

D. BVLOS Operations and International Leadership

Establishing a regulatory framework for BVLOS operation that enables several valuable use cases would establish the U.S. as a global leader in UAS operations. Home of the Wright Brothers and the Chicago Convention, the U.S. has long been a leader in aviation and has claimed many firsts in this industry including the first powered airplane, the home of the pilot who flew the first solo transatlantic flight, and the first pilot to break the sound barrier.²⁶ For UAS, however, the

²⁴ *Unmanned Aircraft Systems Beyond Visual Line of Sight Aviation Rulemaking Committee Final Report* ("BVLOS ARC Report") (Mar. 10, 2022), available at www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/document/information/documentID/5424.

²⁵ Section XIII of this preamble discusses the ARC recommendation regarding third-party services in greater detail.

²⁶ Vaughn College, *Greatest First Flights in Aviation History in Honor of Aviation History Month* (Nov. 14, 2019), available at

United States has strong peers competing for leadership in this space. Globally, several countries have taken significant steps to enable BVLOS operations including China, the United Kingdom, Ireland, Australia, Japan, and Rwanda.²⁷ Key to other countries' successes is that these other countries have provided the UAS industry with a clear regulatory framework that facilitates the scaling of BVLOS operations.

There are several recent examples of countries advancing the integration of UAS operations into their airspaces, including BVLOS operations. In June of 2023, Canada's Minister of Transport announced standardized BVLOS rules for small and medium drones.²⁸ In 2021, the European Aviation Safety Administration (EASA) adopted three regulations that together create the conditions necessary for both drones and manned aircraft to operate safely and has begun the gradual implementation of U-space, a type of airspace designated for safely integrated operation of manned and unmanned aircraft.²⁹ The U-space approach provides cooperative airspace for manned and unmanned aircraft where the manned aircraft are equipped with technology to enable sharing airspace with the UAS. Australia and the EU have also published guidance for BVLOS operators seeking to fly using the specific operations risk assessment (SORA) framework developed by the Joint Authorities for Rulemaking on Unmanned Systems (JARUS).³⁰ In Shenzhen, China, a commercial drone company made over 100,000 drone

deliveries in 2022, demonstrating UAS logistics at scale.³¹ In Rwanda, UAS are regularly deployed to transport blood and medicines to hospitals in remote regions and these programs have existed as early as 2016.³²

Foreign commercial aviation authorities (CAAs) enabling BVLOS operations through their own regulatory frameworks have fostered attractive environments for U.S. companies to expand their operations abroad. Today, U.S. companies are performing BVLOS operations abroad including in Italy, the U.K., Rwanda, and Japan.³³ An overarching goal of this proposed rule is to encourage U.S. UAS companies to expand, innovate, and thrive domestically. A robust domestic UAS BVLOS operating environment could spur technological innovation, bolster U.S. aerospace manufacturing, provide services like package delivery to large swaths of the public, create skilled jobs, and secure the U.S. as a leader for UAS BVLOS operations, UTM, and UAS manufacturing.

Due to the relatively low cost of highly capable UAS technology, hundreds of thousands³⁴ of new operators have entered the aviation community. This significant increase in the volume of UAS and UAS operators, as well as the rapid advancement of UAS technologies, has created significant opportunities—and challenges—for the integration of UAS into the United States airspace. These UAS in the NAS pose new challenges and risks but safety remains paramount

for FAA. Through research, industry partnerships and feedback, and regulatory changes, FAA has made steady progress toward integrating UAS operations of varying complexity in the NAS in a safe, timely, and equitable manner.

In proposing this rule, FAA fully expects that the scope and frequency of UAS operations in the NAS would increase as BVLOS operations become normalized. FAA also appreciates that this proposal would open a new range of opportunities and possible concepts of operations for local communities interested in leveraging the benefits of UAS. FAA emphasizes that it is important for community leaders, local elected officials, and operators to ensure that the general public is informed and engaged in early planning discussions and that the individuals involved in planning the operation have a clear plan for how they will respond to the public's interest, questions, and concerns about operations occurring in local communities. FAA will support community leaders, local elected officials, and operators with responding to the public in its role as a regulator and encourages localities and operators to leverage best practices for community engagement in introducing UAS operations.³⁵

IV. UAS Integration Into the NAS

A. Enabling UAS BVLOS Operations

FAA has long intended to develop a regulatory framework for more advanced UAS operations, enabling the more complex operations that industry has successfully demonstrated at small scale using waivers and exemptions. Waivers, exemptions, and other authorizations, such as operations conducted at UAS Test Sites or through the Integration Pilot Program³⁶ and BEYOND³⁷ initiatives, have safely enabled numerous BVLOS operations including infrastructure inspection, package delivery, and surveillance. These operational advancements have occurred within the existing aviation regulatory framework, one that did not imagine the types of technologies that could, at a minimum, replace the human eye or that could coordinate operations through decentralized automation platforms. To realize the

www.vaughn.edu/blog/greatest-first-flights-in-aviation-history-in-honor-of-aviation-history-month/.

²⁷ Commercial Drone Alliance, U.S. Global Leadership in Aviation at Stake: Scaled BVLOS UAS Operations Around the World (Nov. 27, 2024).

²⁸ Minister of Transport Announces Canada's first proposed drone safety regulations for beyond visual line-of-sight operations, Transport Canada (Jun. 23, 2023), available at www.canada.ca/en/transport-canada/news/2023/06/minister-of-transport-announces-canadas-first-proposed-drone-safety-regulations-for-beyond-visual-line-of-sight-operations.html.

²⁹ Drones: Commission adopts new rules and conditions for safe, secure and green drone operations, Directorate-General for Mobility and Transportation, European Commission (Apr. 22, 2021), available at transport.ec.europa.eu/news-events/news/drones-commission-adopts-new-rules-and-conditions-safe-secure-and-green-drone-operations-2021-04-22_en.

³⁰ See European Aviation Safety Agency, *Specific Category—Civil Drones*, available at www.easa.europa.eu/en/domains/drones-air-mobility/operating-drone/specific-category-civil-drones#Registration%20of%20drone%20operators; see also Civil Aviation Safety Authority, *Beyond visual line of sight operations*, available at www.casa.gov.au/drones/flight-authorisations/beyond-visual-line-sight-operations#HowtorenewyourBVLOSflightapproval.

³¹ See Zeyi Yang, *Food delivery by drone is just part of daily life in Shenzhen*, MIT Technology Review (May 23, 2023), available at www.technologyreview.com/2023/05/23/1073500/drone-food-delivery-shenzhen-meituan.

³² See World Economic Forum, *Medicines from the sky: how drones can save lives* (Apr. 21, 2020), available at www.weforum.org/stories/2020/04/medicines-from-the-sky-how-a-drone-may-save-your-life/; see also World Economic Forum, *Medicine from the Sky: Opportunities and Lessons Learned from Drones in Africa* (Mar. 2021), available at www3.weforum.org/docs/WEF_Medicine_from_the_Sky_2021.pdf.

³³ Italy Chosen For Amazon Prime Air Service In Late 2024, Trieste (Oct. 20, 2023), available at www.intrieste.com/2023/10/20/italy-chosen-for-amazon-prime-air-service-in-late-2024/; Jack Daleo, *Google's Wing to Use Drones to Fly Blood Between London Hospitals*, Flying Magazine (Sep. 17, 2024), available at www.flyingmag.com/modern/googles-wing-to-use-drones-to-fly-blood-between-london-hospitals/; Jack Daleo, *Rwanda launches nationwide drone delivery service with Zipline*, Freight Waves (Dec. 15, 2022), available at www.freightwaves.com/news/rwanda-launches-nationwide-drone-delivery-service-with-zipline; Skydio Secures Nationwide BVLOS Approval for Remote Drone Operations In Japan, Skydio (Jun. 6, 2023), available at www.skydio.com/blog/nationwide-bvlos-approval-for-remote-drone-operations-in-japan.

³⁴ FAA, *Drones by the Numbers*, available at www.faa.gov/uas.

³⁵ For more information regarding legal considerations applicable to state and local regulation of UAS, please see FAA and DOT's 2023 Fact Sheet, available at www.faa.gov/sites/faa.gov/files/State-Local-Regulation-of-Unmanned-Aircraft-Systems-Fact-Sheet.pdf.

³⁶ Available at www.faa.gov/uas/programs_partnerships/completed/integration_pilot_program.

³⁷ Available at www.faa.gov/uas/programs_partnerships/beyond.

next phase in UAS operations, FAA proposes a new set of regulations specific to UAS.

UAS technology, as well as the various systems that support it, has advanced faster than the regulatory framework. Having clear regulations and guidance about how to operate BVLOS is essential for future integration of UAS. This rule proposes requirements for airworthiness acceptance, operating requirements, and a framework for automated data service providers to enable scalable, repeatable, and safe BVLOS operations.

The airworthiness and operating requirements would reside in part 108 of title 14 of the CFR, a new part that represents FAA's commitment to a regulatory framework that permits increasingly complex UAS operations while building on the knowledge gleaned from existing rules. The proposed requirements for automated data service providers would reside in new part 146. This proposed framework would provide assurance that operations can be conducted safely, but also within the appropriate position on the safety continuum. As discussed throughout this rule, FAA recognizes that type certification may not be the most appropriate regulatory regime for the safe operation of proposed part 108 aircraft, nor may the airman certification structure of manned aviation be appropriate for these types of operations.

Proposed part 108 would enable UAS BVLOS operations through design, procedural, and operational requirements. Operations traditionally accomplished through manned aviation could be executed more safely and at greater scale than currently conducted. In this context, UAS, using programmed paths managed by third-party services, operating BVLOS, can offer alternatives to manned aircraft to perform the same function safely. UAS can supplement tasks that would otherwise be accomplished by surface transportation or individuals, which could have a positive impact on safety. A UA can fly over crops distributing pesticide or fertilizer without the need for a person to fly a full-sized aircraft low to the ground and risk an accident or pilot exposure to chemicals. Enabling BVLOS operations could have a transformative impact on logistics. Life-saving medicine, equipment, or even human organs can be transported rapidly between points, without having to contend with traffic congestion, or requiring a pilot to fly a helicopter into a high-risk situation. Local regulatory authorities can use UAS to inspect the underside of bridges or check the

integrity of the railroad tracks that crisscross the wide expanse of the United States, both more efficiently and more safely than is possible without UAS. UAS-based collection and analytics can inspect more energy production, transmission, and storage infrastructure per day compared to a manual, ground-based inspection, which significantly increases the opportunity to detect and remedy leaks and other issues.

Through the proposed airworthiness acceptance process, operational and personnel frameworks, and standards for automated data service supply, the level of risk proposed in this rulemaking would be equivalent to the level of acceptable risk in part 107, but for more complex aircraft and operations. Part 107 notably did not require any airworthiness certification or design standards, instead fixing the weight at 55 pounds and relying on operating limitations to ensure safe operation. In the 2016 Final Rule, FAA acknowledged the biggest concerns for risk were the inability of a pilot to maintain safe separation from other aircraft and the possibility of a loss of control in flight due to a failure of the control link. The risk-based approach in part 107 has proven to be safe and effective for operations conducted within VLOS.

As we have seen through existing operations that we have enabled through exemptions and waivers, the existing technological tools to enable these operations are generally already available, and need only a repeatable, scalable regulatory framework that would allow the various potential benefits that UAS BVLOS operations could provide to be realized. This can also be seen through the new and novel approaches FAA has seen implemented through special programs such as BEYOND. Under existing systems, operators can equip a UAS with technology that will detect other aircraft, both manned and unmanned, and program it to avoid other aircraft in a consistent, safe manner. Similarly, should a mechanical malfunction occur, the technology is able to avoid impacting people through pre-programmed flight responses. This use of technology, in combination with management of the areas within which the UAS operates, helps mitigate the risks involved in these operations, as described in this preamble.

The regulations under this proposal would also ensure that operators address and manage cybersecurity risks. To that end, this proposed rule would require cybersecurity policies be in place for most operators. The security of computers and networked systems is an

overarching goal. Operators under proposed part 108, with the limited exception of recreational operators, would be required to assess and monitor cybersecurity risks continuously and take appropriate precautions to protect their operations from being compromised on an ongoing basis.

The part 107 framework for small UAS operations prioritized individual responsibility for operations, placing the burden of safe operations on the remote pilot in command. While there is merit in this approach, it does not always align with the way UAS are used, especially in a BVLOS operation. This proposed rule would place responsibility at a corporate level, utilizing flexible approaches to training, operations personnel duty assignment, and development of manuals, while also providing the flexibility to allow operators to make risk-based decisions to conduct operations safely. Under this proposed rule, the person exercising control over the operation would not be certificated by FAA. Instead, FAA proposes to require an operations supervisor who would act on behalf of the company and be responsible for the overall safety and security of the operation, including ensuring that operations are conducted within the parameters of the applicable requirements and that personnel are appropriately trained for their role. The position would also demand knowledge of the relevant regulatory requirements, as well as company procedures and the specific requirements associated with the UA used in their operations. In addition, this rule proposes the utilization of flight coordinators, if required by the aircraft design, who would have more direct involvement in the operation of a UA and would similarly require training in safe operation.

This proposed rule is designed to assess and manage risks to people and property on the ground and other users in the NAS while allowing the growth of UAS operations. The main factors considered in assessing the risks are the industry-consensus standards that inform the design of the UAS, the weight, speed, and size of the UA, the environment it is operating in or over, technological mitigations to include strategic deconfliction, conformance monitoring, and DAA capabilities, and what, if anything, it is transporting.

Under proposed part 108, many types of operations would take place over people. One significant risk factor for these operations would depend on the number of people the UA is operating over. Proposed part 108 would address a variety of operating environments. To

present an accurate and consistent picture of population, FAA is proposing the use of LandScan, a Federally sponsored and freely accessible set of population data. LandScan provides a basis for operational categories to allow complex operations over areas with increased population density, with both technological and operational requirements to ensure continued safety.

In proposed part 108, operations would be conducted primarily below 400 feet AGL (unless authorized by the Administrator to go higher), and this rule would establish new requirements to allow for safe operations BVLOS in this more integrated airspace. UAS operating under part 108 would be required to yield right of way to traffic broadcasting their position using Automatic Dependent Surveillance-Broadcast (ADS-B) Out equipment. Under proposed part 108, strategic deconfliction would be required for operations over certain populated areas, and operations in controlled airspace would require strategic deconfliction, conformance monitoring, and the ability to detect cooperative and non-cooperative aircraft in certain airspace classifications. Operators would need to be aware of factors such as the location, weather, obstacles, and other traffic to ensure safe operation, even as they may not be physically present at the flight operation.

As discussed in section III.A.5 of this preamble, FAA is approaching airworthiness in the context of a safety continuum that considers exposure of the public to risk for each aircraft and operation. Whereas traditional manned aircraft generally require a type certification or special airworthiness certification to operate in the NAS, FAA is proposing a process that would ensure public safety while also being mindful of the level of appropriate rigor associated with the operational envelope of UA operating under proposed part 108. While type certification is appropriate for manned operations, it does not necessarily follow that the time, resources, or requirements for type certification are appropriate to allow safe operation of UAS under proposed part 108. With airworthiness acceptance and industry consensus standards, FAA is proposing a process that will provide a more time and resource appropriate avenue to allow more complex UAS operations while appropriately mitigating risk. FAA is also proposing changes that will streamline compliance with UAS noise requirements. FAA recognizes that a fast and efficient process is critical as the UAS technology is constantly changing.

A particular model of UAS may only be produced for a matter of months before substantial changes occur and a new version is produced. A lengthy approval process would not only slow advancement, but the costs would be greater to implement design improvements. Thus, the airworthiness acceptance, as proposed under part 108, will allow the use of industry consensus standards and a streamlined acceptance process.

Likewise, FAA proposes a streamlined approach for operations. An operator would apply for authorization to operate using a UA that holds an airworthiness acceptance. Proposed part 108 has a two-level framework that manages risk in an efficient manner: permits and certificates. A smaller-scale operator can apply for an operating permit, which could be issued with sufficient oversight in a prompt and efficient manner. For those operators wanting to expand by operating larger aircraft in size or number, operating over larger concentrations of people, or conducting higher risk or more complex operations, an operating certificate would be required. This certificate would be more akin to operating certificates in traditional aviation and would entail a higher level of interaction with FAA for both issuance and oversight of the certificate.

FAA further proposes new part 146 to create requirements for the standards and establish FAA oversight of automated data service providers. As part 108 enables UAS BVLOS operation, data is critical to the safe and effective operation of these aircraft, as the ability to operate BVLOS is predicated on the fidelity and assurance of the data. To support the operational and airworthiness requirements of part 108, FAA proposes part 146 to enable those providing these services to obtain certification and defines minimum performance standards for those services using industry consensus standards. Proposed part 146 is essential for laying the groundwork for the next step for UAS operations and providing a service approval pathway that could be used to support other types of operations, both manned and unmanned, in the future. This proposal would ensure operators have options in the services that they use depending on their needs, while being assured that they meet a standard that will keep the public safe. And by keeping the regulation flexible, and allowing operators to choose the service they need, future technological innovations would be recognized while allowing choice by the part 108 operators and

competition among the part 146 service providers.

B. Need for Automated Data Service Providers

An automated data service provider is a person or company who provides an automated data service using a distributed computational system to support or manage aircraft operations, promoting safety and efficiency of the operation. Automated data service providers may or may not be directly involved in the aircraft operation but would nonetheless support the operation before or during its flight. Automated data service providers would add an important layer of safety and risk mitigation benefits to the operating requirements proposed in this rulemaking. To realize those benefits to scale, FAA proposes to regulate automated data service providers and their services under proposed part 146.³⁸

Not all automated data services and providers of those services would be subject to proposed part 146. Only those that provide services to support an aircraft operators' ability to comply with an FAA requirement by promoting the safety and efficiency of the operation would be subject to part 146. FAA would not, nor intends to, regulate an entity that does not fall under its purview; as such, providers of automated data services that are not provided to support an aircraft operators' ability to comply with an FAA requirement or do not impact NAS safety nor efficiency would not be enabled through proposed part 146.³⁹

FAA selected the term "automated data service provider" to avoid confusion with terms used to describe services provided by FAA's Air Traffic Organization, which are not subject to this rulemaking. In addition, in presentations and discussions, FAA personnel and industry stakeholders have also used terms such as "third-party service suppliers" and "UTM

³⁸ See section XIII of this preamble for further discussion on FAA's proposal to regulate automated data service providers and authorize their services.

³⁹ Strategic deconfliction is one example of an automated data service that would be promulgated under proposed part 146. Strategic deconfliction would significantly scale UAS BVLOS operations under proposed part 108. Using strategic deconfliction, a UAS operator can strategically deconflict flight paths, thereby operate safely in the NAS. In contrast, automated data services providers providing fleet management services to aircraft operators would not be regulated under proposed part 146. Fleet management services are used by operators to fulfill a business need, not a safety objective, thus would not be regulated under proposed part 146. For a detailed discussion on the scope and applicability of automated data services and providers of those services under proposed part 146, see section XIII.E of this preamble.

service providers.” The term automated data service provider is intended to cover both of those terms. The selected term would also include persons and companies that self-provision their own services (often referred to as vertically integrated companies), as well as persons and companies that provide distributed services dependent on ground-based sensors or equipment—sometimes referred to as Infrastructure-as-a-Service. In addition, the term “automated data service providers,” and part 146 in general, may apply to companies that are new to aviation and market a specific product to UAS operators, such as mobile network operators that have a UAS-specific command-and-control (C2) link offering.⁴⁰

Automated data services may fulfill a variety of purposes, including mitigating risk, depending on their exact functionality. For example, automated data services that provide strategic coordination for UAS operations reduce the risk of midair collision between UA, thereby reducing the risk of harm to people and property due to falling debris from that midair collision. Other kinds of automated data services may support operators’ DAA responsibilities, including by providing surveillance information or avoidance maneuvering instructions that could be more comprehensive or accurate than those the operators may provide using their own systems. Automated data services may also help operators avoid controlled flight into terrain, or loss of control, by providing operators with specialized data before and during flight operations to manage a variety of risk factors.

FAA recognizes that it might not be feasible for some UAS operators to provide all the services and functionality necessary to meet BVLOS safety requirements in-house. This could be for a variety of reasons, including resource and technical knowledge constraints. Automated data services may provide a cost-effective, safe, and scalable means for those UAS operators to meet some of the regulatory requirements in part 108. As a result, automated data services that meet the minimum requirements proposed in this rule would provide a viable set of alternative solutions to ensure

operational safety and regulatory compliance without placing undue restrictions or responsibilities on UAS operators.

FAA expects that automated data service providers will deploy services to meet emerging demands and capabilities, some of which are yet to be developed. These services may be based on emerging industry standards that will develop to meet market demands. Recognizing the rapid pace of technological change, FAA proposes a flexible regulatory structure designed to enable the recognition of new services as future standards are designed. Section XIII of this preamble provides the framework for regulating automated data service providers and their services.

C. Definitions (§ 108.5)

FAA proposes to add several definitions in § 108.5 that are unique to operations conducted under proposed part 108. FAA is proposing definitions for AE, C2 link, conformance monitoring, DAA, flight coordinator, ground control station, hazardous material, life-limited part, operational intent, operations personnel, package delivery, safe distance, strategic deconfliction, strategic conflict detection, strategic conflict resolution, and target average conformance. These terms have specific meanings and usage in part 108 that may be unfamiliar to readers, or their usage in part 108 is specifically important to the new UAS framework. These definitions would help the public understand the context of how these terms are used and identify their specific usages throughout part 108. FAA invites comments on the use of the terms and the associated language used in the definitions, as well as if any definitions are not needed, or if any definitions should be added to the list. Discussion and further context for the definitions included in this section can be found in the pertinent sections of the preamble.

V. Part 108 General Requirements (Subpart A)

Currently, most UAS operations in the United States fall under part 107, which applies to small UAS operated within VLOS of the remote operator. Since larger and more complex UAS operations are not covered by part 107, nor are operations permitted beyond VLOS under part 107 without a waiver, UAS operators continue to rely on requesting regulatory exemptions and waivers to allow them to conduct such operations. While FAA has utilized the flexibility of the existing structure broadly to permit increasingly complex

and advanced UAS operations, the current regulatory framework impedes full integration of all operations into the U.S. airspace. FAA seeks to fulfill its regulatory responsibility of ensuring the safety and efficiency of the NAS by facilitating the increased integration of UAS into the NAS and realizing UAS operational benefits. Therefore, FAA proposes to enable complex UAS operations, specifically those conducted BVLOS of the operator, under the proposed structure of part 108.

FAA understands that expanding UAS operations may introduce certain safety risks to the NAS. As part of addressing those safety risks, proposed part 108 would require new sets of processes and guidelines for UAS BVLOS operations, including requirements for UAS operators and maintenance personnel.

Under this proposed rule, FAA would require all UAS operators to obtain either an operating permit or an operating certificate to conduct their UAS operations under this part. Operators without an operating permit or certificate would not be allowed to operate under proposed part 108. Under this proposed rule, whether a UAS operator applies for a part 108 operating permit or an operating certificate would depend on the scale and overall risk of their UAS operation. FAA expects that presenting UAS operators with those two options would cultivate a flexible approach for operators to obtain the necessary credentials to then be able to comply with the requirements of this proposed part.⁴¹

Under this proposed rule, FAA would require operators who wish to conduct BVLOS operations using an operating permit to comply with subpart D of part 108. Likewise, operators who wish to conduct BVLOS operations using an operating certificate would be required to comply with subpart E of proposed part 108. For a discussion on the distinction between part 108 operating permits versus operating certificates, see section VIII of this preamble.

Regardless of whether an operator holds an FAA-issued operating certificate or an FAA-issued operating permit, the proposed rule would require all part 108 operators to comply with the applicable operating rules under subpart B. Subpart B of proposed part 108 would prescribe the general rules of engagement that each operator would need to abide by in order to conduct UAS BVLOS operations under part 108, including preflight operating

⁴⁰ Under proposed part 146, all these terms referring to UTM servicers or third-party servicers and the providers of such services would fall within the umbrella term of automated data service provider. Whether the automated data services are self-provided or outsourced to a third-party, any entity that provides automated data services to support an aircraft operation complying with an FAA regulation would be subject to proposed part 146 regulations.

⁴¹ See section VIII of this preamble for the process of obtaining a part 108 operating permit or certificate.

requirements and regulations related to operating BVLOS over people. A further discussion on general operating rules is contained in section VI.B of this preamble. Lastly, proposed part 108 would also prescribe operating personnel requirements under subpart C, aircraft maintenance and alterations requirements under subpart F, and general procedural requirements—which includes inspection requirements and prohibitions against engaging in fraudulent or deceptive practices—under subpart A of the proposed part.⁴²

A. Applicability (§ 108.1)

Proposed § 108.1 states that the requirements in proposed part 108 would apply to any person⁴³ who wishes to conduct UAS BVLOS operations in the NAS. Regarding operator requirements, as proposed in § 108.1(a), the requirements of part 108 would apply to any person who (1) conducts, or intends to conduct, UAS BVLOS operations in U.S. airspace; (2) requests FAA issuance of an operating permit or an operating certificate; (3) performs maintenance on a UAS under an operating permit or certificate issued in accordance with this proposed part; (4) is involved in the design, manufacture, or production of UAS to be operating in accordance with part 108; (5) requests FAA airworthiness acceptance of a UAS in accordance with subparts G and H of this part; or (6) submits a voluntary consensus standard for acceptance or approval by FAA as a means of compliance for any provision of part 108.

In addition to noting who part 108 would apply to, FAA is also proposing specific exclusions from part 108 to delineate between the different regulations that UAS could be operated under. As proposed in § 108.1(b), part 108 would not be applicable to any persons who choose to conduct UAS operations under 14 CFR part 107 or part 91.

In addition, UAS operations conducted under the recreational flyer provisions of 49 U.S.C. 44809 would not be subject to this rulemaking. FAA anticipates that certain operations such as agricultural, package delivery, aerial surveying, photography, and flight testing currently conducted under waivers or exemptions to 14 CFR part 107, 91, or 135 would transition to the

operations under part 108 when their exemptions expire, and a reasonable transition can occur. For operations that would not fall within the proposed operating requirements of part 108, FAA believes those operators who are currently complying with FAA requirements to conduct safe and efficient UAS operations may continue to do so in accordance with their existing framework. Proposed part 108 is not intended to fulfill the need for every type of operation related to UAS but rather would expand the types of operations that can be conducted under existing FAA regulations.

FAA considered whether it would be appropriate to amend part 107 or to add an additional subpart to proposed part 108 to provide a regulatory path for certain VLOS operations with aircraft weighing 55 pounds or greater with less automation than envisioned for airworthiness acceptance under this proposed part. Ultimately, FAA determined that adding a VLOS subpart to proposed part 108 would unnecessarily complicate the rule, as the risk mitigations under this proposed part rely on minimal human intervention to manage risk for BVLOS operations of larger aircraft with more complex operations. Operation of larger VLOS aircraft is a different risk set than what is being addressed in proposed part 108 and including it would add significant complexity to the structure of this proposed rule.

In addition, at this time FAA has also opted out of expanding the VLOS rules under part 107 to add UAS weighing 55 pounds or greater because doing so could unnecessarily delay this proposed rule. The 55-pound limit within part 107 functions as a significant risk mitigation in VLOS UAS operations and increasing the weight threshold would require FAA to either develop new risk mitigation measures or have sufficient data to establish that operations can be safely conducted at a higher weight threshold with no additional risk mitigation measures.

Also, FAA is unable to gauge the public's need or desire for VLOS operations of aircraft weighing 55 pounds or greater where the operator cannot, or would be seriously disadvantaged to, meet the airworthiness or operational requirements proposed for part 108. While FAA anticipates that there may be business cases in which manually operated UA equal to or exceeding 55 pounds may be the best option, FAA expects these cases to be limited in number based on current operations. Further, FAA's intention with proposed part 108 is to create a regulatory

framework for greatly expanded UAS operations with new and more capable UA, not to create a retrofit model for existing UAS with limited lifespans. Nevertheless, FAA recognizes that there are many existing UAS weighing 55 pounds or greater that are currently operating under an exemption to part 91 and those types of operations will be able to continue as they always have. FAA invites comments on whether there is a need or desire to expand part 107 for VLOS UAS operations weighing 55 pounds or greater. FAA also considered updating the relevant part 91 regulations⁴⁴ that are not currently in alignment with operations of a UA and are frequently the cause of exemptions needed for operators choosing to operate under that part. FAA, however, has opted out of updating part 91 in this way because doing so could unnecessarily prolong this rulemaking. In addition, FAA is unsure how great the need would be for part 91 exemptions after the framework for part 108 is put into place. Finally, FAA invites comments on the assumptions above related to parts 91 and 107, and areas where FAA may be lacking information.

It is important to note that, while proposed part 108 enables the operation of UA BVLOS, there is no prohibition from operating within VLOS under proposed part 108, so long as all the regulatory requirements are met. To illustrate this, an aircraft weighing less than 55 pounds that is to be operated within VLOS would have several options for which part they could operate under. They could operate under part 107, proposed part 108, part 91, or 49 U.S.C. 44809. Each regulation has its own set of unique requirements and allowances. An operator would have to meet all relevant requirements associated with the regulatory part they choose to operate under.

Proposed part 108 is not intended to be used for carriage of people. The risk mitigations provided by this part are not sufficient for passenger carriage nor were they designed with carriage of people in mind. To that end, FAA proposes in § 108.1(b)(4) that UA operated under part 108 are not permitted to carry a person. Operations contemplating carriage of people would appropriately occur under other regulatory parts, such as 14 CFR parts 91 or 135.

⁴² For subpart A, General, see section V of this preamble; for subpart C, Operations Personnel, see section VII of this preamble; for subpart F, Maintenance and Alterations, see section IX of this preamble.

⁴³ Per 14 CFR 1.1, a person is described as an individual or an entity, including a corporation, company, association, governmental entity, etc.

⁴⁴ FAA has granted relief from several regulations within 14 CFR; notably, from §§ 91.7(a), 91.109(a), 91.119(b), 91.119(c), 91.121, 91.151(a), 91.151(b), 91.209(a)(1), 91.403(b), 91.405(a), 91.407(a)(1), 91.409(a)(1), 91.409(a)(2), 91.417(a), 91.417(b), among other sections of part 91.

B. Reporting and Prohibitions

1. Reproduction or Alteration (§ 108.10)

FAA expects that all parties affected by this proposed rulemaking would comply with FAA requirements when conducting UAS BVLOS operations under proposed part 108. Engaging in fraudulent or deceptive practices would be prohibited under proposed part 108, as it is under all existing FAA regulations.⁴⁵

Proposed § 108.10(a) would prohibit anyone from making any fraudulent or intentionally false statement to any information submitted to FAA to show compliance with proposed part 108. Persons would be prohibited from fraudulently reproducing or altering an FAA-issued operating certificate or permit. If anyone were to engage in fraudulent or deceptive practices, proposed § 108.10(b) would enable FAA to issue penalties to those persons for their violations. Those penalties could include issuing a denial to applications for part 108 operating permits, part 108 operating certificates, certificates of waiver or authorizations, or declarations of compliance. Under the proposed rule, FAA may also penalize violators by suspending or revoking any permit, certificate, authorization, DOC, or similar that were already issued or accepted by FAA. Lastly, anyone violating this provision may also be subject to civil penalties.

2. Prohibition on Interference With Unmanned Aircraft Operations Personnel (§ 108.15)

Proposed § 108.15 would prohibit anyone from assaulting, threatening, intimidating, or interfering with operations personnel of a UA in the performance of their duties regarding the operation of a UA. This requirement would be necessary to protect the safety and efficiency of the NAS. Bad actors who interfere with UAS operations may endanger public safety, or any persons or property—both in the air or on the ground—which is anathema to FAA's obligation to ensure the safe and efficient use of the NAS. FAA notes that nothing in this requirement would preclude law enforcement, emergency services, the intelligence community, military personnel, or FAA personnel executing their authorized duties from intervening in operations in the interests of national security, emergency

response, or oversight and surveillance necessary for the safety of the NAS.

3. Inspection, Testing, and Demonstration of Compliance (§ 108.20)

To ensure operations are conducted in accordance with existing rules and limitations, and FAA's statutory oversight responsibilities,⁴⁶ §§ 108.20(a)(1) and (2) proposes that an operator would need to have their authorization to operate and identification readily accessible when operating and present it to any of the following: FAA, the National Transportation Safety Board (NTSB), and law enforcement officers. This measure would ensure that all operators are appropriately authorized, enhancing the safety and security of airspace operations. This requirement would set the stage for obligations aimed at maintaining operational integrity and oversight. This mandate would hold the operator accountable for unauthorized access and operation of UAS, which could result in incidents or accidents. The proposed requirement that operators have their authorization and identification on hand is so that government personnel would be able to verify that the operation is authorized and that qualified personnel are in control. This would ensure that operations are conducted efficiently and in compliance with regulatory standards.

Section 108.20(a)(3) further proposes that an operator would need to make available, upon request of FAA or any authorized representative of the NTSB, any document, record, or report required to be kept under the regulations of 14 CFR chapter I. By ensuring that all relevant documents, records, and reports are readily available for inspection, government representatives would be able to monitor compliance with established safety standards and regulations. This oversight would be essential for identifying potential areas of non-compliance or safety risks that could jeopardize the safety of operations. Utilizing these documents as part of regular and ad-hoc inspections would allow for a proactive approach to safety management, enabling the early detection and resolution of safety issues before they lead to accidents or incidents.

In the aftermath of an incident, the availability of comprehensive documentation is important for thorough investigations conducted by the NTSB or other relevant authorities. These documents would provide a

detailed account of operational procedures, maintenance records, personnel qualifications, and other factors that might contribute to understanding the root causes of an incident. Access to such information supports developing effective recommendations to prevent future occurrences, thereby improving overall safety standards.

Section 108.20(b) proposes that each operator of UAS would be required to, upon request, allow FAA to make or witness any test or inspection of the UAS, including any aspect of the operation of a UAS, and if applicable, the automated data services utilized, to determine compliance with this part, including access to the operations area for the aircraft. This proposed requirement is consistent with FAA's exercise of its authority to ensure operational safety in the NAS. In circumstances in which FAA were to identify a safety issue that warrants review of the operation, this proposed requirement would permit FAA review of all applicable information to make any appropriate determinations about the safety of the operation.

The ability for FAA to perform inspections without prior notice would ensure that operators consistently adhere to the highest standards of safety as a fundamental practice, not just when an inspection is anticipated. This continuous state of readiness and compliance would safeguard not only the operators and their assets, but also the public potential hazards.

Moreover, these inspections would serve as a feedback loop. They would allow FAA to observe operational practices, the state of equipment, and adherence to regulations. Such inspections would promote transparency and accountability. By allowing FAA access to conduct these evaluations, operators would demonstrate their commitment to operating within existing limitations and requirements. This openness would build trust among stakeholders, including regulatory bodies, the public, and other airspace users.

Section 108.20(c) proposes that each employee of, or person used by, the operator who is responsible for maintaining the operator's records would need to make those records available to FAA. Making records accessible to FAA would allow for thorough audits and reviews that can verify compliance with safety standards, operational procedures, and maintenance practices. These records would include, but would not be limited to, logs of operational procedures, maintenance and repair

⁴⁵ As proposed in the *Falsification, Reproduction, Alteration, Omission, or Incorrect Statements* notice of proposed rulemaking (89 FR 8560), FAA intends to use a comprehensive prohibition on fraudulent or deceptive practices that covers all FAA regulations. If that rule becomes final, proposed § 108.10 would be redundant.

⁴⁶ See 49 U.S.C. 44701(a)(2)(A).

records, safety assessments, and employee training records and any other record relating to compliance.

Requiring records to be available for inspection would encourage operators to maintain accurate and comprehensive documentation of their operations. This practice would support continuous improvement by facilitating regular reviews and updates to safety practices based on insights gained from record analysis.

As part of FAA's safety oversight framework, this proposal would require individuals holding an FAA airworthiness acceptance to make available evidence of such acceptance and any other requisite documents upon request. It would ensure that aircraft operating within FAA's regulatory jurisdiction meet the safety standards, thereby protecting the public, enhancing the integrity of the aviation industry, and fostering continuous improvement in aviation safety.

Section 108.20(d) proposes that failure by any operator to make available to the Administrator upon request, the certificate, operations specifications, or any required record, document, or report would be grounds for suspension of all or any part of the operator's permit or certificate.

4. Aviation Safety Reporting System: Prohibition Against Use of Reports for Enforcement Purposes (§ 108.25)

Proposed § 108.25 would prohibit FAA from using reports submitted to the National Aeronautics and Space Administration (NASA) under the Aviation Safety Reporting System (ASRS) in any enforcement action against part 108 operators. This prohibition would not apply, however, in cases where the information submitted to NASA concerns accidents or criminal offenses, which are wholly excluded from ASRS. ASRS was originally created to collect aviation safety event information from pilots, mechanics, air traffic controllers, and other users of the NAS. Under part 107, UAS pilots operating within the VLOS may also use ASRS to report safety events.

The prohibition in proposed § 108.25 against FAA using ASRS data in enforcement actions would be very similar to how such reports are protected and used for part 91 pilots, part 107 UAS pilots, and other airspace users who are subject to various portions of FAA regulations. FAA and NASA have recognized the benefit of having accurate, candid, and timely reports of unsafe (or potentially unsafe) conditions in the NAS. Such data and reports are vital for proactive and

generative safety assurance, enabling FAA to identify leading indicators of increasing risk prior to an accident or incident. As FAA stated in Advisory Circular (AC) 00-46F, "the effectiveness of this program in improving safety depends on the free, unrestricted flow of information from the users of the NAS." FAA is concerned that, without such a prohibition on enforcement actions, pilots, UAS operators and other NAS users would be disincentivized from making safety reports, including acknowledging unintentional or honest mistakes, for fear of being penalized by FAA.

5. Base of Operation and Operator Identification (§§ 108.30 and 108.35)

FAA proposes in §§ 108.30(a) and (b) that each operator would be required to maintain a principal base of operations in the United States and would be required to provide FAA with a physical address. This physical address would serve as the primary point of contact for FAA, though (per proposed § 108.30(d)) the operator may perform operations at locations other than the principal base of operations, as authorized by FAA. Further, per proposed § 108.30(c), the operator would need to notify FAA at least 30 days prior to changing their principal base of operations. However, recreational operators would not be required to submit a principal base of operations, in accordance with proposed § 108.475(f)(3). Recreational operators would only be required to submit a physical address.

By ensuring that all operators supply a physical address, FAA would have the ability to accomplish prompt and cost-effective service of process and service of other safety-critical or time-sensitive documents, including notices of proposed civil penalties, orders of suspension or revocation, and emergency orders of suspension or revocation. In addition, as this proposed rule would only apply to operations conducted within the United States, FAA finds it necessary that the physical base of operations is also located in the United States. While part 47 aircraft registration does require the aircraft owner to provide a mailing address, FAA is including this requirement for a principal base of operations in proposed part 108 because it is important for FAA to know the primary location where the operator will be conducting operations to conduct inspections. The address required for part 47 is the owner's mailing address, which may or may not be where the UA is located or from which it is operated.

In addition, FAA proposes in § 108.35(a) that an operator would not

be able to operate or advertise services of a UA under part 108 using a business name other than what is listed on the operating permit or operating certificate. If the operator were to operate under a d/b/a, the business names would need to be provided on the application and listed on the permit or certificate to be valid. Furthermore, in proposed § 108.35(b), no person would be able to operate a UA under part 108 unless the identity of the operator is displayed on the UA in a manner acceptable to FAA. In addition to the registration number, FAA proposes that an operator would need to include the company name or trademark on the exterior of the aircraft for ease of identity in the case of a lost aircraft or off-site landing. FAA also encourages the addition of contact information in the form of a phone number, QR code, or other method to enable people who may come across the UA be able to report the sighting easily.

These proposed requirements in § 108.35 would be consistent with FAA practices for other commercial operations and would ensure FAA has sufficient information to contact the operator as necessary, including in instances where a UA is destroyed and access to remote ID or other electronic systems is not possible, or FAA has other reason to contact the operator. In addition, as with other regulations applicable to commercial operations, the proposed prohibition on advertising under a different name would ensure that the people using the operator have the assurance that the company is operating within the regulatory framework established by FAA and would ensure FAA can appropriately link the operator who is advertising with the approval for the operation.

C. Recordkeeping (§ 108.40)

FAA proposes in § 108.40 to require each operator under proposed part 108 to maintain records for each aircraft used in part 108 operations, each required operations personnel used in part 108 operations, any mechanical irregularities for the UA and its AE, any maintenance or alterations performed on the UA or its AE, and all initial and recurrent training taken by each person required to receive training under proposed part 108. The operator would also be expected to provide FAA access to the records upon request, either electronically or in paper form.

For aircraft records, FAA proposes under § 108.40(a) that operators would need to include a current list of UA used in the permitted or certificated operation, the total time in service of each UA, and the status of any life-limited parts. FAA and industry rely

heavily on current aircraft status and past aircraft servicing and inspections to determine airworthiness of an aircraft. FAA would therefore require these records to be kept by the operator under this part.

FAA further proposes in § 108.40(a)(3) that an operator who performs a flight under this proposed rule would need to maintain records of each flight, including the date, time, and duration of the flight; the aircraft registration number; the type of operation (*e.g.*, package delivery); the flight path including destination, origin, and altitude(s); the name of the designated operations personnel assigned to each flight; and landing locations if different from origin and destination locations. FAA is proposing this recordkeeping to ensure the availability of information critical to incident or accident investigations. By requiring the operator to maintain these, FAA and operator would have historical data to determine root causes of occurrences, incidents, or accidents.

Proposed §§ 108.40(a)(3)(vii) and 108.40(a)(3)(viii) include operation type-specific recordkeeping requirements for package delivery and agricultural operators. Under proposed § 108.40(a)(3)(vii), FAA would require package delivery operators to keep a record of the pickup points and delivery locations for each operation. FAA is proposing this requirement in addition to destination, origin, and landing locations because some UA do not physically land to pick up or deliver packages and it would be critical for FAA to know who the customers or warehousemen are and where they are located in the event of an incident or accident investigation. Under proposed § 108.40(a)(3)(viii), FAA would also require the operators performing agricultural operations to keep a record of the name and address of each person for whom agricultural UA services were provided, the date of the service, and the name and quantity of the substance dispensed be kept as a record by the operator. The rationale for this additional requirement is that the agricultural operator may be contracted to provide services to one or more customers, and it is important for FAA to know who these customers are and where they are located in the event of an incident or investigation. Oftentimes, FAA does not discover non-compliance, accidents, or incidents involving aircraft until after the flight has been completed. By requiring these detailed records to be kept by the operator, FAA and operator would have historical data to look back on to determine root causes to occurrences, incidents, or accidents.

Because personnel are a key contributor to how any permit or certificate holder conducts safe operations, FAA proposes in § 108.40(b) that each operator would need to maintain records on each person required for the safe operation of the UAS used in its operations, including their full name, qualifications in sufficient detail to determine the individual's ability to participate in part 108 operations, current duties and date of duty assignment, and information relating to an individual's release from employment for cause. In addition, for operators holding an operating certificate, the operator would also need to be required to maintain records on the date and times of operations personnel assigned work shifts, the length of the rest period prior to each duty period for each of the required personnel, and the total hours on duty per calendar day for each of the required operations personnel which, as discussed in VII.F, would require a minimum of 10-hour rest periods and maximum 14-hour duty days. This information would be valuable in understanding if persons are fit for duty and appropriately qualified. In addition, this information would be beneficial to FAA for continued surveillance purposes.

FAA proposes in § 108.40(c) that operators would need to provide logs for personnel to record mechanical irregularities. Having this log would allow personnel to view current and previous discrepancies for corrections and airworthiness of the aircraft. FAA further proposes that operations personnel would be required to enter, or to have entered, in the log each mechanical irregularity for the UA and their AE that comes to the person's attention. For operators to ensure that faulty or inoperative equipment is addressed per manufacturers' maintenance instructions, operations personnel would need to create a log of the faulty item should it come to their attention. This log would ultimately be used by both maintenance personnel for correction and operations personnel for determining overall UA airworthiness. In addition, when entering a log of mechanical irregularity, FAA proposes that personnel who take corrective action concerning a reported or observed failure or malfunction would need to enter, or need to have entered, the action taken in the log. This would ensure that any person(s) responsible for determining UA airworthiness can decide the UA's overall operational status.

Further, FAA proposes that, under § 108.40(d), the operator would be required to maintain records of the UA

inspection status for each maintenance or alteration activity to the UA or its AE. It is important for anyone operating the UA to be able to determine when the last inspections were performed and the status of all the required inspections as outlined in the manufacturer's maintenance instructions. In addition, persons performing maintenance on the UA would be required under proposed § 108.40(d)(1) to make a record of that activity, including a description of the work performed, the date of completion of the work, the identification of the person who performed the maintenance, and a return to service approval. These requirements would additionally help persons responsible for airworthiness determination to ensure proper airworthiness status of the UA by showing a complete log of all work performed.

FAA proposes in § 108.40(d)(2) that operators would not need to comply with the logging and documenting requirements of proposed § 108.40 for removal and replacement of UA batteries designed for frequent, toolless replacement if the operator has other means of tracking battery use, life, and performance. Some UA designs necessitate the removal of the aircraft batteries on every flight for charging. Aircraft designed this way are expected to have an easy, toolless feature that prevents the battery from being installed improperly and ensures that the battery is secure. Therefore, all of the information generally required for other maintenance entries may not be needed in these cases and may become overly burdensome if required for every flight. However, FAA recognizes that batteries are essential to most UA operations and does propose that operators would still need a way to track battery use, life, and performance.

FAA also proposes in § 108.40(d)(3) that operators would not need to comply with the logging and documenting requirements of § 108.40 for removal and replacement of UA components that are designed for toolless removal and installation, such as removable rotors which may be necessary to remove for UA storage, so long as the operator has procedures for ensuring that any part that is removed is inspected for serviceability prior to being reinstalled and: (1) the parts are reinstalled on the same aircraft; (2) the parts are not subject to time limits; or (3) the operator has other means of tracking installations and use. Through current experience, FAA understands that UA often have various removable parts that are frequently removed and replaced without being deemed faulty. These typical parts are removed for

reasons such as storage or repositioning of the UA. FAA does not intend to overburden an operator with logging and documenting parts that the manufacturer has designed to be normally removed and reinstalled. So long as operators have procedures for ensuring parts are removed, inspected, and reinstalled, FAA has concluded that safety would not be affected by not requiring logging and documenting normal removal and reinstallation of parts.

Personnel training is of great importance, as it ensures appropriate qualification, competency, and proficiency of a person performing their duties. To understand each person's qualification, competency, and proficiency, proposed § 108.40(e) would require the operator to keep a record showing personnel training. Initial and recurrent training records are important because they show a person's baseline qualifications and continuing proficiency. In addition to requiring recordkeeping of all initial and recurrent training, operators would additionally need to maintain records on initial and recurrent training on handling hazardous materials and for agricultural operations. As described in section VIII.C 9, these types of operations would have additional knowledge requirements to address the use of agricultural products. In addition, these training records would give a snapshot of company policies and procedures at the time that the training occurred. This may be of importance when reviewing archival records for root cause of non-compliance or a safety incident.

FAA proposes that the records required by § 108.40(e) would need to contain the person's name, the date of hire or start of a related job function, the most recent training completion date, a description, copy, or reference to training materials used to meet the training requirement, the name and address of the organization providing the training, and a copy of the certification issued when the individual was trained, which would show that training has been completed satisfactorily. All of this documentation would help not only the operator to have a complete description of the training event for tracking, scheduling of future training, and archival documentation for non-compliances, but also would help FAA to determine continued compliance.

Finally, this proposal would include minimum retention periods. FAA recognizes that operators may struggle to keep track of old records and the necessity for archival data from those

records becomes unnecessary and non-applicable as time goes on. FAA therefore proposes that UA records, mechanical irregularity records, and maintenance records would need to be kept either for the life of the aircraft, or for 24 months, as applicable. Records of the total time in service of each UA and the status of any life-limited parts must be kept for the life of the aircraft as they establish important history for the UA that must be maintained. Records of each flight performed, must be retained for a period of 24 months. Personnel records must generally continue to be maintained as long as the employee is employed and continue until 12 months after the person has separated from the company, to include any training performed or received, however, duty and rest records only have to be maintained for 3 months. Records of mechanical irregularities and maintenance performed must also be retained for a period of 24 months.

In addition, personnel and training records would need to be retained for 12 months following the separation of the personnel from the operator. This amount of time would be sufficient for these records to be useful. FAA does not want to impose on an operator record filing that, after years of retention, may create faulty, inundated databases with records that have not shown to be of concern within the previous 12 months. FAA proposes that initial and recurrent training records required by § 108.315, initial and recurrent training records required by § 108.440(b), initial and recurrent training records required by § 108.570(a) and records received for agricultural operations required by §§ 108.445(i)–(j) and 108.575(g) would need to be retained under the proposed above requirements for 12 months after separation.

Finally, FAA proposes that operators holding an operating certificate would need to retain records in proposed § 108.40(b)(5) concerning the date and times of operations personnel assigned work shifts, the length of the rest period prior to each duty period for each of the required operations personnel, and the total hours on duty per calendar day for each of the required operations personnel for a period of 3 months. Information contained in these records are related to individual flights. FAA would use this type of data during routine surveillance inspections to determine individual flight compliance with regulations. FAA does however recognize the burden that would be imposed on an operator should records for multiple flights be required to be kept for long periods at a time. Operator databases would be overloaded with

data. During routine surveillance, FAA typically reviews samplings of this type of data to determine overall compliance. FAA does not see the need to retain lengthy archival data concerning individual flights.

D. Reporting (§ 108.45)

FAA has a duty to ensure the safety of the NAS. To do so, FAA needs to be aware of accidents, incidents, and precursor safety events and occurrences in the NAS. The reporting requirements proposed in § 108.45 are intended to capture a diverse set of data ensuring that FAA can appropriately track and monitor the safety of UAS operations under this part.

In § 108.45(a)(1), FAA proposes that each operator would be required to report aggregate flight data to FAA. This data would include the total number of flight hours operated for each individual UA, including the specific make, model, or series of aircraft and the associated FAA registration number. This data would be helpful for three reasons. First, it would support FAA's safety oversight functions. By collecting flight data, FAA would gain insights into UAS operations. This information would help FAA identify potential risks, and areas for improvement. Second, this data would be useful in identifying trends that could otherwise lead to accidents or incidents. Monitoring flight hours would allow FAA to track usage patterns and identify any anomalies or excessive usage. This would also aid in preventing accidents due to overuse or fatigue-related issues. Third, reporting flight data would ensure compliance with regulations by enabling FAA to verify that operators are adhering to their operational limits.

In § 108.45(a)(2) FAA proposes requiring operators to provide flight data to the manufacturer or permit and facilitate flight data collection by the manufacturer to ensure continued operational support for the operator. Traditionally, these data collection systems are already voluntarily implemented within the industry to analyze flight data to aid in the identification of safety issues with the UA design. FAA envisions that this could be accomplished by submitting the data log file to support both § 108.725 and § 108.905. In § 108.45(b), FAA proposes requiring each operator to report the registration and serial numbers of each aircraft used in part 108 operations. This report would need to be made in a form or manner acceptable to the Administrator. FAA notes in proposed § 108.45(b) that this reporting can be combined with the flight data reporting required under

proposed § 108.45(a). Requiring this reporting allows FAA to easily determine an operator's compliance with § 108.115 as well as to ensure ongoing regulatory compliance.

In § 108.45(c), FAA proposes that operators would be required to submit a monthly interruption report summary to FAA when there is an occurrence related to an unplanned or precautionary landing away from the normally designated landing location or where the planned UAS route is altered due to known or suspected mechanical difficulties or malfunctions. By analyzing these occurrences, FAA would gain insights into common failure modes. This information would inform maintenance practices and would help improve reliability—including potential changes that the manufacturer may need to make or that can be addressed through revisions to industry consensus standards.

Aggregated reports would allow FAA to assess the overall health of a growing and diverse fleet of UAS. This would inform regulatory decisions, training programs, and safety best practices, among other outcomes. Taken together, these reporting requirements would serve as essential tools for maintaining safety, compliance, and operational efficiency.

FAA further proposes that operators certificated under subpart E would be mandated under § 108.45(d)(1) to report to the UA manufacturer any failure, malfunction, or defect that results in a momentary or permanent loss of control or communication of the UAS if it has endangered, or may endanger, the safe operation of the UA. Under the proposed rule, operators would also have to provide such reports to FAA upon request. FAA's intent for this proposed requirement is that this information could be used by the manufacturer to monitor and identify negative trends affecting the safe operation of the UA and its AE. Reporting reliability issues to the UAS manufacturer would provide a vital source of data to help detect and mitigate potential hazards and improve aircraft design. Safety reporting can provide precursor data before a hazard leads to a more significant event. By analyzing these events, industry may be able to avoid future incidents or accidents.

Operators would need to include specific details in their reports, including the date, aircraft identification and nature of the failure. Furthermore, FAA proposes in § 108.45(d)(1) that service difficulty reports would also need to include identification of a part or system

involved, which aids in pinpointing root causes and assessing overall system reliability. FAA also proposes in § 108.45(d)(1) requiring operators to indicate the apparent cause of the failure, malfunction, or defect. This could include factors such as wear, cracks, a design deficiency, or a personnel error on the part of the operator. Regardless of what the cause is, understanding the root cause would inform better preventive measures. To assist manufacturers in determining the best course to address a service difficulty report, FAA also proposes in § 108.45(d)(1) that operators would need to report any corrective actions taken.

The service difficulty reporting requirements for operators to report to automated data service providers in proposed § 108.45(d)(2) would substantially mirror those discussed in proposed § 108.45(d)(1), albeit with several notable exceptions. The requirement to make service difficulty reports related to service usage would apply to all users of a service, not just operational certificate holders. Because the operational use of automated data services is new, FAA wants to enable greater information exchange between users and service providers when the failure, malfunction, or defect of an authorized service has endangered or may endanger the safe operation of the aircraft. This proposed rule would require that users report details of the apparent failure of an automated data service, which could include operational or functional issues including notification of a contingent state, interface issues, data issues, time delay/latency issues, or the operational response to information or alerts from a service. FAA intends for this to be broad so that users and service providers alike can recognize a range of issues, including systemic incorrect usage of a service that may be due to ambiguities in documentation, design, or other factors.

Prompt reporting of service difficulties of not later than 7 days after the occurrence would enable manufacturers and automated data service providers to play a proactive role in assessing and mitigating potential safety risks. By reporting to the aircraft manufacturer or the automated data service providers, operators would contribute to a broader understanding of real-world performance and reliability. This feedback would inform design improvements, corrective actions, and other sets of standards upon which the airworthiness acceptance and service authorization rely. Therefore, in proposed § 108.45(h)(4), FAA proposes that reporting under (d)(1) and (d)(2)

would need to occur no later than 7 days after the occurrence.

FAA proposes several security-related reporting requirements in § 108.45(e). Any security breach where an operator loses control of the UAS would need to be reported to FAA. This would include unauthorized control that may be careless in nature or perpetrated by a malicious agent, regardless of if that individual is an employee or an outsider. Furthermore, an operator would need to report unauthorized access to the operator's facilities, including areas where UAS are loaded, hazardous materials are stored, or goods are prepared for transport. Finally, an operator would need to report unauthorized access to the operator's networks, devices, or data, regardless of its impact on UAS operations' integrity, accuracy, or reliability. In the report for any incident, the operator would need to include the date and time of the incident, the nature and scope of the incident, identification of any vulnerabilities that led to loss of control or unauthorized access, and corrective actions taken. These security-related reporting requirements would work in conjunction with similar requirements FAA proposes for aircraft manufacturers (sections X and XI) and automated data service providers (section XIII). Reporting security incidents would ensure that potential threats are identified and addressed promptly and contributes to national security by preventing misuse of UAS technology. Reporting would allow FAA to investigate breaches, assess vulnerabilities, and implement corrective measures. It also would help prevent future incidents. Reporting such breaches helps safeguard critical data and maintain public trust.

FAA proposes in § 108.45(f) that part 108 UAS operators report any deviation from this part in the event of an emergency within 10 days, excluding Saturdays, Sundays, and federal holidays. While emergencies may necessitate deviations from standard procedures, reporting these deviations would ensure transparency and accountability on the part of the operator, and may provide insights into operational challenges that could inform changes in training or operational policies.

FAA proposes in § 108.45(g) that operators must report to FAA any operation of a UA that involves damage to property, other than the UA, which exceeds \$500, and for any malfunction or failure of any system that leads to operations into an unauthorized area. Note that these reports are in addition to the reporting of aircraft accidents and

serious incidents required under 49 CFR 830. FAA chose not to add a duplicative reporting requirement as FAA would also receive these notifications in due course through that regulatory process. FAA intends to use the data both to track overall safety performance and to establish and update relevant safety policies for ongoing BVLOS UAS operations under the rule. Reports under proposed § 108.45(g) would need to include the date, time, and location of the event, as well as a description of the event (including operational factors including whether use, failure, malfunction, or defect of an automated data service provider was a factor) and any known contributing factors. FAA proposes requiring reports within 10 days of the event. This would be consistent with the corresponding reporting requirement in proposed § 107.20.

Finally, FAA proposes in § 108.45(h) reporting timeframes for each reporting requirement enumerated under proposed § 108.45. Under the proposed rule, flight data and UA registration and serial numbers (§§ 108.45(a) and 108.45(b)) would need to be provided to FAA at least once each calendar month. FAA intends to provide an automated interface to facilitate the collection of this data and anticipates that most manufacturers and operators will incorporate automation to comply with this request, so that data collection could be as frequent as near real-time, weekly, or any other frequency that is at least once a month. As this is a new requirement, FAA invites comments on the impact this might have on operators, including potentially less-burdensome alternatives.

Summaries of occurrences under interruption reports (§ 108.45(c)) would need to be provided no later than the end of the 10th day of the following month in which the occurrence took place, which would be consistent with other similar requirements in other regulations.⁴⁷ Service difficulty reports (§ 108.45(d)) would need to be submitted 7 days after the occurrence, with additional information provided as needed to supplement the initial report which is also consistent with similar requirements.⁴⁸ Security occurrences (§ 108.45(e)) would need to be reported no later than 96 hours after the occurrence, with supplemental information after the initial report as needed, which would be a new requirement but is being proposed as a

96-hour requirement due to the nature of the information. Emergency conditions and event reporting (§§ 108.45(f) and (g)) would need to be submitted within 10 days of the deviation or event, respectively.

Lastly, in considering appropriate reporting requirements for operations under part 108, FAA is considering requiring UA operators to report to FAA all aircraft traffic targets received by their UA operating under this part. This would include reporting ADS-B targets used to meet § 108.195 and part 89 compliant remote ID received by the operator's UA. The latter remote ID reporting requirement would have required additional aircraft reception capability that is not explicitly required by the proposed part 108 rule. This reporting requirement would allow FAA to have a more comprehensive awareness of operations within airspace used by part 108 operators. It would allow FAA to better respond to governmental or public inquiries about UAS operations as low altitude UAS operations increase in scale. However, the presumed additional cost to meet the reporting requirement for the UA manufacturer, part 108 operator, and FAA is considerable. FAA requests comment on whether FAA should require this traffic target reporting, and if so, what type of general time latency would be appropriate for FAA to require.

VI. Conducting UAS BVLOS Operations (Subpart B)

Subpart B of proposed part 108 prescribes the general operating requirements for all operators conducting operations under proposed part 108. To conduct UAS BVLOS operations in the NAS under this proposed rule, FAA would require part 108 operators to comply with all applicable requirements of this part. As noted in proposed § 108.100(a), this rule would establish two pathways for operation under part 108, operating permits and operating certificates. Subpart B applies to operations conducted under an operating permit (subpart D) and operations conducted under an operating certificate (subpart E). Further description of the operating permits and certificates can be found in section VIII of this preamble and personnel requirements can be found in section VII of this preamble.

This rule proposes requirements for BVLOS operations conducted within the United States, using risk-based criteria that permit further evolution of operations than currently allowed in existing regulations. The below section lays out FAA's reasoning and proposed

requirements for a BVLOS operating framework, while this section describes the overall requirements applicable to all BVLOS operations envisioned under this rule.

Proposed part 108, like part 107, would have specific risk mitigation and hazard reduction provisions that would facilitate integration. The requirement for all part 108 operations to have a means to avoid manned aircraft broadcasting their position using ADS-B Out equipment would extend to Class G airspace, providing additional collision risk reduction compared with the strategic mitigations provided through the regulatory requirements of part 107. In addition, UAS would be required to have anti-collision lighting that conforms to an industry standard to ensure that they are visible to manned aircraft.

To meet the requirements of proposed part 108, operations under this proposed part would require the use of a registered aircraft (section VI.A.2) with an airworthiness acceptance received in accordance with subparts G and H of part 108, with an exception for flight testing. The UA and its AE would be required to be equipped with aircraft lighting (section VI.A) and be in safe condition for operation (section VI.B). This rule proposes to permit operations in both uncontrolled (section VI.F) and controlled airspace (section VI.G), with operations limited to 400 feet AGL and below. Access to controlled airspace would depend on the operator holding an approved method for strategic deconfliction and conformance monitoring, as discussed in section VI.I.

This rule also proposes a set of criteria by which operators could operate over people (section VI.H). These criteria would rely on a population distribution data set called LandScan USA, developed by the Oak Ridge National Laboratory, and define categories and criteria for operation. This rule would continue to prohibit operations over open-air assemblies.

In order to enable operations in controlled airspace and over people, this rule also proposes requirements for strategic deconfliction (section VI.I), changes to right-of-way rules (section VI.J), and Remote ID performance (section VI.K). These three proposed requirements would provide a framework for the kind of shared, dynamic environment FAA anticipates this proposed rulemaking could enable. In addition, this rule sets requirements for shielded operations (section VI.L), which would permit BVLOS operations within 50 feet of an obstacle or a structure or other designated areas, without further authorization. The

⁴⁷ See, e.g., 14 CFR 135.417, 14 CFR 121.705, 14 CFR 91.1417.

⁴⁸ See, e.g., 14 CFR 135.415, 14 CFR 121.703, 14 CFR 125.409.

proposed rule would permit operations with multiple UA (section VI.M).

Finally, this rule proposes requirements to prohibit careless or reckless operation (section VI.N), manuals (section VI.O), and emergency conditions (section VI.P).

A. Operating Unmanned Aircraft Under Part 108

As explained in section X of this preamble, FAA is proposing that a UA operating under this rule would be required to have an airworthiness acceptance rather than an airworthiness certification. Because an individual UA evaluation by FAA would not take place, FAA would additionally require under proposed § 108.720(a)(1) that the manufacturer develop limitations for the UAS to be operated as specified in the manufacturer's UAS operating instructions. This requirement would ensure that operators do not exceed the manufacturer's operational limits on the UA, which could lead to UA failure. Under this proposed rulemaking, manufacturers would develop and test UA to meet consensus standards for FAA airworthiness acceptance. Manufacturers would need to demonstrate that the UAS design may be safely used in BVLOS operations in accordance with FAA-accepted consensus standards.

Accordingly, to operate under proposed part 108, operators would be required to use a UA that holds an airworthiness acceptance, as noted in proposed § 108.105(b), except for UA operated under the flight test permit of proposed § 108.470. These UA and AE would need to be in condition for safe operation and, per proposed § 108.105(a), meet the equipage requirements of subpart H, further described in section XI. These equipage requirements to meet proposed § 108.105(c) would provide the assurance that the aircraft would be able to operate safely, including the fidelity of the AE, suitability and durability of materials, and lighting requirements.

1. Aircraft Lighting (§ 108.110)

Using an anti-collision lighting system or position lights on UA would provide a means for a manned aircraft pilot to observe UA. As such, FAA has proposed in § 108.110 that aircraft lighting would be required for operations under part 108. Proposed § 108.110(a) would require operators to use an anti-collision lighting system during all flight operations, day or night, except when in the interest of safety, as discussed below. To comply with proposed § 108.110(a), the anti-collision lighting system would need to

meet the requirements of proposed § 108.830. In addition, proposed § 108.110(b) would require operators use lighted position lights during all operations at night when operating a UA that is equipped with position lights per the requirements of proposed § 108.835.

An anti-collision light is designed to minimize the risk of collision with other aircraft while airborne. Anti-collision lighting usually consists of white pulsating strobe-type lights. The bright flash of an anti-collision light is typically the first visual a pilot has at night of another aircraft, allowing pilots to take appropriate actions to avoid collisions. Under this proposal, anti-collision lights would be required during all operations, as the use of the anti-collision lights can always provide awareness of an aircraft operation prior to and during flight.

As stated in § 108.110(c), this proposal would also permit the flight coordinator to reduce the intensity of, or turn off, the anti-collision lighting if they determine that, because of operating conditions, it would be in the interest of safety to do so. FAA anticipates that there may be situations, primarily during takeoff and landing, where the flight coordinator may want to either reduce the intensity of or turn off the anti-collision lighting due to close proximity with the flight coordinator or other persons on the ground. Allowing the flight coordinator to reduce the intensity of or turn off the anti-collision lighting during takeoff and landing would help to maintain the flight coordinator's full night vision adaptation, which generally takes 30 minutes after exposure to bright lights. If the flight coordinator were to lose their night vision adaptation from exposure to the anti-collision light, they might no longer be able to ensure that the takeoff or landing area is clear for operations.

The primary purpose of requiring lighted position lights on UA during night operations is to enhance the visibility of these aircraft to other airspace users. This requirement would help prevent midair collisions and ensure safe distance between aircraft, particularly in areas of high traffic density or when operating in proximity to manned aircraft. Position lights would make it easier for pilots of manned aircraft and other UA operators to see and track UA, thereby facilitating better situational awareness and decision-making in flight.

Enforcing the use of lighted position lights at night would align with existing regulations for manned aircraft, promoting a consistent and predictable environment for all airspace users. This

requirement would ensure that UA are visible to other pilots and air traffic control, thereby supporting safer coexistence and minimizing the risk of incursions or airspace violations.

2. Registration (§ 108.115)

Per 49 U.S.C. 44101, all aircraft operated in the NAS must be registered with FAA. No person is allowed to operate a UA unless it has been registered by its owner, unless the aircraft meets a limited exception from registration.⁴⁹ There are currently two ways to register a UAS. Part 47, which broadly applies to all aircraft, including UA, and part 48, which provides an alternate route to register a small UA, defined as those weighing less than 55 pounds. Since part 108 would cover operations of UA weighing greater than 55 pounds, part 48 could not be used for all part 108 operations without making significant changes to part 48. FAA has determined that it is appropriate for UA operated under part 108 to follow the existing registration structure set out in part 47. Though small UA may operate under part 108, FAA is proposing that all aircraft conducting part 108 operations would be required to follow the registration procedures of part 47, as proposed in § 108.115(a). As a result, FAA is proposing to amend § 48.1, Applicability, to require small UA that operate under 108 to use the registration procedures of part 47.

The web-based registration process under part 48 was designed as an alternative streamlined system for the registration and marking of small UA. Aircraft records created under part 48 only contain a minimal amount of data, such as the owner's name, email address, physical address, and phone number, the manufacturer and model of the UA, and the standard remote identification serial number or remote identification broadcast module serial number, if applicable. The part 48 database cannot house document images, such as transfers, security conveyances, or airworthiness applications and certificates. Such documents would likely be commonplace for part 108 UAS. Therefore, any UAS operating under part 108 would be required to register under part 47 (e.g., an N-number), regardless of weight. To facilitate this,

⁴⁹ Section 48.105 Registration: Small unmanned aircraft intended exclusively for limited recreational operations adds an exception to the general registration requirement for small UA for recreational flyers. In those cases, a Certificate of Aircraft Registration issued in accordance with § 48.110 constitutes registration for all the small UA used exclusively for operations in compliance with 49 U.S.C. 44809 owned by the individual identified on the application.

FAA is also proposing to amend the applicability under part 48 to restrict the registration of small UA operating under part 108, in addition to small UA that hold an airworthiness certificate. UA operating under part 107 may continue to be registered under the requirements of part 48.

The aircraft registration requirements in part 47, along with the requirements pertaining to the recording of aircraft title and security documents in part 49, necessitate a filing and recording system for the collection of ownership and financial interests in aircraft. FAA Aircraft Registry is the official repository for all title and security documents affecting an interest in aircraft and all airworthiness applications and certificates. Contrary to part 48, part 47 does not restrict the eligibility for aircraft registration based on aircraft weight.

It is possible that a UA currently registered under part 48 could obtain airworthiness acceptance under proposed part 108. However, to be operated under part 108, the aircraft would need to be registered under part 47. While it is not possible to transfer a part 48 registration to part 47, due to the nature of the registrations and the necessary information for each, a current part 48 registration holder could cancel that registration and then submit a new application for a part 47 registration.

While FAA proposes to amend part 47 to apply its registration requirements to part 108 operators, the Agency also considered allowing registration under part 48 or even imposing registration requirements in part 108 itself. If the registration requirements were implemented under part 108, they would be tailored to the particularities of operations under this rule. This could eliminate requests for information that are not available to UAS operators and issuing proof of registration other than a physical registration certificate. FAA requests comment on a potential registration process tailored to UAS operations under this part.

B. General Operating Rules (§ 108.120)

FAA proposes in § 108.120(a) that operations conducted under part 108 would need to be conducted with a UAS that is in a condition for safe operation, including both the UA and the AE. Proposed § 108.120(a) would prohibit an operator from initiating or continuing a flight if they know or have reason to know that the UA or the AE are no longer in a condition for safe operation. As noted in the 2016 Final Rule, FAA considers safe operation to be essential to ensure overall safety of flight.

Determinations made of the overall condition of the UAS include an evaluation based on the make, model, age, type and completeness of continued maintenance and inspections of the aircraft and AE. The varied designs of possible UAS mean that FAA cannot prescribe every possible condition that could render a UAS unfit for operation. An unsafe condition could include damage to the structure of the UA, damaged or inoperative flight control systems, data link failures, or damage to propulsion systems.

FAA proposes in § 108.120(b) that operations conducted under part 108 would need to be conducted in accordance with the manufacturer's operating instructions or other procedures acceptable to FAA. While the manufacturer's operating instructions would be the authoritative source of the limits and capabilities associated with the operation of the UA, as discussed in section X.G, FAA recognizes that some operators may have additional operational considerations that may require deviations from the operating instructions defined by the manufacturer. In those circumstances, the operator may request additional operational flexibility from FAA by demonstrating how the operation could still be safely conducted. Possible permutations could include different ratios of flight coordinator to aircraft operations or operating environment conditions not considered by the manufacturer.

FAA proposes in § 108.120(c) that, except for operations conducted under a flight test permit under § 108.470 or in accordance with § 108.555, operations conducted under part 108 would need to be conducted with properly installed and operational instruments and equipment. The manufacturer, as required under proposed § 108.720, would develop a list of parts necessary for the safe operation of the aircraft, or a list of equipment that is allowed to be inoperative.

Finally, as proposed in § 108.120(d), FAA proposes that persons occupying this position would be directly responsible for, and be the final authority as to, the safe and secure operation of all aircraft under their purview. If a company has multiple operations supervisors, each operations supervisor would only be responsible for the operations of aircraft in their assigned responsibility. Similarly, FAA proposes to require that the operations supervisor ensure that the operator complies with all applicable regulatory requirements and its operations manual. Accordingly, the operations supervisor

should demonstrate skill in ensuring safe operations and in management. This role would oversee the entire operation, or where multiple operations supervisors are used, their specific areas of responsibility. They must have knowledge of all other roles involved, as well knowledge of the UA, the AE, and flight plans. Though other personnel may be responsible for performing individual safety-of-flight actions, both before and during flight, the operations supervisor holds the overall responsibility and is the final authority for safe operations. The operations supervisor would also be responsible for ensuring that all applicable personnel are properly trained and knowledgeable before an operation commences. FAA proposes in § 108.140 that operations conducted under part 108 would be limited to a speed equal to or less than what is prescribed in the manufacturer's operating instructions. The aircraft manufacturer is in the best position to know the design limits for the aircraft that they produce. FAA chose to use groundspeed because most small UAS lack the equipment to determine true airspeed and generally rely on technologies such as Global Positioning Systems (GPS) to determine UA speed. However, this poses some challenges. If a UA has a strong tailwind, it is possible that the true airspeed might be very low. As such, FAA recognizes that some UA may need to operate at higher ground speeds to maintain a minimum safe operating speed and FAA would provide relief for an operator to exceed the stated groundspeed in the manufacturer's operating instructions in those operating conditions.

FAA proposes in § 108.140(b) that operations conducted under part 108 would be limited to a weight equal to or less than specified for the type of operating permit or operating certificate that the operator is using for that operation. The weight would include the weight of the UA as well as the weight of any items attached to or carried by the UA. While part 108 would allow operations with varying sizes of UA weighing not greater than 1,320 pounds, FAA has proposed weight limitations associated with different types of operations to further mitigate the risks associated with BVLOS operations. For further information about the specific weight restrictions, see the descriptions of permitted and certificated operations in section VIII.

FAA proposes in § 108.145 that operations conducted under part 108 would not be allowed to be conducted in weather conditions other than those described in the manufacturer's

operating instructions. In developing a UA for airworthiness acceptance under part 108, manufacturers would be required to identify which weather conditions the UA may safely operate in or ensure the UA has the capability to identify and avoid those weather conditions for which the UA is not designed to operate, per proposed §§ 108.720(a)(1)(i) and 108.890. Operators therefore would need to ensure the weather conditions do not exceed the design considerations and limitations of the UAS used in the operation.

FAA also proposes in § 108.145 that a UA that has frost, ice, or snow adhering to the UA prior to takeoff, except as provided in the manufacturer's operating instructions, would not be allowed to operate under proposed part 108. As with manned aviation, frost, ice, and snow can result in significant degradation of UA performance, including controllability and changes in the weight of the aircraft. Barring any significant mitigations identified by the manufacturer, FAA does not find it in the interest of safety to allow any operations under these conditions.

FAA proposes in § 108.150(a) that operations conducted under part 108 would be required to be conducted from locations that are pre-designated and access-controlled and ensure any persons who are not directly participating in the operation are safely segregated from flight operations. This mitigation would reduce the risk posed by and to non-participants during any stage of the operation. Restricting access to only those involved in the operation would ensure appropriate oversight for safety of flight.

In addition, FAA proposes in § 108.150(b) that UA operated under part 108 would need to be monitored and controlled from a location that is physically located within the United States, including its territories and inter-island operations when operating in United States airspace. This would follow the same restriction that is present in part 107. As discussed in the part 107 final rule, the International Civil Aviation Organization (ICAO) recognizes UAS as aircraft and therefore has applied existing standards and recommended practices (SARPS) for aircraft to UAS. ICAO remains in the process of determining how the SARPS can accommodate UAS, but presently, the ICAO SARPS are quite restrictive for UAS. This proposed rulemaking would likely go beyond what ICAO currently allows for UAS. As such, FAA would restrict proposed part 108 to operations within United States airspace. Any operations outside the United States

would not fit within the applicability of part 108. FAA considered adding an option to request authorization to monitor and control UAS from outside the United States. FAA seeks comment on whether it should expand the scope of § 108.150 to allow UAS to be monitored or controlled from outside the United States.

Finally, FAA proposes in § 108.150(c) that operators must address physical security and seek to prevent unauthorized access to the operation's facilities, including controlled access areas, as applicable. An operator may use controlled access areas to protect hazardous materials before those materials are loaded onto a UA, for example. FAA also anticipates that, due to the size, scope, and complexity of operations, the operator may have other areas they deem sensitive and choose to utilize controlled access areas. FAA is utilizing performance-based language in this proposed requirement to provide operators flexibility with how controlled access areas are designated.

FAA proposes in § 108.155 that the operator would need to be able to determine the location of each UA during flight operations. The ability to determine the geographic location during operations and to find the UA when it is has landed during normal, abnormal, and emergency situations are important considerations for maintaining situational awareness and safety of the operation. FAA anticipates that most UAS will have software that will provide the operator with the appropriate information to determine its location.

C. ADS-B and Transponder Use (§ 108.160)

FAA proposes in § 108.160 that no operator would be allowed to operate a UA with ADS-B Out equipment in transmit mode or with a transponder in transmit mode under part 108. As previously discussed in the Remote Identification of Unmanned Aircraft final rule (86 FR 4390, January 15, 2021), the installation and use of ADS-B Out transmitters on UA may negatively affect the safe operation of manned aircraft in the NAS. The projected numbers of UA operations have the potential to saturate available ADS-B frequencies, affecting ADS-B capabilities for manned aircraft and potentially blinding ADS-B ground receivers. Currently, operators conducting operations under part 107 cannot operate a UA with ADS-B Out in transmit mode, per § 107.53. FAA also prohibits the use of ADS-B Out to meet the requirements of remote identification, as per § 89.125. The

proposed restriction on ADS-B equipment in § 108.160 is consistent with FAA's existing limitations.

D. Area of Operations (§ 108.165)

FAA proposes in § 108.165 that all operators would be required to obtain approval from FAA for the area of intended operations prior to operation. Understanding potential risks, anticipating their impact on both flight and ground operations, and mitigating those risks are all critical to safe part 108 operations. Under this proposed requirement, before beginning operations in a new area the operator would identify known hazards, mitigate such hazards with proper planning and effective controls, and plan for contingencies for any new hazards identified during operations. In developing this proposal, FAA utilized its ongoing experience with the authorization and oversight of waiver and exemption holders. In proposed § 108.165(a), FAA would require operators to receive approval from FAA prior to beginning operations in an area and would expect the operator to be responsible for certain requirements as described below for those intended operations. In requesting approval from FAA for a new operating location, the operator would submit information to FAA that includes the operating area boundaries, estimated number of daily operations, and other operating characteristics as appropriate. FAA anticipates that operators would report, and FAA would collect, this information through the same portal as the application process uses for permit and certificate oversight.

Proposed § 108.165(b) would require the operator to designate safe alternate landing areas that the UA can reach if it is unable to complete the intended flight. Proposed § 108.165(b) lists specific requirements that landing areas would have to meet to satisfy the proposed regulation. First, the safe alternate landing area would need to avoid areas where overflight is prohibited. Second, the safe alternate landing area would need to provide for a landing without posing undue hazard to persons or property on the ground. FAA has proposed these requirements to ensure that, in a situation when an immediate landing is required, the operator is prepared with an area that would not create a hazard to persons and property on the ground. In the planning of these proposed alternate landing areas, it is critical that operators understand that the need to land the UA in a timely manner is paramount for circumstances such as emergencies or abnormal events.

In § 108.165(c), FAA proposes that the operator would be required to designate appropriate takeoff, landing, and loading areas that have restricted access to only those persons participating in the operation and that are free of any obstructions that could pose a hazard to persons who are not participating in the operation. Designating appropriate takeoff, landing, and loading areas that have restricted access would ensure that only authorized people have access to the operating areas. This would keep unauthorized persons away from operating areas and lower the risk to non-participants, who may not be aware that an operation is in progress. In addition, FAA proposes that takeoff, landing, and loading areas would need to be adequate for the planned operation, considering such items as size, surface, obstructions, and lighting. FAA anticipates operators to use UA of various sizes and capabilities, which would also have performance characteristics that may require takeoff, landing, and loading areas of differing complexities. By requiring operators to ensure that these areas are adequate, operators would be required to consider the individual necessities of the UA and the operation.

FAA proposes in § 108.165(d) that the operator would be required to ensure adequate communications coverage and availability, and appropriate lost link procedures. As discussed in section XI.D of this preamble, a lost link or loss of control of the UA pose significant risks to aviation safety. As part of the flight planning for a new operational area, the operator would need to assess the coverage area for C2 link system configuration utilized for the intended operational area and verify operational status. The operator would not be able to commence a UAS operation if a control link is working improperly, whether due to a result of radio interference or for some other reason. The operator would be expected to resolve any radio interference or other spectrum complications prior to beginning operations in that area.

Before beginning operations in a new area, FAA proposes in § 108.165(e) that the operator would need to ensure that the planned operations minimize risk to persons and property on the ground, as appropriate, and consider terrain and obstacles that the operator intends to overfly. FAA expects operators to plan for and be aware of the number of persons and property on the ground around operations and consider possible flight paths with the least presence of people and moving vehicles, while also considering the terrain and human-made obstacles the operator intends to

overfly. The operator would be required to verify the maximum height of obstructions. To accomplish this, the operator could perform an area assessment or use a capable third party to do so.

Further, as discussed in section VIII.C.5, § 108.550(b) proposes to also require certificated operators to perform a ground risk assessment of pedestrians, vehicles, terrain, and man-made obstacles.

E. Preflight Requirements (§ 108.170)

Ensuring the safe conduct of operations begins with determining that the aircraft is in a safe condition for flight and reviewing appropriate information concerning the operating environment. FAA has proposed in § 108.170 that operators would be required to meet certain preflight requirements before conducting each operation under part 108.

In § 108.170(a), FAA proposes that, prior to operating under part 108, the operator would need to ensure that the weather conditions are appropriate for the intended operation, in accordance with the aircraft limitations specified by the manufacturer, and that are determined in a manner acceptable to FAA. This is because flying in adverse weather conditions, or in weather conditions that the UA is not designed to handle, may increase operational risk. Familiarity with forecast weather conditions is an important part of the flight planning process. Title 14 of the CFR contains requirements on the use of weather information and the level of approval required for that information for various operations. For example, within 14 CFR parts 121 or 135, there is a requirement to use weather reports or forecasts from a source “approved by the Administrator.”

Aviation weather currently provides surface weather observations [e.g., Meteorological Aerodrome Report (METAR)] and forecasts [e.g., Terminal Area Forecast (TAF)] at and around many airports. These observations and forecasts are typically only valid out to five miles from the location where the observation was taken or around the airport the TAF was generated for. To date, FAA’s current sources “approved by the Administrator” include, but are not limited to, Automated Surface Observing System (ASOS), Automated Weather Observing System (AWOS), and information provided by the National Weather Service (NWS).

Massachusetts Institute of Technology Lincoln Laboratory (MIT/LL) reports ⁵⁰

from November 2017 note the sparseness of off-airport observations of visibility, clouds and ceiling, and surface winds. The report summaries state that: “airport-specific weather information (e.g., METAR, TAFs, etc.) do not readily translate to conditions at remote launch locations, which may be 10–30 miles from the nearest airport . . . the results show significantly less weather information available to support low-altitude flight than for typical manned-flight profiles.”

FAA estimates that, for airspace below 400 feet only, around 3% of the continental United States and 2% of Alaska airspace is covered by an approved source of weather information, with most of that being on or near airport environments. However, given that part 108 UAS operations would operate primarily outside of this area of approved observation coverage, those operations will need additional sources of weather information to operate safely. FAA anticipates that some of this weather information gap could be filled by third-party weather providers or come from other non-traditional sources, such as locally owned and operated devices.

As BVLOS UAS operations mature, they may require a more detailed and definitive set of meteorological information to operate safely. For BVLOS operations, the fidelity of the meteorological information would need to be such that the operator can determine whether the vehicle can safely operate within the manufacturer’s limitations. Traditionally FAA has required operators to use weather information that was from sources approved or provided by FAA.

However, for the reasons stated above, this is not practical or appropriate for most UA operations, so FAA is proposing to allow operators to obtain weather information in other ways. This could include the use of weather services provided under an automated data service provider construct under proposed part 146, or through other sources found acceptable to the Administrator.

FAA proposes in § 108.170(b) that the operator would need to be familiar with any airspace and flight restrictions along the entire route of flight, including the review of any applicable Notices to Airmen (NOTAMs). Another important aspect of assessing the operational environment is the consideration of airspace information to identify any known flight restrictions along the

⁵⁰ See MIT/LL, *Preliminary UAS Weather Research Roadmap*, ATC-438 (November 2017),

and MIT/LL, *Preliminary Weather Information Gap Analysis for UAS Operations*, ATC-437 (November 2017).

route. To comply with this requirement, FAA expects the operator to assess the departure, enroute, and destination airspace; special use airspace; NOTAMs; temporary flight restrictions; and UA flight restrictions to ensure compliance with airspace rules and restrictions. As stated in proposed § 108.180 and further discussed in section VI.G, UAS operations under this proposal would only be allowed in controlled airspace under certain conditions and may be subject to FAA authorization. If an operator did not assess this information prior to conducting operations, operations could transverse through controlled airspace and result in adverse events, such as disruptions to aircraft receiving ATM services or loss of separation between controlled and uncontrolled aircraft. Similarly, an operator would need to be familiar with special use airspace, NOTAMs, and any ground hazards associated with the flight. The operator would need to be aware of special use airspaces to avoid conflict or potential national security issues with the operations or events being conducted within those airspaces. In addition, NOTAMs indicate the real-time and abnormal status of the NAS impacting every user and concern the establishment, condition, or change of any facility, service, procedure, or hazard in the NAS. These impact UA operations as well as manned aircraft operations.

FAA proposes in § 108.170(c) that the operator would need to assess the population density category or categories to be overflown. Obtaining this information in advance would allow the operator to comply with proposed § 108.185. For further discussion, see section VI.H of this preamble.

FAA proposes in § 108.170(d) that the operator would need to identify the location of ground obstacles and hazards associated with the specific flight operation being flown. Because part 108 UAS operations are conducted at low altitudes, the operator would need to be aware of structures, obstructions, and other hazards that may pose a risk to the specific flight operation. Awareness of these ground hazards would enable the flight coordinator to appropriately plan around or avoid such hazards that may result in adverse events when preparing to conduct the operation. Given the advances in geospatial information systems, 3D mapping software, and publications, operators should have access to sufficient information to be able to comply with this requirement. FAA seeks comment on this assumption.

To comply with proposed § 108.170(e), the operator would be required to ensure that the UAS are in a condition for safe operation. It is critical that all aircraft operated in the NAS, including UAS operated under proposed part 108, are in a safe condition to minimize risk. Being in a safe condition not only minimizes the risk for other aircraft in the NAS, but also minimizes the risk for persons and property on the ground.

FAA proposes in § 108.170(f) that the operator would need to ensure there are sufficient personnel available for the operation. While there are no specific staffing requirements under this proposal, an operator not having sufficient personnel necessary for their individual operation could present a safety risk. Increased pressure to “get the job done,” and personnel taking on additional work beyond their duty assignment, or lack of experience with certain duties, can degrade the safety of the operation. Operations with insufficient personnel may experience mistakes with potential undesired results in any part of the operation. Task saturation or diversion of attention could create gaps in monitoring the automated systems and over-reliance on those systems. Incomplete knowledge and experience with those systems could cause errors that could lead to an incident or accident at various points during an operation.

FAA is proposing in § 108.170(g) that, if required by § 108.180 or § 108.185, the operator would need to ensure that a strategically deconflicted operational intent is accepted prior to takeoff. As described in section VI.I of this preamble, strategic deconfliction is a set of functions that aid in managing conflicts between UAS operating under part 108.

FAA proposes in § 108.170(h) that the operator would need to ensure that there is enough available power or fuel, considering wind and forecast weather conditions, for the UAS to operate for the intended operational time, such that the UA can land without posing an undue risk to aircraft or people and property on the ground, or the reserve power recommended by the manufacturer, if greater, is satisfied. A key aspect of preflight planning involves ensuring that there is sufficient fuel or power to conduct the intended operation and land safely. Since the amount of fuel or power necessary for an operation may be impacted by wind and weather conditions, FAA proposes requiring the flight coordinator to consider these conditions in making the determination whether there is sufficient fuel or power to conduct the

intended operation. FAA considered establishing and enforcing a standard flight time that the UAS would need to have in its power reserve to land safely (e.g., 5 minutes, 10 minutes, etc.). However, limitations should be relevant to the operation. As such, imposing a standard time that a UAS needs to have in its power reserve may be unreasonably burdensome for some UAS operations. The flight coordinator would be better situated to determine what constitutes sufficient power or fuel for their specific UAS operation.

FAA proposes in § 108.170(i) that the operator would need to ensure that operations would be conducted within the weight and balance limitations defined by the aircraft manufacturer. Compliance with the weight and balance limits of any UAS are critical to flight safety. Operating above the maximum weight limitation compromises the structural integrity of the UAS and adversely affects its performance. Operators must be aware that, even while operating within center of gravity limits, the UAS can be overloaded. Though the UAS manufacturer may specify a maximum gross takeoff weight, and the operator would need to comply with that limitation, there may be additional conditions that affect overall takeoff performance such as high elevations, high temperatures, and high humidity (high-density altitudes) that the operator could consider in determining the weight for a specific operation.

Conditions such as these may require a reduction in weight before a flight is attempted. Operating with the center of gravity outside the approved limits could result in control difficulty and unstable or unknown flight characteristics. Operating within the center of gravity would ensure the UA is operating in the most stable, balanced, and predicted condition. As listed in section X of this preamble, under the proposed process for airworthiness acceptance, the manufacturer would need to provide weight and balance data. Therefore, because of the effects of an out-of-balance or overweight condition, FAA proposes that the operator should ensure that weight and balance will be calculated and conducted within the limitations defined by the aircraft manufacturer.

In § 108.170(j), FAA proposes that, for the safety of the operation, property, and people around the operation, the operator would need to ensure that any object attached to, or carried by, the UA is secure and does not adversely affect the flight characteristics or controllability of the UA. If not directly

attached to the underside of the UA during transport or if lowered during operations, the operator should be able to calculate weight and balance with emphasis on a lateral center of gravity. If during maneuvering forward airspeed is increased, light loads generally tend to shift further aft and may become unstable. Any unstable load may flutter, oscillate, or rotate, resulting in reduced aircraft control and undue stress on the UA.

Finally, in proposed § 108.170(k), the operator of a part 108 UA would need to ensure that their UA navigation and communication systems are working properly. This is critical for ensuring that the UAS operation can be conducted successfully.

F. Operating Restrictions (§ 108.175)

FAA proposes in § 108.175 that an operator would not be allowed to operate a UA under part 108 higher than 400 feet AGL unless the operator is in Class G airspace and temporarily transiting steeply changing terrain, is operating within a 400-foot radius of a structure and does not fly higher than 400 feet above the structure's immediate uppermost limit, or needs to maneuver up to 450 feet AGL temporarily in order to avoid a collision.

Like part 107 and existing UAS exemptions and waivers, FAA proposes to permit UA operating under proposed part 108 to operate up to 400 feet AGL. An altitude limitation provides a necessary barrier between UA operations and most manned aircraft operations in the NAS. In addition to the altitude limitation of 400 feet AGL, FAA would require the altitude of the UA to be flown within a 400-foot radius of a structure to not fly higher than 400 feet above the structure's immediate uppermost limit when operating within the confines of a structure. This limitation has the same reasoning as the buffer of 500 feet from manned aircraft in that manned aircraft must generally maintain at least 500 feet from a structure. In addition, FAA would permit operations to exceed 400 feet AGL if necessary to avoid a collision.

This prohibition against close operation near obstacles and structures is intended to mitigate the risk of collision. The operating speed of manned aircraft is another factor that contributes to collisions with structures or obstacles. For most manned aircraft, the operating speed is much higher than the operating speed of a UAS.

FAA does not believe that an altitude above 400 feet AGL is justified for part 108 UAS operations, except in the narrow circumstances prescribed in this part. If allowed, higher altitude UA

operating in the NAS would potentially be unable to maintain adequate separation from manned aircraft. If UAS were permitted to operate above 400 feet AGL, it could increase the risk of a collision between UAS and non-equipped aircraft. At this time, FAA does not have sufficient data to eliminate the 100-foot buffer between UA operating at 400 feet AGL and below and manned aircraft generally occupying airspace 500 feet AGL and above established in part 107. The United States aviation system is designed to have sufficient safety margins, as well as redundancy in risk mitigations. The 400-foot AGL maximum altitude proposed by this rule upholds those principles.

The maximum operating altitude imposed by this rule is intended to limit the height of the UA above the ground over which it is flying AGL. It is incumbent upon the operator to maintain flight at or below this maximum operating altitude. Lastly, during all operations, the UA must be operated at an altitude that would not create a hazard to persons or property. Operating at an altitude that would not create a hazard to persons or property also means that the UA must be operated at a distance from a structure or obstruction to not create a hazard to persons or property.

FAA recognizes, however, that certain terrain may obstruct the operator's ability to comply with this requirement to remain at or below 400 feet AGL. For example, in areas with steep terrain, such as open pit mines, gorges, and small canyons, it may be unsafe or impractical for the aircraft to dive or climb rapidly to stay no more than 400 feet above the terrain immediately below. Rather than require operators to maintain a consistent altitude of 400 feet AGL or below, FAA deems it would be more important for the operator to use their best judgment in maintaining a safe altitude and reduce any operating safety risks. FAA's primary objective is to ensure that UAS BVLOS operations promote NAS safety and efficiency. As such, FAA proposes in § 108.175(a)(1) that, in the interest of safety, the operator would be able to operate higher than 400 feet AGL in situations where the operator is briefly transiting steeply changing terrain.

In addition, FAA proposes in § 108.175(a)(2) that an operator may operate higher than 400 feet AGL when operating a UA within a 400-foot radius of a structure and does not fly higher than 400 feet above the structure's immediate uppermost limit. Manned aircraft are not able to operate safely that closely to a structure, so the UAS

operator would be able to maintain separation.

FAA proposes in § 108.175(a)(3) that the operator could temporarily exceed 400 feet AGL if necessary to avoid a collision. While it would remain incumbent upon the operator to be aware of any obstructions that could pose a hazard, per § 108.165(c)(2) and maintain safe distance from other aircraft in line with the requirements in § 108.195, FAA acknowledges that there are circumstances that may require the operator to temporarily climb to avoid a collision. One example could be ascending above 400 feet AGL to avoid hitting birds or other wildlife and then returning to 400 feet AGL or below when the hazard has passed. FAA has proposed this section to permit operators the leeway to exceed the 400 feet AGL limit in Class G airspace in their operating area to the altitude and duration necessary to avoid unexpected objects.

Class G airspace is considered uncontrolled airspace. Research conducted by MITRE for FAA found that in Class G airspace, a drone with no mitigations could be expected to collide with manned aircraft between once every 10,000 flight hours in the most heavily used Class G airspace, to once every 1 million flight hours in the least used Class G airspace. The addition of mitigations under part 108, such as those described above, would substantially lower the collision risk in Class G airspace even further.

FAA proposes in § 108.175(b) to make clear that operators would be required to comply with certain other requirements like those that apply to part 107 and recreational operators. Proposed § 108.175(b) provides that part 108 operations would need to comply with flight restrictions and other conditions codified in 14 CFR 91.133, 91.137–91.145, and 14 CFR 99.7. Flight restrictions are established under certain circumstances to maintain the safety and security of the NAS. Scenarios warranting the establishment of flight restrictions may include responses to disaster areas such as wildfires and hurricanes, protection of sensitive sites, major sporting events, and for emergency and national security situations.

FAA proposes in § 108.175(c) that operators should notify the controlling agency for any operations planned within a military operating area (MOA) or on and military training route (MTR). Operators must always exercise extreme caution and remain vigilant of all MTRs and or non-regulatory SUAs. While MOAs and MTRs do not rise to the level of being classified as prohibited or

restricted areas, the potential for low level military operations are higher in these areas and increased awareness and precautions are warranted.

Finally, similar to the restriction found in part 107, FAA proposes in § 108.175(d) a provision that would prohibit any UAS operations that interfere with operations and traffic patterns at airports, heliports, seaplane bases, space launch and reentry sites or any facilities used for VTOL aircraft landing and takeoffs. Airspace designations as described in proposed § 108.180(a) should help ensure UA operations do not interfere with operations at airports within controlled airspace. However, since many airports are within uncontrolled airspace, this proposal would also cover uncontrolled airspace where such operations could represent a higher likelihood of an encounter with a part 108 operation during takeoff or landing.

G. Operation in Controlled Airspace (§ 108.180)

FAA proposes in § 108.180(a) to enable routine BVLOS UAS operations in certain areas within controlled airspace at or below 400 feet AGL when participating in strategic deconfliction and conformance monitoring (as described further in this section, and in section VI.I). Per proposed §§ 108.180(c) and (d), airspace authorization would only be required in those portions of Class B, Class C, or Class D airspace, or within the lateral boundaries of the surface area of Class E airspace designated for an airport, that FAA specifically designates as requiring authorization. Operators would be able to access the remaining portions of controlled airspace without an airspace authorization.

Currently, operators authorized to conduct BVLOS operations via exemptions or waivers must obtain an authorization from FAA to access controlled airspace on a case-by-case basis. As FAA moves toward enabling routine BVLOS operations, this process to authorize these operations in controlled airspace needs to become more scalable and less resource intensive.

One approach FAA considered is a process similar to the one FAA uses for recreational and part 107 operators. Under that process, operators can request authorization to access controlled airspace using either FAADroneZone or a Low Altitude Authorization and Notification Capability (LAANC) service provider. (See section XII.B.6 for additional details about FAADroneZone and LAANC services). LAANC and

FAADroneZone collect data about the operator, including contact information, location and altitude of operation, date of operation, and time of operation. Once the operator has authorization through LAANC or FAADroneZone, they usually do not have any other interaction with FAA prior to accessing the airspace.

BVLOS operations in controlled airspace under proposed part 108 would present a different regulatory construct than part 107 or recreational operations. An operator otherwise in compliance with part 108 would have other touchpoints with FAA that would provide the minimum information that FAADroneZone and LAANC currently provide for part 107 and recreational operations. For example, under this proposal, a part 108 BVLOS operator in controlled airspace would be required to participate in strategic deconfliction and conformance monitoring services, as defined in section VI.I. As a result, FAA would not need to rely on a system like FAADroneZone or LAANC to have the basic informational touchpoint with part 108 operators. This would negate the need for automated approvals. Instead, FAA could limit its interaction to operators seeking to conduct higher risk, more complex operations that require individual evaluation and coordination.

In § 108.180, FAA proposes that operations at or below 400 ft AGL in Class B, Class C, Class D airspace, or within the lateral boundaries of the surface area of Class E airspace designated for an airport, can occur without an exemption or waiver, except for in those areas FAA specifically designates as requiring airspace authorization (as provided in proposed §§ 108.180(c) and (d)). FAA would engage in a risk-based analysis to determine where BVLOS operations cannot be conducted safely or cannot be conducted safely without prior authorization. FAA anticipates these designations would be close to airports and other areas in controlled airspace where uncoordinated UAS operations could affect the safety of the NAS. The risk-based analysis will include the potential for primary radar returns by larger UAs enabled by proposed part 108. Under this proposal, operators would be allowed to conduct part 108 BVLOS operations in all other portions of Class B, Class C, Class D airspace, or within the lateral boundaries of the surface area of Class E airspace designated for an airport without prior FAA authorization, so long as the operators meet the minimum operating requirements proposed in § 108.180. This would present a scalable approach

to airspace access that focuses on those operations that require special attention.

In many ways, airspace designations under proposed § 108.180 would be similar to the UAS facility maps that part 107 and recreational operators use to identify where airspace access authorizations are available. The principal difference between those maps and the process in proposed part 108 is that FAA would require authorization in those places where advance coordination is mandated in the interest of safety.

In addition, FAA proposes additional requirements to operate in Class B and C under proposed part 108. The largest concentration of manned aircraft operating at low altitude within the vicinity of an airport occurs within Class B and C airspace. As a result, FAA considers there to be a higher risk of a collision in this airspace. To mitigate this risk, FAA proposes to require UA operating in Class B or C airspace to be equipped with a DAA system that meets the requirements in §§ 108.825 and 108.195. FAA also proposes to require UA operating in Class B or C airspace to detect and avoid manned aircraft that are not broadcasting their position via ADS-B or an electric conspicuity device. FAA recognizes that most aircraft operating in Class B or C airspace are otherwise required to broadcast their position via ADS-B or an electronic conspicuity device. Nonetheless, under certain circumstances, aircraft could be operating in this space without ADS-B or an electronic conspicuity device. For example, an aircraft could be experiencing an equipment failure or could have received authorization from ATC to deviate from these requirements. FAA seeks comment on whether these requirements are appropriate mitigations to address the risk of collision with manned operations in this airspace and any information that provides more insight into if, and to what extent, operations with ADS-B Out turned off happen in controlled airspace below 500 feet.

Designated airspace requiring prior authorization would be compiled annually in FAA Order JO 7400.[XX], which FAA would incorporate by reference into § 108.180. FAA would then publish periodic designation updates for airspace requiring prior authorization in the **Federal Register** and seek public comment through an NPRM. After considering comments and making any appropriate adjustments, FAA would publish the adopted designation updates in a final rule. At the end of the year, FAA would apply the updates to FAA Order JO

7400.[XX+1] and then incorporate the new version of the Order by reference. The currently incorporated version of FAA Order JO 7400.[XX] would be available on FAA's website, along with any periodic updates. In addition to making these designations available on its website, the agency anticipates making electronic information available for service providers to incorporate into their UAS information service offerings.

FAA further proposes in § 108.180(a) to require operators to conduct operations at 400 feet AGL or below and to use strategic deconfliction and conformance monitoring services that meet the requirements of § 108.190 (see section VI.I). The purpose of these requirements would be to mitigate the risk of collision with other aircraft. FAA has identified several important risk reductions associated with strategic deconfliction and conformance monitoring; the functionality of both capabilities is described in greater detail in section VI.I.

First, strategic deconfliction⁵¹ would reduce the risk of collision between UA. By definition, controlled airspace exists over and around airports which, in turn, serve major population centers. Where there are greater concentrations of people, FAA anticipates that there would be UA operating in closer proximity to people than in less densely populated areas. Operators who provide a service to people in urban environments may also be conducting more frequent operations than those in more rural areas. Operators may also be limited in room to maneuver in controlled airspace due to natural or human-made obstacles. Given these additional challenges to operating in controlled airspace in addition to the proximity and frequency of operations, FAA determined that BVLOS operations would present an increased risk of collision in these areas. FAA determined that improving operators' situational awareness of other operations through strategic deconfliction services would help reduce this risk.

Second, using strategic deconfliction services would also help reduce the risk of UA having near misses and engaging in avoidance maneuvers to avoid each other. Controlled airspace is highly structured and requires aircraft to operate in their designated areas to avoid conflicts. ATC manages controlled airspace to maintain the structure and separation necessary for the safety of the airspace. It is not necessary, however, for FAA to provide these types of

services for UA operating at 400 feet AGL or below due to the extremely low likelihood of interaction with manned aircraft. Strategic deconfliction would provide the situational awareness for operators to understand where other UA are operating or intend to operate. This would help provide predictability and structure at 400 feet AGL and below that would help reduce the risk that UA would have an unexpected encounter or near miss that would require avoidance maneuvers. This would be particularly helpful in areas with a high density of UAS operations, as it would reduce the likelihood of a cascading set of uncoordinated maneuvers that could introduce risk to both UAS and manned aircraft operating in the area.

Third, using strategic deconfliction services would enable NAS users to participate in a data exchange network that would benefit the entire community of NAS stakeholders. Flight notification would allow the operator to share relevant operational information with other data exchange networks and users, including manned aircraft. For manned aircraft operating at 400 feet AGL and below, this would provide information that could help mitigate risk associated with BVLOS and aircraft not broadcasting their position using ADS-B Out equipment operating in the same airspace. For example, manned aircraft and UA could use this information for operational prioritization. FAA anticipates that the demand for UA operations in controlled airspace around major metropolitan areas would continue to grow, causing interactions between lower priority routine operations and higher priority emergency or first responder operations (manned or unmanned) to become more frequent. Universal exchange of information would facilitate operational prioritization, to avoid preventable interference with priority services.

In § 108.180(a), FAA also proposes requiring conformance monitoring in controlled airspace to help provide predictability, structure, and the necessary situational awareness to reduce risk associated with introducing UA operating BVLOS at 400 feet AGL or below. Conformance monitoring would provide notice to users when a UA does something unexpected or inconsistent with its previously indicated operational plan. Conformance monitoring would make NAS-users aware of BVLOS UA operating off-nominally.

Conformance monitoring would help reduce risk in several ways. First, conformance monitoring would notify other users of off-nominal conditions in the NAS that may require additional

action to maintain safe operations. Notification would provide situational awareness to help NAS users react and adjust operational plans as necessary to maintain safe operations. Second, conformance monitoring would provide an operator important information about its own operations. A BVLOS operator could use conformance monitoring to understand when off-nominal conditions occur, allowing for real-time adjustment during the operations. Third, operators, equipment manufacturers, service providers, and regulatory agencies could use conformance monitoring data to study and identify the causes of off-nominal operation. Understanding why off-nominal operations occur and what their impact is on safety would help FAA and other stakeholders improve safety and efficiency for BVLOS operations at 400 feet AGL or below.

H. Operations Over People (§ 108.185)

Part 107 currently allows for operations over people; however, part 107 is limited to UA weighing under 55 pounds and includes restrictions on how operations over people may be conducted. Under part 107, operations over people may only be conducted over persons directly participating in the operation or located under a covered structure or inside a stationary vehicle that can provide reasonable protection from a falling UA, or if the operation complies with categorical requirements. The categorical eligibility requirements for operations over people under part 107 are based on aircraft weight, compliance with aircraft impact severity limits, and FAA-accepted DOC.

Currently, to operate a UA under part 107 over people, an operator must either (1) operate in compliance with part 107 subpart D; (2) request a waiver under part 107; or (3) obtain a type certificate. If the UA weighs 55 pounds or more, the operator must obtain a 49 U.S.C. 44807 determination for the specific aircraft and operation and, at a minimum depending upon location and type of operation, an exemption that provides relief from several part 91 and part 61 regulations that do not apply to UAS.

As noted in section III.A.2, the current part 107 process is limited in scalability. Part 107 was developed for VLOS operations, small UA, and individual pilots operating a single UA. As such, the part 107 regulations allowing operations over people and related waiver provision were crafted with this limited scale in mind. Proposed part 108, however, would allow for a much larger scale of operations, which merits the proposed approach for operations over people.

⁵¹ Strategic deconfliction is discussed in section VI.I.

A calculation based on population density can be used as a general estimation for ground risk to people. As the population density overflown increases, there is a corresponding increase in the risk of a person being harmed by a UA crash. Since some portion of UAS operations are expected to be driven by demand from the population nearby, such as package delivery, FAA anticipates that increasing the required mitigations as the overflown population increases would help mitigate risks in a proportional fashion.

In § 108.185(c), FAA is proposing five categories of ground risk to people based on population density for part 108. The proposed population categories seek to find a balance between risk and increasing integration of UAS in the NAS. Though FAA strives to establish performance-based regulations where possible, in this case, prescriptive requirements are appropriate to ensure that is no ambiguity when determining a population density level (*i.e.*, one operator's determination of population density level would not differ from another's). This would ensure applied mitigations would be consistent across operators. This would be especially important with strategic deconfliction, which relies on all UA complying with the requirement for it to mitigate risk successfully.

The categories would be defined by metrics that could be assessed consistently by independent users and regulators. FAA proposes to use the Oak Ridge National Laboratory's LandScan USA product as a source of population location and density to assess population density for low-risk UAS BVLOS operations considered under this rule. The LandScan data is accessible in machine-readable format at no cost. FAA's proposal would require the use of the appropriate LandScan data set to determine population density, including proper selection of day or night data. LandScan USA updates annually, which ensures accurate population density data. FAA intends to provide guidance on the implementation of new data published by LandScan following the annual update.

LandScan USA is partially based on census data and the data is processed to reflect the estimated location of people during both day and night. This publicly available data is free to access and can be analyzed with common mapping software. FAA anticipates that UAS operators, service providers, and other industry stakeholders may be interested in developing specialty

applications to process and share the LandScan data.

FAA expects that there would be various methods to access this data. Some operators may not choose to take on the determination themselves and look to service providers for a ground risk assessment. Some operators may fully automate this ground risk analysis into their automated flight planning software. The LandScan website also offers a viewing application. While the map on the LandScan website is not as precise as the downloadable data, it can be useful in understanding the general population density of an area. The LandScan website map does not give exact population count nor measure distance, both necessary for making a final decision about which population density category an operation falls within. FAA is considering publishing a map, similar to the UAS Facility Map for LAANC data, which would assist operators in determining population density categories. FAA invites comments on whether this would be helpful or desirable.

All operators would need to reach the same conclusion for the population density category for any point in the NAS. This would ensure that all operators in that area will enact the same minimum level of mitigations. Knowing what mitigations other operators would be required to employ would create certainty for an operator. As such, FAA is proposing using the LandScan data to determine the population density category for a specific place.

FAA considered including a "shelter factor" in the population density determination to account for the protection offered by a building. However, FAA decided to not include it in proposed § 108.185. The static nature of the population density data does not account for the ratio of time spent inside and outside of buildings, nor does it account for abnormal events which could cause people to go outside unexpectedly. In addition, the ability of a building to protect its occupants from a falling UA is not assumed, particularly with larger and heavier UA.

Each population density category would have operational restrictions. Each category level would build upon the prior level, layering on mitigations as deemed appropriate for the additional risks posed by increased population density. The requirements of each category of operations over people would include the mitigation(s) for that level and all the mitigations of numerically lower levels, with the exception of Categories 2 through 5 not having to follow the Category 1

requirement to stay away from people. For example, an operation in Category 4 airspace would need to comply with the mitigations of Category 2 and 3 as well as the Category 4 mitigations. For operations in Categories 3, 4, and 5, FAA intends to address the ground risk over areas of increasing population density by requiring the use of strategic deconfliction that meets the requirements of § 108.190.

The following descriptions of the five categories of population density describe why certain mitigations would be required at increasing levels of density. The mitigations would be layered on at increasing category levels, such that a higher-level area would require the mitigations applied at all lower levels (with the exception of category 1's mitigation), plus additional mitigation(s) at that level. This graduated approach to risk management is designed to proportionally add safety mitigations to reduce risk of harm to people on the ground.

1. Category 1 Operations

FAA proposes in § 108.185(c)(1) that Category 1 areas would be those with few to no people, defined as being farther than 1 statute mile from any LandScan USA cell which contains 10 or more people. In addition, any operations that are unable to comply with the requirements for Category 2 would be limited to this category. This would be the lowest category with the fewest number of mitigations being applied to the operation. As a result, Category 1 would be the most restrictive in terms of location regarding flights over higher population density. While all part 108 operations would be allowed to operate in Category 1 airspace, those permitted operations that would be limited to Category 1 would be ones that pose a higher risk to persons and property on the ground. As such, it is critical to operate in airspace over areas with very low population densities.

2. Category 2 Operations

FAA proposes in § 108.185(c)(2) that under Category 2, the operational area would cover locations where people are expected near the flight path, but at low densities, such as rural areas found near farms. This would be defined as being within 1 statute mile of a LandScan USA cell which contains 10 or more people. In areas of this level of population density, operations would be more likely to be targeted toward mission types which overfly fields and infrastructure, such as agricultural and inspection missions, which generally have fewer people than areas in which

package delivery would be likely to be more prevalent.

Because of the increased risk to the overflown population compared to Category 1, FAA proposes to preclude Category 2 operations from using radio frequency devices that operate in accordance with 47 CFR parts 5 and 15 in their C2 systems. These radio frequency devices operate on specific radio frequency spectrum allocations in a manner in which all users have equal access. As such, systems and equipment that use that spectrum should expect harmful radio frequency interference anytime during use. This harmful interference could prevent the UA from staying in its intended flight area or from being directed by an operator to perform avoidance maneuvers from other traffic.

The likelihood of the harmful interference would be expected to increase commensurate with increasing overflown population since many household consumer electronics operate on these same radio frequencies. Because of this, FAA proposes to manage the risks associated with spectrum interference of the C2 link by precluding operators from relying on radio frequency devices that are susceptible when in Category 2 operations.

3. Category 3 Operations

FAA proposes in § 108.185(c)(3) that Category 3 operational areas would include areas of moderate population, such as developments and single-family homes, which are often located within a few miles of small, higher density areas such as shopping centers or schools. Specifically, proposed Category 3 would be defined as being within 1 statute mile of a LandScan USA cell which contains 25 or more people. Package delivery operations under this proposal would drive portions of the quantity of UAS missions to higher population density levels.

Because Category 3 operations would be conducted over a population density greater than that of Category 2, FAA proposes to increase the mitigations in these areas to enhance and further protect associated ground risks. Therefore, FAA is proposing an additional mitigation for Category 3 and higher categories: the requirement to use a strategic deconfliction capability. Simulations have shown that using strategic deconfliction, a process of reserving segments of an intended path for the time the UAS is expected to occupy it, can reduce UA–UA collisions drastically when nearly all operators in the same area comply (see section VI.I

for extensive discussion and rationale for this requirement).

FAA found that strategic deconfliction dramatically reduces the likelihood of ground-based injuries or fatalities by reducing the likelihood of collision between UA. However, since Category 1 and 2 operations would be limited to areas that already have very low population densities, the likelihood of ground-based injury or fatality would already be low. Fewer simultaneous BVLOS operations would be expected in such areas, and any falling debris would be much more likely not to fall on a person. Therefore, FAA determined that there would be marginal additional safety benefit to requiring use of strategic deconfliction when operating above Category 1 and Category 2 areas. By contrast, Category 3 areas are expected to include suburban developments where operations such as package delivery and infrastructure inspection would be more likely to occur, thus there would be an increased risk to people outside at certain times of day if strategic deconfliction is not required.

4. Category 4 Operations

FAA proposes in § 108.185(c)(4) that Category 4 operational areas would include areas such as shopping centers and multifamily housing. This would be defined as being within 0.5 statute mile of a LandScan USA cell which contains 100 or more people. FAA anticipates that many Category 4 areas of operations may be of higher risk to persons and property, as these areas allow for flight over increasingly populated areas. As referenced in section IV of this preamble, FAA would consider the UA airworthiness acceptance to meet an acceptable level of reliability for all operations under this proposal. Therefore, operational reliability remains a mitigating risk factor for any higher risk operation.

FAA proposes that operators would be required to obtain an operating certificate to operate in Category 4 operating areas, subject to certain limitations depending on the type of operation. As further described in section VI.O of this preamble, operations conducted with an operating certificate would be required to have specific manuals and procedures accepted and approved by FAA. This requirement would involve FAA evaluation to ensure specific practices and procedures are taking place in an effective and safe manner. In addition, operations conducted with an operating certificate would require a level of routine FAA surveillance to ensure that these practices and procedures continue

to meet the specific standard. With this added level of initial and continued oversight, along with the limitations on the types of operation that can be conducted under a certificate in Category 4 areas, risk under Category 4 would continuously be evaluated and mitigated.

5. Category 5 Operations

FAA proposes in § 108.185(c)(5) that Category 5 operational areas would include locations like major metropolitan downtown areas. Category 5 would be defined as being within 0.5 statute mile of a LandScan USA cell that contains 2,500 or more people. In mitigating risk in what FAA considers the highest ground risk category, FAA proposes that the UA would need to be equipped with a DAA system that meets the requirements in proposed § 108.825 and § 108.195, and additionally can detect and avoid aircraft that are not broadcasting their position via ADS–B or an electric conspicuity device. At this level of ground risk, the system would need to be agnostic to the intruder aircraft's equipment and would need to detect all airborne aircraft. Requiring a DAA capable of detecting all airborne traffic would ensure that persons on the ground would be protected from any potential debris from an airborne collision. Due to the high volume of persons on the ground in an area designated as Category 5, the potential for persons to be impacted by fallen debris or large pieces of aircraft would be greater should an airborne collision occur. By requiring a DAA system capable of detecting all aircraft, the risk of collision would greatly be reduced, which also further reduces the likelihood of hazards to persons on the ground.

FAA welcomes comments and information that provides more insight into if, and to what extent, ADS–B Out off operations happen in dense urban areas below 500 feet. In addition, FAA has issued some operators authorizations to operate in mode C veils without transmitting ADS–B Out, however, FAA does not have sufficient data on how often, or if, ADS–B Out operations are conducted below 500 feet AGL, nor on the necessity of such operations.

6. Operations Over Open-Air Assemblies

In addition to the population density categories, proposed § 108.185(b) would prohibit all UA operations over open-air assemblies of persons unless specifically authorized by FAA. FAA has determined that the likelihood of impact with persons would greatly

increase should a UA have an airborne collision or failure during operations over open-air assemblies of persons. Generally, open-air assemblies are areas of large gatherings of persons, but other areas can also be considered open-air assemblies. FAA considers open-air assemblies of persons on a case-by-case basis. For example, in an FAA legal interpretation, FAA determined that a picnic area, if it is sufficiently populated, could be an open-air assembly of persons, as could a beach.⁵²

Based on the high probability of injury to persons in the event of a malfunction or operator error, FAA proposes that the safest means to protect open-air assemblies of persons would be to prohibit all operations from operating over open-air assemblies of persons, unless otherwise authorized by FAA. This would also prohibit transient operations over open-air assemblies of persons. Given the low altitude of operations, higher potential UA weight, and minimal options for maneuverability should an airborne collision or failure occur, sustained operations would likely impact persons directly below. During transient operations, the UA's current direction of flight would likely be the trajectory for impact. A UA failure with a forward momentum may create a larger debris field with a trajectory directly into the open-air gathering. Furthermore, UA intended for operation under this proposed rule may weigh 1,320 pounds, significantly greater than the 55 pounds permitted for certain transient operations under part 107. The risk associated with transient operations and the potential for greatest impact is something that cannot be broadly mitigated at this time and must be evaluated on a case-by-case basis.

I. Use of Strategic Deconfliction and Conformance Monitoring (§ 108.190)

FAA proposes in § 108.190(a)(1) to require part 108 operators conducting their operations in controlled airspace to use approved capabilities for strategic deconfliction and conformance monitoring. In addition, under proposed § 108.190(a)(2), part 108 operators flying over a population density of Category 3 or higher would be required to use an approved capability for strategic deconfliction. Operators may meet these respective requirements by opting into using an authorized automated data service provided by an appropriately certificated service provider under proposed part 146, or by receiving their own part 146 certificate and

authorization so that the operator can self-provision the service. This is so long as the service provision meets part 146 requirements to provide reasonable and non-discriminatory access to airspace and adhere to other procedural requirements for all users of the service.⁵³ For further discussion on part 146, see section XIII of this preamble.

1. Description of Strategic Deconfliction and Conformance Monitoring

In proposed §§ 108.190(b) and (c), FAA sets forth performance-based requirements for performing strategic deconfliction and conformance monitoring.⁵⁴ FAA proposes in § 108.190(b) that having a strategic deconfliction capability—required in both controlled airspace and when flying over a population density of Category 3 or higher—would mean being able to perform strategic conflict detection and resolution prior to takeoff, and in relation to other UA operations that are discoverable at that time, as well as being able to maintain a target average conformance to all operational intents that are utilized by the operator.

The first requirement for strategic deconfliction is a preflight function; it is the ability to perform strategic conflict detection prior to takeoff and in relation to other UA operations that are discoverable at that time.⁵⁵ This capability would check the operator's operational intent against conflicts with other discoverable operational intents.⁵⁶ In addition to detecting conflicts, through the ability for strategic conflict resolution, strategic deconfliction provides the operator with an

⁵³ FAA emphasizes that automated data service providers do not have the authority to provide operators with access to the NAS, as that authority resides solely within FAA. However, certain services—such as strategic deconfliction—have the capability to coordinate its user's operational intent with others in the network, therefore may block that space for a specific time, which may inadvertently result in non-equitable treatment of aircraft operators. FAA has established a priority of operations schema, providing guidance to operators in identifying priorities of operations, and providing an indication of whether conflicts can exist among operations at the same priority level. FAA's priority schema, for applicable services, is addressed in AC 146–1, available in the public docket for comment.

⁵⁴ FAA derived definitions for strategic deconfliction and conformance monitoring, as well as several terms used in the regulatory text, from ASTM F3548–21, Standard Specification for UAS Traffic Management (UTM) UAS Service Supplier (USS) Interoperability, which is an industry consensus standard.

⁵⁵ See proposed § 108.190(b)(1).

⁵⁶ In proposed § 108.5, FAA defines operational intent as a volume-based representation encapsulating the intended flight path for a UAS operation and comprising one or more overlapping or contiguous 4-dimensional volumes defined by length, height, width, and a beginning and ending time.

opportunity to adjust their operational intent (for example, by following a different path, flying at a different altitude, or departing at a different time) until a conflict-free route is found.

The second requirement for strategic deconfliction is to achieve a target average conformance when operating the UA in accordance with the operational intent. A target average conformance is a lagging indicator of how safely and efficiently the operator flew the strategically deconflicted routes. The operator's automated data service provider would support this function by calculating how often the operator stayed within its operational intents and then notifying the operator if the value were to fall below an established threshold.⁵⁷

UAS operators and service providers would not be required to report the target average conformance value to FAA on an ongoing basis. However, FAA would be able to verify these values through compliance and safety assurance activities via the operator-reported data in accordance with proposed § 108.45 in any instance of failure, malfunction, or defect in an authorized service. Furthermore, FAA may verify these values by inspecting records maintained by the operator's automated data service provider certificated under part 146, in accordance with § 146.330.

In addition to strategic deconfliction, UAS operated in controlled airspace would also be required to have a conformance monitoring capability provided by an automated data service provider certificated under proposed part 146.⁵⁸ FAA proposes in § 108.190(c) that this capability would need to include two specific functions. The first function would be to provide time-sensitive alerts to operations personnel whenever the UA exits its operational intent, consistent with criteria or parameters established prior to takeoff. The second function would be to communicate information to other airspace users and FAA about the alert—via means acceptable to FAA.⁵⁹

⁵⁷ This calculated value would be provided by the automated data service provider on a recurring basis for the duration of the flight operation and is generally represented as a percentage.

⁵⁸ A service providing conformance monitoring for a UAS operation is required to also provide strategic deconfliction for the operation. This is further discussed in AC–146, available in the docket for this proposed rulemaking.

⁵⁹ When communicating information about alerts to FAA, FAA generally anticipates that only alerts that result in safety concerns would need to be communicated immediately to the Agency. For example, alerts regarding operational intents transitions from a conforming to a nonconforming state may not pose a safety concern because the non-conformance is expected and may only be

⁵² See FAA Legal Interpretation addressed to Banner Tow USA (March 3, 2010).

An alert to the operator of a non-conformant UA would help the operator gain and maintain situational awareness of their aircraft by notifying the operator of the need to take action to bring the UA back into the approved operational intent. Making the alert available to other NAS users would enable further collision risk reduction by making impacted operators of nearby UAS and manned aircraft aware of the off-nominal operation, allowing those operators to determine their best course of action to avoid a collision.⁶⁰ Finally, making the alert available to FAA would enable FAA to maintain the safety of aircraft operations in controlled airspace.

Proposed § 108.190(d) states that, unless otherwise authorized by FAA, operators would need to meet the requirements in §§ 108.190(b) and (c) by using a service provider certificated under proposed 146 with the appropriate service authorization. Operators could choose to either self-provision the necessary services described above by applying for and receiving their own certificate and corresponding service authorization under proposed part 146 or use another certificated service provider to provide the service for them. These options are meant to strike the optimal balance between ensuring airspace safety, while providing a degree of flexibility to UAS operators. Some operators may choose to build their own service that includes features uniquely suited to their own needs, while other operators may prefer to shop across an open and competitive marketplace of qualified services. Overall, FAA anticipates automated data service providers would offer a range of products with various price points and additional value-added features for UAS operators.

temporary until conformance is re-established. Such alerts would not need to be communicated to FAA immediately. However, alerts regarding operational intents transitions to a contingent state may pose a safety concern; such alerts are considered time-sensitive and would need to be communicated to FAA immediately. Further guidance on information regarding alerts that need to be communicated to FAA, including FAA criteria for identifying those alerts, is discussed in AC-146, available in the docket associated with this rulemaking.

⁶⁰ FAA anticipates that manned aircraft may choose to participate in the UTM network to maintain situational awareness of UAS operations nearby. Manned aircraft who choose to do so would be able to receive alerts, provided they subscribe to receive push notifications for a given area of interest.

2. Requiring Use of Strategic Deconfliction and Conformance Monitoring

In 2022 and 2023, in response to BVLOS ARC recommendation TP 2.2,⁶¹ FAA contracted with Johns Hopkins University Applied Physics Laboratory to conduct extensive simulation-based research of UAS interactions using USS to provide strategic deconfliction to determine the safety benefit of the functionality and to inform FAA policy about its use, including for this rulemaking. The simulation environment represented commonly expected UAS mission profiles, vehicle behavior, airspace restrictions and variations in population density. In total, the Applied Physics Laboratory conducted more than 450,000 airspace simulations representing nearly 94 million UAS flight hours, the research showed midair collisions between UAS were about 100 times less likely to occur when strategic deconfliction was used by all UAS, compared with simulations in which UAS did not use strategic deconfliction.⁶² The use of strategic deconfliction resulted in a corresponding two-order-of-magnitude decrease in the rates of ground-based injuries or fatalities when simulated over a wide range of locations and variations in population density.⁶³ However, with 75 percent of UAS participating in strategic deconfliction, the midair collision rate decreased by only about half. This is a significantly higher number of midair collisions, which occurs because non-participating UAS would follow routes that would intersect with operational intents, resulting in collisions in some instances.

Separate from this research, the ASTM International USS Interoperability Workgroup conducted a series of analyses between 2020 and 2023 to characterize the safety benefit of strategic deconfliction services. The three independent modeling efforts yielded similar results indicating significant reduction in collision risk for

UAS using strategic deconfliction, compared with using no strategic deconfliction. ASTM International published this safety case framework for strategic deconfliction in appendix X4 of the Standard Specification for UTM UAS Service Supplier Interoperability⁶⁴ with a representative safety analysis resulting in a 97.9% reduction in midair collisions using strategic deconfliction. This is within the same order of magnitude of the collision risk reduction found in FAA's research with Johns Hopkins University. The combined results from FAA and ASTM workgroup analyses—that were conducted separately and used different approaches—provide a strong body of evidence that requiring the use of strategic deconfliction is highly effective at reducing midair collisions between UAS.

The strategic deconfliction model is less effective if there is not an inflight means, such as conformance monitoring, to verify that UAS are flying within their operational intents. The Applied Physics Laboratory research indicated that deviations outside of those operational intents could increase collision risk with another UAS, even if it is operating in its own strategically deconflicted operational intents nearby.⁶⁵ Separately, conformance monitoring capabilities have been demonstrated in the UTM Pilot Program (UPP) and UTM Field Test (UFT) scenarios to be effective at further reducing collision risk, especially if the UAS did not have DAA that could recognize and maneuver away from other UAS.⁶⁶

Furthermore, beginning in the fall of 2023, FAA established the UTM Key Site Operational Evaluation in North Texas. This initiative establishes partnerships with operators and UAS Service Suppliers (USS)⁶⁷ and works with suitable participants in attaining the necessary exemptions to operate BVLOS at a key site. As discussed further in section XIII, USS are UAS-specific automated data service providers and form a crucial component

⁶¹ ARC recommendation TP 2.2 states: “FAA and NASA should conduct a study to determine what level of aircraft operations in a defined volume of the airspace would trigger the need for mandatory participation in federated or third-party services.” The ARC recommendation further mentioned that an “interoperable safety services such as strategic deconfliction” is an example of one of these services.

⁶² Johns Hopkins Applied Physics Laboratory, *Initial Safety Criticality Assessment of Unmanned Aircraft System Traffic Management (UTM) Strategic De-Confliction and Impacts to Beyond Visual Line of Sight Operations* (2022) (provided in docket).

⁶³ See Zanlongo, S., *Ground Risk Assessment Report for Urban UTM Operations*, AOS-23-1252 Version 1 (2023) (provided in docket).

⁶⁴ *Standard Specification for UAS Traffic Management (UTM) UAS Service Supplier (USS) Interoperability*, ASTM F3548-21 (2022), www.astm.org/f3548-21.html.

⁶⁵ Zanlongo, S., *Conformance Monitoring Assessment Report for Urban UTM Operations*, AOS-23-1253 Version 1 (2023) (provided in docket).

⁶⁶ FAA, *UTM Field Test (UFT) Final Report* (Nov. 6, 2023), www.faa.gov/uas/advanced_operations/traffic_management/UFT-Final-Report.pdf.

⁶⁷ An automated data service provider that fulfills the strategic deconfliction or conformance monitoring functions, whether self-provisioned by the operator, or deployed by another person, is referred to as a USS, a provider of particular type of UAS services to the UTM ecosystem.

in the development of the UTM ecosystem. FAA anticipates that USS will coalesce into networks that provide all manner of services necessary for full integration of UAS including, but not limited to, strategic deconfliction and conformance monitoring services.

FAA has learned through data collection and observation of the UTM Key Site Operational Evaluation that industry can effectively self-govern many aspects of standing up and running a USS Network.⁶⁸ This effectiveness was a result of industry committing to adhere to an interoperability standard, in this case ASTM F3548–21, which has a performance target and feedback mechanism for operators. This self-governance included mechanisms for the automated data service providers to measure and track each operator's conformance rate over time. It also provided opportunities for operators whose conformance rate was too low to come into compliance with the expected performance target. As part of this industry-led initiative, FAA would issue a letter of acceptance to an automated data service provider, who has been paired with a UAS operator, if the pair has successfully demonstrated that their automated data service is effective in managing UA to UA collision risk.⁶⁹

Based on the success observed, FAA issued 2 letters of acceptance to automated data service providers in July 2024—one to Zipline and another to Wing. In the letter of acceptance issued to the automated data service providers, FAA highlighted its findings that using strategic deconfliction is a safe and effective means of managing collision risk among UA flying simultaneously, by multiple operators, and in the same area. In addition, FAA took the opportunity from this industry-led initiative to develop a streamlined regulatory approval process of certain automated data services. The UAS industry has expressed to FAA the need

for approving certain automated data services, in this case strategic deconfliction, to scale their UAS BVLOS operations safely. As a result, FAA proposes the creation of part 146 in this rulemaking, allowing UAS operators to scale their BVLOS operations, given a service's proven safety benefit. For a further discussion FAA's proposal for regulating automated data services providers, and their services—such as strategic deconfliction or conformance monitoring—see section XIII of this preamble.

3. Alternatives Considered

FAA considered requiring the use of strategic deconfliction and conformance monitoring for all UAS operations but settled on proposing that strategic deconfliction would only be required when operating a UA in controlled airspace or over a population density of Category 3 or higher and that conformance monitoring would only be required when operating a UA in controlled airspace. In making this determination, FAA considered comments received in response to a May 2023 **Federal Register** notice regarding UAS BVLOS operations (BVLOS FRN)⁷⁰ that included FAA-funded simulation research into the effectiveness of strategic deconfliction at reducing collision risk between UAS and insights gained from the UTM Key Site Operational Evaluation.

In the BVLOS FRN, FAA asked the public about requiring UAS BVLOS operations to use services providing strategic deconfliction and conformance monitoring in any airspace. Many of the comments argued that such a requirement was not proportionate to the underlying risk of collision between UA in sparsely populated areas. Commenters argued that the likelihood of collision between UA in such areas would be lower because fewer UA are likely to be operating simultaneously and in proximity to each other. Commenters also argued that, in the event of a collision, it would be unlikely that falling debris would cause property damage or injuries to people on the ground in sparsely populated locations. Commenters also emphasized that, because conformance monitoring relies on a real-time network connection to send alerts, the function may not be implementable in remote parts of the United States with poor cellular connectivity, especially if alternative C2 link options were not available. FAA agrees with the commenters, and therefore has proposed requiring strategic deconfliction only in

controlled airspace, or when flying over a population density of Category 3 or higher, and conformance monitoring only in controlled airspace.

FAA also considered the approach recommended by the BVLOS ARC, which was to not require strategic deconfliction or conformance monitoring, but rather to allow their use via a service if an operator chose to do so. However, FAA has determined that, without a requirement for all operators in certain environments to perform strategic deconfliction, there would be only a marginal safety benefit. As discussed earlier, strategic deconfliction is most effective when all UAS in a given area are participating in the function.

FAA also considered permitting operators to find their own way to manage collision risk with other UAS. This would provide operators with a variety of solutions, which might include manual coordination with other operators; use of emergent collision avoidance technology predicated on detecting other UAS; or use of an automated data service provider certificated under part 146. However, FAA found that while it would be desirable to provide maximum flexibility, such an approach would have decreasing safety benefits because operators may not be aware of each other's operations. Further, there is not yet a demonstrated operationally validated solution for tactical collision avoidance between UAS.⁷¹ FAA seeks comments on whether the UAS-to-UAS collision risk is appropriate for the nature of proposed operations when the operator is using strategic deconfliction or conformance monitoring through a part 146 certificated entity.

J. Operations Near Aircraft: Low Altitude Right-of-Way Rules (§ 108.195)

FAA's system of right-of-way is based on the foundational principle of "see-and-avoid," a concept based on aircraft maneuverability, piloting skillset, physical limitations of VLOS, and the conspicuity of other aircraft to determine right-of-way. This is the basis of §§ 91.113 and 91.115, as well as other part 91 requirements such as cloud clearances, visibility minimums, aircraft lighting for night operations, and other associated design and flight requirements. FAA has taken this consistent approach into account in

⁶⁸ Per the *UTM Concept of Operations v2.0* (Mar. 2, 2020), www.faa.gov/sites/faa.gov/files/2022-08/UTM_ConOps_v2.pdf, USS Network is an amalgamation of USSs connected to each other, exchanging information on behalf of subscribed operators. The USS Network shares operational intent data and other relevant details across the network to ensure shared situational awareness for UTM participants.

⁶⁹ Each FAA-issued letter of acceptance to an automated data service provider compliments an FAA waiver or exemption issued to the UAS operator paired with that same provider. While the waiver or exemption issued to the UAS operator highlight the operational conditions or limitations the operator needs to abide by to deviate from FAA's requirements, the letter of acceptance documents FAA's analysis of industry's self-governance documents and the automated data service's testing results.

⁷⁰ 88 FR 33855 (May 3, 2023).

⁷¹ The RTCA minimum operational performance standards (MOPS) for Airborne Collision Avoidance System X for sUAS (ACAS sXu) provide an algorithmic means of alerting and avoiding other drones, but require a sufficient means of detecting other drones that has not been standardized.

developing right-of-way rules for proposed part 108.

Under FAA's approach to right-of-way, the aircraft with right-of-way can continue their flight unimpeded, while the other aircraft gives way. The proposed changes to the right-of-way structure envisioned under part 108 would maintain that principle, updating the existing requirements under part 91 to accommodate this new entrant. Under proposed § 108.195 and the proposed amendments to § 91.113, UA operating under part 108 would be required to yield to all manned aircraft broadcasting their position using ADS-B or electronic conspicuity equipment, and those operating in specific locations. Specifically, manned aircraft operating in a Category 5 population density area as described in proposed § 108.185, operating in Class B or C airspace as described in proposed § 108.180(b), or departing from or arriving at an airport or heliport would have right-of-way over the UA.

The BVLOS ARC made several proposals related to right-of-way in their final report. These included allowing for "detect-and-avoid" (a technology-based approach to "see-and-avoid"), giving UA right-of-way in shielded areas, giving UA right-of-way over non-cooperative aircraft, and giving cooperative manned aircraft right-of-way over UA. "Cooperative" in this context meaning aircraft broadcasting their position using ADS-B Out equipment or electronic conspicuity equipment. FAA is proposing to adopt the BVLOS ARC's recommendations related to giving UA right-of-way in shielded areas, giving manned aircraft broadcasting their position using ADS-B Out equipment or electronic conspicuity equipment right-of-way over part 108 UA, and giving part 108 UA right-of-way over manned aircraft who are not broadcasting. FAA has decided not to update § 91.113 based on the BVLOS ARC's proposal related to "detect-and-avoid" at this time. This change would require further updates to part 91, affecting legacy aviation in a manner that is out of scope of this rulemaking effort.

Proposed § 108.195(a) states that UA operating under part 108 would be required to yield right-of-way to all aircraft departing from or arriving at an airport or heliport or equipped and broadcasting their position using ADS-B Out equipment that meets the performance requirements of § 91.227. FAA acknowledges that ADS-B Out systems may occasionally fail to meet the performance requirements of § 91.227. Therefore, FAA expects DAA standards would include performance

requirements for the UAS so that the system can avoid aircraft when ADS-B Out equipment exhibits performance deficiencies.

In addition to ADS-B Out equipment that meets § 91.227, FAA would allow for an electronic conspicuity device that broadcasts a signal on Universal Access Transceiver (UAT)/978 MHz and that would also provide a means for the manned aircraft operator to retain their right-of-way over the UA. FAA anticipates that equipment that is able to broadcast limited ADS-B information, including aircraft location, would make manned aircraft electronically conspicuous to UA that are already listening for that signal. A portable device would be capable of fulfilling this requirement. FAA does not foresee this limited-information broadcast to fulfill the full requirements of ADS-B equipment that must comply with § 91.227. Instead, it would only be used to make UA aware of the presence of a manned aircraft that the UA must yield to.

FAA considered mandating ADS-B Out for all operations below 500 feet for manned aviation operators but decided that was not tenable due to the additional cost and burden that would impose. However, FAA plans to define new requirements for a portable low-cost electronic conspicuity (EC) device that could be used by manned aviation operators solely to retain right-of-way over a part 108 UA. This could be in the form of a new Technical Standing Order (TSO), or another form of approved specification issued by FAA, but FAA invites comment on the best way to enable this technology. The specification would allow for the device to be battery-powered and easily moved between aircraft, which would minimize costs for an owner of multiple aircraft and for a pilot of different rental airplanes by only having to purchase one device. This EC device could use its own antenna or attach to an external antenna and broadcast the aircraft's identification and location repeatedly, informing nearby receivers of the location of a manned aircraft that would need to be avoided by UAS. This EC device would be useable in any manned aircraft, including fixed-wing, rotorcraft, balloons, and ultralight vehicles, without expensive installations or reliance on onboard electrical systems.

FAA also considered requiring part 108 UA to monitor and perform separation for aircraft that are broadcasting their position over a networked connection, such as the internet. This could enable a technological solution on the manned aircraft side where the pilot of a manned

aircraft could use something as simple as an app on their cell phone that was low cost, or free to provide right-of-way retention. However, research into this as a viable solution has not yet occurred and the concept is still too new to incorporate into a rulemaking proposal without significant interest. However, FAA notes that the section 906 of FAA Reauthorization Act of 2024 requires the Comptroller General to conduct a study of technologies and methods that may be used by operators of UAS to DAA manned aircraft that may lawfully operate below 500 feet AGL and that are not equipped with a transponder or ADS-B Out equipment or not otherwise electronically conspicuous. This type of technology, which might not rely on transponder or ADS-B equipment, could potentially be one way of meeting the intent of this study. Therefore, FAA seeks comments on whether FAA should consider an added equipage requirement in the final rule for UA in the event that such a technological solution could be delivered before the rule is implemented.

It is important to note that, per proposed § 108.195(b), FAA states that UA would be required to remain at a safe distance from aircraft to which the UA would be required to yield the right of way. FAA is also proposing an amendment to § 91.113 to reference proposed § 108.195 (for more discussion, refer to section XII.B.5.ii). The right of way rule would not apply for UA operations in shielded areas, as specified in proposed § 108.205. When conducting operations in shielded areas, FAA proposes that UA would have the right-of-way over all manned aircraft. As noted above and further discussed in the following section VI.L, this is motivated by the fact that manned aircraft are extremely unlikely to be operating in shielded areas. Also discussed previously in section VI.H, the existing framework for avoiding collisions has been predicated on conditions largely specific to manned aircraft operations. To enable BVLOS operations, this proposed rule considers how to fulfill those functions in the context of strategic deconfliction, right of way requirements, and DAA. Strategic deconfliction requirements, referring to the preflight planning that ensures that the routes taken by all UA in a given area do not conflict, was discussed in section VI.I, while the proposed right of way requirements to increase conspicuity was discussed in section VI.J.

In proposed § 108.195(b), FAA further proposes that operators would need to use a method acceptable to the Administrator for determining safe

distance that statistically mitigates the risk of a collision to a remote event. FAA anticipates that an acceptable standard would require the ability to calculate and verify separation distances with manned aircraft in order to determine proximity, have a means to measure the performance of the equipment used to determine separation, and ensure that the assumptions used in the separation distances are appropriate and comparable to the types of operations intended to be conducted. FAA also expects that any such safe distance used would place no undue tactical burden on other aircraft such that a UA operating BVLOS may cause a potential safety hazard for a manned aircraft by trying to avoid the UA. The minimum safe distance used would need to be based on the balance of the technological capability of the systems and the interaction with the manned aircraft.

The first criteria, calculating and verifying separation, could be met by the operator having DAA technology installed on their aircraft that meets the design and performance requirements set out in a relevant industry consensus standard that has been accepted by FAA pursuant to the process described below. At the time of this preamble, FAA has reviewed DAA and associated calculation methodologies in reports from MIT/LL, the DAA standards proposed by ASTM Committee F38 on UAS, and RTCA Airborne Collision Avoidance System (ACAS) standards. Based on this, FAA anticipates that industry has many means to be able to calculate the separation distance of a UA to manned aircraft in tactical DAA mitigation strategies. FAA looks to industry and other stakeholders to recommend any further industry consensus-based standards as a means to be able to show FAA their tactical DAA separation calculations.

The second criteria, to measure the performance of the equipment used to determine separation, could be achieved with design and development compliance to the RTCA ACAS sXu or other DAA design standards for GPS systems for tactical mitigation, as well as connectivity to strategic deconfliction networks for strategic mitigation. In current part 107 BVLOS waiver operations, operators have used both strategic and tactical DAA systems, which generate associated performance data for their operation. Strategic DAA has consisted of lowering the estimated aircraft encounter rates through preflight planning that avoided known traffic areas, pre-launch holds when traffic approached the launch area, and

early or strategic pre-DAA or separation to avoid an encounter and maintain a safe distance. Operators have been able to demonstrate meaningful increases in separation distances from other aircraft using tactical DAA systems, such as radar, cameras, and ADS-B In systems, when compared to what would have been the closest point of approach without the DAA or separation system detecting and avoiding the other aircraft. FAA expects that this same level of performance in part 108 BVLOS operations would allow for scalable integration of more expansive operations.

The third criteria, using appropriate assumptions for separation distances, could be met by operators utilizing a DAA technology that is validated for the operation expected for their aircraft and supported by appropriate flight data sets for the intended operations. In the process of validating DAA technology, FAA expects that a manufacturer of a UA would comply with a DAA industry consensus standard for design requirements. The operator could review the operations manual of the UA to understand the aircraft's DAA tactical abilities and how the aircraft may be used safely within their expected BVLOS operations. FAA expects that an industry consensus standard would utilize a standardized means of performance validation.

K. Remote Identification of Unmanned Aircraft (§ 108.200)

FAA proposes in § 108.200(a)(1) that, unless otherwise authorized by FAA, no person would be able to operate a UA under part 108 unless the UA meets the requirements for standard remote identification. In addition, in proposed § 108.200(a)(2), FAA provides that the UA is not required to broadcast the control station location as required under § 89.305 (b) and (c) if the unmanned aircraft is being operated without a flight coordinator in accordance with 108.310. In addition, in § 108.200(a)(3) FAA proposes that the UA would be required to broadcast a remote identification operational status message that indicates whether the UA is being operated BVLOS, a status which indicates that the unmanned aircraft is being operated without a flight coordinator in accordance with 108.310, if applicable, and the takeoff location of the unmanned aircraft. FAA is also proposing that the broadcast range would need to be optimized to enable other aircraft to use the remote identification signal for situational awareness. FAA also proposes in § 108.200(a)(3) an update to the minimum performance requirements for

standard remote identification: when the UA operational status is set to BVLOS, the performance (range) of the broadcast would need to be sufficient to allow the UA to remain a safe distance from other aircraft. This proposal is intended to enable operators of other aircraft to identify UA that are operating BVLOS so the aircraft can remain separated by a safe distance. This may require higher performance levels for the equipment used to transmit the standard remote ID broadcast from the UA than what is typically used for aircraft operating under part 107. FAA seeks feedback from members of the general aviation (GA) community as to what would be a sufficient distance that the signal would need to be broadcast for GA aircraft to have enough time to maneuver.

FAA proposes in § 108.200(b) that the standard remote identification UA used for part 108 operations under this part would be required to meet the requirements of an FAA-accepted means of compliance for standard remote identification that includes the operational status message element described in this section. FAA notes that the currently accepted remote identification means of compliance (RID-ASTM-F3586-22-NOA-23-01), which is based primarily on ASTM standards F3586-22 and F3411-22a, already voluntarily contains provisions for up to 16 unique operational status indications. FAA has concluded the addition of a BVLOS operational status indication can be implemented without a significant impact to existing users of remote identification.⁷² FAA does not anticipate this provision will introduce any additional difficulty for manufacturers when producing UA equipped with remote identification for airworthiness acceptance under part 108. FAA also does not currently intend to impose any additional broadcast requirements on aircraft operated outside of part 108 as part of this rulemaking, so aircraft currently operating that are compliant with standard remote identification using the only currently accepted remote identification means of compliance, using a broadcast module, or operating under an FAA-Recognized Identification Areas (FRIA) would not be impacted. But FAA welcomes comments on whether other operating rules, such as part 107, should also be updated to include a broadcast operational status message requirement.

For the airworthiness acceptance of remote identification systems installed on UA operated under part 108, FAA is

⁷² See 87 FR 49520, 88 FR 77895.

proposing a new § 89.511 for production requirements for UA produced under an airworthiness acceptance issued under part 108. Currently, production of standard remote identification UA is under either § 89.510 for UA produced under a design approval or production approval issued under part 21 or § 89.515 for UA without design approval or production approval issued under part 21. FAA is proposing a new § 89.511 for UA produced under an airworthiness acceptance issued under part 108. This new section would require the remote identification system installed on UA operating BVLOS under part 108 to meet the airworthiness acceptance requirements under part 108 rather than the requirements in § 89.515, which are intended for UA produced without any airworthiness requirements, such as those operated under part 107 or 49 U.S.C. 44809. The proposed amendment to § 89.511 also requires conforming amendments to §§ 89.505 and 89.515. As such, FAA is proposing amendments to §§ 89.505 and 89.511.

L. Operation in Shielded Areas (§ 108.205)

As discussed in section VI.J, FAA has proposed allowing part 108 UA to have right-of-way while conducting operations in shielded areas. In § 108.205, FAA proposes defining shielded areas as areas within 50 feet of certain infrastructure, to include power lines and substations, railroads, bridges, and pipelines, when permission from the facility or infrastructure owner is obtained. In addition, FAA is reserving the right to designate any other area as shielded, as appropriate. It is important to note that proposed § 108.205 would prohibit UA being operated in shielded areas where manned aircraft are expected to operate.

The proposed use of both infrastructure and protected facilities to create shielded airspace for UAS is intended to enable a broad range of BVLOS UAS operations. Manned aviation must follow the altitude and obstacle requirements of § 91.119, and only in certain instances can manned aircraft intentionally come closer to infrastructure and terrain features than 500 feet. This creates an opportunity for UAS, which can operate closer to obstacles and structures without having the increased risk that would result from manned aircraft attempting to conduct the same operations. Part 108 UA are expected to mostly be smaller than manned aircraft and would therefore be able to navigate more nimbly. This, combined with the lack of humans on board the UA, reduces the

risk in shielded operations when compared to manned aircraft.

Traditionally, close-up inspection by manned aircraft (fixed-wing or helicopter) has been the method used by electrical transmission and pipeline utilities to inspect and maintain these lines. By allowing the use of UAS to perform these types of operations, FAA anticipates that the risks associated with these operations would be reduced. But in determining if the UA operation should be considered shielded, FAA must consider the remote possibility of a helicopter air ambulance, helicopter, manned agricultural aircraft, or another type of manned aircraft operating close to infrastructure and in the same area as the UA. FAA has concluded that requiring permission from the infrastructure owner for an operation to be considered shielded would be the best way to deconflict these types of activities, since they would be in the best position to know what types of operations are being conducted. However, it should be emphasized that this in no way provides an infrastructure owner the ability to control the airspace over their infrastructure and any non-shielded operations can still occur without said permission. Furthermore, it should be noted that this is in addition to the requirements proposed in § 108.180 for gaining access to controlled airspace, if required.

With this, FAA finds that the requirement of a 50-foot limit from structures is consistent with the risk accepted based on prior waivers granted and recommendations made from industry. This 50-foot limit would support numerous operations, including building, bridge, and other infrastructure inspection. A 50-foot limit also strikes a balance between allowing an adequate distance away from infrastructure for the safety of the UA and general camera and imaging equipment capabilities, while also providing an appropriate safety margin from other potential manned aircraft operations. In addition, powerline inspection can benefit from the 50-foot limit due to electrical and magnetic field metrics that require minimum UA standoff distances when operating within the vicinity of powerlines. Manned operations should be operating far enough away from powerlines that a 50-foot limit should provide enough of a separation distance from the UA operating under part 108 and manned aviation operations in the vicinity of the UA operation. In time, the definition of a shielded area may expand beyond what has been defined for linear infrastructure. To support the flexible

application of shielded operations, FAA proposes to permit additional shielded operations through an authorization under § 108.205.

Operations that propose an operating area within 50 feet of certain infrastructure that do not have permission of the facility or infrastructure owner, do not qualify to fly under the designation of shielded operations. This is to limit operations that may leverage the removal of DAA compliance and strategic deconfliction to be able to conduct operations in areas where the risk of the operation of the aircraft is mitigated based on location, speed, and closeness of the UA to the infrastructure being inspected. The 50-foot offset granted under shielded operations under this rule is meant to provide enough distance for a UA to conduct operations without impeding on other operations in the vicinity of the infrastructure being inspected.

While FAA has defined the specific infrastructure sites of powerlines and substations, railroads, bridges, and pipelines as the qualifying infrastructure, FAA recognizes there are additional structures that could be included in this definition and requests comments on the list.

M. Operations of Multiple Unmanned Aircraft (§ 108.210)

The technological ability for one individual person to manipulate multiple aircraft simultaneously is unique to the UAS environment. FAA recognizes that broader applicability of controlling or monitoring multiple UA per person, or groups of persons, is an important consideration in scaling UAS operations to greater commercial and societal benefit, while also recognizing that this scenario presents greater complication to the operational environment. To ensure there is no safety gap as a result of these differences, FAA has proposed § 108.210 to provide allowance for the operation of multiple UA. Proposed § 108.210(a) states that operators would only be able to conduct operations at a UA to flight coordinator ratio of 1:1, except in accordance with a method acceptable to the Administrator. FAA expects that industry consensus standards would be developed, and later accepted by FAA, which would meet this industry need. FAA would also evaluate proposals from operators related to operating multiple UA on a case-by-case basis. Such an evaluation is already occurring with current UAS operations, including those with package delivery operators and agricultural UAS operators, as part of FAA's review of exemption petitions

and waivers. Factors that FAA considers when making such determinations currently include the technology used and the operational procedures in place. FAA anticipates using similar factors when making case-by-case decisions under part 108. Proposed § 108.210(b) states that flight coordinators would not be allowed to be responsible for operations of more UA than what the flight coordinator is reasonably capable of handling during normal, abnormal, and emergency conditions, determined in a method acceptable to FAA. How to determine the number of UA a flight coordinator is capable of handling would be addressed in any consensus standard that may be developed, or FAA would determine this number at the time of evaluation. Proposed § 108.210(c) states that flight coordinators would not be allowed to be responsible for operations of more UA than specified in the manufacturer's operating instructions, which highlights that there may be a difference between the ratio identified in the manufacturer's operating instructions and the ratio at which an operation can be conducted by an operator. The ratio identified in the manufacturer's operating instructions would consider the ability of the technology and system capability, but it would not be able to fully account for the specific operating conditions, individual company procedures, and human factors for any given operator. In addition to the parameters set by the operating instructions, the operator may consider human factors, weather conditions, the category of operating over people, the strategic deconfliction and DAA technologies utilized by the operator, and other relevant information when developing a method acceptable to the Administrator. Being responsible for a UA would include, but would not be limited to, operating or monitoring the UA.

Furthermore, this proposal will only outline the allowed 1:1 operations under part 108, but it will not list an allowable ratio of flight coordinators to a specific number of part 108 UA for any given operation. FAA expects there to be a great deal of variety among part 108 UA designs. As such, the manufacturer of these multiple UA systems would be in the best position to design the maximum number of aircraft to be operated at one time by a single flight coordinator under optimal conditions. Conversely, FAA understands that operators may not hold optimal training commensurate with the expected operation or plan to operate in fully optimal conditions. Therefore, the

ratio of aircraft to flight coordinator would be determined based on the UA design characteristics and FAA's review of the operation. FAA recognizes that there is significant interest in the industry in being able to operate 1:many at scale to facilitate further UAS integration. However, at this time there is limited industry standardization, and the variances of aircraft design and operational considerations are too great to be able to codify a singular set of parameters to enable 1:many operations. FAA invites public comment on how 1:many operations could be safely standardized and expanded in the regulations beyond 1:1.

Current 1:many operations have mostly consisted of package delivery operations under parts 107 and 135. In addition, "swarm" operations have been granted waivers under § 107.35 for drone light shows and other entertainment purposes. In many operational use-cases, there may be opportunities to use 1:many operations for the benefit of agriculture, surveillance, infrastructure inspection, and many other operations, as described by the BVLOS ARC in March 2022 (for more information on the BVLOS ARC, see section III.C0).⁷³

N. Careless and Reckless Operation (§ 108.125)

Existing FAA regulations such as § 91.13 prohibit a person from operating an aircraft in a careless or reckless manner that may endanger the life or property of another. These regulations also prohibit any object being dropped from an aircraft in flight if doing so would create a hazard to persons or property.

FAA proposes § 108.125(a) to ensure that UAS would not be operated under part 108 in a careless or reckless manner. Proposed § 108.125(b) would also prohibit allowing an object to be dropped from a UA in a manner that would create an undue hazard to persons or property. In § 108.125(c), FAA proposes that part 108 UA would not be able to be operated in such a way that creates a collision hazard with property of another, vehicles, persons, structures, other UA, or aircraft with one or more people on board. As the primary mission of FAA is the safety of the NAS and the public, operation of a UA in a manner that could cause damage to property or injury to persons would be unequivocally prohibited,

whether the cause is intent, lack of skill or training, faulty equipment, or recklessness. This is consistent with other FAA regulations and is critical to ensuring a safe NAS. FAA notes that, for purposes of research and development, UA are sometimes intentionally collided into structures and objects, but that intentional testing is not considered to be "careless and reckless" if done with appropriate safety mitigations and intent and does not injure people nor damage another person's property.

O. Manuals (§§ 108.130 and 108.135)

In § 108.130(a), FAA is proposing that operators would need to ensure that certain documents are available and readily accessible during relevant operations. These documents would include the manufacturer's provided UAS operating instructions (as described in proposed § 108.720), the manufacturer's provided UAS maintenance instructions (also described in proposed § 108.720), the manufacturer's provided UAS configuration and control document (also described in proposed § 108.720), and the company operations manual, as proposed in § 108.135. These documents would provide the operator's personnel with the UA's operational procedures and limitations, emergency and abnormal procedures, operations policies, methods and procedures for maintenance, accepted configurations, and general company policies. These documents would be necessary for the safe operation of the UA and for safety of overall operations.

In addition, FAA proposes in § 108.130(b) that the operator would need to ensure that all personnel have access to the documents that pertain to their duties and responsibilities during the performance of their duties. Depending on the duties required, some manuals could be quite extensive. Requiring personnel to have access to pertinent documents would allow personnel to immediately reference relevant information during operations, rather than commit an entire manual to memory. In addition, emergency, abnormal, or procedures that are used infrequently should be verified by manual reference so as not to omit any important step or process.

In § 108.135(a), FAA proposes that each operator would be required to prepare and keep current a manual setting forth the operator's procedures and policies acceptable to FAA, which would be essential to standardize processes and ensure uniformity in tasks performed during operations. A company operations manual aids personnel in following established

⁷³ Unmanned Aircraft Systems Beyond Visual Line of Sight Aviation Rulemaking Committee Final Report, (Mar. 10, 2022), available at www.faa.gov/regulations_policies/rulemaking/committees/documents/media/UAS_BVLOS_ARC_FINAL_REPORT_03102022.pdf.

processes and procedures consistently. This consistency facilitates improved efficiency and reduces errors. A company operations manual would also be an essential resource for new personnel. It would provide a structured overview of operations, policies, and regulatory requirements that need to be followed.

In § 108.135(b), FAA proposes that the company operations manual may be in the form of one or more documents if the appropriate portions of the manual, as well as changes and additions, are always made available and accessible to the operator's personnel when such personnel are performing their assigned duties. Operators should have the flexibility to decide which manuals or sections of manuals would be issued to personnel depending on their duties. This would enable the operator to take smaller sections from large manuals and provide their personnel information related to their specific work functions, rather than information not relevant to their tasks. To ensure that all operations are conducted consistently with what is written, personnel should have a reliable and updated manual to enable him or her to perform his or her mission properly. Having access to applicable documents would also help to improve safety by reducing the risk of incidents through appropriate procedures or work instructions.

Under proposed § 108.135(c), FAA would require the manual be made available to FAA upon request. As part of FAA oversight, surveillance, and continued operational safety (COS), operators would need to make the manual available for review to ensure the manual meets the requirements of the proposed rule and is not contrary to any applicable Federal regulations, the operator's operating certificate or permit, or operations authorizations, as would be required under proposed § 108.135(d). This would also provide FAA with an opportunity to verify the operation complies with its manual.

In addition, FAA proposes in § 108.135(e) that information and instructions contained in the manual must be displayed clearly and be retrievable in the English language. For ease of obtaining information during time-critical moments such as emergencies, manuals would need to be printed in a clearly legible format or in electronic format that displays in a way that is clearly visible in all lighting situations. In maintaining the universal language standard in aviation, FAA proposes that the manual should be retrievable in the English language.

FAA proposes in § 108.135(f) that the manual revision status would need to be

controlled in such a way a person can immediately ascertain the information is the most current. Personnel should be able to ensure that all documentation related to operations, processes, and policy is accurate, up-to-date, and compliant with relevant regulations. While FAA is not proposing a requirement for a specific revision format, one way to meet the revision requirement would be to have a document revision history template that includes the current date, the name of the person who made the changes in the revision history template and a description of what changes were made in each revision. A list of effective pages could also be included for easy reference to manual holders to verify that the manual is up to the current revision.

Under proposed § 108.135(g), FAA would require that company manuals must include certain items and procedures in order to standardize important aspects of an operation. First, FAA proposes in § 108.135(g)(1) that a company manual would need to include the name of the personnel required by § 108.135 who are authorized to act for the operator, their assigned area of responsibility, and their duties, responsibilities, and authority. By requiring these personnel to be spelled out in the manual, other persons working for the company would be better able to understand the operational control and structure of the company as it directly relates to responsibility of the operation. In addition, FAA proposes in § 108.135(g)(2) that the manual contain a list of operations personnel positions required and the responsibilities of each role. By making this a requirement, employees would have a means to understand their roles and responsibilities as they relate to the operation. FAA also proposes in § 108.135(g)(3) requiring the company operations manual to include preflight procedures, in order to ensure that all personnel conduct the same process.

FAA recognizes that not all UA are alike. Loading of a UA may be done differently from aircraft to aircraft. Some UA may have external pods, some UA may have a means to attach loads to the exterior of the UA, and some may have an internal bay used to store payloads. Given that not every UA is loaded in the same manner, FAA proposes in § 108.135(g)(4) that the manual would need to contain procedures for ensuring aircraft weight and balance has been accounted for.

As further described in section VI of this preamble, FAA proposes in § 108.135(g)(5) that operators would need to have procedures in their manual

on how to notify FAA after an accident has occurred. Because this rule is flexible in how an operator divides the duties and responsibilities for operations personnel, this proposal would not require that the flight coordinator be the individual making notification in the event of an accident, but rather allows the operator to determine which individual would make that notification. FAA therefore proposes that the company manual would need to include company procedures for complying with accident notification requirements.

FAA proposes in § 108.135(g)(6) that the company manual would need to include procedures for ensuring the appropriate operations personnel know the current condition of the UA in order to determine the airworthiness status of the UA. FAA anticipates this could be accomplished in a number of ways, such as the use of a logbook or through the use of electronic messaging or automation. As discussed in sections VI.A and VI.E, preflight and determination of condition of safe flight is paramount for ensuring safety of the operation. Therefore, this proposal would require operators to include procedures to determine the airworthiness status of the UA prior to flight and to communicate that status to appropriate personnel.

FAA proposes in § 108.135(g)(7) that operators would need to have procedures for complying with the recordkeeping and report requirements as required by proposed §§ 108.40 and 108.45. In proposed §§ 108.40 and 108.45, FAA would require that specific records be retained by the operator and that the operator would need to make necessary reports of certain records to FAA. FAA understands that not all operators would utilize the same recordkeeping or reporting databases. FAA anticipates that some operators may store records electronically, while others may store them in hard copy form. In addition, because operator records play a significant role in showing regulatory compliance to FAA, efficient and effective recordkeeping and reporting by an operator would help to ensure that compliance is continuously maintained. FAA therefore would require that operators develop and publish those procedures within the company operations manual.

FAA proposes in § 108.135(g)(8) that the manual would include procedures for access to and use of UA maintenance procedures and inspection criteria. FAA recognizes that not all operators would utilize the same methods of dispersing these procedures to applicable personnel. For example, one operator

may choose to provide procedures in hard copy format while another may choose to provide the procedures via electronic form. In order to ensure that the applicable personnel receive and follow current maintenance and inspection procedures, FAA proposes that operators would need to include a procedure in the company operations manual for their access and use.

FAA proposes in § 108.135(g)(9) that the manual would also need to contain procedures for developing and implementing emergency procedures. The company manual should include information that the operations personnel need to develop and implement procedures for what to do in the case of various emergencies.

FAA proposes in § 108.135(g)(10) that a company operations manual includes procedures for the retrieval of aircraft that fail to return to their intended landing location. By making this requirement, FAA can ensure that operators are constantly aware of the location of each UA and how to retrieve a UA that does not return to its intended landing location.

FAA proposes in § 108.135(g)(11) that the manual also contain aircraft loading procedures, as applicable. FAA considers the proper loading of a UA to be critical to safe operation as operations are expected to be conducted over people and roads. Objects dropped from a UA could pose a serious hazard. Similarly, improperly secured or distributed loads may result in a loss of control of the UA and also result in a hazard. Including loading procedures in the manual ensures all operations personnel have access to this critical information.

Finally, FAA would require in § 108.135(g)(12) that operators include procedures for the identification and disposition of hazardous materials in their company operations manual, including procedures designed to avoid potential injury to employees and persons and property. FAA also believes that proper identification of hazardous materials in an operator's system can help to prevent such materials from being improperly offered to (shipped on) traditional carriers. Therefore, FAA proposes § 108.135(g)(12) to ensure that UAS operators are aware of the hazardous materials in their operation including hazardous materials that may be installed in the UA. For example, a large lithium battery that powers the UA should be identified to ensure that employees are aware that there are hazardous materials present within their operation.

P. Emergency Conditions (§ 108.215)

FAA proposes under § 108.215(a) that an operator would be able to request deviation authority from any FAA authorizations or limitations during emergency conditions if the conditions necessitate operations for the protection of life or property and a deviation is necessary for the expeditious conduct of those operations. This is intended to be for humanitarian needs where there is time to ask for authorization, but not time to perform the necessary administrative paperwork that would be needed to allow the operation through standard procedures. If conditions arise requiring emergency operations—for example, search and rescue missions or missions supporting first responders' operations—FAA could authorize operators to deviate from existing FAA authorizations or limitations in support of that emergency operation. Ensuring public and aviation safety is FAA's primary mission, and allowing deviations in the interest of safety would align with FAA's mission.

In addition, FAA proposes in § 108.215(b) that an operator may deviate from any rule under part 108, to the extent required, if the deviation necessitates immediate action to meet an in-flight emergency. The provision of a deviation authority in emergency situations is akin to a similar requirement for traditional aviation, §§ 91.3(b) and (c). Unforeseen circumstances can occur during operations and may require the operator to act immediately and deviate from FAA regulations in order to address the safety concern. If such a situation arises in which an operator needs to deviate from the proposed regulations, the operator may do so in the interest of public and aviation safety.

Nonetheless, as proposed in §§ 108.45 and 108.215(c), operators who deviate from FAA requirements during emergency conditions would be required to send a written report of that deviation to FAA upon FAA's request. Operators would be required to submit documentation describing the deviation and the nature of the emergency to FAA upon request. This would ensure that FAA stays informed of the incidents that could affect safety in the NAS and would allow FAA to determine if the deviation was warranted.

Q. Unmanned Aircraft Flight Restriction (§ 108.220)

FAA proposes in § 108.220 that no person would be allowed to operate a UA within a UA flight restriction established in accordance with part 74 of this chapter, except as prescribed in

part 74. This would align part 108 with a concurrent rulemaking titled *Designation—Restrict the Operation of an Unmanned Aircraft in Close Proximity to a Fixed Site Facility*, which is proposing these flight restrictions. FAA anticipates that the NPRM for part 74, while separate, will be issued at, or near, the same time as this preamble and proposes these changes to remain consistent with that proposal. If the NPRM for part 74 receives comments that lead to changes that affect this requirement, appropriate changes will be made to this section as well.

VII. Personnel Requirements (Subpart C)

A. Approach to Personnel in Part 108

1. Tailoring Personnel Requirements to Part 108 Operations

FAA issues airman certificates to accommodate the varied personnel roles within manned aviation, to include pilots, air traffic controllers, and other roles. 49 U.S.C. 44703. The regulations that stem from this authority were developed and envisioned for manned aviation, and, in 2018, Congress recognized that traditional airman certification may not provide the necessary flexibility for UAS operations. Therefore, Congress granted the Administrator authority to determine if airman certificates are necessary for the safe operation of UAS. 49 U.S.C. 44807(b)(2). FAA is proposing to exercise this discretionary authority by not requiring airman certificates under part 108 operations. As subsequently discussed in more detail, FAA has determined that the UAS proposed for use under part 108 and the related operations would be varied in ways that make a centralized airman certification impracticable (e.g., the varied UAS and operations could not be subject to a singular, regulated training program).

FAA has determined that it would not require the certification of airmen to operate a UA under this proposed regulation, instead pivoting to a model predicated on corporate responsibility for the safety of the entire operation. FAA is proposing a personnel structure that better reflects the types of aircraft and operations being currently conducted with UAS, along with expectations about how UAS operations may continue to evolve. Under this proposed rule, an operator would have an operations supervisor, who serves in a supervisory role with strategic oversight of and responsibility for the operation, while the flight coordinator role, if necessitated by aircraft design, would be responsible for the tactical safety of the operation. This proposed

structure reflects the technological capabilities and interfaces of UAS that are expected to conduct operations under part 108, which are both managed and operated within the airspace in significantly different ways to manned aircraft and UAS operated under part 107. Many UAS are heavily automated and may soon be fully autonomous, and do not require constant pilot interaction as manned aircraft do.

Pursuant to 49 U.S.C. 44807(b)(2),⁷⁴ FAA has determined that an airman certificate should not be required for the relevant personnel conducting operations under the provisions of part 108. This rulemaking proposes to shift responsibility for some aspects of the safe operation of UAS under proposed part 108 from humans to systems and from individuals to organizations. In this proposed structure, the operator would be responsible for ensuring the safety of the operation. Among other things, the operator would be responsible for maintenance and alterations, ground handling, loading and unloading of aircraft, and emergency procedures and protocols, even though individuals may accomplish those tasks. While individuals would remain accountable for their actions, the operator would ultimately be responsible for the conduct of their operations personnel. In considering this issue, FAA examined the safety and economic implications of not requiring an airman certificate. This proposal would promulgate a framework to ensure that personnel possess the appropriate knowledge, skills, and training to conduct the BVLOS operations covered in this proposal safely. Therefore, as discussed below, FAA proposes personnel requirements tailored to the UAS that would provide adequate safety for BVLOS operations under part 108.

In manned aircraft, the pilot in command is the primary person responsible for operational control and safety of flight from the flightdeck.⁷⁵ They are responsible for tasks, including performing preflight inspections of the aircraft, controlling the aircraft, seeing and avoiding other aircraft, and complying with instructions from ATC, in addition to numerous other tasks built specifically around pilot control.

However, the increasingly autonomous nature of UAS anticipated for use under this proposal provide alternate pathways to meet the purposes of those regulatory requirements currently applicable to pilots.

In addition, this proposal accommodates the industry's increasing reliance on technology rather than human interaction, including the fact that UAS use systems of monitored automation and control. For example, the design standards of subpart H propose requirements for position, navigation, and timing and UAS must be designed to avoid aircraft in accordance with proposed § 108.195.⁷⁶ These functions, when done in a traditional aircraft, are completed manually by a pilot. Under part 108, these functions, and many of the proposed operating requirements, would be predicated on technology and systems of programming rather than human interaction. An operator under this proposed rule would be responsible for managing the required systems associated with the UA and the operation that will replace traditional airman roles in aviation. This responsibility would extend to all operations, overseeing personnel, training, maintenance, ground handling, administrative functions, and maintaining a secure facility and operations areas.

Among other things, FAA considered the lack of standardization in the industry, which means that operations using one type of UA are likely to be very different from those conducted with a UA from another manufacturer, both in the context of distinct handling characteristics of the UA and the operations to be performed. For example, the proficiencies required of an agricultural operation will be different from the proficiencies required of a package delivery operation. FAA found that developing a common set of knowledge and skills that could be tested for the variety of UA was impracticable and likely would not be adequate to ensure safe operations. Rather than create a new airman certificate for part 108 operations, which would necessitate developing standards for qualification, training and proficiency, FAA proposes to require operators to assume the responsibility to ensure personnel have the appropriate knowledge, training, and skills necessary to oversee and manage the technology and systems required for automated UAS BVLOS operations.

FAA surveyed its experience with modifying airman certification requirements during the exemption process for UAS BVLOS operations. FAA has regularly employed the discretionary authority of 49 U.S.C. 44701 to modify airman certification requirements to allow operators to conduct UAS BVLOS operations through exemptions.⁷⁷ Some of these operators have argued to FAA that certification does not add any value or benefit to operations, due to added administrative burden and costs associated with certification relative to the knowledge and skills that have little relevance to the operation of a UAS. Similarly, operators that were held to a part 107 remote pilot certificate have explained that they still needed to provide the specific knowledge necessary to conduct safe operations because the part 107 knowledge test only covers basic concepts. While the ARC did contemplate the establishment of a new remote pilot certificate, it did point out that UAS provide lower cost ways for people to access the NAS than crewed aircraft, lowering barriers to entry for individuals and companies of a wider income strata to take advantage of this access. According to the ARC, at the highest level, the costs associated with training and becoming a certificated remote pilot are far less than becoming a part 61 certificated pilot, providing individuals a more affordable path into aviation. This has a further positive impact on science, technology, engineering, and mathematics (STEM), employment, and technology transfer.⁷⁸

As discussed further in section VII.A, the proposed rule's approach provides operators with flexibility to assign personnel to the most appropriate roles and responsibilities for the safety and efficiency of their specific operations. The proposed rule addresses personnel through organizational responsibility and operational requirements. Specifically, this proposal contains performance-based and scalable personnel regulations that cover various potential roles, including management positions, flight coordinators, ground handling personnel, package handling, maintenance personnel, aircraft programmers, information technology staff, and other site-specific personnel depending on the complexity of the operation. Because FAA anticipates the UA operating under part 108 will be varied, the proposed rule would also require operators to tailor personnel training and qualification to the specific

⁷⁴ In pertinent part, 49 U.S.C. 44807(b)(2) charges the Administrator with determining whether a certificate under § 44703 is required for the operation of UAS identified under § 44807(b)(1). § 44703 promulgates the authority for the issuance of airman certificates.

⁷⁵ See pilot in command as defined in 14 CFR 1.1, stating, in pertinent part, that the PIC is the person who has final authority and responsibility for the operation and safety of the flight.

⁷⁶ See proposed §§ 108.820 and 108.825, *see generally* section XI of this preamble.

⁷⁷ See section III.B of this preamble for additional discussion on BVLOS exemption history.

⁷⁸ See BVLOS ARC Report, page 270.

UA and its operating environment. The UAS industry has pursued a variety of configurations and systems, both to support the specific design of their UAS and in pursuit of proprietary technological solutions. For example, current UAS designs exhibit diverse user interfaces, from programs that function on mass-produced tablets or cellphones, with others in a closed-loop system with control stations and software specific to the design. There are currently no common interface standards developed by industry, and as such FAA finds that this training and qualification process will reflect the current varied direction undertaken by industry.

The variety of anticipated UA also extends to the UA's AE. Accordingly, given the varying AE needed to comply with proposed part 108, FAA anticipates that companies may employ software, hardware, or information technology personnel, as well as communications and satellite experts. For example, as discussed in section XIII, part 108 operations could include complex interactions with third-party service providers integral to safe BVLOS operations, and specialized personnel may be required to handle these system-level requirements. Depending on the operation type, the operator could also be responsible for multiple aircraft operating at the same time, and therefore personnel may need to be trained and qualified on the technological systems that enable simultaneous flights.

This proposed rule would promulgate a framework involving permitted operations and certificated operations. Permitted operations would be restricted to smaller aircraft and possess limited operating privileges with less direct FAA oversight, while operators conducting more complex certificated operations would enter a closer structured oversight relationship with FAA. When operators conduct BVLOS operations consistent with proposed part 108 requirements, including proposed personnel regulations, FAA anticipates that both permitted and certificated operations could be safely conducted without an airman certificate.

FAA acknowledges that this proposal departs from the existing airman regulations for manned aircraft operations and from FAA's approach to small UAS operations under part 107. Through part 107, FAA created a new small-UAS-specific airman certificate called a remote pilot certificate with a small UAS rating. In doing so, FAA recognized and addressed the shared characteristics of operating a small UAS

under a remote pilot's command. However, there are fundamental differences between the existing part 107 and proposed part 108. Under part 107, most of the operators are hobbyist, recreational, and individual flyers who are less likely to know and understand the necessary regulations (*e.g.*, airspace designations, operations over people) without a testing requirement to do so. Therefore, it is important to verify that part 107 operators understand these important restrictions. Thus, the prerequisite for a part 107 Remote Pilot Certificate is a knowledge test focusing on regulations and basic aviation knowledge and does not include a skills test like traditional manned pilot certificates under part 61. Moreover, because the part 107 regulations restrict all operations to visual line of sight, with specific conditions for operating over people and at night, operations are fairly limited in what they can achieve unless the operator holds a waiver or exemption. As a result, part 107 operations are primarily designed for individuals (*i.e.*, the remote pilot). Accordingly, FAA's approach to mitigating risks of part 107 operations is focused on the remote pilot's knowledge of the regulations, and less on the remote pilot's overall skills and reliability of the specific UA.

Despite their size, small UA operated under part 107 are much like traditional aircraft in that they rely heavily on user input and hand flying. These circumstances are dissimilar to the heavier, diverse, and more autonomous UAS that are reliant on technology and programming to a greater degree as envisioned under part 108. To account for these differences, this proposal would reassign most functions performed by pilots in traditional, manned aircraft, and similar or analogous functions performed by remote pilots under part 107 to technology and autonomous systems. As noted above, part 108 would require UAS to be designed to avoid most other aircraft (§ 108.825). Similarly, this proposal would require UAS to have a simplified user interaction (§ 108.810), which is anticipated to greatly reduce the level of human interaction and, therefore, limit potential user errors to ensure safe flight.

2. Operator Responsibility for Personnel

Given the shift from human controlled UA to systems-controlled UA intended to be operated under this rulemaking, FAA proposes to shift certain operating responsibilities from individuals to organizations. This proposed "corporate responsibility model" requires operators to satisfy the

regulatory requirements for safe operation, which include ensuring that the personnel they employ meet the requirements in subpart C of part 108. FAA contends that holding operators primarily responsible for the safety of their operations would better address how part 108 operations are expected to occur and the associated risks, which are driven less by individual reactive decision-making and more by management of technology and systems, policies, personnel, security, and other matters that operators must develop and oversee to meet this proposal's requirements.

Rather than prematurely define the appropriate roles and responsibility structures for emerging technologies and operations, the proposal would establish performance-based regulations that ensure part 108 operators meet or exceed management, knowledge, and training, standards for all personnel. These regulations would accommodate the position that the operator would be best positioned to conduct all knowledge and skills training and ensure employee qualification because they would understand the intricacies of their operations as it applies to their specific UA and the corresponding personnel requirements. Similarly, the proposal recognizes that the operator would be best situated to tailor knowledge, qualifications, and training regimes to the type of UA and AE being used, as well as the operational procedures in place. Thus, FAA has determined that the operator should be responsible for holistically managing its operations personnel, providing adequate training to ensure appropriate proficiency. Consistent with this approach, FAA would expect an operator company to take appropriate corrective measures to address issues with an individual's performance issues if and when they arise. While FAA would retain the authority to take enforcement actions against an individual where a regulatory violation occurs by assessing a civil penalty, FAA expects the operator to proactively address potential issues as the authority within the corporate responsibility framework. If FAA finds that an operator company is not managing its workforce effectively, placing the operation or the public at an unsafe level of risk, FAA could take appropriate enforcement against the operator up to and including revocation of their operating permit or certificate.

As noted above, it is anticipated that BVLOS operations under proposed part 108 would likely involve more people than part 107 operations and have different configurations and roles of

personnel than manned operations. These BVLOS operation roles could include a variety of positions, including management, flight coordinators, ground handling personnel, package handling personnel, maintenance personnel, aircraft programmers, information technology staff, and other site-specific personnel depending on the complexity of the operation. FAA considered certificating each type of personnel involved in the control of a UA under part 108 operations but concluded that operator certification was sufficient given the risk profile and standard operations observed for the types of operation conducted under proposed part 108. Further, FAA is not in a position at this time to reasonably anticipate the array of business models and personnel preferences given the variety of operations that would be facilitated under this rule.

Moreover, each individual person would likely have a diminished role when compared to airman analogues in manned aviation. As explained above, FAA anticipates part 108 operations to be mostly to fully autonomous, with many functions previously performed by manned aircraft pilots built into the technology and systems. While in manned aircraft, the use of autopilot systems and self-governing technology is becoming more commonplace, the ultimate control and responsibility for the safety of flight rests solely on the pilot. The pilot can always take direct control and maneuver the aircraft as desired or needed, and the pilot cannot rely on anyone outside of the aircraft to intercede control. With respect to controlling a UA during operations, an operator could utilize multiple personnel and combine their efforts to carry out successful and safe flight. For example, an operator could use personnel designated just for UA preflight preparation and checks, while other personnel perform the tracking and monitoring of the UA in flight (see section VI.B). Similarly, an operator may have payload operators with specialized training on loading packages onto specific UA. Some personnel could be removed from the proximity of the flight operations, and even switched during flight without degrading safety. These positions could vary depending on the type of operation and the UA and would generally require only narrow insight into the operation as a whole. FAA contends that these varying roles and responsibilities, which could significantly change from operator to operator, are not amenable to a certificate process that would yield few benefits beyond the safety mitigations

proposed in these personnel regulations and the other requirements of part 108. Instead, the proposed rule would require operators to satisfy the performance standards described herein to develop and use qualified personnel with the knowledge, training, and skills to conduct operations safely.

B. Personnel Roles and Responsibilities

While this proposed framework acknowledges a variety of roles could be necessary to meet the operational requirements proposed in this rule, this proposed rule explicitly regulates two roles: the operations supervisor and flight coordinator. The general personnel categories and requirements intend to extend flexibility to operators, given the variability in possible business purposes and operations. Operators would be required to develop procedures and policies that would clearly state the roles and responsibilities necessary for the planned operations in their company operations manual⁷⁹ as part of the application process for both permitted and certificated operations. Upon submission of the application, which will include the manual, FAA would evaluate the operations personnel framework, which would be required to be included by proposed §§ 108.135(g)(1) and (2), necessary for safe operation. FAA would consider how the framework outlined in the company operations manual meets requirements for the roles and responsibilities specific to the operation, as proposed in § 108.300(b). For certificated operators, FAA would also consider the training program, as proposed in § 108.540, which would also be included in the certificated operator's application, as proposed in § 108.505(b).

1. Operations Supervisor (§ 108.305)

As proposed in § 108.305(a), FAA would require each operator to have at least one operations supervisor. The operations supervisor would be directly responsible for, and be the final authority as to, the operation of all UA (see proposed § 108.120(d)). FAA proposes that the operations supervisor would maintain individual responsibility for operations in the company to ensure regulatory compliance. This position would also be a point of contact for FAA. FAA expects that this role would be similar to a director of operations in manned

aviation, with the responsibility of ensuring that persons in the company comply with the regulations and any authorizations or limitations associated with an operating permit or certificate.

In this proposal, FAA contends that persons occupying this position would need expansive knowledge of aviation safety standards and safe operating practices, as well as those policies and procedures specific to the operator and the operations. Therefore, the proposed rule accounts for specific areas of expertise necessary for the operations supervisor. In proposed § 108.305(a), FAA proposes to require that the person serving in the role of an operations supervisor be qualified through training, experience, or other expertise (e.g., UAS military experience, academic background). As further discussed in section VII.C, FAA has proposed training requirements that would apply to all personnel, including the operations supervisor. FAA anticipates that each company will tailor the training to fit their particular operational profile, which would include the specific procedures as detailed in their application for operating permit (proposed § 108.405(b)) or operating certificate (proposed § 108.505(b)).

In proposed § 108.305(b), FAA proposes that the operator would be required to inform FAA of any change in personnel assigned as operations supervisor within 10 days of any such change. Because FAA anticipates that the operations supervisor will be a primary point of contact in many cases between the operator and FAA, having this information available in an expeditious fashion is necessary for maintaining appropriate oversight of the operator.

To ensure operation supervisors possess the requisite level of specialized knowledge to successfully carry out their duties, FAA proposes § 108.305(c). In proposed § 108.305(c)(1), the operations supervisor would be required to be knowledgeable of the company policies and procedures. Because FAA is approaching the requirements of personnel from a perspective of corporate responsibility, FAA finds it necessary for the operations supervisor to be able to represent the company with full knowledge of the company's policies and procedures to facilitate safe and regulatorily compliance operations.

In proposed § 108.305(c)(2), FAA proposes that the operations supervisor must have a full understanding of aviation safety standards and safe operating practices, the practices for maintaining a secure facility and operations, and the regulatory

⁷⁹ Proposed § 108.135 would require each operator to prepare and keep current a company operations manual that sets forth the operator's procedures and policies acceptable to the Administrator. See also §§ 108.405 and 108.505.

requirements of part 108. FAA would expect the operations supervisor to understand the high-level information necessary to maintain the safety of the operation, similar in manner to a Director of Operations under 14 CFR parts 121 and 135. FAA envisions this role would be tailored to the operational parameters of the company. For example, some organizations may require the operations supervisor to maintain significant and direct interaction with operations; others may task the operations supervisor with overseeing a multi-state operational environment, provided there are sufficient safeguards to ensure the operations supervisor is directly responsible for, and the final authority as to, the safe and secure operation of all UA.⁸⁰ In addition, some companies may choose to employ multiple people in the operations supervisor role, depending on company needs and the scale of the operation.

2. Flight Coordinator (§ 108.310)

The second personnel position that would be regulated (if required by aircraft design in the manufacturer's operating instructions for UA operation) is that of a flight coordinator. Section 108.310 proposes the requirements for flight coordinators. As explained in section XI.C, UA operating under this proposal would exhibit highly automated features and functions. Direct manual control (e.g., handheld joystick controllers) would not be permitted,⁸¹ and any user interaction would be mediated by an automated control system that enables flight coordinators to execute simple commands, such as changes in airspeed, altitude, and heading. This is in contrast to operations under part 107 where the safety case largely relies on the actions of an individual (the remote pilot in command) who is primarily responsible for the safety of the operation⁸² and no requirement for automation exists. Accordingly, FAA chose the term "flight coordinator" rather than "pilot" to avoid confusion and to reinforce that the flight coordinator would not share the exact same roles and responsibilities traditionally given to pilots (both manned aviation pilots and part 107 remote pilots).

In addition, this proposed rule acknowledges that a person directly controlling or monitoring a UA in flight may not be necessary unlike other circumstances where pilots are required for operations (e.g., a pilot inputting

manual operations in an airplane, or a remote pilot manually moving a joystick in small UAS operations). The proposal would accommodate fully automated flight, and thus, in accordance with the manufacturer's operating instructions, the flight coordinator role may not require consistent action. However, for this to be the case, a UA design would have to be fully automated and be able to handle both normal operations and emergency situations autonomously. For UA that are not fully autonomous, the flight coordinator would provide direct oversight and monitoring of UAS flights but may not be actively controlling the flight. In those circumstances, the flight coordinator would instead be responsible for overseeing the technology and systems that ensure safe operation of autonomous flight.

Proposed § 108.310(a) would require the operator to designate a flight coordinator prior to each flight where a flight coordinator is required by the manufacturer's operating instructions. FAA proposes in § 108.310(b) that no operator may allow a person to direct the flight of a UAS unless they are appropriately qualified and authorized by the operator as a flight coordinator. As further discussed in the following section VII.C, FAA anticipates that operators will develop training requirements appropriately tailored to the personnel requirements consistent with the requirements in § 108.315 that best fit the needs of the company and its operational profile. The operator would thus be responsible for ensuring that the flight coordinator understands the appropriate procedures to conduct the operation. While the operator must assign a flight coordinator prior to each flight, FAA recognizes there may be a situation where the flight coordinator must handoff control to another flight coordinator (e.g., an emergency medical situation). Therefore, proposed § 108.310(c) would require the operator to maintain appropriate handoff procedures if necessary to transfer control from one flight coordinator to another while the flight is in operation.

As previously discussed in section VI.A.1 of this preamble, FAA notes that though the UAS envisioned for use under part 108 are highly automated, the flight coordinator would be required to take appropriate actions, within the limitations of the UAS design, to prevent the UA from posing an undue hazard to other people, aircraft, or property, as proposed in § 108.310(d)(1). Proposed § 108.310(d)(2) would further require the flight coordinator to maintain situational awareness of the UA and to otherwise direct the UA if necessary to comply with the

requirements of part 108, again within the limitations of the UAS design. If the flight coordinator is overseeing more than one flight, subject to operating requirements and approval, they must have the skills and training needed to conduct 1:many operations.

FAA also notes, however, that the anticipated highly automated UA may include varying systems, controls, and operational characteristics. To ensure safety, flight coordinators must have experience with the specific make and model of UA that will be used during operations, which would provide familiarity with the UA's distinct features (e.g., flight dynamics, responsiveness under different conditions, and control input procedures). Because acquired knowledge of a UA's specific features is prone to decay over time, this actual experience must be recently acquired and maintained to ensure appropriate familiarity with the UA. However, FAA has determined that this experience need not be extensive, considering the automation requirements and simplified user controls that would be required in proposed subpart H. For these reasons, in proposed §§ 108.310(e), (f), and (g), FAA proposes certain competency and recency requirements. Specifically, FAA proposes a minimum of 5 hours of initial supervised flight experience in the specific make and model of UA in § 108.310(e) and recency within 12 calendar months under § 108.310(f) in order to qualify to serve as a flight coordinator. This 5-hour requirement mirrors the 5 hours of experience required of a flight engineer under 14 CFR 63.37. FAA recognizes that the duties of a UAS flight coordinator are not completely synonymous with those of a manned flight engineer, but notes that the basic principles of flight responsibility are similar: (e.g., monitoring critical aircraft systems, understanding/coordinating emergency procedures) such that a mirrored 5 hours is an appropriate time of flight experience. FAA seeks comment on whether the 5-hour experience requirement is sufficient for UA operations under part 108.

FAA proposes that this operating experience would be directly supervised by persons who have the foundational level of knowledge about the operation and the UA to intervene in an emergency situation or correct a possible erroneous action by the person seeking to be a qualified flight coordinator.⁸³ FAA finds these persons

⁸⁰ See proposed § 108.120(d).

⁸¹ See proposed § 108.810(a).

⁸² See 14 CFR 107.19.

⁸³ FAA notes that "direct supervision" must provide the ability to conduct these actions when necessary and may include unobstructed visual

to be a fully qualified flight coordinator, an operations supervisor, or a person qualified and designated by the operator to ensure operations personnel are appropriately trained (*e.g.*, a person providing training program). FAA notes that this operating experience would not be required to be conducted in an actual operation; in other words, the person may count 5 hours of operational experience in a training scenario to the five hours. This would be how a certificate holder would stand up an initial cadre of flight coordinators upon the inception of an operator; because

§ 108.310(a) would require a fully qualified flight coordinator where it is required by the manufacturer, the person would need to obtain their supervised operating experience prior to initiating actual operations to be fully qualified. This would be conducted through the training/preparation before actual operations begin. Because permit holders⁸⁴ would not be required to have a training program, the operations supervisor would supervise the initial cadre of flight coordinators. In either certificated or permitted operations, should a fully qualified flight

coordinator be the designated supervisor, the flight coordinator could obtain their operating experience in actual operations with the fully qualified flight coordinator as the designated flight coordinator for that operation.

Table 1 illustrates who could directly supervise the operating experience in both the initial cadre (*i.e.*, no flight coordinators exist for that operator yet) and during the regular course of business (*i.e.*, the operator has a flight coordinator but is qualifying additional ones).

TABLE 1—SUPERVISORY PERSONNEL

	Certificated operators: direct supervision may be conducted by:	Permitted operators: direct supervision may be conducted by:
Initial Cadre of Flight Coordinator(s)	1. Operations supervisor 2. Person designated by operator to ensure personnel are trained.	1. Operations Supervisor.
Flight Coordinators Established in the Regular Course of Business	1. Fully Qualified Flight Coordinator. 2. Operations Supervisor 3. Person designated by operator to ensure personnel are trained.	1. Fully Qualified Flight Coordinator. 2. Operations Supervisor.

After the flight coordinator is initially qualified, the person must maintain proficiency by serving as a flight coordinator for at least 5 hours of operating experience of a UA of the same make and model in the previous 12 calendar months. In the event of a lapse in recency, FAA proposes in § 108.310(g) that the flight coordinator must requalify in order to serve in their role as the flight coordinator. FAA expects these experience requirements and intervals would be reasonable and provide sufficient familiarity with the UAS to ensure the safe oversight of the operation.

3. Other Roles

FAA places responsibility on the operator to identify all needed personnel to meet the requisite safety standards given the operations this proposal seeks to facilitate. FAA anticipates that operations personnel categories under this part would include, but would not be limited to, seven general categories of personnel roles. The breadth of possible operational needs may require individuals outside of the roles listed below. Those roles would be specific to the operation and required for safe operation, but they would not necessarily fit any of the following

categories. FAA identified these categories based on data and information gathered from waivers and exemptions the agency has granted to date. FAA acknowledges it cannot foresee every specific role that may be required by future operations. As a result, FAA invites comments on these seven personnel categories and seeks feedback on the types of personnel that may be necessary for BVLOS operations. FAA discussed two categories previously, the operations supervisor and flight coordinator, and the remaining categories include (but are not limited to) those described in table 2:

TABLE 2—PERSONNEL ROLES AND RESPONSIBILITIES

Personnel role	Responsibility	Proposed regulation(s)
Operations Supervisor	Directly responsible for and final authority as to the operation of all UA.	§ 108.300(a)(1), § 108.305
Flight Coordinator	Direct and monitor the UA, and, if necessary, intervene during UA flight to ensure safe operations.	§ 108.300(a)(2), § 108.310
UA Maintenance or Alterations	Determine the performance of the UA, determine whether the UA is in a condition for safe operation, and perform maintenance and repairs on the UA.	§ 108.300(a)(3)
Ground Handling	Retrieve UA from storage, set UA up for operations, power on the UA, perform physical handling of the UA and corresponding equipment.	§ 108.300(a)(4)
Loading and Unloading of the UA ..	Act as payload operators or package operators, conduct UA loading and unloading activities, maintain knowledge pertaining to carriage of hazardous materials.	§ 108.300(a)(5)
Servicing or Upkeep of Systems (including AE).	Maintaining and repairing systems such as ground control stations, interface equipment, fleet management system, C2 links, and any components necessary for operation but not part of the UA.	§ 108.300(a)(6)

sight of the flight coordinator's actions, active communication, etc.

⁸⁴ Under proposed § 108.475(k), recreational permit operators would not be required to comply with the experience requirements set forth in

proposed § 108.310. Therefore, the supervised operating experience 5-hour requirement would not apply and is not contemplated in this section.

TABLE 2—PERSONNEL ROLES AND RESPONSIBILITIES—Continued

Personnel role	Responsibility	Proposed regulation(s)
Establishing Flight Paths, Emergency Procedures, and Operational Parameters.	Understand automation of UA, input system parameters, set up operations software, programming of system elements (while not in-flight).	§ 108.300(a)(7)

While this proposed rule would allow operators to tailor personnel design to fit the needs of their operations, including by consolidating roles in individual employees when appropriate, this flexibility cannot come at the expense of safety. Accordingly, in proposed § 108.300(b), FAA proposes that an operator may not allow a person to perform multiple roles concurrently if doing so could affect the safety of operations.

C. Personnel Knowledge and Training (§ 108.315)

FAA proposes to require operations personnel to have general and aircraft-specific aviation knowledge and skills as it relates to their respective roles. The permit and certificate holders would be responsible for appropriately training their personnel. However, because FAA anticipates that operators will build their workforce in a variety of configurations to support their diverse operations, FAA does not propose to require all training for every person involved in the operation. Instead, this proposed rule would allow operators the flexibility to tailor training for appropriate personnel (as determined by the manufacturer's instructions and the operator's policies and procedures) to ensure they have the aviation and aircraft-specific knowledge and skills necessary for safe operations, and, more specifically, to use the specific aircraft and to support other operation elements. Certificate holders, as further described in section VIII.C, would be required to develop and implement a training program in accordance with proposed § 108.540, and to include the training program in their application for the certificate, as proposed in § 108.505(b)(10). FAA does not propose to require that permit holders would need to submit a training program for FAA approval, noting that the expected smaller scope of permitted operations and fewer number of personnel would naturally result in a less complex structure and does not necessitate that more formalized approach.

1. General Aviation Knowledge and Training

Proposed § 108.315 would set forth the general personnel knowledge and training requirements. First, in

§ 108.315(a), FAA proposes that each operator would be required to ensure that all operations personnel have completed the applicable training under part 108 and that the operations personnel have the knowledge and skills required to conduct their duties specific to their areas of responsibility. While FAA would mandate the inclusion of certain subject matter areas dependent on the personnel role, there would be no prescriptive hours or manner of training requirements. In addition, if there are changes to the UAS utilized or to an operator's operational procedures, FAA expects that updated training would be administered accordingly. To note, FAA would not be responsible for providing such training required under proposed § 108.315; rather, the specific operator would provide the training tailored to their operations and required personnel or ensure they have received appropriate training. Specifically, if the operator uses an outside source or contractor, the operator is still responsible for ensuring the course content meets the need.

As mentioned, FAA would require general knowledge and skills training relevant to their areas of responsibility covering certain subject matter areas proposed in § 108.315(b). Specifically, FAA finds 19 subject matter areas warranting inclusion in the training program where the personnel would directly deal with matters within that subject area in their role. However, an operator would be responsible for ensuring personnel have applicable knowledge and skill required to conduct their duties safely, therefore, an operator is free to include all subject matter areas in a training program for all personnel, even when a subject area may not pertain to a specific role (*i.e.*, the regulation sets a training curriculum floor, but an operator may choose to include subject areas beyond that). The following preamble text discusses the significance of each subject matter area requirement. Because the regulation would apply the subject area as applicable to the personnel's area of responsibility, FAA also provides discussion for each subject area on the personnel roles expected to receive the subject area training.

In proposed § 108.315(b)(1), operations personnel would be required

to receive general knowledge and skills training on the applicable regulations relating to flight operations, such as UA speed, altitude limitations, and equipment requirements associated with operations over people and in controlled airspace. As discussed in section VI, the proposed rule would establish general operating rules governing all operations envisioned under part 108 (*e.g.*, areas of operations, preflight requirements and emergency conditions, aircraft lighting, aircraft registration). To ensure that personnel, first, understand what those regulations would require and, second, do not violate them through ignorance, FAA proposes that all operations personnel would have general knowledge and skills training related to part 108's general operating rules.

In proposed § 108.315(b)(2), FAA proposes that operations personnel would receive general knowledge and skills training on how to determine the classification of specific airspace and what the requirements are for operating in that airspace. Through training, personnel would become knowledgeable on flight restrictions affecting UA operations. Training would also include how to determine which areas are prohibited or restricted. This subject area would be applicable to any personnel involved in flight planning, specifically including the operations supervisor and the flight coordinator.

In proposed § 108.315(b)(3), FAA proposes that operations personnel would receive general knowledge and skills training on the effects of weather on UA performance and aviation weather sources. Knowledge of weather is necessary for safe operation of a UA. For example, space around buildings, smokestacks, and trees, which is safe during clear weather, could easily become hazardous in a windy situation. Accordingly, personnel should understand the effect that different types of weather have on the performance of their specific UA and how to react to that weather. Personnel must be trained in how to utilize the manufacturer's flight manual to reference the weather conditions specific UA may or may not withstand. Lastly, FAA proposes that personnel also be trained on their knowledge of official sources that they can use to

obtain weather information and predictions in order to plan the operation of the UAS. Training in this subject area would be applicable to any personnel involved in flight planning, specifically including the operations supervisor and the flight coordinator.

In proposed § 108.315(b)(4), FAA proposes that operations personnel would receive general knowledge and skills training on crew resource management. As discussed previously, FAA anticipates the BVLOS operations under proposed part 108 to increase in shared responsibility and in the number of personnel involved, as compared to typical part 107 operations. Therefore, UAS operations personnel must understand how to function in a team environment, known as crew resource management, because operations allowed by this proposed rule would typically involve a diverse team of personnel. At a minimum, the operations supervisor would need knowledge and skills associated with crew resource management to effectively oversee operations and comply with the management responsibilities outlined in § 108.305 however most operations personnel would likely benefit from this training. Because of the separation between the flight coordinator, ground control stations, ground personnel and possibly other personnel, communication across a team environment is critical to the success of each UA flight.

In proposed § 108.315(b)(5), FAA proposes that operations personnel would receive general knowledge and skills training on the operator's communications procedures. Operational communication procedures training emphasizes clear and concise communication, both internally between operations personnel and externally with stakeholders (*e.g.*, law enforcement, FAA and NTSB representatives, and other airspace users). The ability to effectively exchange information during routine and unexpected situations is crucial, as most operations rely on various personnel performing different tasks such as package loading or maintenance work. To ensure the status of these specific tasks during an operation is communicated effectively, FAA contends that operators would need to train most personnel on company communication procedures.

In proposed § 108.315(b)(6), FAA proposes that operations personnel would receive general knowledge and skills training on the operator's safe distance criteria. This is important because the means of maintaining a safe distance may vary from one operation to

another. FAA also anticipates that any DAA systems used may not specifically measure system performance in the same manner. As such FAA expects that each operator will tailor their personnel training to the specific DAA technology that they use. Operations supervisors and flight coordinators would need to be trained on safe distance criteria, as would any operations personnel responsible for ensuring that the AE and other systems are functioning within the specified parameters of the technology (*e.g.*, programming or technical experts).

In proposed § 108.315(b)(7), FAA proposes that operations personnel would receive general knowledge and skills training on the principles of strategic deconfliction and conformance monitoring. Proposed § 108.190 sets forth the requirements for the use of strategic deconfliction and conformance monitoring, which is a system designed to manage UA traffic to integrate and separate UA in the NAS, allowing for more complex BVLOS operations. Flight coordinators and operations supervisors must be informed on the requirements for the use of strategic deconfliction and conformance monitoring, specifically to understand system limitations and that it is not a replacement for flight coordinator responsibility to take actions to avoid other aircraft.

In proposed § 108.315(b)(8), FAA proposes that operations personnel would receive general knowledge and skills training on determining the performance of UA. This would include training on the weight and balance of the UA to determine impacts on performance. A UA's design limitations are meant to keep it within safe operating parameters, and if a UA is loaded such that the maximum takeoff weight is exceeded, or the balance of the UA is not within those design limitations, then a catastrophic failure could result. To operate safely, flight coordinators, package loaders, and potentially other personnel, such as personnel involved in the decision on what products to offer for delivery, would require knowledge and understanding of fundamental aircraft performance issues, which should include (but is not limited to) load balancing and weight distribution, determining maximum takeoff and landing weights, and understanding available power for the operation with computations based on current atmospheric conditions.

In proposed § 108.315(b)(9), FAA proposes that operations personnel would receive general knowledge and skills training on the physiological effects of drugs and alcohol. Many prescription and over-the-counter

medications, as well as alcohol, can significantly reduce an individual's cognitive ability to process and orient situational awareness and initiate corrective action when necessary. Accordingly, all operations personnel need to understand how drugs and alcohol can impact their ability to perform their duties safely.

In proposed § 108.315(b)(10), FAA proposes that operations personnel would receive general knowledge and skills training on aeronautical decision-making and judgment. Even though this proposal would limit the flight of UA to operations at or below 400 feet AGL, manned aircraft will still operate in the same airspace as UA such as (*e.g.*, takeoff and landing, low altitude operations, emergency situations). In addition to contending with manned aircraft, operations personnel may encounter unexpected weather, UA system failures, inflight route changes and other unplanned situations. Accordingly, the flight coordinator and the programming and technical experts would need to understand the aeronautical decision-making and judgment processes so that they can anticipate, plan, and manage any seen and unforeseen circumstances.

In proposed § 108.315(b)(11), FAA proposes that operations personnel would receive general knowledge and skills training on airport and heliport operations. These operations are a critical and complex piece of the NAS. Within the bounds of an area designated as an airport or heliport, there are typically higher volumes of manned air traffic conducting departure and arrival operations (*e.g.*, takeoff and landing), which creates a higher workload environment. Having an understanding through knowledge and skills training regarding these operations would greatly reduce any unnecessary increases in complexity and workload increases to both the UA and manned aircraft operations. This training would seek to ensure that UA flight operations personnel (*i.e.*, those personnel whose roles involve the airborne parts of the UA operation) are fully aware of how manned aircraft conduct operations within the bounds of an airport and be able to identify any airborne hazards while reducing potential conflicts.

In proposed § 108.315(b)(12), FAA proposes that operations personnel would receive general knowledge and skills training on operation at night to ensure familiarity with the risks and appropriate mitigations for nighttime operations. Night operations occur in low visibility without natural light, which can make it harder for pilots of manned aircraft to identify other aircraft

or UA. FAA contends that training on this proposal's UA mitigations for night operations, such as aircraft lighting and usage, and other areas like physiological factors and aircraft and airport lighting, would be vital to ensure safe operation during the night. Accordingly, FAA expects that operators conducting night operations would provide the appropriate knowledge and skill training for personnel with roles in those operations to ensure safety and to reduce the risk to other aircraft in the NAS.

In proposed § 108.315(b)(13), FAA proposes that operations personnel would receive general knowledge and skills training on the assignment and transfer of control of a UAS. Seamless handoff procedures are crucial for safe UAS operation. Clear communication during these transitions ensures all personnel share a complete understanding of the UAS's status and any potential issues, preventing confusion and loss of situational awareness. This is especially critical in emergencies, where a smooth and practiced transfer of control to the appropriate personnel is essential to maintain safe operation and avoid potential harm to people or property. This subject area would be applicable to any personnel involved in flight planning, specifically the operations supervisor and the flight coordinator.

In proposed § 108.315(b)(14), FAA proposes that operations personnel would receive general knowledge and skills training in BVLOS strategic and tactical risk mitigation strategies and approaches. Strategic risk mitigation is typically associated with planning that occurs before the flight occurs, such as holding flights from taking off if there are manned aircraft operations in the near vicinity. Tactical risk mitigation is generally associated with technologies that are employed during flight, such as DAA equipment and sensors. This training would apply to both general principles and items specific to their operation. Having an overall understanding through knowledge and skill training of BVLOS risk mitigation strategies and approaches would help an operator and its personnel ensure positive control of the UA at all times. Operations supervisors and flight coordinators would need to be trained on strategic and tactical risk, as would any operations personnel responsible for ensuring that the AE and other systems are functioning within the specified parameters of the technology (e.g., programming or technical experts). In proposed § 108.315(b)(15), FAA proposes that operations personnel would receive general knowledge and

skills training on multi-aircraft operations (where an operator seeks to conduct a part 108 operation with multiple UAs), contingency management, and recovery procedures. Operations supervisors and flight coordinators would need training on how to manage and fly multiple drones at once (1-to-many operations) and understand the specific systems and rules involved if those operations are conducted. To the extent technology improves and allows for even larger drone fleets, the training would likely get more intricate. For example, pilots delivering packages with many UA would need different training than those using UA for inspections.

In proposed § 108.315(b)(16), FAA proposes that operations personnel would receive general knowledge and skills training on the C2 system of the UAS. Different operations personnel must have a strong understanding of the core functions of the C2 system. For flight coordinators, this includes how it transmits commands (flight path, maneuvers) and receives telemetry data (battery level, signal strength, UA health) between the ground control station (GCS) and the UA. Knowing the limitations and potential vulnerabilities of the C2 system is also important for operations supervisors and technical staff, including factors like range (maximum distance for reliable communication), interference (potential signal disruptions from other electronics), and redundancy (backup systems in case of primary C2 failure).

In proposed § 108.315(b)(17), FAA proposes that operations personnel would receive general knowledge and skills training on contingency management and recovery procedures. A risk of UAS operations is the possibility that during flight, the operations supervisor or flight coordinator may become unable to directly control the UA due to a failure of the C2 system that connects the UA and the GCS. Training in contingency management and aircraft recovery would prepare operations supervisors, flight coordinators, and those personnel establishing flight paths, emergency procedures, and operational parameters to handle unexpected situations, and promote the safe, efficient, and responsible recovery of UA that may have experienced landing at an unintended location.

In § 108.315(b)(18), FAA proposes that operations personnel would receive general knowledge and skills training on population density considerations. As further discussed in section VI.H, operations over people are subject to specific operating requirements. In this

proposed rule, operators would need to abide by the categories determined by calculations derived from the Oak Ridge National Laboratory's LandScan data in order to operate over people. Understanding these restrictions and considerations is critical for operations planning personnel responsible for planning operations and flight coordinator personnel.

In proposed § 108.315(b)(19), operations personnel would receive general knowledge and skills training on ATC procedures. In order to operate safely near an airport or heliport, operations personnel would need to have knowledge of airport operations and air traffic control procedures, so that the UA does not interfere with either of those operations. In addition, for operators that operate in controlled airspace, knowledge of ATC procedures is critical for understanding the operating environment and what to expect of manned aircraft operations. Finally, knowledge of communication procedures is also important so that the operator can understand how to communicate with ATC and when it is appropriate. This information is appropriate for operations supervisors, flight coordinators, and those personnel establishing flight paths, emergency procedures, and operational parameters.

FAA expects that the permit or certificate holder will include other aeronautical or operational knowledge and skill areas as they see fit. This list is not exhaustive. An operator is responsible for ensuring that all of their operations personnel must have the knowledge required to operate safely, regardless of whether it is included in the previous 19 items.

2. Aircraft-Specific Knowledge and Training

While § 108.315(b) would require generalized knowledge and skill training, as applicable, FAA finds it necessary to require knowledge and skill training specific to the make and model of the UA to be used in the operation. Therefore, proposed § 108.315(c) would require operations personnel to have knowledge and skills training specific to the make and model of UA to be operated relevant to their areas of responsibility that covers certain subject areas (similar to § 108.315(b)). Specifically, FAA finds 12 specific subject matter areas warranting inclusion in the training program where the personnel would directly deal with matters within that subject area in their role.⁸⁵ The following preamble

⁸⁵ Because the operator would be responsible to ensure personnel have the applicable knowledge

discusses the significance of each subject matter area requirement, and the personnel roles expected to receive the subject area training.

In § 108.315(c)(1), FAA proposes that the relevant operations personnel would receive make-and-model knowledge and skills training on the general and operating limitations of the UA used in the operation. As noted herein, FAA anticipates that there will be a variety of aircraft permissible for use under this proposed rule. Familiarity with the specifics of the operator's particular UAS, including any limitations that might affect its ability to complete its flight safely, is a basic tenet of safe operation. FAA anticipates that the operations supervisor and flight coordinator roles would require such training, though it may be appropriate to include other personnel depending on the specific operations.

In §§ 108.315(c)(2) and (3), FAA proposes that the relevant operations personnel would need to receive make-and-model knowledge and skills training on the UA's system setup and configuration and normal and abnormal procedures. While FAA anticipates that most operations would be automated to the extent that personnel need not interfere with an operation, certain operations personnel would need to be familiar with the normal and abnormal procedures associated with the UA. These personnel should be able to discern deviations from standard operating procedures, which can help identify any problems or mishaps before they become significant. FAA expects that the operator's training materials would be specifically tailored to the aircraft used in their operation. If significant problems or mishaps do arise, FAA proposes in § 108.315(c)(4) that the relevant operations personnel would receive make-and-model knowledge and skills training on emergency procedures specific to the UA used in operation. Such training would provide relevant personnel with the knowledge and skills to address those abnormal circumstances that require personnel to intervene in UA operations (e.g., initiating an immediate landing or return-to-home). FAA anticipates that training in these subjects would be appropriate for operations personnel that must collaborate to plan and execute flight operations, including operations supervisors, flight coordinators, and

those personnel responsible for servicing or upkeep of systems, including AE, and establishing flight paths, emergency procedures, and operational parameters.

To further support the expected use in various commercial operations, in proposed §§ 108.315(c)(5)–(6), FAA proposes that the relevant operations personnel would receive make-and-model knowledge and skills training in ground handling and loading, respectively. While these subjects are not applicable to all potential operations under a permit or certificate, an operator would need to ensure that relevant operations personnel are sufficiently trained in the particulars of these functions: for example, attaching payload or spraying substances. FAA anticipates that personnel responsible for ground handling and loading and unloading of the UA would require such training, though it may be appropriate to include other personnel depending on the specific operations.

No matter how well an aircraft is designed, if it is not maintained properly, it will degrade the reliability of the aircraft and the safety of the operation. This includes not only repairing components as they become damaged, but regular inspections to verify condition of the aircraft and related systems. FAA anticipates that the UA operating under part 108 will vary significantly, which would, in turn, necessitate succinct knowledge about the maintenance and inspection dynamics for the make and model of UA. Therefore, FAA proposes to require in § 108.315(c)(7) that the relevant operations personnel receive make-and-model knowledge and skills training in maintenance and inspection procedures for the operation's UAS. FAA anticipates that personnel responsible for UA maintenance or alterations, and for servicing or upkeep of systems, including AE, would require such training, though it may be appropriate to include other personnel depending on the specific operations.

In § 108.315(c)(8), FAA proposes that the relevant operations personnel would need to receive make-and-model knowledge and skills training on preflight procedures. These preflight procedures would likely include inspecting the UA to ensure it is in safe condition for operation and that the AE supporting the operation are in appropriate working order (e.g., diagnostics scans show as normal). These more programmatic functions would be further supported by the proposed make-and-model knowledge and skills training on navigation systems, DAA procedures, and lost-link

procedures, as proposed in §§ 108.315(c)(9), (10), and (11), respectively. FAA contends that such training should provide responsible operations personnel with the knowledge and skills to use systems that facilitate deconfliction and safe distance. Training that emphasizes how to identify, use, and troubleshoot, if appropriate under the approval determined by part 146, would be an essential component for safe operation. FAA anticipates that ground handling personnel and personnel responsible for UA maintenance or alterations, and for servicing or upkeep of systems, including AE, would require such training, though it may be appropriate to include other personnel depending on the specific operations.

As noted in § 108.210 and discussed in section VI.M, FAA is proposing that flight coordinators may only operate UA at a 1:1 ratio, though this provision is subject to waiver. However, when an operator is authorized to operate at a higher ratio and intends to do so, FAA proposes in § 108.315(c)(12) that the relevant operations personnel, including operations supervisors and flight coordinators, would receive make-and-model knowledge and skills training on the operation of multiple aircraft.

3. Currency

In § 108.315(d), FAA proposes that both general and make-and-model knowledge and skills training, *i.e.*, the training proposed in §§ 108.315(b) and (c), would be routinely required for operations personnel with relevant responsibilities. Accordingly, to comply with these regulations, the operator would have to ensure that operations personnel receive the appropriate training at least every 24 months. Knowledge of rules, regulations, and operating principles erodes over time, particularly if the person is not required to recall such information on a frequent basis. FAA also notes that even personnel who regularly conduct UAS operations may not fully retain knowledge or proficiency elements that they may not use during their regular operations. For example, a flight coordinator who conducts operations only in Class G airspace may not retain the knowledge that they need ATC authorization to conduct operations in Class B, C, or D airspace. Similarly, if regular operations are never interrupted by abnormal circumstances that require operations personnel to use emergency procedures, these personnel may not retain the knowledge and skills necessary to navigate these critical moments. FAA proposes a recurrent training frequency because that have

and skill required to conduct their duties safely, pursuant to proposed in § 108.315(a), the operator is free to include all specific subject matter areas, or unlisted subject matter areas, for all personnel if the operator found it would best equip their personnel with operational proficiency.

been used as the method of ensuring the appropriate retention of knowledge and skills for decades. FAA seeks comment on whether a different frequency, or another method for ensuring knowledge and skill retention would be more appropriate.

In § 108.315(d), FAA also proposes to provide a structure that allows training to be provided up to 1-month before or after the month in which it is due without changing the renewal date. This 3-month training window would encourage personnel to not wait until the end of their training window to avoid the perceived penalty of “losing” time. The 3-month training window would also allow personnel to complete training in the month after it is due without penalty to provide flexibility in unforeseen circumstances when the person cannot complete the training by the subsequent base month. This is commonly referred to as a “grace period.”⁸⁶ Note that this would not have the effect of changing the next due date as the person will be considered to have taken the training during the month it was due (*i.e.*, a person’s “base month”). As stated in the proposed regulation, the person will be considered to have taken the training in the month it was due, so as not to encourage last-minute training or extending the training date. For example, if a person originally completed their training in January 2026, they would be required to receive the recurrent training in January 2028 (and may elect to receive training in December 2027). However, due to an unforeseen circumstance or emergency, the person could not complete the training until February 15, 2028. Upon completing the training on February 15, 2028, the person’s next training month would be January 2030. The person could continue to participate in operations during that 15-day period. Conversely, if the person did not complete the training until March 2028, the person would not be considered qualified from February 1, 2028, until the training was completed in March (*i.e.*, unable to perform the personnel position) and would be in violation of § 108.315 for those operations conducted after January 2028. Once the person completes the training, their new base month would be in March.

The subject matter, training, and testing requirements described above apply to both permitted operators and certificated operators. However, for certificated operations, FAA proposes in

§ 108.540 that their training be documented in a program acceptable to FAA. FAA expects that the additional services that certification will enable for an operator (flight over higher population densities, interstate operations, etc.) will add scale and complexity to the operation. Therefore, through review and acceptance of the certificated operator’s training program, FAA seeks to have greater oversight to ensure the level, scope, and rigor of the knowledge and training provided.

Finally, FAA is not requiring operations personnel to demonstrate a minimum level of flight proficiency to a specific standard as part of the requirements of § 108.315 (*e.g.*, a “check flight” or practical test). Rather, FAA proposes minimum operating experience and recency of flight experience requirements as proposed in § 108.310.

FAA invites comments on the following:

- The proposed performance-based training and testing of personnel under a corporate responsibility model.
- The proposed areas of knowledge in § 108.315, including comments addressing whether additional areas of knowledge should be trained.
- FAA’s proposal to not require a minimum level of flight proficiency to a specific standard as part of the requirements of § 108.315.

D. Medical Condition (§ 108.320)

This proposed rule would not require operations personnel to hold a part 67 issued airman medical certificate. However, FAA recognizes the possibility that operations personnel may have a medical condition that could interfere with the safe operation of the UA or safe execution of operations personnel duties. Accordingly, in proposed § 108.320, FAA proposes to prohibit a person from serving in an operations personnel position if that person knows or has reason to know that they have a physical or mental condition that would interfere with the safe operation of a UA or make the person unable to perform duties of their position. Consistent with the proposed rule’s emphasis on operator responsibility and control over operations consistent with the requirements of this proposal, FAA also proposes in § 108.320 to similarly prohibit operators from using a person in an operations personnel position if the operator knows or has reason to know that the person has a physical or mental condition that would interfere with the safe operation of the UA or make the person unable to safely perform duties of their position.

Proposed § 108.320 is similar to 14 CFR 107.17, which applies to small UAS operations, and to 14 CFR 61.53(b), which applies to operations that do not require a medical certificate.⁸⁷ FAA notes that this proposal’s analogous prohibitions extend beyond the direct operation of a UA to circumstances where a medical condition would jeopardize the safe performance of other operations personnel duties. In other words, proposed § 108.320 would apply to all personnel positions (*e.g.*, ground handlers, maintenance personnel, etc.), not only a flight coordinator. As explained in section VII.B, the proposed rule’s personnel requirements would allow operators to develop an operations personnel framework appropriate for the complexity and scale of their operations with FAA review and oversight. More specifically, § 108.300(b) would require operators to identify operations personnel required for safe operation of the UAS and its AE. Accordingly, FAA has determined that medical conditions that would make any person unable to perform the duties of their operations personnel position would raise risks to operation safety, and the proposed rule makes explicit that the prohibition includes such circumstances.

Operations personnel are responsible for knowing their physical and mental conditions, and they must evaluate whether those conditions allow safe participation in UAS operations and the performance of their duties. If a person serving in an operations personnel position is unsure about the limitations of a physical or mental condition, they should consult with a physician. In addition, operations personnel should, if appropriate, take steps to inform the operator of medical conditions in accordance with company policy. Considering the dual responsibility that persons and operators share with respect to medical conditions and safety, operators should develop and adhere to corporate policies that govern reporting and monitoring known medical conditions and potential signs of medical conditions that could interfere with safe operations and the performance of operations personnel duties.

As stated in the final rule adopting part 107, the primary reason for medical certification is to determine if the airman has a medical condition that is likely to manifest as subtle or sudden incapacitation that could cause a pilot to lose control of the aircraft, or impair the pilot’s ability to “see and avoid.”⁸⁸

⁸⁶ FAA has provided flexibility of a “grace period” in this manner elsewhere in the regulations: *see, e.g.*, § 135.323.

⁸⁷ See 14 CFR 61.23(b).

⁸⁸ 81 FR 42159.

While FAA anticipates that a wide range of UAS operations could be diversely affected by different conditions, FAA anticipates the UA to be operated under this proposal to be highly autonomous with built in redundancies and preprogrammed commands such that certain medical anomalies that would typically disqualify a person from receiving a part 67 medical certificate could actually safely operate a certain UA. For example, a person who is incapable of moving their fingers would not be able to operate a UA with a control station interface that relies on manual manipulation using the fingers, such as a keyboard and a mouse. However, that person may be able to interact with a control station operated through voice controls, or other assistive technologies, safely. While FAA has not established a list of disqualifying medical conditions under § 108.320, FAA expects operators to use reasoned judgment and knowledge of their operations in developing and adhering to policies that mitigate the risk of medical conditions.

FAA has determined that traditional FAA medical certification via part 67 is not warranted for operators subject to this proposed rule. Part 108 UAS operations present a lower risk than manned operations, in part because the operations do not involve passengers onboard the aircraft that could be injured in the event of an accident. This proposed rule also includes operational requirements that reduce reliance on human capacities, and prescriptive medical standards are thus not as critical as they are for individuals exercising pilot privileges on a manned aircraft. For example, proposed § 108.825 would require UA to be designed to “see and avoid” most other aircraft, and proposed § 108.810 would require simplified flight controls that permit only limited human interaction during a UA’s flight. As another example, proposed § 108.170(k) would require operators to ensure that a UA’s navigation and communication systems are working properly prior to conducting an operation. These operational requirements and limitations render it unlikely that a flight coordinator’s impairment would cause the loss of UA navigation to its original destination (or emergency landing destination).

FAA also considered changing “would” to “may” in § 108.320 (“... the person has a physical or mental condition that *would* interfere with the safe operation. . .”) to clarify that a physical or mental condition need not be certain to trigger the prohibition. “Would” conveys definiteness of

knowledge about the causal relationship between a medical condition and interference with safe operations or safe performance of operations personnel duties. By contrast, “may” expresses possibility, and thus the use of “may” in these provisions would enlarge the prohibition to include medical conditions that could impact safety but where causation is less certain. FAA declined to adopt this change in part to maintain consistency across similar provisions in the regulations. However, FAA invites comment on whether “may” should be adopted in the final rule. FAA also invites public comment as to whether an airman medical certificate should be required for operations personnel, specifically for flight coordinators, and the costs and benefits of requiring an airman medical certificate.

E. Alcohol or Drugs (§ 108.325)

Despite the enhanced autonomy that FAA anticipates will characterize flight operations, operations personnel would continue to perform essential roles under proposed part 108. Among other things, operations personnel would be responsible for programming, monitoring, and intervening in UA operations, as needed; maintaining and repairing UA and certain AE elements; and the safe handling, loading, and storage of packages, which may include hazardous materials. These functions would require operations personnel to make decisions and exercise judgment in the regular course of business and in emergency situations. Alcohol and drugs can compromise judgment, reaction times, and decision-making, which could have serious consequences even in the context of mostly autonomous UA operations. Accordingly, FAA has determined that operations under proposed 108 must be free from the influence of alcohol and certain drugs to mitigate the risks associated with impairment.

Part 91, which contains the general operating and flight rules, sets forth general alcohol and drug use prohibitions in § 91.17 and § 91.19, which are cross-referenced in § 107.27 for small UAS. Likewise, proposed § 108.325 would require operations personnel and operators to comply with alcohol and drug use prohibitions mirroring those currently in place in parts 107 and 91 of FAA’s regulations.

The purpose of these regulations is to ensure that the safety of UAS operations is not impeded by alcohol or drug use. Proposed § 108.325(a) would specifically prohibit serving or attempting to serve in an operations personnel position within 8 hours of

consuming an alcoholic beverage, while under the influence of alcohol, while using any drug that affects the person’s faculties in any way contrary to safety, or while having an alcohol concentration of 0.04 or greater in a blood or breath specimen. Moreover, as proposed in § 108.325(b), persons who are serving, ready to serve, or immediately available to serve⁸⁹ in an operations personnel position would need to submit to alcohol or drug testing upon an appropriate request by a law enforcement officer. These proposed requirements align with the existing alcohol or drugs rules for operators under part 91.⁹⁰ Under § 108.325(c), operations personnel would be required to submit the results of certain alcohol or drug tests in their possession, or authorize the release of the same, to FAA if FAA has a reasonable basis to believe that the person has violated § 108.325(a) and the Administrator makes a request for such results.

Proposed § 108.325(d) would prohibit operators from allowing or continuing to allow a person to serve in an operations personnel position in violation of these requirements. To note, paragraph (d)(1) would require the operator to have actual knowledge that the person is in violation of § 108.325(a). “Actual knowledge” in this context means information an employer becomes aware of that an operations person has used alcohol or controlled substances based on the employer’s direct observation of the employee, information provided by person’s familiar with the employee, a traffic citation for driving while under the influence of alcohol or controlled substances, an employee’s admission of alcohol or controlled substance use, or the results of reasonable suspicion testing resulting from observation of employee behavior or physical characteristics sufficient to warrant such testing in accordance with § 108.325(b). Direct observation as used in this instance means either direct observation of alcohol or controlled substances use. As used in this section, “traffic citation” means a ticket, complaint, or other document charging driving while under the influence of alcohol or controlled substances. In addition, the operator

⁸⁹ The moniker of “immediately available” is intended to cover personnel that may only perform operations on a temporary, short term, or standby basis (e.g., listed as a backup flight coordinator if the assigned flight coordinator becomes incapacitated). This is different from being “ready to serve,” which would mean the operations personnel is preparing to imminently begin their assigned duty.

⁹⁰ See 14 CFR 91.17(a) and (c) (the drug and alcohol regulations proposed in part 108 for UAS operations personnel would align with the drug and alcohol regulations for a part 91 crewmember).

may not permit a person to serve in an operations personnel position when the person refuses to, first, test upon request of a law enforcement officer in accordance with proposed § 108.325(b) or, second, furnish or authorize the release of test results requested by the Administrator in accordance with § 108.325(c).

F. Duty and Rest (§ 108.330)

FAA defines fatigue in AC 117–3 as a physiological state of reduced mental or physical performance capability resulting from lack of sleep or increased physical activity that can reduce a crew member's alertness and ability to operate an aircraft or perform safety related duties safely. Further, FAA states that the primary contributor to fatigue is lack of proper sleep and the root-cause for crew member fatigue may be a combination of scheduling and crew members not obtaining the proper amount of rest during their assigned sleep opportunity. FAA states that fatigue can lead to weakness, lack of energy, lethargy, depression, lack of motivation, sleepiness, decreased alertness and situational awareness, and poor decision-making skills. Finally, FAA states that fatigue decreases a person's ability to perform cognitive tasks and increases variability in performance as a function of time on task.⁹¹

The importance of alertness, situational awareness, and decision making is not relinquished even though part 108 operations personnel would not perform the traditional role of a crew member onboard the aircraft. Flight coordinators would still be responsible for monitoring a UA and controlling and initiating emergency actions or issuing commands to the aircraft during flight as necessary. Should a situation arise during an operation that would require immediate flight coordinator input, the alertness, situational awareness, and decision making of the flight coordinator would be crucial to ensure a safe outcome as unforeseen events typically happen quickly without warning. FAA also recognizes that all operational personnel play an important part in the overall operation of the UA. Personnel may perform such delegated duties as conducting preflight checks of the UA for the flight coordinator, loading the UA, or assembling the UA prior to operations. In performing such functions, the same importance of alertness, situational awareness, and

decision making is necessary to ensure the overall safe outcome of an operation.

Fatigue in manned aviation has led to events such as procedural errors, unstable approaches, lining up with the wrong runway, landing without proper clearances, and overall poor decision making. Though this proposed rule is for highly autonomous UA operations, FAA anticipates similar parallels in operational errors with manned aircraft that have stemmed from fatigue.

FAA has previously determined that if a person has had significantly less than 8 hours of sleep in the past 24 hours, he or she is more likely to be fatigued.⁹² In parts 121 and 135, FAA generally requires a minimum of a 10 consecutive hour rest period preceding flight time. Because FAA views less than 8 hours of sleep as being the point for increased fatigue, a minimum of 10-hour rest period would leave time to complete duty and initiate an 8-hour rest period with an hour prior to the next duty report time. Therefore, FAA proposes in § 108.330 that operations personnel would be limited to a maximum 14-hour duty day and a maximum 50-hour work week. In addition, required operations personnel would be required to take a minimum 10-hour consecutive rest period which is free of all responsibility for work or duty on behalf of the operator within the 24 hours prior to reporting for duty. In addition, FAA proposes that required operations personnel would be required to receive a minimum of one day of continuous rest, which would be free of all responsibility for work or duty on behalf of the operator, per week, each week in which the operator schedules them for duty. As addressed in proposed § 108.475(f)(6), the provisions of § 108.330 would not be applicable to recreational permit holders.

G. Security Threat Assessment for Certain Personnel (§ 108.335)

Pursuant to TSA recommendation, FAA proposes in § 108.335 to require that certain covered persons who are engaged in BVLOS operations undergo up to a Level 3 security threat assessment (STA) conducted by TSA. Covered persons would include those who perform the functions of an operations supervisor; perform the functions of a flight coordinator; have unescorted access to the UAS; have unescorted access to the cargo loaded for transport on the UAS; or have unescorted access to the control or the flightpath of the UAS. As is the nature of their functions and access, such

persons naturally play a critical role in the security and integrity of the operations. An individual with bad intent performing such functions could cause great harm to the public by using UAS to conduct attacks or strikes on civilian populations or transporting prohibited cargo over residential or urban areas where no guardrails exist to restrict where the UAS travels. TSA administers such vetting requirements among similarly situated surface, maritime, and aviation transportation workers. FAA believes, and TSA concurs, that similar requirements are advisable for these proposed part 108 UAS operations.

A Level 3 STA includes a check of criminal history, immigration, and intelligence-related databases and watchlists, as codified at 49 CFR 1572.103–107.

Applicants would most likely visit a TSA enrollment center to provide identification verification documents needed for the assessment. TSA may develop other processes in the future to permit the submission of information electronically for this population. Details regarding such alternative processes would be included in a final rule resulting from this NPRM or in a future rulemaking more broadly related to vetting programs promulgated by TSA. The proposed rule text accounts for this potential by stating the individuals must follow the enrollment procedures approved by TSA. Finally, any individual who is adversely affected by security vetting may seek redress from TSA using the procedures and standards codified at 49 CFR part 1515.

The proposed rule also references the information TSA requires applicants to provide for vetting (which TSA has set forth in 49 CFR 1572.9), and the applicant's ongoing responsibilities to maintain an STA (which TSA has described in 49 CFR 1572.11). In addition, TSA notes that it is required by law under 6 U.S.C. 469 to collect fees to recover all vetting costs, and applicants submit those fees to TSA during the enrollment process. The fees for the Level 3 STA are set forth in TSA regulation 49 CFR 1572, subpart E. Finally, any individual who is adversely affected by security vetting may seek redress from TSA using the procedures and standards codified at 49 CFR part 1515.

FAA believes this STA proposal is necessary to ensure the security of these operations and could help mitigate the risk of a person who poses a security threat from serving in a position that impacts the flight of the UAS.

TSA and FAA invite comment on this STA proposal from all affected parties.

⁹¹ FAA AC 117–3, *Fitness for Duty* (Oct. 11, 2012).

⁹² *Flightcrew Member Duty and Rest Requirements* final rule, 77 FR 330 (Jan. 4, 2012).

Based on the data and information received, TSA and FAA may determine that the scope of the affected population or the breadth of the STA should be expanded or decreased for certain covered persons. In light of the potential security risks of these operations, including foreign ownership and operation, TSA and FAA are also interested in whether the scope of individuals who must be vetted should be expanded to include individuals who have ownership or control of the corporate entity conducting BVLOS operations. For instance, TSA imposes STA requirements for individuals who are proprietors, general partners, officers, directors, or owners of an indirect air carrier under 49 CFR 1548.16.

Finally, including the overarching vetting requirement in 14 CFR part 108 rather than TSA's regulations is consistent with other vetting conducted for airmen certificate holders. While TSA's regulations govern the vetting process itself, it is the FAA that denies or revokes a certificate based on TSA vetting. FAA and TSA, however, welcome comments on whether TSA should incorporate the overarching requirement into 49 CFR chapter XII, subchapter C, rather than in the FAA's regulations under 14 CFR part 108.

VIII. Permitted and Certificated Operations (Subparts D and E)

Under this proposal, FAA would require UAS operators to obtain an FAA-issued operating permit or operating certificate to conduct BVLOS operations. The rule proposes two categories of operating authorization delineated by risk: permitted and certificated operations. Permitted operations represent a lower level of risk due to their limited complexity and scope. Permitted operations include package delivery, agriculture, aerial surveying, civic interest, UA operations training, demonstration, recreational, flight tests, and other operations as approved by FAA. Permitted operations would have limitations on the size of the aircraft, number of aircraft in the fleet, and capacity to operate over people, depending on the type of permit. Under this proposal, operators would be required to hold separate permits for each category of operation, renew their permit(s) every two years, and obtain approval from FAA for their area(s) of intended operations.

Certificated operations would allow more complex operations, with larger aircraft, fleet, and greater flexibility to operate over people under this proposed rule. Certificated operations would include package delivery, agriculture,

aerial surveying, civic interest, and other operations as approved by FAA. As the operations allowed under a certificate would be more advanced than those under a permit, FAA oversight would be more significant and involved than with a permit. Operators would also be required to hold a communication assessment plan to ensure safety of communication links and ground risk, develop a SMS, submit to validation tests before FAA, obtain approval from FAA for the area of intended operations, and establish and implement a training program for their personnel.

FAA may issue authorizations and limitations as part of the operating permits and certificates, and in conjunction with any waivers or deviations granted. However, FAA is not proposing a requirement to use Operation Specifications (OpSpecs) in the regulations. FAA finds that defining the system that FAA uses to document authorizations and limitations in the regulations would not be needed because such a system would govern the conduct of FAA rather than the regulated community. Instead, FAA intends to produce guidance to industry and FAA inspector workforce on the expectation of how authorizations and limitations will be issued and managed for permit and certificate holders.

The following sections articulate proposed requirements for this operating framework, addressing the manner and form in which applications would be submitted, the specific authorizations and limitations of the various categories of operation, and the process for denials of application and suspensions or revocations of the permit or certificate.

For most of the categories of permitted operations and certificated operations, one of the limitations would be the maximum weight of the UA, including anything carried by or attached to the UA. FAA has included weight limits on UA in both part 107, which has a 55-pound weight limit, and exemptions, which have specific weight limits determined by the type of operation being conducted under the exemption and the UA being used. The highest maximum weight for a part 108 UA would be 1,320 pounds, per proposed § 108.800(b)(3).⁹³ The basis for the highest maximum weight being 1,320 pounds is the BVLOS ARC

⁹³ FAA has proposed allowing that the 1,320 pounds limit in § 108.800(b)(3) could be subject to waiver if a manufacturer chooses to seek the ability to manufacture a part 108 UA over 1,320 pounds, specific to permitted agricultural, UA operations training, demonstrations, and other operations as determined by FAA.

recommendations and JARUS limitations based on maximum kinetic energy. However, as discussed in subsequent sections, not all permitted operations nor all certificated operations would be allowed to use UA with a maximum weight of 1,320 pounds. Instead, for many of the categories of permitted and certificated operations, there are lower maximum weight limits. While the reasons for each category's specific weight limitation are detailed in their respective sections, the guiding principle in selecting the weight limitations was a spectrum of risk. The level of risk varied not only because of the type of operation but because of the other associated mitigations, such as population density. In order to translate a relatively abstract concept like risk into specific weight limits, FAA utilized two limitations on weight: the 55 pounds limit for part 107 operations and the proposed 1,320 pounds overall limit for part 108 UA. This rule proposes three weight limits for the various categories of permitted and certificated operations (55 pounds, 110 pounds, and 1,320 pounds) to give structure to the spectrum of risk. FAA welcomes comments on this approach, as well as on the specific weight limits adopted for the various categories of permitted and certificated operations. In particular, FAA requests comments, with supporting data as available, on allowing operations with aircraft between 110 pounds and 1,320 pounds at higher population densities than proposed in this preamble.

A. Requesting Operating Permits or Operating Certificates (§§ 108.400 and 108.500)

FAA proposes to create two avenues for operators to conduct operations under part 108. These two paths proposed are operating permits and operating certificates. To conduct operations under part 108, operators would have to obtain either an operating permit or an operating certificate from FAA. This proposal creates a mechanism by which FAA authorizes each operation, which would mean FAA has reviewed the application and issued the permit or certificate, as appropriate. Whether issued a part 108 operating permit or certificate, operators would have to comply with the applicable performance requirements proposed under part 108 as well as any operating limitations imposed by FAA or the manufacturer.

Operating permits, proposed under subpart D of part 108, may be issued for eight possible purposes: package delivery, agriculture, aerial surveying, civic interest, operations training,

demonstrations, recreational activity, and flight tests. FAA believes that these categories represent the majority of UAS operations in the NAS. FAA anticipates that most operators would likely seek an operating permit. Alternatively, an operator may seek an operating certificate, which places additional requirements for compliance on the operator in exchange for increased operating privileges. Operating certificates may be requested for four purposes: package delivery, agriculture, aerial surveying, and civic interest operations. Operators conducting flight training, demonstrations, recreational activity, and flight tests would be required to obtain operating permits, as operating certificates would not exist for those purposes. FAA recognizes that operators may request operating permits or certificates for UAS operations other than those categories listed in this proposed rule. As such, FAA may authorize operators to conduct their requested operation on a case-by-case basis pursuant to § 108.400(c) for operating permits and § 108.500(c) for operating certificates.

FAA has sufficient safety data to normalize complex UAS operations for the proposed type of operations listed under § 108.400(a) and § 108.500(a), based on the exemption and waiver requests that FAA has evaluated from operators seeking to conduct those specific operations. Using lessons learned from market needs, as well as the evaluation and issuance of FAA waivers and exemptions, FAA was able to categorize and establish limits for each of the proposed types of UAS operation. FAA did so by assessing the individual risk associated with each type of operation.

For situations where the regulation allows operators to request authorization from FAA to operate beyond the limitations stated in the regulations, FAA may place additional conditions and limitations on the operating permit or the operating certificate, considering any added risk associated with each requested type of UAS operation. FAA would also impose appropriate conditions and limitations for any other UAS operation not listed in this proposed rule and requested under § 108.400(c). FAA would apply conditions and limitations consistent with the level of risk posed by the proposed operation, as it does with existing waivers and exemptions.

FAA anticipates that there may be types of UAS operations that do not meet those specified in § 108.400(a). While FAA invites comments on any additional types of operations that should be included in the rule, FAA

further proposes in § 108.400(c) that FAA may approve other operations proposed by an operator that do not fit into the types defined in this proposal. However, FAA emphasizes that this flexibility would not be a license to exceed the limitations for a type of operation already defined in § 108.400(a). FAA would not accept a request for an operating permit for operations listed in proposed § 108.400(a) in an attempt to exceed the restrictions already placed by FAA on any of the operating categories. For example, if an operator intends to conduct package delivery operations under a permit utilizing a UA with a gross weight of more than 55 pounds, the operator would not be able to petition FAA for a special operating permit because package delivery operating permits are limited to a gross weight of 55 pounds or less. Section VII.B proposes conditions and limitations for each type of operation.

FAA proposes under § 108.400(e) to limit each operator to holding only one operating permit per category of UAS operation. This limitation is necessary to ensure that operators would not compound their FAA-issued operating permits to exceed the restrictions FAA has already placed for each type of operations. For example, part 108 operating permits for package delivery operations would be limited to a fleet size of 100 UA. Likewise, a single operator would not be able to obtain two package delivery operating permits in hopes of doubling the size of their UAS fleet. Operators who would want to exceed that operation size limitation would have to work with FAA to obtain a part 108 operating certificate, which would not have a fleet size limit. As such, FAA believes these limitations would facilitate compliance with FAA requirements.

The only exception to this limitation would be a part 108 operating permit issued for flight test operations. Flight test permits would be issued to UAS manufacturers who want to develop UAS for airworthiness acceptance under proposed part 108. Those UAS manufacturers would need to test their UAS to validate the UAS's performance. Manufacturers may want to test more than one UAS for more than one of the UAS operations listed. As such, FAA proposes to except them from being limited to a single operation.

1. Application Submission (§§ 108.405 and 108.505)

Prior to conducting UAS BVLOS operations under proposed part 108, operators would need to obtain either an FAA-issued operating permit or an

FAA-issued operating certificate. To do so, operators would be required to apply for either the operating permit or the operating certificate depending on the type and scale of their UAS operation. Under proposed part 108, FAA would review and evaluate all applications received for operating permits or operating certificates in order to determine whether applicants meet the minimum performance requirements to comply with and operate under proposed part 108.

FAA would require operators to submit their application for an operating permit under proposed § 108.405, or an operating certificate under proposed § 108.505, in a form and manner acceptable to the Administrator. Each applicant would need to describe the operation they seek to conduct under proposed part 108. The application would include questions, data, and documentation requests that verify the applicant's ability to operate in compliance with the applicable requirements of this part. This is proposed to be an online application system. Operators applying for part 108 operating permits would be required to submit the following information in their application package, as required under proposed § 108.405:⁹⁴

(1) The operator's name and contact information, which would comprise of the operator's name (including name of individual who serves as the point of contact), physical address, email address, and telephone number.

(2) Address for principal base of operations, if different from the address provided for contact information, in accordance with proposed § 108.30.

(3) Name of the individual(s) who serve as operations supervisor, in accordance with proposed § 108.305.

(4) The intended type of UAS operation, in accordance with proposed § 108.400(a).

(5) The intended area(s) of operation(s), in accordance with proposed § 108.165.

(6) Company manual(s) as required under proposed § 108.405.

(7) A recordkeeping process as required under proposed § 108.40.

(8) Operator reporting procedures, as required under proposed § 108.45.

(9) The type(s) of unmanned aircraft to be used in operations that comply with the requirements of proposed § 108.105.

⁹⁴ Further discussion on requirements for an operator's base of operation and recordkeeping requirements, see section V.C of this preamble. For further discussion on intended area(s) of operation and operator's company manuals, see sections VI.D and VI.O of this preamble.

(10) Additional information the Administrator may determine is necessary to evaluate the application.

In addition, operators applying for a certificate for package delivery operations would also be required to provide documentation of their citizenship status. FAA requests comment on what documentation should be provided, including whether the level of documentation should be similar to that provided in other certification contexts. From a policy perspective, it is FAA's intent that this proposed regulatory pathway for scaled BVLOS operations benefits U.S. companies and encourages growth in their domestic operations. FAA considered proposing application of this requirement to permitted package delivery operations but determined that it may not be necessary in all circumstances given the anticipated smaller scope of these operations. However, FAA requests comment on whether or not permitted package delivery operations should also provide their citizenship status as part of their application, especially in consideration of the DOT regulatory requirement that exists for new certificate applicants in 14 CFR 204.3(e) which requires a sworn affidavit stating that the applicant is a citizen of the United States.

Under this proposed rule, operators applying for a part 108 operating certificate would be required to submit the same information in their application package as those required by applicants for part 108 operating permits. Applicants for operating certificates would need to identify which type of UAS operations they intend to operate as found under proposed § 108.500(a). UAS operations that do not fall under one of four categories listed in proposed § 108.500(a) could be authorized by FAA, subject to any limitations issued by FAA in conjunction with the certificate.

Because UAS operations under an operating certificate could be larger in scale and therefore could have larger impacts on the safety and efficiency of the NAS, FAA would require applicants for operating certificates to substantiate their application by proving their ability to conduct their proposed operation safely. As such, FAA proposes in § 108.505(b) that applicants for a part 108 operating certificate would need to provide additional information, as well as undergo additional steps, to complete their application package. Proposed additional requirements for applicants

for part 108 operating certificates include:⁹⁵

(1) A training program, as required under proposed §§ 108.540 and 108.315.

(2) Communication and ground risk assessments, as required under proposed § 108.550.

(3) SMS, as required under proposed § 108.560.

(4) A hazardous materials program, as required under proposed § 108.570.

(5) Procedures permitting the use of any inoperative equipment, per proposed § 108.555.

(6) Plan for complying with duty and rest requirements, per proposed § 108.330.

(7) For those operators proposing to engage in package delivery, documentation of their citizenship status.

Requiring applicants to verify their ability to comply with the applicable requirements of the proposed part 108 operating permit or operating certificate they seek would assist FAA in properly evaluating and qualifying operators to ensure that they would be able to conduct complex BVLOS operations without compromising the safety or efficiency of the NAS. The operator's application package would be evaluated to determine whether to grant or deny an applicant's request for a part 108 operating permit or operating certificate. FAA would evaluate that information to also ensure that the operator is capable of conducting the operation they seek to conduct.

Under proposed § 108.405, FAA would evaluate operating permit applications for completion and may request additional information or documentation, as needed, to supplement the application. In addition to reviewing and verifying the applicant's identification and the intended area(s) for operations, FAA may also review the applicant's operating and maintenance procedures, personnel qualifications, manuals, and record-keeping procedures. By evaluating the information submitted as part of the application, FAA would be able to assess and determine whether the applicant for a part 108 operating permit is sufficiently capable and qualified to conduct the operation they seek to conduct under part 108 without compromising NAS safety or efficiency.

In contrast to evaluating an application for part 108 operating permits, applications for operating certificates under proposed § 108.505

would involve a process similar to part 135 certification, which involves a collaborative effort between the applicant and FAA to review manuals, training programs and operational authorizations. Similar to part 135 certification, FAA would assign a certificate management team to the operator, and evaluations of applications for operating certificates would necessitate regular communication between FAA and the applicant. As a part of this engagement with FAA, the applicant would also be required to demonstrate their capability to meet all the requirements listed under proposed § 108.505(b). FAA anticipates that the communication and demonstration would be an iterative process, which could require multiple instances of communication between FAA and the applicant, depending on the completeness of the application and the complexity of the operation(s). FAA may also request additional information or documentation from the applicant, as needed, to supplement their permit or certificate application.

If FAA approves the application for the requested operation, FAA would then issue the applicant the operating permit or operating certificate, as requested. The following section will discuss FAA issuance of a part 108 operating permit or operating certificate in greater detail.

2. Duration (§§ 108.410 and 108.510)

Section 108.410 proposes that permits would have a set duration of 24 calendar months. Since permitted operations would receive less FAA surveillance, an expiration date for permits is necessary to periodically verify the operators' continued ability to meet regulatory requirements through an application process. Certificated operators would not have an expiration date as FAA would conduct routine and frequent surveillance on those operations to verify continued regulatory compliance. For both operating permits and certificates, FAA would retain its ability to suspend or revoke an operating permit or certificate in accordance with proposed §§ 108.420 and 108.520.

FAA proposes in § 108.510 that, unless suspended or revoked, an operating certificate issued under part 108 would remain in effect until the operator surrenders it to FAA, or the operator fails to meet the requirements of proposed § 108.530, as discussed in further detail below. As explained in section VIII.A, the process of obtaining and maintaining a certificate would require continued collaboration between the operator and FAA. As such, FAA

⁹⁵ See section VIII.C of this preamble for further discussion on a part 108 operating certificate assessment plan, training program, SMS, hazardous materials program, inoperative equipment requirement, and duty and rest requirements.

would continue to remain informed on the operator's characteristics, qualifications, and whereabouts through regular surveillance—including whether the operator is still active and in good standing. As such, it is unnecessary to include an expiration date for part 108 operating certificates. Similarly, under this proposal, FAA would retain its ability to suspend or revoke any part 108 operating certificate issued if FAA were to determine that the operator does not meet the requirements of part 108.

In contrast, FAA proposes under § 108.410 that, unless suspended or revoked by FAA, an operating permit issued under this part would remain in effect for a duration of 24 months. Once issued, an operating permit would expire on the last day of the month 24 months from the date in which it was issued. For example, if a permit was issued on March 15 of 2027, the permit would expire March 31, 2029. Operators intending to continue operating under a permit would need to apply for a new permit before the expiration of their existing permit in a form and manner acceptable to the Administrator. FAA proposes to allow operators to submit the application for their new part 108 operating permit up to 120 days in advance of the expiration date listed on their existing operating permit. Applications received and approved for a new permit within this period would be valid for a period of two (2) years beyond the expiration date listed in their existing operating permit.

The proposed 24-month period would be in line with letters of authorization (LOAs), exemptions, certain waivers, and air agency operating certificates that FAA approves. In addition to beneficially verifying the safety of operations in the NAS on a recurring basis, 24 months would also provide operators under a part 108 permit with the opportunity to assess the practicability of their operation on a recurring basis. This proposal also allows the permit holder the option to surrender the permit at any time if the operation is or becomes unfeasible, or if for some reason the operator can no longer comply with the operating requirements of the permit.

FAA further proposes in §§ 108.410(d) and 108.510(b) that permits and certificates are not transferable. However, in accordance with §§ 108.425 and 108.525, FAA proposes that companies that undergo name changes, mergers, and acquisition may be eligible to have the permits or certificate information updated to reflect the new company information, subject to review and oversight by FAA that the operation remains largely unchanged.

3. FAA Issuance of Operating Permits or Operating Certificates (§§ 108.415 and 108.515)

As noted in section VIII.A, FAA would evaluate each application received and may request additional information or documentation, as needed, to supplement the application. If FAA were to determine that an applicant for an operating permit or an operating certificate is able to comply with the applicable requirements under proposed part 108, FAA would issue the requested operating permit or certificate, as applicable.

As set forth in §§ 108.415 and 108.515, FAA would include all of the following information in an FAA-issued operating permit or certificate: the operator's name and the location of their principal base of operations; type of UAS operation; the permit or certificate number and effective date, as applicable; and the expiration date (for permits). While each FAA-issued permit under part 108 would be limited to one kind of UAS operation, FAA may authorize an applicant for a part 108 operating certificate to conduct multiple kinds of operation under a single operating certificate.

The information contained in the permit would provide evidence of the operator's identity as well as the parameters of their operating privileges. Those parameters would include the location of the operation, the date and duration of the issued permit, and whether there are any operating restrictions placed on the permit—e.g., operating over certain population densities or the size limit of the operator's UA fleet. FAA would be able to use this information when doing surveillance to verify whether the operator is indeed authorized to conduct their BVLOS operations, and in doing so, is indeed complying with FAA regulations. FAA would conduct surveillance and oversight similar to that conducted for part 91 and 107 operations, with more robust interactions for certificated operators, as discussed in section VIII.C. In addition to conducting routine surveillance of part 108 operations, FAA would act on reports of violations to conduct further investigations.

Similar to part 108 operating permits, the information comprised in each FAA-issued operating certificate would outline the parameters FAA places on each operator for safely conducting their requested operation. The information would be used to identify the operator as well as provide the operator with evidence of their FAA-issued authorization to conduct UAS

operations in accordance with FAA regulations. Through routine surveillance of part 108 operators, FAA would be able to determine that the operator complies with the regulatory requirements of part 108, in addition to additional oversight if necessitated by reports. FAA relies on many sources to further investigate complaints, such as accounts from witnesses, video, and reports from Federal, State, and local law enforcement agencies.

Unlike operating permits, operating certificates, as described in the proposed rule, would remain active, unless otherwise suspended or revoked by FAA, returned to FAA by the operator, or the recency of operations had lapsed. As stated earlier, FAA expects the process of obtaining an operating certificate to be a collaboration between the operator and the Agency. UAS operations conducted using an operating certificate are expected to be more complex and larger in scale than permitted operations. As such, the certification process would include a cooperative effort and constant communication between FAA and the operator. This means FAA would remain informed on the operator's characteristics, qualifications, and whereabouts, including whether the operator is still active and in good standing. Section VIII of this preamble discusses the differences between part 108 permits or certificates in greater detail.

Operating permits and certificates issued under part 108 do not constitute all the approvals that may be needed to transport property for compensation. Operators intending to transport property by air for compensation may be considered an "air carrier" engaged in "air transportation", both of which are defined in 49 U.S.C. 40102 and may require economic authority from the Office of the Secretary (OST). In limited instances, operators whose operations are wholly within the geographic limits of a single State, transporting no more than a *de minimis* volume of passengers or property moving as part of a continuous journey to or from a point outside the State, may be considered as not engaging in air transportation and thus not requiring economic authority. However, these determinations are case specific.⁹⁶ Operators proposing to

⁹⁶ See Consent Order, *Scott Air LLC d/b/a Island Air Express Violations of 49 U.S.C. 41101 and 41712*, DOT-OST 2012-0002 (Dec. 28, 2012) (Holding that an airline flying routes exclusively within Alaska constituted interstate transportation because it had a public website, 1-800 phone number, and had reservations connected to routes to other states) accessible at www.transportation.gov/sites/dot.gov/files/docs/

transport property by air for compensation may wish to consult with OST prior to conducting such operations to determine whether economic authority is required. OST has established a streamlined process for issuing economic authority to UAS operators.⁹⁷ To assist in ensuring an efficient Departmental process for these operators, FAA is proposing in this rule to require that these operators include documentation of their citizenship status in the application process under proposed § 108.505(b)(16) for certificated operations.

The general purpose of obtaining economic authority is to enable operations for common carriers and air carriers by providing Federal-level requirements to meet instead of being subject to state regulations that may

differ in various states of operation. These Federal requirements include insurance that protects the operator and the overflowed public from unintentional damages. Maintaining those requirements is within the Department's scope of authority and in the public interest. Accordingly, should such operations constitute air transportation and require economic authority given by the DOT, the operating permit or certificate issued under part 108 would meet the statutory requirements for air carriers and air carrier certificates contained in chapters 411, 417, and 447 of 49 U.S.C. Specifically, FAA has identified §§ 41701, 41702, 41707, 41708, 41709, 41711, 41712(a), 44702(a), 44705, 44711(a)(4), and 44713(a) as statutes that would apply to operators conducting air transportation

under part 108.⁹⁸ FAA welcomes comments on the application of chapters 411, 417, and 447 to interstate package delivery operations conducted under part 108.

In sum, the Department as a whole will, as part of this proposal, continue to align economic authorities with safety and operational authorities. Because the requirements for obtaining economic authority are provided explicitly in the statute, those rules will apply to UAS air carrier operations in the same way that they apply to all other air carrier operations. Nothing in the proposed rule will exempt entities wishing to carry or deliver property by UAS from the statutory rules set forth in 49 U.S.C. 41101–02, 40101(a)(15), and 41703.

TABLE 3—STATUTORY REQUIREMENTS AND CORRESPONDING PROPOSED REGULATIONS

Statutory provisions	Proposed regulations
49 U.S.C. 41701	§ 108.565.
49 U.S.C. 41702	§ 108.120(a).
49 U.S.C. 41708	§ 108.45.
49 U.S.C. 41709	§ 108.20; § 108.40.
49 U.S.C. 44702(a)	§ 108.505.
49 U.S.C. 44705	§ 108.405; § 108.180; § 108.185; § 108.505; § 108.515; § 108.565.
49 U.S.C. 44711(a)(4)	§ 108.500; § 108.565.
49 U.S.C. 44713(a)	§ 108.625; § 108.745.

The Department also notes that foreign civil aircraft, as defined in 49 U.S.C. 41703 and 14 CFR 375.1, may only be navigated in the United States when authorized by the Secretary of Transportation, *e.g.*, under 14 CFR part 375, pursuant to a foreign air carrier permit under 49 U.S.C. 41301 and 41302, or pursuant to an exemption from the permit requirement. 49 U.S.C. 41703 prohibits foreign operators from conducting for-hire intrastate or interstate air transportation operations (*i.e.*, cabotage) unless the foreign operator is authorized for an emergency exemption under 49 U.S.C. 40109(g). Foreign civil aircraft operators may be licensed by DOT to engage in package delivery operations in foreign air transportation pursuant to applicable bilateral aviation agreements by virtue of a DOT-issued foreign air carrier permit under 49 U.S.C. 41301 and 41302, or pursuant to a DOT-issued exemption from the permit requirement. In terms of other commercial air operations conducted solely within the United States, foreign civil aircraft

operators are in general limited to non-air transportation/non-package delivery operations under 14 CFR part 375, whereby DOT may authorize an operator to conduct aerial surveying or agricultural and industrial operations performed in the United States.

As with the 2016 rule, the Department only will authorize foreign-registered UAS and foreign civil UAS operators in the United States if it determines that such operations are recognized under international agreements or via findings of reciprocity, and that approval would be consistent with the statutory parameters in § 41703. The concept of reciprocity has a long-standing tradition in international relations, and it has been the long-standing policy of DOT to require a finding of reciprocity before allowing commercial air operations or air transportation to, from, or, as applicable, within the United States. Operators of foreign civil aircraft may wish to consult with DOT prior to conducting such operations to determine what authorization is required.

4. Denials, Revocation, and Suspensions (§§ 108.420 and 108.520)

Under proposed part 108, FAA would have the ability to deny, suspend, or revoke a part 108 operating permit or certificate. FAA proposes that it would be able to deny an application for a permit or certificate if FAA finds that operators are not properly or adequately equipped or are not able to conduct safe operations. Further, FAA proposes that it would be able to revoke or suspend an existing operating permit or certificate if any of the conditions in proposed § 108.420 or § 108.520 are present.

First, FAA would be able to deny an application or suspend or revoke an existing permit or certificate if FAA were to find that the operator does not meet the requirements of part 108. It is critical that operators under part 108 comply with all applicable requirements to ensure the safety of the NAS and persons and property on the ground. Providing FAA with these grounds for a denial, suspension, or revocation would

Scott%20Air%2C%20LLC%20dba%20Island%20Air%20Express%20Consent%20Order%202012-12-16.pdf.

⁹⁷ See *Notification to UAS Operators Proposing to Engage in Air Transportation* notification of procedures, 83 FR 18734 (Apr. 30, 2018).

⁹⁸ This list is not exhaustive, but it notes the statutory obligations that FAA has noted as being

specifically applicable to part 108 package delivery operators. Operators would also need to comply with DOT regulations related to air carriers, including economic authority and liability insurance. See 14 CFR chapter II, subchapter A.

ensure an enforcement mechanism for violations.

Second, FAA may deny an application or suspend or revoke an existing permit or certificate if FAA were to conclude that the applicant is not properly or adequately equipped or is not able to conduct safe operations under this part. This would include those applicants who are unable to conduct safe operations due to financial reasons. For example, an inability to conduct safe operations due to financial reasons may stem from not being able to afford insurance coverage due to damages incurred in an accident involving the UAS or from the operator declaring bankruptcy.

FAA would also be able to deny an application or suspend or revoke an existing operating permit or certificate if the Administrator were to find that the operator previously held any FAA-issued permit or certificate that was revoked. Similarly, FAA would be able to deny an application for a permit or certificate or suspend or revoke an existing operating permit or certificate if the operator filled or intended to fill a management position with an individual who exercised control over an operator, or an individual who held the same or a similar position with an operator, whose permit or certificate was revoked or is in the process of being revoked, so long as that individual materially contributed to the circumstances resulting in the revocation.

In addition, FAA would be able to deny an application for a permit or certificate, or suspend or revoke an existing operating permit or certificate, if an individual who would have control over the operator, or a substantial ownership interest in the operator, had the same or similar control or interest in an operator whose permit or certificate was revoked, or is in the process of being revoked, so long as that individual materially contributed to the resulting revocation. Finally, FAA would be able to deny an application for a permit or certificate or suspend or revoke an existing operating permit or certificate if the operator engaged in any violation of the rule.

Any of these actions may provide FAA with reason to believe that the operating permit or certificate holder, or applicant for an operating permit or certificate, may participate in future violations or non-compliances with FAA regulations. As with any aviation incident or accident, FAA has the authority to conduct investigations into possible violations of 49 U.S.C. subtitle VII (Aviation Programs), part A (Air Commerce and Safety) provisions or

regulations and orders issued under that part. When FAA becomes aware of any potential regulatory violation, including violations or non-compliances with FAA regulations, FAA performs an investigation to determine whether a regulatory violation occurred. The investigation is conducted in accordance with agency guidance, such as FAA Orders 8900.1 and 2150.3. After the investigation is complete, FAA Flight Standards Service determines the proper action to take based on the guidance in the above-described FAA Orders. However, FAA would holistically evaluate each applicant with a basis for denial to determine if it has reason to believe it should not issue a permit or certificate. As such, these actions would not require FAA to deny an application or suspend or revoke an existing operating permit or certificate. However, this requirement ensures that FAA would have the authority to deny, suspend, or revoke operating permits or certificates when there is an operator or applicant that may threaten public or aviation safety.

5. Amendments (§§ 108.425 and 108.525)

Under proposed §§ 108.425 and 108.525, FAA would be able to amend any operating permit or certificate it has issued under part 108 if FAA were to determine that safety in air commerce or public interest requires or allows for the amendment. Similarly, an operator would be able to submit a request to amend their operating permit or operating certificate under proposed § 108.425 or § 108.525, as applicable.

Operators would be able to submit a request to change any of the information submitted in accordance with § 108.405—for operating permits—or § 108.505—for operating certificates. Those changes would include, but would not be limited to, changes to the operator's name, address, and type of UAS operation. However, this would not include the ability to transfer a certificate from one legal entity to another. As described in §§ 108.410 and 108.510, permits and certificates are not transferable. However, companies that undergo name changes, mergers, and acquisition may be eligible to have the permits or certificate information updated to reflect the new company information, subject to review and oversight by FAA that the operation remains largely unchanged.

Any changes submitted to FAA would be reviewed in accordance with § 108.425 or § 108.525, as applicable. FAA may decide to grant the amendments—which would then warrant the issuance of an updated

permit or certificate. However, if FAA were to determine that it is in the interest of public or aviation safety to deny the operator-requested amendment, then FAA would proceed with issuing a denial. When FAA proposes to issue an order amending, suspending, or revoking all or part of any certificate, the procedure in § 13.19 of part 14 would apply.

Sections 108.425(d) and 108.525(d), would provide operators an opportunity to petition FAA's decision to deny an amendment request that was initiated by the operator. FAA would require operators to submit those petitions within 30 days of receiving FAA amendment or denial of an operator's request to an amendment. Providing operators with the opportunity to appeal FAA's decisions would ensure that operators receive due process. Thirty days should provide operators with sufficient time to submit requests to appeal FAA decisions.

FAA understands that changes to an operation are inevitable over time. It would be the responsibility of the operator to ensure that FAA is informed of any changes in operations or business plan. Similarly, FAA understands that NAS characteristics may change over time and may include stakeholders that do not currently exist. As the entity responsible for the safety and efficiency of the NAS, FAA has to remain vigilant in making decisions that would not compromise that safety or efficiency. This responsibility would include decisions to amend, or requests to amend, any permits or certificates issued by FAA.

B. Permitted Operations

In order to provide simple, rapid access to commencing operations for smaller scale and lower-risk operations, FAA is proposing an expedited path for authorization to operate with part 108 operating permits. Under this proposed rule, FAA would require that a permit be obtained for UA operations training, flight testing, demonstration, and recreational operations beyond visual line of sight. FAA would also provide a path to a permit for package delivery, agricultural use, aerial surveying, and civic interest, though operators would also be able to obtain a certificate for those types of operations.

Though the operating permit requires less time to obtain and has fewer requirements than an operating certificate, FAA still must ensure the safety of the public when issuing operating permits. Because this proposal would not require airman certification for individuals to operate a UA, FAA must ensure that the responsibility of

the operation rests with either an individual or an entity that will be held accountable for complying with the requirements of an issued permit. FAA would require that any person or company wanting to conduct a specific operation performed under this proposal would be required to obtain either an operating permit or an operating certificate.

As further discussed in section VIII.B.1 of this preamble, a permit holder would be required to designate an operations supervisor who is directly responsible for and the final authority for every operation of all UA allowed to fly in the NAS under the permit and in accordance with the proposed regulations. FAA considered requiring all persons conducting operations under this proposal to obtain an operator certificate rather than having an operating permit option. However, FAA finds that certain operations, as described in this section, are lower risk, could occur under the operating permit, and do not require the complex process of obtaining an operating certificate.

FAA proposes in § 108.400(a) that operations under a permit would be limited to eight specific purposes: package delivery, agricultural, aerial surveying, civic interest, UA operations training, demonstration, flight test, and recreational. Each of these categories has distinct risk associated with them. For example, agricultural use may involve the use of chemicals, while package delivery operations would be more likely to interact with the public. By categorizing these specific operations through an authorized permit, FAA would be able to mitigate the associated risks with tailored authorizations and limitations.

Finally, FAA proposes that operators could request authorizations to exceed various limitations proposed in certain permit sections of part 108. Each authorization granted to an operational provision could include special conditions and limitations imposed by FAA. Combined with the requirements and limitations described below, FAA anticipates that operations under an authorized permit would be conducted in a manner that would allow for safe operation.

1. Active Aircraft Limits, Weight Limits, and Population Density Limits

FAA anticipates that permitted operations would have less oversight than certificated operations under the proposed framework. The less oversight of permitted operations would be balanced with having more operational limitations than what limitations would be imposed on certificated operations.

For permitted operations, FAA proposes a three-pronged approach to risk mitigations. Each type of operation under permit is limited in some combination of weight of aircraft, number of active aircraft, and permissible population densities over which operations can take place.

FAA has used a spectrum to determine the appropriate limitations for each type of permit, considering a combination of the weight, population density restrictions, and number of active aircraft allowed per permit. FAA proposes to limit larger aircraft to lower population densities, while also limiting the fleet size per permit to vary levels of active aircraft, dependent on the operation, (other than recreational operations, which are limited to one active aircraft, and flight test permits, which have no limits on the number of active aircraft). “Active aircraft” refers to the number of UA that are actively being used in operations and are listed on the operating permit application, per proposed § 108.105. This would not preclude an operator from having extra “backup” drones that could be operationalized in the case an active aircraft got damaged or put out of commission. In other words, this does not imply limits on the number of UA owned or registered in an operator’s possession.

The limit of one active aircraft for recreational permits is based on the different regulatory requirements for operators holding recreational permits. As discussed in section VIII.B, the operating requirements for recreational permits are tailored to the more limited operations anticipated under this proposed rule, including limiting the distance the UA may be flown, and exceptions from personnel, manual, and general operating rules.

At the other end of the spectrum for proposed permitted operations, flight test permits would not have an active aircraft limit. This is supported by two mitigations in particular. First, flight test permit holders must be qualified UA manufacturers or accredited educational institutions. Second, flight test operations can only be conducted over Category 1 population densities, the most restrictive of the population density categories under proposed part 108.

For the remaining six types of operating permits, FAA proposes set a limit of 100 active aircraft for permitted package delivery, 25 active aircraft for permitted aerial surveying and civic interest, and 10 active aircraft for permitted agricultural, UA operations training, and demonstration operations. The proposed limit on the number of

active aircraft is intended to manage the size of the operations allowed under permit. FAA is also attuned to the scope of operations and the appropriate levels of oversight which aviation safety inspectors provide based on risk, which was considered in proposing these active aircraft limits. Given that the proposed operating permit structure has less FAA oversight and fewer regulatory requirements than the proposed operating certificate structure, FAA proposes to use active aircraft limits as a risk mitigation to ensure that operations remain the appropriate size for this oversight and regulatory model. FAA acknowledges that there is no existing precedent for such fleet sizes. FAA has not implemented active aircraft limits on a large scale for UAS operations previously. FAA requests comments on the use of specific active aircraft limits for each type of permitted operation, as opposed to a consistent limit for most commercial operations. In addition, FAA requests comments on the specific proposed active aircraft numbers. In particular, FAA requests comments on if certain types of operations based on their complexity, geographical scale, or other factors warrant different active aircraft limits. FAA also solicits comments regarding the maximum economically feasible size and scope of operations under the proposed limits including estimated numbers of employees, operating locations or bases of operations, and geographic area. Detailed explanations of each active aircraft limit are located in sections VIII.B.4 through VIII.B.9.

FAA also considered proposing a generally consistent number of allowed active aircraft depending on the type of operation while determining whether differentiating between types of operations would be appropriate. As such, FAA considered setting the active aircraft limit to 25 for all operations. Ultimately, FAA determined that variable limits was a more appropriate way of limiting the size of operation to ensure sufficient operator oversight and appropriate level of safety for each different type of operation, while also allowing the different types of operations to have sufficient number of aircraft to be economically viable. FAA invites comment on the concept of a generally consistent active aircraft limit for permitted operations. FAA also welcomes comments, including supporting data, on whether FAA-proposed limits of active aircraft are appropriate in order to support the operations that would be conducted under that type of permit.

As noted previously in this section, FAA is proposing three weight

categories for both permitted and certificated operations, with the applicable weight category depending on the type of operation. The highest weight limit, 1,320 pounds, is supported by JARUS Specific Operations Risk Assessment (SORA) and the BVLOS ARC recommendations, as further discussed in section XI.B. of this preamble. It also aligns with the weight limit that has been traditionally used for light-sport aircraft as defined in 14 CFR 1.1.

The other two proposed weight limitations are 55 pounds and 110 pounds. 55 pounds is consistent with the weight restriction in part 107, while 110 pounds is consistent with FAA’s experience of approving operations with UAS over 55 pounds through

exemptions. The specific weight restrictions associated with each type of operating permit are described in the following sections (section VIII.B.4–VIII.B.11).

Under proposed part 108, no permitted operations would be able to be conducted over Category 4 or Category 5 population densities. In addition to this broad limitation, FAA proposes to set various limits on population densities over which permitted operations may operate. FAA proposes that the permitted operations that are allowed to have UA up to 1,320 pounds would be able to only operate over Category 1 areas. Permitted operations that are allowed to have UA up to 110 pounds would be able to operate over Category 3 population

densities and below, with certain exceptions for civic interest if in an emergency situation. FAA proposes these limits to ensure the permitted operations, with their reduced oversight and regulatory requirements, would be appropriately limited in scope compared to the certificated operations that have more robust training programs, communication and ground risk assessments, and safety management systems to mitigate the risks associated with operations in more densely populated areas.

The following sections discuss the specific weights and population limits associated with the permitted operations, as shown in table 4.

TABLE 4—LIMITATIONS ON PERMITTED OPERATIONS BY OPERATION TYPE

Permit type	Maximum weight (pounds)	Operation size	Maximum population density	Additional limitations
Package delivery	55	100 aircraft	Cat 3	No hazmat. No dispensing over people. Must be under contract to Federal/ State/local/Tribal government.
Agricultural	1,320	10 aircraft	Cat 1	
Aerial surveying	110	25 aircraft	Cat 3	
Civic interest	110	25 aircraft	Cat 3	
UA operations training	1,320	10 aircraft	Cat 1.	
Demonstrations	110	50 aircraft	Cat 2.	
Flight test	1,320	No limit	Cat 1.	
Recreational	55	1 aircraft	Cat 3.	

2. Display of Permit (§ 108.430)

FAA proposes that operators would be required to display their FAA-issued operating permit pursuant to § 108.430. FAA would require operators to provide evidence of a valid permit for the operation being conducted and that is available at the point of aircraft operations control. Current FAA-issued waivers and exemptions require that all operational documents be present at the location where the operation is taking place. Given the use of digital systems, operators should be easily able to produce the operating permit evidence necessary to FAA or to a Federal, State, or local law enforcement officer. Further, requiring that an operator have an operating permit readily available ensures that the permit holder has the operational conditions of the permit accessible for reference. FAA proposes the permit can be in paper form but may be kept on an electronic device that displays the permit legibly and may not be altered by any person that has it stored on a device.

3. Cybersecurity (§ 108.435)

FAA understands that integrating low-altitude UAS BVLOS operations into the NAS may create conditions

conducive to new and innovative safety and security threats. In security organizations, a threat is generally regarded as anything that can exploit a vulnerability and obtain, damage, or destroy an asset, and this threat can be either accidental or intentional. Accidental threats usually arise when operators unintentionally violate regulations through ignorance or negligence. Intentional threats arise when persons engage in criminal or malicious activity. Threats from malicious actors are particularly nefarious, but both accidental and intentional threats can exploit vulnerabilities with impacts to both safety and security.

FAA anticipates that proposed part 108 operations may introduce vulnerabilities, particularly regarding cybersecurity. Various cybersecurity threats include unauthorized access to a facility’s hardware, software, control station or other AE, insufficient protections or protocols regarding employee network access, or cyberattacks by malicious actors. FAA anticipates that UAS operating under this proposed rule would rely on complex technologies that connect the UA to various systems and services, enabling remote control, communications, data transmission, and other functions. These UAS would thus be susceptible to many of the same cybersecurity risks as other connected technologies. In general, cybersecurity threats may be evaluated by examining the combination of intent, capability, and opportunity. Intent and capability are outside FAA’s control, but opportunity can be mitigated against by protecting vulnerabilities. FAA has determined that operators must address the elements listed above to cover the many vulnerable access points that could introduce cybersecurity threats. This proposed rule already includes some requirements to mitigate these threats, including proposed § 108.150(c), which would require operators to develop and implement physical security policies and processes, including preventing unauthorized access to the operation’s facilities and protecting other controlled access areas. § 108.875, which would require UA manufacturers to protect the UAS from intentional unauthorized electronic interactions.

To address these cybersecurity risks, FAA proposes to require operators to develop and implement cybersecurity

policies and processes to protect networks, devices, and data from unauthorized access. These policies would ensure integrity, accuracy, and reliability of operations. In § 108.435(b)(1) through (4), FAA proposes that certificated operators must, at minimum, include processes for: protecting software, hardware, and network computing infrastructure necessary to protect operations from unauthorized access;⁹⁹ ensuring the operator's employee network access privileges are limited to those necessary to fulfill normal job duties; ensuring access privileges are turned off/removed for former employees; preparing for, responding to, and mitigating the impact of cyber-attacks; collecting and analyzing data to measure the effectiveness of the cybersecurity policy and processes; and any other processes the operator deems necessary to implement effective cybersecurity protections. FAA is utilizing performance-based language in this proposed requirement to provide operators flexibility with how controlled access areas designated.

4. Package Delivery Operations (§ 108.440)

FAA proposes several threshold requirements to distinguish permitted package delivery from package delivery conducted with an operating certificate. These distinguishing factors would be limited to Category 3 population densities and lower (as set forth in § 108.440(h)), lower volume of operations, and smaller UAS. These factors are discussed in more detail in the following paragraphs.

Similar to part 107 operations, FAA proposes to prohibit permitted operators from transporting hazardous materials unless operating in accordance with 49 CFR 175.9(b), as set forth in § 108.400(d). Transportation of hazardous materials would be allowed under certificated package delivery operations. However, FAA requests comment on whether and how a permitted operator seeking to transport hazardous materials may be appropriate. FAA is particularly interested in the limited scenarios when operators would seek relief to transport hazardous materials (*e.g.*, in support of a disaster response) and what types of conditions and limitations the operators believe would sufficiently ensure an acceptable level of safety.

FAA notes that permitted operators operating under 49 CFR 175.9(b) are not subject to the prohibition from

transportation of hazardous materials. 49 CFR 175.9(b) provisions apply to certain special aircraft operations. These operations are distinct from package transportation and delivery. For example, 49 CFR 175.9(b)(1) allows hazardous materials to be loaded and carried in hoppers or tanks of aircraft certificated for use in aerial seeding, dusting spraying, fertilizing, crop improvement, or pest control to be dispensed during such an operation. FAA seeks to provide clarity that § 175.9(b) operations are not considered package delivery operations and are not subject to the prohibition on permitted operators transporting hazardous materials. In addition, FAA notes that while 49 CFR 175.9 also includes provisions for rotorcraft external load operations (see 49 CFR 175.9(a)), those operations are not provided the same exceptions as 49 CFR 175.9(b) operations.¹⁰⁰

Though FAA does not propose to authorize a permit holder for package delivery from transporting hazardous materials, they may inadvertently receive a package for delivery that contains hazardous materials. Hazardous material packaging regulations require marking and labeling to be included on the outside of a package for identification purposes.¹⁰¹ Persons loading packages in permitted operations would be required to have adequate knowledge and understanding of the marking and labeling associated with hazardous materials in order to reject a package for transportation. Misidentifying a package or ignorance of the contents, which may contain hazardous materials may result in UA fires, contamination, or personal injury. Accordingly, FAA proposes in § 108.440(b) that package delivery permit holders would be required to ensure that any personnel assigned duties and responsibilities for the handling or carriage of packages have initial and recurrent training in the recognition of hazardous materials and complete hazardous materials recognition training every 24 calendar months. Requiring this training to be conducted every 24 calendar months would be consistent with requirements listed under parts 135 and 121 hazardous material training.¹⁰²

As proposed elsewhere in this preamble, permitted package delivery operators would be limited in operational scope to enable streamlined approval of lower-risk part 108 operations. One reason these operations

would be lower risk is that transporting hazardous materials would be prohibited (will-not-carry operations). In addition, compared with will-not-carry certificated package delivery operators, permitted package delivery operations would be much more limited in size and scope, which would also serve to limit the associated risks. Therefore, FAA believes requiring an approved hazardous materials training program (as proposed for certificated package delivery operations) is overly burdensome. However, FAA believes that attending a hazmat recognition training course and obtaining a certificate of completion achieves the goals of an approved hazardous materials training program without being burdensome. FAA notes that if a permitted package delivery operator wishes to transport hazardous materials, they may do so as a certificated package delivery operator.

One way that FAA proposes a permitted package delivery operator would obtain initial and recurrent training is by taking an FAA training course or an equivalent training acceptable to the Administrator. FAA intends to offer a free online course that would inform permitted package delivery operators about hazardous materials to help ensure they do not inadvertently transport or offer hazardous materials. For example, the FAA course would focus on what is considered a hazardous material and what hazardous materials communication markings and labels are (to ensure these packages are rejected and not transported), as well as highlighting some considerations if the permitted operator wishes to ship hazardous materials by an authorized carrier. While this course would provide effective methods of ensuring that the permitted package delivery operator is aware of hazardous materials transportation considerations, it would always be the responsibility of each permitted package delivery operator to ensure they do not transport hazardous materials or offer hazardous materials. Alternatively, a permitted package delivery operator may take a different course or training acceptable to the Administrator. For example, FAA may accept alternative training from a permitted operator who took hazardous material training that meets the requirements in 14 CFR part 135, subpart K or general awareness training in 49 CFR 172.704(a)(1) in the preceding 24 months. Following completion of any initial and recurrent training, the permitted package delivery operator should prepare training records in

⁹⁹ www.nist.gov/cyberframework/quick-start-guides.

¹⁰⁰ See 76 FR 3381.

¹⁰¹ 49 CFR part 172.

¹⁰² 14 CFR 135.501 and 121.1001.

accordance with § 108.40(e)(1). FAA proposes that each permitted operator would be required to take recurrent training every two years, which mirrors the proposed recurrent training requirements for part 108 certificated package delivery operators. Lastly, FAA notes that this training may support other forms of hazardous materials knowledge, including for part 107 operations. While FAA is not proposing to require this training for part 107 operations, other operators may take this training as an additional means to understand hazardous materials transportation requirements.

FAA proposes in § 108.440(c) that, for package delivery permitted operations, operators would be required to ensure that the payload in, on, or suspended from the UA is properly secured and does not adversely affect the flight characteristics or controllability of the UA. An unsecured payload could shift or disconnect partially, interfering with UA devices or flight characteristics, which may cause shifts in center of gravity and controllability issues. In addition, an unsecured payload could disconnect fully, causing hazard to persons or property on the ground as it releases from the UA. To avoid any hazard to the UA's controllability and flight characteristics and to persons and property on the ground, FAA proposes in § 108.440(c) that operators would be required to ensure payloads are properly secured and do not adversely affect the flight characteristics or controllability of the UA. Generally, this is expected to be specified by the UA manufacturer as the manufacturer is the systems designer and testing of the payload securing device would be completed by the manufacturer. The payload system should be addressed in the manufacturer's operating instructions for each UAS receiving an airworthiness acceptance as further described in section X of this preamble.

FAA proposes in § 108.440(d) that operators would be required to provide notification to each delivery customer that provides the customer information about the delivery method and instructs the customer to remain clear of the UA during delivery by a distance sufficient to minimize the risk of injury. FAA anticipates this may be done through means such as electronic means during the order process prior to delivery, or other means that ensure information is adequately provided to the customer. Because BVLOS package delivery operations may not have operator personnel at the site of delivery, a UA delivering a package close to the ground, possibly with exposed spinning rotor blades, may create a hazard to

persons should a person come in contact with the UA. By requiring information about the delivery method to be disseminated, FAA can ensure the consumer would have an adequate understanding of the risk associated with the intended operation. This would allow the operator to conduct a delivery as planned while the customer retains awareness of the specific parameters of the individual delivery in order to reduce the likelihood of injury.

Under proposed § 108.440(e), FAA would require that the operator ensure delivery areas are free of any obstructions that could pose a hazard. Delivery area obstruction information is important to a UA operation because obstructions in the delivery area could damage the UA and increase risk for persons or property on the ground. UA operators should always ensure that not only delivery areas, but any area used for takeoff and landing are free of any obstructions or hazards. FAA anticipates that an operator may accomplish this by in-person visits to an area, customer provided data, onboard cameras used during flight, detailed topography mapping, geospatial data mapping, and other technology that would ensure familiarity to avoid obstacles and hazards.

FAA is proposing in § 108.440(f) that operations for package delivery would have to be conducted with fewer than 100 active aircraft. FAA based this proposed limit for active aircraft on its experience with operations that have been conducted under current UAS exemptions. These operations under exemptions have consistently begun with small numbers of aircraft and incrementally increased in scale, to include operations using 100 aircraft. FAA's intention with this proposal is to ensure that permitted operations are designed to be smaller in scale but remain economically viable, with an active aircraft number that allows for UAS being prepared for delivery with their packages, those in transit to their destinations, and those returning from delivery and being recovered. This is an upper limit, and the responsibility would ultimately lie with the operations supervisor to ensure safety is maintained during all phases of their operations. Package delivery operations, which are expected to typically have multiple UA departing from a single hub station with monitoring oversight by few persons, would be manageable by operations personnel as these numerous UA would likely be visible on a single computer display with very little interaction by a human. In addition, FAA has observed that there is generally a correlation for battery-

powered UA between the weight of the UA and the maximum distance possible for the UA to travel. As UA used for package delivery permitted operations are limited to 55 pounds, this correlation would suggest a more limited maximum distance than would be expected for larger UA. Accordingly, though there will be significantly more UA allowed under package delivery permits, the UA would be limited in how far they could get from the departure location. This in turn would minimize the scope of what a flight coordinator has to monitor in terms of geography. This expectation supports allowing more active aircraft under a package delivery permit than would be allowed under other forms of part 108 permits.

Due to the proposed limitations on the size of the operations under a permit, FAA proposes to place controls on how an operator is defined. For the purposes of delineating operator size under a permit, an operator would include those operations directly under the control of the operator, including operations conducted through lease agreements with other persons, subcontractors, or subsidiaries. This is intended to prevent companies from working around the size limitations by setting up shell companies, lease arrangements, or other arrangements which would increase the risk of their operations while avoiding moving to a certificated operation.

Under this proposal, FAA would limit package delivery permitted operations to Category 3 population densities and below, as described in section VI.H, to reduce the risk to individuals and property. Categories 4 and 5 population densities would include areas such as shopping centers, multifamily housing, and cities. FAA has proposed in § 108.185 to limit Category 4 and 5 operations to certificate holders as the mitigations associated with an operating certificate provide the level of safety equal to the increased risk. Certificated package delivery operations could occur in Category 4 and 5 population density areas provided the operator meets the requirements of proposed § 108.565. FAA anticipates that package delivery permit holders would conduct most of their deliveries within housing developments and areas with single-family homes. Further, agricultural, UA operations training, and flight testing permitted operations would be limited to population density Category 1. Those permitted operations would be limited to lower population density categories due to associated increased risks such as carriage of hazardous chemicals, and training and testing which have a higher

potential for operator error or in-flight malfunctions. The same risks do not apply to package delivery operations under a permit and therefore, FAA proposes that package delivery operations with a permit may utilize population density categories 3 and below.

Per the discussion in the paragraph regarding package delivery operations in section VIII.A.3, the operator may be considered an “air carrier” engaged in “air transportation” and may require economic authority from the OST. See section VIII.A.3 for more discussions on this topic.

As discussed in section XII.B.6.vi, this rule would eliminate package delivery entirely as an option under part 107. The feasibility of performing extensive package delivery operations with aircraft that are limited to line of sight and prohibited from operating over people is very limited. In addition, part 107 package delivery operations that adhere to the restrictions of that part without waiver or exemption are simply not feasible and unnecessarily encumber limited Agency resources. Furthermore, the scale these types of operations are considering would go far beyond what was contemplated under the part 107 rule. FAA anticipates that many of the package delivery operations currently being conducted under part 107 would shift to permitted operations under part 108, necessitating a change to more capable and reliable UAS but largely keeping the same footprint as the 2016 rule anticipated.

In addition, FAA proposes in § 108.440(g) that package delivery permitted operations would need to be conducted with a UA having a combined gross weight of UA and payload no greater than 55 pounds. Package delivery operations using an operating permit are proposed to be conducted with fewer of the operating requirements, such as training programs, SMS, and DAA systems (for Category 5) than package delivery with an operating certificate. For package delivery permitted operations, a UA weighing greater than 55 pounds would pose a greater risk to human beings should an unplanned landing occur than a small UA would. Fifty-five pounds is consistent with the limit placed on part 107 operators. Without this additional standardization as required by certificated operations, FAA believes that risk to persons and property on the ground would increase with a UA weighing greater than 55 pounds as the standardization under certificated operations is meant to mitigate risk associated with the increased population density.

Finally, FAA proposes in § 108.440(i), that prior to conducting package delivery operations under a part 108 operating permit, the operator must contact TSA to request and obtain a limited security program equivalent to 49 CFR 1544.101(g). FAA finds it necessary to levy this requirement given the national security implications arising from UAS package delivery operations. FAA only proposes to apply this requirement to package delivery operations at this time and notes TSA has requested comment on imposing additional security requirements on other part 108 operations. FAA may adjust this requirement as appropriate to conform to applicable security requirements.

TSA has joined this proposed rulemaking to ensure that TSA’s security requirements are appropriately applied to UAS operations that would be permitted or certificated by the FAA under part 108. TSA’s proposed amendments are limited to the addition of definitions relevant to UAS operations in 49 CFR part 1540 and two revisions to 49 CFR part 1544 to clarify that these operations are within the scope of its requirements. In addition, the FAA is proposing including in 14 CFR 108.440(i) a requirement for operators to ensure they have obtained a security program from TSA before conducting UAS operations under this proposed rule. Under this requirement, operators are advised that FAA approval is not sufficient. TSA approval is also required.

These proposed requirements are intended to avoid any unintended consequences regarding the security of UAS operations under proposed part 108, consistent with TSA’s responsibility for aviation security and the need to ensure the security of UAS operations as recognized in both E.O. 14305 and E.O. 14307. The types of security risks UAS operations pose to the public are described in E.O. 14305, which states that “criminals, terrorists, and hostile foreign actors have intensified their weaponization of these technologies, creating new and serious threats to our homeland.” Specifically, the E.O. notes that “[d]rug cartels use UAS to smuggle fentanyl across our borders, deliver contraband into prisons, surveil law enforcement, and otherwise endanger the public.”

The proposed text would ensure that the decision to regulate these UAS operations under part 108 does not inadvertently create a security gap under TSA regulations.¹⁰³ Under this

¹⁰³ In the absence of the text, this proposed rule might have created uncertainty regarding the

proposal, which has been developed in consultation with TSA, TSA will continue to ensure the security of the national airspace by imposing appropriate security requirements. The proposed text would require UAS operators authorized under part 108 to request a TSA security program. The revisions to TSA’s regulation would permit TSA to issue a limited program to these operations under 49 CFR 1544.101(g). The proposal is consistent with TSA’s regulatory structure, which has long required certain operators regulated under part 119 to request, and maintain compliance with, a TSA-approved security program before conducting operations (both domestic and foreign carriers operating to/through/from the United States).

The proposed text would clarify that under applicable TSA regulations, UAS operators must seek a “limited program” under 49 CFR 1544.101(g). The general requirements for a security program are listed in TSA’s regulations at 49 CFR part 1544. TSA develops standard security programs that meet these requirements. Operators can request amendments to the standard security program to address specific operational issues, and TSA can approve these amendments to the extent they maintain the required level of security. In addition, TSA has broad statutory authority to grant exemptions from applicable requirements.¹⁰⁴

TSA is considering additional changes to security program applicability and requirements in a final rule. While some operations will not require any additional security requirements beyond vetting, in a final rule TSA may expand the applicability of security program requirements to cover more than package delivery operations. TSA is requesting comment on the scope of operations for which a limited security program should be required, in addition to the requirement for vetting. For instance, TSA could choose to regulate all permitted and certificated BVLOS UAS operations, with limited exceptions for certain non-package delivery operations based on (1) UAS size; (2) intended use of the UAS; (3) capabilities of the UAS, including payload; (4) location of operation centers and range of UAS; (5) planned areas of operation; and (6) fleet size.

applicability of 49 CFR part 1544, potentially resulting in a separate TSA rulemaking proceeding while this more comprehensive rulemaking remained pending. Having concluded that an additional concurrent rulemaking could result in confusion and uncertainty, the agencies decided to work together on this limited issue as the most appropriate path forward.

¹⁰⁴ See 49 U.S.C. 114(q).

Similarly, recreational operations permitted under part 108 may be appropriate for an exemption from such requirements given the size, weight, and range limits associated with those operations.

TSA notes that an expanded security program applicability in the final rule could include any of a range of security program requirements, such as (for instance) requirements to appoint a Security Coordinator and to comply with security directives and emergency amendments to security programs. TSA anticipates developing model language appropriate to the different types of operations that will be permitted by FAA under part 108. For example, under the existing regulatory requirements in 49 CFR 1544.101(g), TSA could require the following security measures as applicable:

- Preventing or deterring the carriage of any unauthorized weapons, explosives, incendiaries, and other destructive devices, items, or substances.
- Controlling cargo that it accepts for transport on an aircraft in a manner that:
 - Prevents the carriage of any explosive, incendiary, and other destructive substance or item in cargo onboard an aircraft.
 - Prevents unescorted access by persons other than an authorized aircraft operator employee or agent, or persons authorized by the airport operator or host government.
- Either verifying that the chain of custody measures for screened cargo are intact before loading such cargo on aircraft or ensuring that the cargo is re-screened in accordance with TSA's requirements.
- Designating a Security Coordinator at the corporate level that must serve as the operator's primary contact for security-related activities and communications with TSA.
- Implementing control functions with respect to each aircraft operation sufficient to:
 - Prevent unauthorized access to areas controlled by the aircraft operator under an exclusive area agreement in accordance with 49 CFR 1542.111 of this chapter.
 - Prevent unauthorized access to each aircraft.
 - Conduct a security inspection of each aircraft before placing it into operations if access has not been controlled in accordance with the aircraft operator security program and as otherwise required in the security program.
 - Prevent unauthorized access to the operational area of the aircraft while loading or unloading cargo.

- Training individuals with security-related duties.

Such requirements would also ensure UAS operators could avail themselves of existing procedures in TSA's regulations to modify their programs to appropriately address their operational environment while maintaining the level of security determined necessary by TSA.¹⁰⁵

TSA anticipates that many of the larger operators that will seek approval to conduct part 108 operations may already be subject to a TSA security program. TSA would work with these operators to determine whether they need a new program or could modify their TSA-approved program. TSA has also historically adapted its requirements to meet the needs of smaller and seasonal operators and would continue to apply this flexibility for UAS operations approved under part 108, while also ensuring the security risks identified above are being appropriately addressed. TSA and FAA request comments on the proposed text and will work jointly on adjudicating comments relevant to TSA's proposed text in this NPRM. Because FAA is held to the final rule deadline established by E.O. 14307, TSA will have to meet that deadline as well in co-adjudicating the security-related comments and developing its relevant final rule sections.

5. Agricultural Operations (§ 108.445)

FAA proposes in § 108.445(a) that, except for certificated operations, no operator would be allowed to conduct agricultural operations involving aerial seeding, dusting, spraying, fertilizing, crop improvement, or pest control with a UA under part 108 without, or in violation of, an agriculture permit issued under part 108.

Substances used in agricultural aircraft operations can contaminate soil and water resources and cause health risks to the general public. To ensure the safety of such operations, FAA is proposing in § 108.445(g) that no person would be allowed to dispense an economic poison or cause an economic poison to be dispensed from an aircraft, for a use other than that for which it is designed and registered, contrary to any safety instructions or use limitations on its label, or in violation of any Federal, State or local law or regulation of the United States. Further, because of the associated risks, FAA is therefore proposing in § 108.445(f) that no operator would be allowed to dispense, or cause to be dispensed, from an aircraft, any material or substance in a

manner that creates a hazard to persons or property on the ground.

In § 108.445(h) FAA proposes the same relief from the requirements in proposed § 108.445(e) as is currently allowed under part 137 for operators dispensing economic poisons for experimental purposes when under the supervision of a Federal or State agency authorized by law to conduct research in the field of economic poisons or when operating under a U.S. Department of Agriculture permit issued pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136). Operations conducted for agricultural purposes require fundamental knowledge and skills such as identifying and loading of pesticides, dispensing substances with wind drift, and effects of economic poisons and agricultural chemicals on persons, animals, and plants. Dispensing economic poisons and agricultural chemicals from a UA poses an inherent risk to persons and property on the ground. In § 108.445(f), FAA proposes that the operator would not be allowed to dispense, or cause to be dispensed, from an aircraft, any material or substance that creates a hazard to persons or property on the surface. These materials and substance may include products intended for use in purposes such as plant nourishment, soil treatment, propagation of plant life, activities affecting agriculture, horticulture, or forest preservation, but not including the dispensing of live insects in a manner that creates a hazard to persons or property on the ground.

In addition, FAA further proposes in § 108.445(i) that operators conducting agricultural aircraft operations under an operating permit would need to have and keep current a comprehensive training program that is tailored for their proposed operation, in addition to the training required by § 108.315. Proposed § 108.445(i) provides minimum knowledge requirements for the training, including a survey of the area to be worked, safe handling and storage of economic poisons, the proper disposal of used economic poison containers, the general effects of economic poisons and agricultural chemicals on plants, animals, and persons (with emphasis on those normally used in the areas of intended operations), the precautions to be observed in using agricultural chemicals and economic poisons, primary symptoms of poisoning of persons from economic poisons, the appropriate emergency measures to be taken, the location of poison control centers, performance capabilities and operating limitations of the aircraft to be used, and

¹⁰⁵ See, e.g., 49 CFR 1544.101.

safe flight and application procedures. By requiring a training program that includes the tailored areas described above, any additional risk associated with an individual operation would be further reduced.

FAA proposes in § 108.445(b) that agricultural aircraft operations would need to be conducted with fewer than 10 aircraft directly under the control of the operator, including those held through lease agreements or subsidiaries. Agricultural UA operations, though conducted in areas of overall lower risk to persons and property, would be a more complex operation as it relates to operational supervisor oversight. For example, package delivery operations typically have multiple UA departing from a single location and returning to that same location point, providing for a more controlled oversight environment as the operational supervisor has direct access to the UA, persons, and packages on the ground before and after flight. Conversely, UA agricultural operations currently require personnel to reposition a UA to a specific location for agricultural treatment. While on location, those personnel typically conduct several duties to mitigate any hazards, including preflight site surveys, loading substances on the aircraft, and continuous monitoring of the operational area for persons. As discussed in section VIII.B.4, FAA has observed a correlation between the weight of a UA and distance that the UA can travel from the departure location. As agricultural permitted operations would be able to use larger UA, FAA is cognizant that the larger UA could cover greater distances than smaller UA. As the UA could be located in a larger circumference, in turn increasing the scope that the flight coordinator has to monitor, it is prudent for FAA to limit the number of active aircraft to 10 or fewer. FAA has also based this limit on its experience with existing exemptions that limit agricultural operations to smaller numbers of UA being controlled at one time in comparison to package delivery exemptions, which typically allow a greater number of active UA. As a result, FAA believes that limiting the number of UA under a permitted agricultural aircraft operation would reduce the ancillary risk of such an operation.

FAA proposes in § 108.445(c) that operations conducted under an agricultural permit would also be limited to UA weighing no more than 1,320 pounds. Currently, FAA has issued hundreds of exemptions for UAS agricultural operations, weighing up to

1,125 pounds,¹⁰⁶ with an average weight of approximately 500 pounds. Larger UA typically fly longer missions due to increased battery power and require larger or longer takeoff and landing areas. Longer flight durations and larger or longer takeoff and landing areas require more attention by the operator for preflight and operational oversight. To ensure these operations fall within the expected risk parameters of permitted operations, FAA would allow agricultural operations up to 1,320 pounds under permit, though subject to limiting operations to only Category 1.

Agricultural aircraft operations today typically take place in sparsely populated areas and directly over non-populated areas, close to the ground while dispensing and close to structures. Should a UA collide with the ground or a structure, persons may become vulnerable to the associated hazard from any substance on the aircraft. FAA intends to limit agricultural UA operations to lower categories of operations over people (as further discussed in section VI.H) to mitigate any risks associated with persons and property on the ground. FAA therefore proposes in § 108.445(e) that part 108 agricultural aircraft operations with a permit would be limited to Category 1 population density areas, unless otherwise authorized by the Administrator. As discussed above, dispensing economic poisons and agricultural chemicals from a UA poses an inherent risk to persons and property on the ground.

6. Aerial Surveying Operations (§ 108.450)

Operators conducting photography, videography, mapping, inspection, and patrolling with UAS are currently doing so either under the confines of part 107 VLOS operations, under a waiver to proposed § 107.31, or by relief granted through an exemption allowing for aircraft weighing more than 55 pounds or BVLOS operations. FAA proposes in § 108.450(a) that operators would be able to conduct photography, videography, mapping, inspection, and patrolling under an operating permit.

Aerial surveying operations would be limited by proposed § 108.450(b) to operations with fewer than 25 active UA, either directly under the operator's control, through lease agreements, or subsidiaries. Due to the complexity of these operations under a permit, such as operations being conducted from different locations at any given time, FAA finds that a higher limit than 25 active UA for aerial surveying

operations would be detrimental to operational control oversight, as the risk with the operator's management oversight increases with multiple individual operations in different areas. Consistent with the discussion in section VIII.B.4, the correlation between UA weight and maximum distance supports the active aircraft limit of 25 UA for aerial surveying permitted operations. As discussed subsequently, the weight limit for aerial surveying permitted operation UA is greater than that of package delivery, but less than that of agricultural operations. In addition, FAA has considered the proposed allowed population density for the aerial surveying permitted operations in setting the active aircraft limit at 25 UA. Aerial surveying permitted operations are allowed to conduct operations at higher population densities than demonstration permits but are limited to a lower population density than package delivery operations.

FAA proposes in § 108.450(c) those operations conducted for purposes such as photography, videography, mapping, inspection, or patrolling with an aerial surveying permit would also be limited to a UA with a combined total weight of less than 110 pounds, including anything attached to or carried by the UA. Higher-weight aircraft typically fly lengthier missions due to increased battery power or fuel quantity and require larger or longer takeoff and landing areas due to increased size and takeoff and landing speeds directly related to weight. More extended operations and larger or longer takeoff and landing areas would require greater attention to the operator's preflight planning, oversight, and additional risk mitigations to maintain safe operations as the overall complexity of the operation increases. FAA proposes to limit aerial surveying operations to less than 110 pounds. FAA has similarly issued waivers for operations with UA weighing more than 55 pounds. FAA does not however, anticipate a significant need for UA heavier than 110 pounds for purposes of aerial surveying since applications for waivers with UA greater than 110 pounds for these purposes are not requested frequently. Furthermore, FAA can mitigate risk associated with aerial surveying by limiting the UA's weight.

In addition, FAA proposes in § 108.450(d) that aerial surveying operations would be limited to Category 3 population density areas or lower, in accordance with § 108.185. Further, § 108.185 also generally limits permitted operations to categories 3 or lower, as lower population densities correlate to a

¹⁰⁶ Pyka, Inc. Grant of Exemption No. 20445.

lower risk to persons and property on the ground. FAA anticipates that aerial surveying operations would occur in a multitude of population densities due to the various purposes of missions, such as newsgathering. However, because of the lower weight and because aerial surveying operations are typically conducted within the confines of a defined area or areas, FAA proposes that a Category 3 population density would provide an acceptable level of safety.

7. Civic Interest Operations (§ 108.455)

Under § 108.455, FAA proposes to allow certain civic interest operations to be conducted under a permit. For the purposes of this rule, civic interest operations would be operations performed by an entity contracted to a Federal, State, local, or Tribal government for purposes including forest and wildlife conservation (including wildfire recovery, wildlife conservation, and tracking climate change) and operations in support of public safety (including fire, accident, and disaster response). In addition, FAA proposes that, when operating in support of a government entity, the operator must coordinate and deconflict operations with the law enforcement or government emergency management agency responsible for incident response in advance and throughout the duration of the operation.

Civic interest operations conducted under part 108 operating permits and certificates would only apply to civil aircraft operations. PAO would continue to be governed under the statutory provisions for public aircraft as set forth in 49 U.S.C. 40102(a)(41) and 40125 and be required to comply with applicable ‘all-aircraft’ operating requirements as set forth in 14 CFR part 91. In other words, PAO operators can continue to operate as PAO under part 91 pursuant to the terms of their valid COA. These provisions provide the legal basis for PAO in the United States. FAA has issued an AC¹⁰⁷ that provides information to determine whether government or government-contracted aircraft operations conducted within the territory of the United States are public or civil aircraft operations under the statutory definition of “public aircraft.” The civic interest category would not replace the use of PAO, but rather would provide other options for operators that do not wish to operate as PAO or cannot meet all the PAO requirements for the type of operation being conducted.

FAA proposes in § 108.455(b) that operations conducted under a civic interest permit would be limited to operations with fewer than 25 aircraft either directly under the operator’s control, through lease agreements, or subsidiaries. Civic interest operations usually would occur in response to government safety response and support. As these operations could occur on short notice and in unpredictable operational areas, FAA does not consider it appropriate to increase the overall complexity of the operation by allowing for greater amounts of active aircraft. FAA therefore proposes to limit the number of active aircraft per operator, thus reducing the overall risk associated with the operation. Consistent with the discussion in section VIII.B.4, the correlation between UA weight and maximum distance supports the active aircraft limit of 25 UA for civic interest permitted operations. As discussed subsequently, the weight limit for civic interest permitted operation UA is greater than that of package delivery, but less than that of agricultural operations. In addition, FAA has considered the proposed allowed population density for the civic interest permitted operations in proposing to set the active aircraft limit at 25 UA, which would be the same as aerial survey. Civic interest permitted operations would be allowed to conduct operations at higher population densities than demonstration permits but would be limited to a lower population density than package delivery operations.

In addition, FAA proposes in § 108.455(c) that UA operating under a civic interest permit would not be allowed to have a combined gross weight of aircraft and payload of more than 110 pounds. Similar to the weight limit proposed for aerial surveying operations, larger aircraft typically have increased battery power, allowing for longer missions, and require larger or longer takeoff and landing areas due to increased size and takeoff and landing speeds directly related to weight. Longer duration operations and larger or longer takeoff and landing areas require more attention by the operator to the amount of preparation and preflight planning of operations.

FAA is proposing that operations at a gross weight of 110 pounds or less would be limited to Category 3 population density areas or lower. The additional mitigations of Category 3 (*i.e.*, the strategic deconfliction requirements of § 108.190), combined with the lower weight, provide sufficient assurance to operate in more densely populated areas. As discussed

above, larger UA may fly longer operations and may require larger or longer takeoff and landing areas, increasing the complexity of the operation and the necessary oversight by the operator.

Finally, FAA recognizes that certain life-saving missions with UA, such as search and rescue-related missions in disaster or hard to reach areas, would be in the interest of the general public. FAA does not intend to limit those life-saving operations and recognizes the necessity of the expeditious and precise support that civic interest UA operations could have on short-notice relief. FAA therefore proposes in § 108.455(f) that civic interest operations may be conducted over any population density to the extent necessary to safeguard lives in imminent threat. While FAA does not propose to define how this is determined, it is expected for these to be rare events associated with disasters and other unforeseen emergency situations where the use of the UAS could help save lives. In these situations, the added risk to persons and property on the ground is offset by the life-saving nature of the operation. However, FAA emphasizes that this should not be construed as routine and everyday occurrences and it is still the responsibility of the operator to exercise good judgment and conduct any and all operations in the best interest of safety to everyone involved, as well as to comply with the prohibition on careless and reckless flight.

8. UA Operations Training (§ 108.460)

The overall purpose of UA operations training is to acquire and hone basic airmanship skills. While the UA operations in this proposal would be mostly autonomous, the systems used for monitoring and controlling the UA would use software that provides a means to configure the autopilot system as well as providing an in-flight means of monitoring and controlling aspects of the UAS. These systems can range from straightforward user interfaces to complex arrangements requiring advanced training to program and operate the system. FAA recognizes that some UAS operators would benefit from training by a third party. For example, a UAS manufacturer may be in the best position to train persons on the intricacies and details of the UAS before an operator’s first use of that system. Therefore, FAA proposes in § 108.460 that persons operating under a UA operations training permit could perform UAS operations training services for any type of operation authorized under this part. This would

¹⁰⁷ Available at www.faa.gov/documentLibrary/media/Advisory_Circular/AC_00-1.1B.pdf.

not apply to operators conducting their own training programs. UA operations training provided by an operator to their own operations personnel could be conducted under the same permit or certificate they hold for their operations without holding a separate UA operations training permit under this section.

FAA is proposing that a UA operations training permit would be exclusively used for training purposes, rather than other types of revenue operations. As such, no person would be able to use a UA operations training permit in lieu of obtaining the required permit for another type of operation conducted under proposed subpart D.¹⁰⁸ However, this would not preclude a UA operations training company providing training under a UA operations training permit, while the company personnel being trained are conducting operations under a different type of permit. But the general expectation is that UAS operations training would be conducted in a training environment and not during revenue operations. For example, if a company that specialized in UAS training held a UA operations training permit, that company could train personnel who are employed by a different operator that holds an agricultural operations permit. That company could perform “on-site” training with the agricultural operator while actual agricultural operations were being performed. The training elements of the operation would be accomplished under the training permit, and associated limitations, and the agricultural elements of the operation would be conducted under the agricultural permit. The training company personnel could demonstrate flight path techniques, maneuvering, etc., over the fields. However, the operator holding the UA operations training permit would not be able to use their own personnel to conduct actual agricultural dispensing operations under the UA operations training permit. Rather, they could observe the agricultural operations being performed by personnel of the operator with the agricultural operations permit and provide guidance and advice as part of the training.

FAA proposes in § 108.460(b) that UA and objects carried by the UAS operated under a UA operations training permit would not be able to exceed 1,320 pounds, which is the maximum limit for part 108 UAS under proposed § 108.805

without an authorization from the Administrator. For more details on UA weights under different types of permits, please refer to the introductory language of section VIII.A.1.

FAA proposes in § 108.460(c) that operations would have to be conducted with fewer than ten active aircraft, either directly under the operator's control, through lease agreements, or subsidiaries, unless otherwise authorized by FAA. As discussed in section VIII.B.4, FAA has considered the correlation between UA weight and maximum travel distance when proposing active aircraft limits. As the UA weight limit for training permits is 1,320 pounds, FAA has decided it is prudent to limit the number of active aircraft to fewer than ten because the larger aircraft could travel further than small aircraft and would therefore place an increased burden on the flight coordinator. This aligns with agricultural operations permits under proposed part 108, which would be allowed the same number of active aircraft as training permits for the same proposed weight. As described with other permitted operations above, FAA finds that increasing the number of active aircraft above 10 increases the risk associated with the operation and management oversight of an operation that may require additional review and oversight by FAA. Therefore, operators wanting to provide training with more than 10 active UA would have to request this authority, provide FAA with any information requested, and comply with any additional imposed limitations. FAA does not anticipate that operations with more than 10 aircraft would rise to the level of needing the additional oversight and controls that becoming a certificated operation would entail. This would provide FAA with flexibility to authorize more UAS through an individualized risk-based approach. FAA seeks comment on whether the public and potential operators agree with this approach.

FAA proposes in § 108.460(d) to limit permitted UA operations training with larger aircraft to Category 1 areas, unless otherwise authorized by FAA. Larger UA may be able to operate for longer durations or require larger takeoff and landing areas, increasing the complexity of the operation. Given that the purpose of this permit is to train persons unfamiliar with either the UAS, operating environment, or policies of the operator, FAA finds it appropriate to mitigate ground risk by restricting operations to the lowest population densities proposed by this rule and as further discussed in section VI.H.

9. Demonstrations (§ 108.465)

In § 108.465, FAA proposes that operations for aerial performances, air races, air shows, sales demonstrations, exhibition, and the practice and preparations for these events would be conducted using a demonstration operations permit. FAA currently authorizes and approves waivers and relief granted through exemptions for such purposes. A streamlined regulatory process for UA conducting such operations would benefit the general public and FAA.

Demonstrations with UA are an essential aspect of UA operations, as manufacturers need to demonstrate new UA to the public. In addition, individuals will continue to demonstrate operations such as aerial performances and airshows and have the need to practice those operations before an event.

FAA proposes that demonstration purposes would be limited to operations with fewer than 50 active UA, unless otherwise authorized by FAA. While FAA has proposed active aircraft limits of fewer than 25 UA for similarly sized permits (see sections VIII.B.6–7), FAA has determined that an active aircraft limit of fewer than 50 is appropriate for demonstration permits because they would be limited to a lower population density than aerial surveying operations or civic interest operations. For general manufacturer demonstration purposes, FAA does not foresee an operational circumstance that would require demonstrating 50 or more UA at a time. In addition, FAA finds that a higher allowance of UA for demonstration operations would be detrimental to operational control oversight, as the risk with the operator's management oversight increases with multiple individual operations in different areas. However, FAA recognizes that different demonstrations may necessitate greater flexibility, and FAA therefore proposes that operations of 50 or more UA for demonstration purposes could occur with FAA authorization. Separate authorization would allow for FAA to ensure an acceptable level of safety for each operation.

As discussed in section VI.M, in proposed § 108.210, operations conducted under part 108 would be limited to a UA-to-Flight Coordinator ratio of 1:1, except in accordance with a method acceptable to the Administrator. Demonstration operations with UA typically involve the operator showing system capabilities, UA performance, and maneuvers, and operating at a greater than 1:1 ratio would increase the overall

¹⁰⁸ For example, an operator who seeks to conduct agricultural operations would not be able to seek a UA operations training permit to conduct agricultural operations under the guise of UA operations training.

risk of the operation. FAA does recognize that an operation may require a demonstration by a flight coordinator to take place with more than one UA. For example, an aerial display may include multiple UA performing an in-sync lighted demonstration. In this scenario, FAA would have the ability to authorize such operations. This authorization would ensure that FAA has evaluated that an operation does not adversely affect safety.

FAA proposes that aircraft operated under a demonstration permit would not be allowed to have a combined gross weight of UA and payload greater than 110 pounds, unless otherwise authorized by FAA, consistent with the proposed requirements in § 108.800(b)(3). Further, FAA also anticipates UA manufacturers may want to demonstrate UA that have a weight greater than 110 pounds as this rule also allows for authorization from FAA for operations with UA weighing greater than 110 pounds.

UA operated for demonstration purposes typically perform a flight in close proximity to persons to show the UAS capabilities. FAA therefore finds that, by limiting the weight of the UA for demonstration purposes, should an incident occur, the risk associated with a UA weighing no greater than 110 pounds would further be reduced. However, FAA recognizes that operators with a demonstration permit may need to demonstrate a UA heavier than 110 pounds to fully exhibit its capabilities. FAA would therefore have the ability to authorize those operations to ensure that the operation does not adversely affect safety.

FAA proposes that demonstration operations with a permit would be limited to Category 2 density areas or lower as further described in section VI.H of this preamble. FAA believes that operations in these areas would not have an adverse effect on safety as mitigations require the use of specific equipment for obstacle and aircraft detection and avoidance. FAA does not see the need for demonstration operations to occur in higher population density areas as purposes for demonstration typically take place in front of persons in lower density population locations for aerial performances. However, if operators seek to conduct demonstrations in higher density areas, they may seek authorization from FAA. In addition, with the lower density of persons in these areas and the lower weight proposed in this section, FAA believes that risk to persons and property on the ground would be further reduced.

Finally, FAA proposes in § 108.465(e) that, regardless of the categorization of population density in the operating area, operations would need to be conducted at least 500 feet from any persons. Given the dynamic operating environment of many demonstration flights—e.g., light shows or demonstrations of the full capabilities of a UA for a prospective buyer—FAA finds it appropriate to require an additional setback distance to protect spectators from any inadvertent operational deviations.

10. Flight Test Operations (§ 108.470)

FAA proposes to authorize flight testing under a permit in § 108.470, a necessary condition to conduct the development testing required under proposed § 108.930, functional reliability testing required under proposed § 108.935, and production acceptance testing required under proposed § 108.735, as discussed in sections X.J and XI.AA. Flight testing operations have a higher risk due to new aircraft testing and new equipment and software, which require greater attention to the mission as operators focus more on how a UAS performs during early flights. Flight testing operations would be used to understand how a UAS is performing. If further adjustments or corrections need to be made, the risk increases with operations over persons as the testing is a vetting process that could introduce error and failure. Should a mistake or failure occur, persons on the ground would be susceptible to the associated hazard.

Section 108.470(a) proposes that no operator would be allowed to conduct operations involving flight tests of new aircraft designs, modifications, or other development-related operations with a UA under part 108 without, or in violation of, a flight test permit issued in accordance with this subpart. FAA recognizes that flight testing operations carry an increased level of risk, stemming from the testing of new aircraft, equipment, and software. These elements may require applicants to assess the performance of UA or AE during initial flights. The issuance of a flight test permit enables applicants to conduct operations aimed at research and development, as well as the verification of design, functionality, limitations, and reliability testing. Importantly, this permit would allow for operations under part 108 without the requirement for an experimental airworthiness certificate.

Section 108.470(b) proposes that flight test permit operations would only be allowed to be conducted by UA manufacturers qualified under subpart

G, or by accredited educational institutions. The purpose of this requirement is to allow only applicants seeking airworthiness acceptance to be granted a flight test permit for development of UAS designed for operations under part 108. FAA does not intend to create a parallel path for experimental airworthiness certification, nor does FAA intend for this provision to allow operators to obtain a flight test permit for recreational use.

Allowing accredited educational institutions to obtain flight test permits would benefit the fields of aviation and aerospace. These institutions are often at the forefront of technological innovation and research, playing a role in advancing UAS technology. By granting them access to flight test permits, it would not only facilitate this research but would also encourage innovation within the academic community.

Accredited educational institutions typically possess the necessary infrastructure, expertise, and oversight to conduct flight testing operations safely. This would ensure that such activities are carried out in a controlled environment, minimizing potential risks to public safety, and ensuring the integrity of national airspace.

Section 108.470(c) proposes limiting flight test permitted operations to Category 1 population density areas or lower, in accordance with § 108.185, unless otherwise authorized by FAA. The purpose of this limitation is to mitigate the hazards associated with flight test of new design, software, and equipment. FAA acknowledges the importance of minimizing public exposure to these potential hazards. The development and testing of aviation technologies inherently involve uncertainties and risks, particularly when introducing novel designs or sophisticated software that have not yet been extensively evaluated in operational environments. These risks can range from system malfunctions or failures to unforeseen interactions with the operational environment, which could potentially lead to incidents or accidents.

FAA's approach to mitigating these risks involves carefully managing the exposure of the public to potential hazards during the critical phases of testing and evaluation. By limiting flight tests to controlled environments or specific conditions, FAA aims to prevent any adverse outcomes that could arise from untested or under-tested technologies. This precautionary measure would ensure that any potential safety issues are identified and

addressed in a controlled setting, away from densely populated areas or critical infrastructure, thereby safeguarding public safety.

Section 108.470(d) proposes that, under a flight test permit, the UA and anything attached to or carried by the UA would not be allowed to have a combined total weight greater than 1,320 pounds, unless otherwise authorized by FAA. Testing of all UA designs is necessary and therefore the weight limit must include the maximum allowable weight for any type of part 108 operations. As previously discussed, the population density associated with flight testing permits is very low, which greatly reduces the risk to persons and property on the ground. FAA has therefore proposed allowing higher-weight UA under a flight test permit. As further discussed in VI.A, FAA proposes in § 108.800(b)(3) to limit UA operating under part 108 to no greater than 1,320 pounds max gross takeoff weight, unless otherwise authorized by FAA. This weight limit would be consistent with the safety continuum considered for operations of BVLOS UAS.

In order to permit the full spectrum of flight testing necessary to meet the requirements in subparts G and H, FAA proposes in § 108.470(e) that § 108.105(b), which requires that the UA have an airworthiness acceptance, would not apply to operations conducted under a flight test permit. FAA recognizes the unique nature of flight testing, in which failures can occur as part of the iterative design and development process. Given this context, airworthiness acceptance is not required for aircraft engaged in such testing activities. This approach is based on the understanding that flight testing is inherently designed to identify and push the boundaries of what is currently possible, including testing and validating the limitations of new designs, software, and equipment.

11. Recreational (§ 108.475)

While FAA expects the primary uses of operations conducted under part 108 will be commercial, FAA anticipates that individuals will want to fly UAS BVLOS recreationally. FAA does not want to omit recreational operations from this rule when a framework can be developed to formally ensure safe and secure BVLOS operations. FAA proposes to require non-commercial or recreational operators wishing to conduct operations under this proposal to receive a recreational operating permit. The recreational operating permit and associated requirements under this proposed rule would govern

part 108 recreational operations. FAA, therefore, would require that no operator may conduct recreational operations with a UA under this part without, or in violation of, a recreational permit.

As previously discussed, the main purpose of this proposed rule is primarily for commercial purposes, however, FAA anticipates that there will be persons wanting to operate UA recreationally that would not be possible under part 107. FAA anticipates commercial operations under this rule will be conducted mostly over higher population densities with a specific mission and route in mind. FAA does not find it prudent to oversaturate that airspace with additional recreational operations. Therefore, FAA will limit recreational operations to Category 3 population densities or lower. Further, FAA will limit the maximum UA weight under a recreational permit to not more than 55 pounds, which includes anything attached to or carried by the aircraft. To further reduce ground risk with recreational operations, FAA chose to limit the maximum weight in alignment with part 107.

FAA proposes to limit operations with a recreational permit to a maximum distance of 10 nautical miles from the operator. FAA does not anticipate recreational operators will have the need to operate at great distances from the operator. FAA does not have previous data on recreational BVLOS operational distances with UA. As such, FAA chose a 10 nm maximum distance to ensure a smaller operational footprint. This maximum distance would also help manage the operational risk of unforeseen battery depletion, a risk that under other operational permits would be managed by the corporate entity through their company operations manual (which is not required under the recreational permit).

FAA also proposes to limit recreational operations to one UA operated by an operator at a time because of the complexity and workload of operating more than one UA at a time. While this rule does not prohibit ownership of multiple UAS by an individual, operations conducted under a recreational permit would be limited to the operation of one UA at a time. Per proposed § 108.475(f), recreational permit operators would need not comply with the requirements under part 108 for company operations manuals, experience requirements, base of operations, and operations supervisor requirements, the requirement to develop and implement a cybersecurity plan, and duty and rest requirements.

By limiting operations to one UA operated by one operator, the complexity of the operation would be reduced by maintaining focus on one single UA by one single operator. FAA proposes this one person to one UA limitation to further reduce risk to persons on the ground as overall attention rests with only one UA by one operator.

Lacking a commercial organizational structure, operators holding a recreational permit do not fit cleanly into the roles delineated in section VII.B. However, the recreational permit holder would need to fulfill responsibilities typically assigned to the operator, the operations supervisor, and the flight coordinator.

C. Certificated Operations

Under this proposal, FAA would require that operations conducted with a UA for purposes of package delivery, agriculture, aerial surveying, and civic interest that are not conducted utilizing an operating permit, as described in section VIII.B of this preamble, would require an operating certificate issued by FAA. Unlike permitted operations, which also include permits for UA operations training, demonstration, flight test, and recreational operations, FAA proposes to limit certificated operations to only package delivery, agriculture, aerial surveying, and civic interest. Operations conducted for UA operations training, demonstration, flight test, and recreational purposes are generally more appropriate in areas with lower population densities, as a lower population density provides inherent risk mitigation should an in-flight occurrence happen. Further, FAA does not anticipate a significant need for UA operations training, demonstration, flight test, or recreational flights to be conducted in higher population density areas. However, FAA proposes that any type of operation that are not package delivery, agriculture, aerial surveying, and civic interest, can be authorized by FAA, subject to any limitations issued by FAA in conjunction with the certificate.

The requirements under proposed part 108 and any authorizations and limitations will be the governing constraints for certificated operations. FAA uses to mitigate operational risk. Therefore, FAA proposes that operations under an operating certificate would need to be conducted in compliance with the requirements of part 108 and in accordance with any authorizations and limitations issued by FAA.

FAA considered creating a fifth category of operating certificates for

larger UA carrying cargo. This would have been distinct from the package delivery operating certificate due to the size of the UA and how the operations would be allowed to occur. As discussed further in section VIII.C.8, FAA has proposed a limit of 110 pounds on package delivery certificated operations due to the close proximity of package delivery to customers and customers' homes. FAA did contemplate that there might be an interest in having larger aircraft operate between two controlled areas. However, FAA has not yet processed any waivers or exemptions related to this type of operation. FAA lacks information on how industry might conduct this type of activity and therefore could not determine the appropriate risk mitigations for this type of activity. However, FAA welcomes comments on the inclusion of a cargo transportation operating certificate, particularly on what such a certificate may be used for, how it would differ from package delivery, and what risk mitigations would be appropriate.

1. Recency of Operations (§ 108.530)

Proposed § 108.530 prescribes the requirements for operator's recency of operation. Operations under an operating certificate are potentially at a higher risk level than permitted operations due to the allowable size and scope of the operation. FAA proposes in § 108.530(a) that certificated operations under this part must have been conducted within the preceding 12 calendar months, or the operator would be required to receive authorization from FAA to resume operations, as proposed in § 108.530(b). Continued operations throughout a calendar year allow an operator to maintain a certain amount of proficiency with operations, as daily adherence to company manuals, procedures, authorization, and regulatory compliance allows it to become routine. In addition, FAA surveillance would be regularly conducted for active operations. Given the highly autonomous nature of operations conducted under this proposal, FAA feels that proficiency with the overall operation for recency requirements are different than in manned aircraft operations as referenced in § 119.63. Specifically, operations under proposed part 108 would require less hands-on aircraft controlling and focus more on UA observing and operational management. Therefore, a longer period of time could elapse between operations. Further, FAA proposes that FAA may require inspections or reexaminations to determine whether the operator remains

properly and adequately equipped and able to conduct a safe operation. FAA anticipates that scenarios may arise that would warrant FAA involvement prior to continued operations such as a certificate holder with little operating experience who has not conducted operations after initial certification.

2. Cybersecurity (§ 108.535)

As discussed in section VIII.B.3, FAA has proposed that operators must develop and implement cybersecurity policies and processes. Highly automated systems are integral to UAS operations, and this reliance on these systems can, if not properly protected, result in a significant vulnerability. In § 108.535, FAA proposes to require operators conducting operations under a certificate to meet the same performance standards as permitted operators proposed in § 108.435. Like permitted operators, FAA proposes that operators would need to develop and implement cybersecurity policies and processes, which are identical to those proposed for permitted operations.

In §§ 108.535(b)(1) through (4), FAA proposes that certificated operators must, at minimum, include processes for: protecting software, hardware, and network computing infrastructure necessary to protect operations from unauthorized access;¹⁰⁹ ensuring the operator's employee network access privileges are limited to those necessary to fulfill normal job duties; ensuring access privileges are turned off/removed for former employees; preparing for, responding to, and mitigating the impact of cyber-attacks; collecting and analyzing data to measure the effectiveness of the cybersecurity policy and processes; and any other processes the operator deems necessary to implement effective cybersecurity protections. FAA is utilizing performance-based language in this proposed requirement to provide operators flexibility with how controlled access areas designated.

3. Training Program (§ 108.540)

Proposed § 108.540 prescribes the requirements for a training program. In § 108.540(a), FAA proposes that certificated operators be required to establish and implement a training program, acceptable to the Administrator, which meets the requirements of subpart C of proposed part 108. Generally, an acceptable training program would ensure that all operations personnel are adequately identified, defined, trained, and

evaluated in the performance of their assigned duties. Paragraph (a) also specifically references the requirements of proposed § 108.315 to ensure operations personnel understand they would be required to meet the recurrent training of § 108.315(d) remain proficient in each UA, position, and type of operation in which they serve.

The program would include the initial and recurrent training that ensures operations personnel remain proficient in each aircraft, position, and type of operation in which they serve. Rather than prescribe a specific structure that includes instructors and examiners, this proposed rule would allow an operator to design a training program to fit and support its organizational structure and personnel plan. This flexibility would accommodate the wide variety, scope, and different levels of training that could be appropriate for any given operation. However, the proposal would require the operator to include how all required operations personnel will be trained, not just core operations personnel like operations supervisors and flight coordinators.

In proposed § 108.540(b), FAA would require an operator to ensure that the training facilities, personnel, training material, forms, instructions, and procedures are appropriate and current. However, it is important to note that FAA would not require an operator to provide this training "in-house." As noted in proposed § 108.540(c), an operator is free to develop and conduct its own training or to contract out the training using third-party persons, or any mix thereof, so long as the operator has evaluated the course, found it appropriate, and provided adequate information to FAA to independently evaluate adequacy when submitted with the certificate application in accordance with proposed § 108.505(b)(10). In addition, the training could consist of online courses, hands-on practical courses, instructor-led courses, or any other methods deemed appropriate. Regardless of who provides the training, the operator is ultimately responsible for providing training that meets the requirements of this proposed rule.

In proposed § 108.540(d), FAA proposes that an operator be required to designate a person or persons who are responsible for ensuring that operations personnel are appropriately trained. Importantly, because the designated person(s) would be required to certify as to the proficiency and knowledge of the operations personnel being trained or evaluated, they must also be qualified to determine such matters. The designated person(s) would also be responsible for ensuring that the operations personnel

¹⁰⁹ NIST Quick Start Guide available at www.nist.gov/cyberframework/quick-start-guides.

records are accurate and maintained. The proposal would not require that this training role be the only responsibility of the designated person(s). Instead, FAA would simply require they be identified within the company and fulfill the requirements of the role. In addition, while this proposed rule would not require operators to have traditional positions like instructors and examiners on staff, FAA acknowledges that this structure can be beneficial for some operations. FAA encourages operators, especially those without a proven training program, to consider adopting instructional elements of training programs used by successful traditional air carriers.

As noted above, the training program must be acceptable to the Administrator. As proposed in § 108.540(e), FAA may order an operator to change its accepted training program if it finds that the program, its structure, or other elements are not adequate. In response, an operator may file a petition to reconsider within 30 days of receiving notice, which would stay the order until FAA renders a final decision. However, if an emergency requires an action in the interest of safety, FAA may require immediate changes to a training program after providing a statement of its reasons. This proposed approach would preserve FAA's authority and continuing role in identifying and addressing potential deficiencies that could affect safety, which in turn would allow FAA to ensure that operators refine their training regimen considering changes in technology, policy, and other matters, as needed.

Finally, as proposed in § 108.540(f), FAA describes how an operator may file a petition for reconsideration for any changes requested by the Administrator under paragraph (e).

4. Validation Tests (§ 108.545)

The certification process is designed to preclude certification of applicants who are unwilling or unable to comply with the regulations, or to conform to safe operating practices. FAA, therefore, proposes that each operator with an operating certificate must show that they can conduct operations safely and in compliance with applicable regulatory standards. FAA proposes in § 108.545 that an operator can accomplish this through validation testing.

First, under proposed § 108.545(a)(1), an operator would be required to conduct a validation test during the application process for an operating certificate. In § 108.545(a)(2), FAA proposes requiring validation testing for the addition of a new make or model of

aircraft if an aircraft of the same make and model or similar design has not been previously validated in the operation. Requiring a validation test for this scenario ensures that an operator is capable of conducting operations with new aircraft using new or existing policies and procedures. FAA proposes in § 108.545(a)(3) requiring validation testing for special performance or unique operational authorizations as determined by the administrator such as new equipment or operational technology. Validation testing ensures operators are not only capable of, for example, utilizing the equipment, but also proficient, qualified, and familiar with all aspects of it. FAA proposes in § 108.545(a)(4) requiring validation testing for an operator wishing to conduct operations with multiple UA by one flight coordinator. This type of validation testing will ensure proficiency of the flight coordinator but also verify that workload management is not affected during an operation.

Proposed § 108.545(a) allows FAA to authorize deviations to the requirement for validation testing. FAA will determine whether validation testing is required. Validation testing may not be required in all instances. For example, FAA may look at the operator's prior experience and the complexity of the change. This allows FAA to exercise discretion.

Finally, FAA proposes in § 108.545(b) that all validation tests must be conducted under the appropriate operating and maintenance requirements of part 108 that would apply if the applicant were fully certificated. This would ensure that the other safety mitigations in part 108 will apply to the validation test and will allow FAA to observe an operator performing as they would during an authorized operation. Prior to obtaining an operating permit or certificate, FAA would issue a temporary permit or certificate to allow any required validation tests to occur. FAA would issue this temporary permit or certificate during the application process prior to the validation tests, unless FAA authorizes a deviation that allows the operator to forego validation tests per proposed § 108.545(a).

5. Communication and Ground Risk Assessments (§ 108.550)

FAA expects any operator that operates under a part 108 operating certificate for a BVLOS operation to maintain a robust C2 analysis of the area of operations, per proposed § 108.550(a). While C2 is an important element to every operation, this extra C2 assessment requirement would be

limited to certificated operations due to the greater potential impact of a loss of C2 in operations that could be conducted at that much larger scale. In addition, aircraft are expected to be designed with safety features that minimize the impacts of C2 loss, further minimizing the impacts on smaller operations, as discussed in section XI design requirements. Based on current research and operational approvals of BVLOS operations, FAA has seen C2 metrics that include, but are not limited to, link accessibility, latency of link, and operational processes in the event of lost link. FAA expects that work performed by industry consensus standards bodies will refine the key metrics for C2 over time. For BVLOS operations, an operator would need to be aware of the potential for link to their aircraft to not be available due to interferences and other reasons along the predicted flight path. In addition, FAA expects that BVLOS flights could at times experience intermittent lost link. As such, the operator would need to do an assessment of how link latency and intermittent lost link may impact the safety of their operation and produce mitigation protocols in these instances to maintain a low-risk operation. FAA looks to industry and other stakeholders for additional comment on what additional metrics should be considered in a C2 assessment, which are expected to be documented in a to-be-developed industry consensus standard.

Without mitigations, the size and complexity envisioned for certificated operations would increase operational risk. FAA would reduce and mitigate the increased risks through the certification process proposed in this rule. FAA proposes that protection of persons on the ground in a certificated operation could be reduced further by ensuring operators are familiar with the areas of operation and create their own mitigations which are acceptable to FAA. FAA therefore proposes in § 108.550(b) that certificated operations would have to be conducted in accordance with a ground risk assessment plan acceptable to FAA that includes pedestrian and moving vehicle analysis and considers terrain and human-made obstacles that the operator intends to overfly.

6. Inoperative Equipment (§ 108.555)

FAA is proposing in § 108.555 that no person would be able to conduct an operation under this part with a UAS with inoperative equipment or equipment that has failed its initial performance checks unless all of the following requirements are met. First,

the inoperative equipment would need to be not indicated as necessary by the manufacturer of the UA pursuant to the manufacturer's operating instructions and must not be required by subpart H of part 108 or required for the specific type of operation being conducted. Second, the inoperative equipment would need to be removed from the UA, deactivated, or otherwise determined not to interfere with the safe operation of the UA. Third, a determination would need to be made by a person who is authorized by the operator to perform maintenance on the UA that the inoperative equipment does not constitute a hazard to the UA. Finally, information identifying the inoperable equipment would need to be made available to the appropriate operations personnel.

All aircraft equipment is meant to perform a specific function during flight. FAA also recognizes that installed equipment will eventually fail on an aircraft if not earlier replaced. However, not all installed equipment performs a function that is critical to the safe operation of the aircraft. Under this proposed rule, FAA does not want to limit an operator from operating a UA with inoperative equipment if the equipment deemed inoperative is not necessary for safe operation or required for a particular operation. FAA therefore proposes, in § 108.555, that certificated operators may conduct operations with a UA that has inoperative equipment or equipment that has failed its initial performance checks if the inoperative equipment is not required to be operational by the manufacturer or is not required by any other part of this proposed rule. The manufacturer must determine and indicate, under proposed §§ 108.720(a)(v) and 108.870, which items of equipment are essential for the safe operation of the UA. However, FAA is proposing to limit this operational flexibility to certificated operations, as the increased oversight and other mitigations described throughout the proposed rule would provide a sufficient level of assurance of the safety of the operation. Furthermore, FAA proposes that any inoperative equipment would need to be removed from the UA, deactivated, or otherwise determined not to interfere with the safe operation of the UA. The appropriate method can be predetermined by the manufacturer and included in the operating instructions or be determined by the operator. However, FAA will also require that a determination is made by a person authorized by the operator to perform maintenance on the UA that the inoperative equipment does not

constitute a hazard to the UA. This requirement ensures that someone inspects the inoperative equipment to determine the cause of the inoperative functionality to determine if safe operations may be continued after removal or deactivation. FAA proposes that information regarding the inoperative equipment be made available to the appropriate operations personnel for their situational awareness and decision making as it pertains to future operations.

7. Safety Management System (§ 108.560)

A safety management system (SMS) is a formal approach for an organization to manage risk and ensure the effectiveness of safety risk controls. An SMS includes procedures, practices, and policies for safety risk management.¹¹⁰ In the Safety Management Systems for Domestic, Flag, and Supplemental Operations Certificate Holders final rule dated January 8, 2015,¹¹¹ FAA stated that requiring an SMS is an effort to continuously improve safety by filling gaps through improved management practices. The UAS industry is constantly growing and technologically advancing, and FAA anticipates this will continue to be the case. In addition, FAA recognizes that operations under this proposal are a new concept compared to traditional manned aviation operations. Though FAA has developed the policy under this proposal to mitigate risks, FAA also sees the benefit of an SMS for operations within a rapidly growing industry. FAA therefore proposes in § 108.560(a) that certificated operations under part 108 would need to develop, implement, and keep current an SMS that meets the requirements of 14 CFR part 5.¹¹²

In part 5, FAA has outlined the SMS process to ensure that the four major components (safety policy, safety risk management, safety assurance, and safety promotion) are included and developed in such a manner to ensure that the SMS is fully functioning. FAA proposes that a part 108 certificated operator's SMS would need to meet the requirements of part 5 in order to

incorporate the benefits of SMS into part 108 operations.

FAA proposes an exception to certain part 5 requirements in § 108.560(b) for certificate holders with a sole individual performing all necessary operations functions under part 108. Those certificate holders would not be required to comply with the following provisions of part 5: §§ 5.21(a)(4), 5.21(a)(5), 5.21(c), 5.23(a)(2), 5.23(a)(3), 5.23(b), 5.25(b)(3), 5.25(c), 5.27(a), 5.27(b), 5.71(a)(7), 5.93, and 5.97(d). As discussed in the Safety Management System final rule (89 FR 33068), these particular regulations would be impractical or illogical for single pilot operations when implementing SMS.

Per proposed § 108.560(c), operators would be required to make available to FAA, upon request, all necessary information and data that demonstrates that the operator has an SMS that meets the requirements set forth in part 5. This would ensure that FAA has enough information to verify that an operator has a sufficient SMS.

8. Package Delivery Operations (§ 108.565)

In § 108.565, FAA proposes regulations for package delivery certification, as well as requirements for interstate package delivery operations. Currently, FAA approves package delivery operations with UA through existing part 135 rules, as these are currently the only regulations pertaining to transportation of property with smaller aircraft. However, part 135 does not address UA operations. In developing this rulemaking, FAA is creating a pathway specific to UAS operations, with the appropriately tailored requirements for UAS package delivery. For existing package delivery operations, FAA exempts package delivery operators from numerous part 135, 61, and 91 regulations, as these parts were originally developed for manned aircraft. FAA therefore proposes in part 108 a series of regulations that will allow package delivery operations in the NAS without requiring exemptions.

FAA proposes in § 108.565(b) that package delivery operations conducted with an operating certificate would be required to ensure that the payload in, on, or suspended from the UA is properly secured and does not adversely affect the flight characteristics or controllability of the UA. An unsecured payload could shift or disconnect partially, interfering with UA devices or flight characteristics, which may cause shifts in center of gravity and controllability issues. In addition, an unsecured payload could disconnect

¹¹⁰ FAA Order 8000.369C, *Safety Management System*.

¹¹¹ *Safety Management Systems for Domestic, Flag, and Supplemental Operations Certificate Holders* final rule, 80 FR 1307 (Jan. 8, 2016).

¹¹² Organizations with a sole individual performing all necessary operations functions in the conduct and execution related to the safe operation of the unmanned aircraft are not required to comply with the following provisions of 14 CFR part 5: §§ 5.21(a)(4), 5.21(a)(5), 5.21(c), 5.23(a)(2), 5.23(a)(3), 5.23(b), 5.25(b)(3), 5.25(c), 5.27(a), 5.27(b), 5.71(a)(7), 5.93, and 5.97(d).

fully, causing hazard to persons or property on the ground as it releases from the UA. To avoid any hazard to the UA's controllability and flight characteristics and to persons and property on the ground, FAA proposes in § 108.565(b) that operators would be required to ensure payloads are properly secured and do not adversely affect the flight characteristics or controllability of the UA. Generally, this is expected to be specified by the UA manufacturer as the manufacturer is the systems designer and testing of the payload securing device would be completed by the manufacturer. The payload system should be addressed in the manufacturer's operating instructions for each UAS receiving an airworthiness acceptance as further described in section X of this preamble.

In § 108.565(c), FAA proposes that UA for package delivery with an operating certificate must not have a combined total weight, including anything attached or carried by the aircraft, of greater than 110 pounds. With certificated operations, operators may conduct services over all population densities, as further described in section V.H. One of the main concerns with any UA operations is protection of persons on the ground and reduction of ground risk. In conducting package delivery operations, the UA will most likely be operating within the higher population density area for longer periods of time, as the delivery requires slowing the UA, descending, and making the delivery, then climbing back to altitude and transitioning back to cruise flight for a return to base. To mitigate the associated risk to persons on the ground, FAA proposes to limit the weight of the UA to 110 pounds for certificated package delivery operations. Should a loss of flight occur during certificated package delivery operations, FAA anticipates that a 110-pound maximum weight UA would provide for an acceptable level of risk with ground contact. FAA's experience with granting exemptions for UAS weighing above 55 pounds for package delivery operations¹¹³ demonstrates that these operations, within the appropriate operational framework and mitigations, can be safely conducted. In addition, the design requirements proposed in this preamble would mitigate additional risks, particularly related to loss of control in flight or unplanned landings. FAA anticipates package delivery aircraft may increase in size and weight

if there are rapid advances in industry concepts. However, the operational profile of package delivery contains aircraft that are routinely operating into uncontrolled delivery locations at altitudes very close to the ground and over populated areas. As such, the risk profile is very different compared to other types of part 108 operations. Therefore, FAA is proposing to place higher restrictions on the size of aircraft performing these types of operations. The 110-pound maximum limit is similar to current package delivery UA operations that are primarily conducted with UA at or under 110 pounds under existing exemptions.

Further, FAA proposes in § 108.565(d) that operators must ensure that the delivery area is free of any obstructions that could pose a hazard. Since operations will be conducted BVLOS and in close proximity to customers and other people on the ground, operators must ensure safe operations at the delivery site. FAA anticipates that this may be done by use of onboard cameras, in-person site visits, or other technology with the capability of ensuring safe entry and exit to the area. By ensuring the delivery area is free of any obstructions or hazards, FAA can further reduce risk to persons and property during delivery.

Additionally, in order to continue to protect persons on the ground within the delivery area, FAA proposes in § 108.565(e) that the operator must ensure each delivery customer is provided information about the delivery method that minimizes the risk of injury. Though this proposed rule includes mitigations to ensure safety of the flight and operational area, FAA finds it appropriate to also ensure that customers are aware of the dangers and hazards associated with an active delivery. FAA anticipates that operators may provide this information electronically or by other acceptable means that operators may convey to the customer.

FAA proposes in § 108.565(f), that prior to conducting package delivery operations under a part 108 certificate, the operator must contact the TSA and request and obtain a limited security program equivalent with 49 CFR 1544.101(g). FAA finds it necessary to levy this requirement given the national security implications arising from UAS package delivery operations. FAA only proposes to apply this requirement to package delivery operations at this time and notes TSA has requested comment on imposing additional security requirements on other part 108 operations. FAA may adjust this

requirement as appropriate to conform to applicable security requirements.

TSA has joined this proposed rulemaking to ensure that TSA's security requirements are appropriately applied to UAS operations that would be permitted or certificated by the FAA under part 108. TSA's proposed provisions are limited to the addition of definitions relevant to UAS operations in 49 CFR part 1540 and two revisions to 49 CFR part 1544 to clarify that these operations are within the scope of its requirements. In addition, the FAA is proposing including in 14 CFR 108.565(f) a requirement for operators to ensure they have obtained a security program from TSA before conducting UAS operations under this proposed rule. Under this requirement, operators are advised that FAA approval is not sufficient. TSA approval is also required.

These proposed requirements are intended to avoid any unintended consequences regarding the security of UAS operations under proposed part 108, consistent with TSA's responsibility for aviation security and the need to ensure the security of UAS operations as recognized in both E.O. 14305 and E.O. 14307. The types of security risks UAS operations pose to the public are described in E.O. 14305, which states that "criminals, terrorists, and hostile foreign actors have intensified their weaponization of these technologies, creating new and serious threats to our homeland." Specifically, the E.O. notes that "[d]rug cartels use UAS to smuggle fentanyl across our borders, deliver contraband into prisons, surveil law enforcement, and otherwise endanger the public."

The proposed text would ensure that the decision to regulate these UAS operations under part 108 does not inadvertently create a security gap under TSA regulations.¹¹⁴ Under this proposal, which has been developed in consultation with TSA, TSA will continue to ensure the security of the national airspace by imposing appropriate security requirements. The proposed text would require UAS operators authorized under part 108 to request a TSA security program. The revisions to TSA's regulation would permit TSA to issue a limited program to these operations under 49 CFR

¹¹⁴ In the absence of the text, this proposed rule might have created uncertainty regarding the applicability of 49 CFR part 1544, potentially resulting in a separate TSA rulemaking proceeding while this more comprehensive rulemaking remained pending. Having concluded that an additional concurrent rulemaking could result in confusion and uncertainty, the agencies decided to work together on this limited issue as the most appropriate path forward.

¹¹³ FAA Exemption No. 18601A (Sept. 26, 2022), available at www.regulations.gov/docket/FAA-2019-0573.

1544.101(g). The proposal is consistent with TSA's regulatory structure, which has long required certain operators regulated under part 119 to request, and maintain compliance with, a TSA-approved security program before conducting operations (both domestic and foreign carriers operating to/through/from the United States).

The proposed text would clarify that under applicable TSA regulations, UAS operators must seek a "limited program" under 49 CFR 1544.101(g). The general requirements for a security program are listed in TSA's regulations at 49 CFR part 1544. TSA develops standard security programs that meet these requirements. Operators can request amendments to the standard security program to address specific operational issues, and TSA can approve these amendments to the extent they maintain the required level of security. In addition, TSA has broad statutory authority to proactively grant exemptions from applicable requirements.¹¹⁵

TSA is considering additional changes to security program applicability and requirements in a final rule. While some operations will not require any additional security requirements beyond vetting, in a final rule TSA may expand the applicability of security program requirements to cover more than package delivery operations. TSA is requesting comment on the scope of operations for which a limited security programs should be required, in addition to the requirement for vetting. For instance, TSA could choose to regulate all permitted and certificated BVLOS UAS operations, with limited exceptions for certain non-package delivery operations based on (1) UAS size; (2) intended use of the UAS; (3) capabilities of the UAS, including payload; (4) location of operation centers and range of UAS; (5) planned areas of operation; and (6) fleet size. Similarly, recreational operations permitted under part 108 may be appropriate for an exemption from such requirements given the size, weight, and range limits associated with those operations.

TSA notes that an expanded security program applicability in the final rule could include any of a range of security program requirements, such as (for instance) requirements to appoint a Security Coordinator and to comply with security directives and emergency amendments to security programs. TSA anticipates developing model language appropriate to the different types of operations that will be permitted by the

FAA under part 108. For example, under the existing regulatory requirements in 49 CFR 1544.101(g), TSA could require the following security measures as applicable:

- Preventing or deterring the carriage of any unauthorized weapons, explosives, incendiaries, and other destructive devices, items, or substances.
- Controlling cargo that it accepts for transport on an aircraft in a manner that:
 - Prevents the carriage of any explosive, incendiary, and other destructive substance or item in cargo onboard an aircraft.
 - Prevents unescorted access by persons other than an authorized aircraft operator employee or agent, or persons authorized by the airport operator or host government.
- Either verifying that the chain of custody measures for screened cargo are intact before loading such cargo on aircraft or ensuring that the cargo is re-screened in accordance with TSA's requirements.
- Designating a Security Coordinator at the corporate level that must serve as the operator's primary contact for security-related activities and communications with TSA.
- Implementing control functions with respect to each aircraft operation sufficient to:
 - Prevent unauthorized access to areas controlled by the aircraft operator under an exclusive area agreement in accordance with 49 CFR 1542.111 of this chapter.
 - Prevent unauthorized access to each aircraft.
 - Conduct a security inspection of each aircraft before placing it into operations if access has not been controlled in accordance with the aircraft operator security program and as otherwise required in the security program.
 - Prevent unauthorized access to the operational area of the aircraft while loading or unloading cargo.
- Training individuals with security-related duties.

Such requirements would also ensure UAS operators could avail themselves of existing procedures in TSA's regulations to modify their programs to appropriately address their operational environment while maintaining the level of security determined necessary by TSA.¹¹⁶

TSA anticipates that many of the larger operators that will seek approval to conduct part 108 operations may already be subject to a TSA security program. TSA would work with these

operators to determine whether they need a new program or could modify their TSA-approved program. TSA has also historically adapted its requirements to meet the needs of smaller and seasonal operators and would continue to apply this flexibility for UAS operations approved under part 108, while also ensuring the security risks identified above are being appropriately addressed. TSA and FAA request comments on the proposed text and will work jointly on adjudicating comments relevant to TSA's proposed text in this NPRM. Because FAA is held to the final rule deadline established by E.O. 14307, TSA will have to meet that deadline as well in co-adjudicating the security-related comments and developing its relevant final rule sections.

Per the discussion in the paragraph regarding package delivery operations in section VIII.A.3, the operator may be considered an "air carrier" engaged in "air transportation" and may require economic authority from the Office of the Secretary. See section VIII.A.3 for more discussions on this topic.

9. Hazardous Materials (§ 108.570)

In § 108.570, FAA proposes regulations to enable the safe transportation of hazardous materials under part 108 for certificated package delivery operations.¹¹⁷ Currently, the primary means for UAS operators to transport packages containing hazardous materials in air commerce is as a part 135 air carrier. Part 135 air carriers must have an FAA-approved hazardous materials training program and an FAA-accepted hazardous materials manual. FAA issues each operator an Operations Specification permitting or prohibiting the acceptance, handling, and transportation of hazardous materials in commerce.¹¹⁸ These requirements apply regardless of whether a certificate holder transports hazardous materials or does not transport hazardous materials. Hazardous materials requirements are function-based and scale to the scope and complexity of a certificate holder's operation.

Hazardous materials training requirements apply equally in UAS and non-UAS operations. Hazardous materials training requirements focus on

¹¹⁷ This rulemaking uses the definition of hazardous material as defined in 49 U.S.C. 5102(2) and 49 CFR 171.8.

¹¹⁸ See 14 CFR part 135 subpart K (training program requirements) and 14 CFR 119.49(c)(12) (Operations Specifications). Parts 135.21 and 135.23 establish the requirements for hazardous materials manuals, including the exception that certificate holders who use only one pilot are not required to have a hazardous materials manual.

¹¹⁵ See 49 U.S.C. 114(q).

¹¹⁶ See, e.g. 49 CFR 1544.101.

ground-based job functions associated with any item for transport on board an aircraft, as well as the personnel who perform or directly supervise these functions. These job functions include acceptance, rejection, handling, storage incidental to transport, packaging of company material (COMAT), and loading. Recurrent training would be required every two years.

In 2017, FAA published AC 121–40, *14 CFR part 121 and Part 135 Dangerous Goods Transportation Operations*, to help support the hazardous materials manual and training program. Ultimately, AC 121–40 promotes the safe and efficient transportation of hazardous materials. UAS applicants have successfully used this AC during the part 135 precertification process and FAA continues to encourage UAS applicants and operators, including those in package delivery operations subject to this proposed rulemaking, to use this AC.

To account for novel UAS-related considerations associated with certificate holder systems and the transportation of hazardous materials, FAA requests UAS certificate holder applicants seeking a will-carry authorization to conduct a safety risk assessment (SRA). An SRA, which is part of a SMS program, is a systematic process that involves identifying, analyzing, and controlling hazards and risks.

The SRA determines what the potential risk mitigations should be to eliminate or control identified risk and promotes employee awareness regarding hazards, aids in identifying personnel and property at risk, determines existing control measures and their adequacy to prevent injuries, and prioritizes hazards and their control measures. An SRA ensures that the certificate holder properly assesses the additional risks that may be present with these UAS operations and that they develop appropriate risk mitigations to reduce the risk to an acceptable level.

Ultimately, when issuing an operations specification for the carriage of hazardous materials, FAA limits UAS certificate holders to the types and amounts of hazardous materials specified in their accepted hazardous materials manual and approved hazardous materials training program. A UAS certificate holder may request a modification to the types and quantities of hazardous materials they are authorized to transport by submitting an updated hazardous materials training program and manual to receive an updated operations specification. This is different than a will-carry non-UAS

certificate holders, as their operations specification only identify that they are authorized to accept, handle, and transport hazardous materials; it is not limited to a list of types and quantity of hazardous materials. Thus, in this preamble, FAA proposes that the authorization for a will-carry package delivery operation be aligned with current UAS certificate holder operations specifications in that the authorization will be limited to the type and quantity of hazardous materials that an operator can accept, handle, and transport.

Any person¹¹⁹ (including a UAS certificate holder) who offers or transports hazardous materials in commerce must comply with the Hazardous Materials Regulations (HMR).¹²⁰ This includes requirements such as training, loading, hazardous communication, packaging, and segregation. FAA notes that the HMR were originally promulgated for hazardous materials transportation inside of cargo compartments, typically on type-certificated aircraft. Therefore, the HMR does not necessarily account for the unique hazards associated with UAS transportation.¹²¹ FAA believes that this rulemaking and its certification and operational standards will be relevant to future HMR amendments specific to UAS.

FAA notes that section 933 of the 2024 FAA Reauthorization Act requires the Secretary to use a risk-based approach to establish the operational requirements, standards, or special permits necessary to approve or authorize an air carrier to transport hazardous materials by unmanned

aircraft systems providing common carriage under part 135 or under successor authorities, as applicable, based on the weight, amount, and type of hazardous material being transported and the characteristics of the operations subject to such requirements, standards, or special purposes UAS.

In addition, paragraph (d) of section 933 requires the Secretary to make necessary conforming amendments to the HMR under parts 173 and 175 to implement this risk-based approach to the carriage of hazardous materials via UAS by air carriers. Any comments to this NPRM involving revisions to the HMR, would have to be considered by PHMSA in a separate rulemaking. FAA seeks comments on the types of operational requirements and standards that could facilitate air carriers transporting hazardous materials by UAS in a risk-mitigated manner.

Currently, most UAS certificate holders transport small packages. Most hazardous materials transported by these certificate holders are excepted from HMR requirements, under certain conditions, due to their perceived lower risk, especially when transported as a single consignment over a relatively short distance from certificate holder ground personnel. UAS operators who cannot meet the HMR requirements must apply for and obtain a special permit from PHMSA in accordance with 49 CFR part 107, subpart B. Special permit applications should demonstrate an equivalent level of safety to the requirements in the HMR for which the applicant is seeking relief. This is also true if a UAS operator wishes to obtain relief from other HMR requirements, such as shipping papers, pilot notifications, markings, labels, and packaging requirements. Currently, FAA is unaware of any special permits seeking relief from the HMR to better enable hazardous materials transport onboard UAS.

Prior to the issuance of the first part 135 UAS certificate holder, 14 CFR part 133 certificate holders were the only operators in the NAS transporting cargo, including hazardous materials, outside an airframe. When rotorcraft transport hazardous materials as external loads, the HMR requires the certificate holder to apply for and obtain an approval¹²² (i.e., a special permit) from the PHMSA Associate Administrator. In addition, part 133 certificate holders must also produce a plan for approval by their Principal Operations Inspector (POI) to mitigate the hazards created by such cargo. This requirement is supported by a 2009 legal interpretation, FAA's Office

¹¹⁹ The HMR defines a person in 49 CFR 171.8 as “an individual, corporation, company, association, firm, partnership, society, joint stock company; or a government, Indian Tribe, or authority of a government or Tribe, that offers a hazardous material for transportation in commerce, transports a hazardous material to support a commercial enterprise, or designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce. This term does not include the United States Postal Service or, for purposes of 49 U.S.C. 5123 and 5124, a department, agency, or instrumentality of the government.”

¹²⁰ 49 CFR parts 171–180.

¹²¹ For example, the HMR generally require a hazardous materials package to be designed, constructed, maintained, filled, its contents so limited, and closed, so that under conditions normally incident to transportation there will be no identifiable release of hazardous materials into the environment, the effectiveness of the package will not be substantially reduced, and there will be no hazardous materials adhering to the outside of the package during transport; however, the conditions normally incident to transportation may not account for the unique characteristics of UAS transportation.

¹²² 49 CFR 175.9(a).

of the Chief Counsel stated that “the transport of hazardous materials, especially forbidden hazardous materials, in external load operations creates ‘a hazard to persons or property on the surface.’”

Having an additional emphasis on safety evaluation is important when hazardous materials are transported outside of an airframe. However, FAA does not propose a similar mechanism in this preamble. Instead, as discussed elsewhere in this preamble, similar safety components can be accomplished with an SRA acceptable to the Administrator that provides, but does not require, coordination with another agency. This ultimately will make the authorization process more expeditious and less burdensome on the part 108 package delivery operator.

Lastly, FAA notes that part 133 certificate holders are only authorized to drop cargo from above ground level in the event of an emergency; currently, there are no authorized transportation modes that allow dropping cargo from above ground level as a part of regular operations. As discussed elsewhere in this preamble, this is one reason why FAA is proposing to require a specific authorization when a will-carry part 108 package delivery operator wishes to deliver or unload hazardous materials by releasing or dropping such materials from above ground level.

With respect to small UAS operations,¹²³ part 107 was promulgated in 2016; however, part 107 prohibits the carriage of hazardous materials via small UAS. This prohibition is not subject to waiver. In the part 107 final rule, FAA stated “that the carriage of hazardous materials poses a higher level of risk than the carriage of other types of property. . . [and] the transport of hazardous materials, especially forbidden hazardous materials, in external load operations creates a hazard to persons or property in the surface.”¹²⁴ Therefore, FAA did not authorize the carriage of hazardous materials under part 107 because part 107 did not include airworthiness requirements, and part 107 operators are not required to have hazardous materials training programs or manuals. Part 107 operators who wish to transport hazardous materials must petition FAA for a regulatory exemption to § 107.36.

Working from the baseline of the part 107 prohibition on the carriage of

hazardous materials and part 135 air carrier certification requirements, the BVLOS ARC issued two hazardous materials-specific recommendations in their March 2022 Final Report. These recommendations include allowing UAS to transport hazardous materials and including an exception (for specific quantity and types) to all applicable HMR requirements. The rationale for this recommendation specified that the exception could match the types and quantities of hazardous materials provided in 49 CFR 175.10(a), which applies to hazardous materials carried by passengers or crewmembers in their carry on or checked baggage. However, FAA does not have the regulatory authority to revise the HMR; this authority is delegated to PHMSA.

FAA acknowledges that the HMR have mostly been developed for traditional aircraft operations. The transportation of hazardous materials has almost exclusively been conducted in cargo compartments with well-defined capabilities and almost all passengers and crew fly on type certificated aircraft.¹²⁵ Similarly, 14 CFR requires that trained crewmembers are onboard aircraft to detect, assess, and mitigate emergencies caused or aggravated by hazardous materials. This involves using onboard detection systems and what crewmembers, passengers, or supernumeraries see, hear, or smell onboard an aircraft. However, not all UAS are expected to be able to as readily detect or mitigate hazardous materials-related events, which is why it is necessary to ensure that any hazardous materials operations by UAS provide an equivalent level of safety as compared to transportation by traditional aircraft.

The HMR requirements were originally designed for manned operations. Therefore, UAS capabilities and operator-specific mitigations are relevant to the overall risk characterization of part 108 hazardous materials transport. This is especially relevant given the wide array of operating environments and the means of transport and delivery currently used in UAS operations. The variety of these environments and means of transport/delivery are only expected to increase with part 108 operations. With payload capacity expected to increase significantly under part 108 and the types of hazardous materials also expected to grow beyond common consumer items, FAA does not believe it is in the interest of regulatory

flexibility or safety to provide specific hazardous material types or quantity allowances for UAS operations. Instead, as noted elsewhere in this preamble, FAA believes that an operation-specific analysis should be conducted by the operator (via an SRA acceptable to the Administrator) to ensure that all appropriate hazards are considered and addressed to ensure the safe transportation of hazardous materials in commerce. However, FAA is open to future regulatory development and industry partnerships to develop broader-based performance-based approaches proportionate to the risk.

i. FAA Authorization To Permit or Prohibit Accepting, Handling, and Transporting of Hazardous Materials

FAA proposes to enable part 108 hazardous materials transportation in a safe and efficient manner. Currently, FAA lacks sufficient data to conclude what types of hazardous materials should be authorized for package delivery transportation for all part 108 operations. As such, the most efficient and effective way to authorize this transportation is to individually assess the risks for the types and amounts of hazardous materials that each part 108 certificated operator wants to transport in the context of their overall operation and system design. Thus, as detailed in this preamble, FAA proposes that when a part 108 package delivery certificated operator wants to transport hazardous materials, they will be able to obtain a will-carry authorization by having an accepted hazardous materials manual, approved hazardous materials training program, and SRA acceptable to the Administrator. The specific proposal is detailed further in this preamble.

As noted in the aircraft airworthiness section, proposed part 108 aircraft would not be type-certificated. Meanwhile, the HMR are promulgated on the understanding that hazardous materials, in air mode, are transported on type-certificated aircraft intended to protect crew, passengers, and supernumeraries onboard. If there are releases of hazardous materials onboard type certificated aircraft, those releases are usually confined to aircraft cargo compartments; trained crew or other ground personnel would mitigate the release.

Proposed part 108, as an enabling regulation, is intended to establish a safety framework that can be tailored to any individual part 108 package delivery certificated operation—from small and simple to large and complex.

FAA proposes enabling regulations to allow for the transportation of hazardous materials under part 108 for

¹²³ 14 CFR 1.1 defines a small UAS as an unmanned aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft.

¹²⁴ 81 FR 42076.

¹²⁵ See 14 CFR 25.855 and 25.857 for current cargo and baggage compartment requirements on transport category aircraft.

package delivery certificated operations. Hazardous materials cannot be authorized merely as a function of hazard class, division, packaging group, or package quantity, especially as part 108 proposes to utilize non-type certificated UAS and given the wide array of aircraft, operators, and operations within the proposed part 108 domain. Therefore, these proposed enabling regulations scale to all part 108 package delivery service certificated operators.

FAA has previously stated that a “certificate holder’s hazardous materials program constitutes the foundation for safely transporting dangerous goods by air.”¹²⁶ Current hazardous materials requirements, including operations specification, hazardous materials manuals, and hazardous materials training programs, have been proven to readily scale to all types of operators, including UAS certificate holders. These requirements are an efficient means of ensuring personnel are trained in the functions they are performing or directly supervising; therefore, FAA proposes similar requirements for part 108 certificate holders transporting hazardous materials in package delivery certificated operations.

Proposed § 108.570 regulates the transport of hazardous materials. Package delivery operators, regardless of whether they transport hazardous materials, must comply with the requirements by creating safety policies, implementing procedures and programs for personnel training, job function assignments and management roles, handling and storage of hazardous materials, and recordkeeping. To ensure an adequate level of safety by implementing requirements similar to current part 135, FAA is taking an approach based on two transport categories of hazardous materials: will-carry and will-not-carry. Part 108 package delivery certificated operators, regardless of their will or will-not carry status, will need to be able to identify hazardous materials based on hazard communication information and recognize that they cannot transport hazardous materials without proper FAA authorization. Therefore, FAA proposes that both will-carry and will-not carry operators would need accepted hazardous materials procedures and information (often colloquially referred to as an accepted hazardous materials manual) and an approved hazardous materials training program. However, will-carry operations

would also need an SRA acceptable to the Administrator to address the risk associated with the transportation of hazardous materials.

These proposed requirements increase the level of safety to enable the safe transportation of hazardous materials. FAA notes that the type and amount of hazardous materials authorized will be specific to the aircraft, operation, operating environment, and other relevant considerations. Therefore, FAA is not proposing a blanket prohibition on the carriage of hazardous materials analogous to § 107.36 for certificated package delivery operators. However, in the future, FAA may propose data-informed, risk-based regulatory carve-outs for part 108 operators regardless of their aircraft, operation, or operating environment. As new operations are established and more data is collected, such an approach may be appropriate. As noted above, FAA is also open to supporting the development of performance-based standards. Currently, with the small numbers of UAS package delivery operators and operations, limited data, and many unique factors relevant to each operator, FAA believes that proposed requirements serve as an efficient means to enable the transport of hazardous materials.

FAA proposes in § 108.570(a) that certificated package delivery operators seeking authorization to transport packages in air commerce would need to obtain a will-carry or will-not-carry authorization from FAA, which permits or prohibits the accepting, handling, and transporting of hazardous materials. All required documents must be submitted to FAA when obtaining the authorization. Specifically, FAA proposes that to obtain a will-carry authorization, a certificated package delivery operator must have an accepted hazardous material procedures and instructions, an approved hazardous materials training program, and an SRA acceptable to the Administrator. To obtain a will-not-carry authorization, a certificated package delivery operator must have an approved hazardous materials training program and an accepted hazardous materials manual. When issuing the authorization, FAA will review the submitted materials to ensure the applicant achieves regulatory compliance, has properly assessed the unique UAS-related risks associated with their operations, and has developed appropriate risk mitigations to reduce the risk to an acceptable level.

FAA believes that the hazardous materials manual, training program, and SRA are critical to designing a safety system that supports the safe transportation of hazardous materials in

the NAS. Hazardous materials manual and training program requirements are established requirements for current part 135 operations. Transportation of hazardous materials under proposed part 108 certificated package delivery operations are similar to part 135 operations. On-ground hazardous materials requirements apply consistently, no matter the type of transport vehicle; thus, as detailed in this preamble, FAA has concluded that the hazardous materials manual and training program requirements should also apply to part 108 certificated package delivery operations. However, part 108 UA differ from traditional part 135 aircraft, with additional risks to carrying hazardous materials because of UAS operations. Therefore, FAA is proposing that an additional analysis (*i.e.*, SRA) must be conducted to ensure that the operations account for new hazards and risks to a specific operation. These proposed requirements are further detailed below.

Lastly, as noted in the discussion of HMR requirements, all operators who transport hazardous materials in commerce are subject to the HMR. While a will-carry authorization allows hazardous materials to be accepted, handled, and transported by the operator, the regulatory requirements for these functions are detailed in the HMR; the operator must ensure they also comply with these requirements. For example, 49 CFR 175.30 of the HMR requires the operators to inspect shipments. However, if an operator cannot comply with any of the HMR requirements, they may apply for and obtain a Special Permit from PHMSA (see part 107, subpart B); the will-carry authorization does not replace or exempt an operator from obtaining a special permit from PHMSA when the operator cannot perform any function not authorized in the HMR.

ii. Approved Hazardous Materials Training Program

FAA proposes that certificated package delivery operators must have an approved hazardous materials training program. This proposed requirement is like the current approved hazardous materials training programs for part 135 certificate holders.

In the final rule that established part 135 hazardous materials training program requirements (2120–AG75; 70 FR 58795), FAA stated:

A hazardous materials training requirement is a critical step toward reducing the number of improperly prepared or undeclared shipments. These requirements establish mandatory hazardous materials training programs

¹²⁶ FAA, AC 121–40, 14 CFR part 121 and part 135 *Dangerous Goods Transportation Operations* (Dec. 13, 2017).

with uniform standards.¹²⁷ Hazardous materials training programs will ensure that company personnel are trained to comply with the requirements of the HMR, which they perform or directly supervise.¹²⁸ In addition, each certificate holder must train each crewmember and person performing or directly supervising any of the following job functions involving any item for transport on board an aircraft:¹²⁹

- Acceptance;
- Rejection;
- Handling;
- Storage incidental to transport;
- Packaging of company materials; or Loading.

Ultimately, these requirements ensure that personnel who are not authorized to transport hazardous materials do not inadvertently do so. Therefore, the training program for will-not-carry certificated package delivery operators ensures that personnel are trained to recognize hazardous materials packages, refuse them for acceptance, submit incident reports, and submit discrepancy reports, as appropriate. There is a significant safety benefit to the overall NAS in ensuring this training is offered effectively. Hazardous materials, including COMAT, can be offered for transportation by the UAS operator, and operator personnel must comply with the appropriate regulations and operating procedures. These training requirements also apply to will-carry certificated package delivery operators and ensure that their personnel know the appropriate requirements for their operations (*e.g.*, what packages to accept or reject). This means that the operator can scale the overall scope of the training requirement based on their hazardous materials operations.

Once undeclared hazardous materials are offered into transportation, it can be very difficult for downstream operators to know there may be improperly offered hazardous materials in their system. FAA notes that the HMR requires hazardous materials training in accordance with 49 CFR part 172, subpart H; however, this training only applies to hazmat employees.¹³⁰

Therefore, will-not-carry certificated package delivery operations personnel are not subject to the HMR training requirements. However, they are subject to FAA-approved hazardous materials training requirements. In addition, FAA continues to believe that the purpose of hazardous materials training, as described, provides a safety benefit. For these reasons, FAA proposes that certificated package delivery operators have an approved hazardous materials training program.

In addition, FAA also proposes various exceptions to certain scenarios for the hazardous materials training requirement, similar to those authorized for part 135 certificate holders, to ensure that part 108 certificated package delivery operators are afforded the same regulatory flexibility as part 135 certificate holders. This includes (1) flexibility in the period between a person's hire date or start of a new job function that requires training and when training is completed, (2) allowance for differences training, and (3) flexibility in when recurrent training must be completed.

FAA proposes to allow a person to perform a § 108.570(b) job function between their hire date or start of a related job function and completion of training for that function under the supervision of another trained employee. FAA recognizes that a certain degree of flexibility is required to ensure continuous package delivery operations of hazardous materials between when a person is hired or starts a related job function and when they complete FAA-approved training program. This period can be as long as 30 days. Therefore, in § 108.570(h), FAA proposes to allow a person to perform a § 108.570(b) job function under the direct visual supervision of a person who is authorized by the operator to supervise that person and who has successfully completed the operator's FAA-approved initial or recurrent training program within the past 24 months. This exception is only applicable from their hire date or start of a new job function up until 30 days, when training must be completed. In addition, in § 108.570(i),

FAA proposes that any operator using this exception must retain a specific record for that person taking the exception.

In § 108.570(j), FAA proposes to allow an operator who uses or assigns a person to perform or directly supervise one of the § 108.570(b) job functions to only train that person in its own policies and procedures regarding those job functions when that person also performs or directly supervises the same job function for another package delivery operator, part 121 certificate holder, or part 135 certificate holder. This exception is sometimes also referred to as "hazardous materials differences training." This exception is only authorized when (1) the operator receives written verification that the person has satisfactorily completed hazardous materials training for the specific job function and (2) the package delivery operator, part 121 certificate holder, or part 135 certificate holder who trained the person has the same authorization or equivalent operations specifications regarding the acceptance, handling, and transport of hazardous materials as the operator using this exception. FAA proposes this exception because, without this exception, a person who performs a similar job function for multiple operators or who changes employers would be required to complete hazardous materials training for each operator. FAA acknowledges that an operator's FAA-approved training program may be similar to another operator's FAA-approved training program when the two operators are authorized to conduct similar hazardous materials operations (*i.e.*, will-carry operator compared to another will-carry operator). Therefore, by proposing this exception to allow a part 108 package delivery operator to provide only differences training when the person has successfully completed a similar FAA-approved hazardous materials training program, FAA eliminates a potentially overly burdensome requirement.

Lastly, in proposed § 108.570(k), FAA provides some flexibility in when recurrent training is required. Recurrent training would be required every 24 months. However, to allow flexibility in operations FAA proposes that if the training is completed in the month before or after recurrent training is required, then the training is considered complete in the month that training was originally due. However, if a person completes recurrent training earlier than the month before it is due, then the earlier month becomes the new training anniversary month.

¹²⁷ 70 FR 58799.

¹²⁸ 70 FR 58813.

¹²⁹ 70 FR 58797.

¹³⁰ 49 CFR 171.8 defines a hazmat employee as a person who is (i) employed on a full-time, part-time, or temporary basis by a hazmat employer and who in the course of such full-time, part-time or temporary employment directly affects hazardous materials transportation safety; (ii) self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous materials in commerce who in the course of such self-employment directly affects hazardous materials transportation safety; (iii) a railroad signalman; or

(iv) a railroad maintenance-of-way employee. Additionally, this term includes an individual, employed on a full-time, part-time, or temporary basis by a hazmat employer, or who is self-employed, who during the course of employment: (i) loads, unloads, or handles hazardous materials; (ii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce; (iii) prepares hazardous materials for transportation; (iv) is responsible for safety of transporting hazardous materials; and (v) operates a vehicle used to transport hazardous materials.

iii. Accepted Hazardous Materials Procedures and Information

FAA proposes that certificated package delivery operators transporting packages must have accepted hazardous materials procedures and information (often referred to as an accepted hazardous materials manual). This proposed requirement is like the current accepted hazardous materials manuals for part 135 certificate holders.

As with the approved hazardous materials training program, FAA has concluded that the accepted hazardous materials procedures and information requirements have proven to ensure that all operator personnel understand and follow procedures to ensure appropriate compliance with hazardous materials acceptance (*i.e.*, that will-carry operators appropriately accept hazardous materials, and that will-not-carry operators reject hazardous materials). Therefore, FAA proposes that these requirements apply to certificated package delivery operators.

FAA notes that certificated package delivery operators may have a combined hazardous materials training program and hazardous materials procedures and information. Likewise, the hazardous materials procedures and information and hazardous materials training program, or portions thereof, may be integrated into General Operations Manuals, General Maintenance Manuals, or other relevant manuals. Furthermore, FAA notes that the procedures and information requirement does not apply to special aircraft operations, such as agricultural operations, transporting hazardous materials in accordance with 49 CFR 175.9(b).¹³¹

iv. SRA Acceptable to the Administrator

FAA is also proposing that certificated package delivery operators transporting hazardous materials (*i.e.*, will-carry operators) submit an SRA acceptable to the Administrator as a part of their authorization request. This SRA would need to be inclusive of risks to people and property on the ground resulting from the carriage of hazardous materials.

An SRA is not a requirement for part 135 operators. However, because of the unique and novel characteristics of part 108 UAS transportation, the proposed hazardous materials training program

and hazardous materials procedures and information requirements, coupled with HMR compliance, may not be sufficient to ensure that there is an acceptable level of safety in the NAS or for people and property on the ground. For example, shippers may not be aware of the transportation conditions associated with UAS package delivery operations—or even that their package will be transported by UAS. Conditions normally associated with the traditional air cargo environment may not be normal compared to individual operations in the UAS domain. A package attached to the outside of a UAS airframe can be subject to weather and atmospheric conditions such as precipitation, temperature, humidity, and wind/airflow not necessarily experienced inside an aircraft, unit load device, warehouse, or sort facility.

An SRA would account for many of these gaps because the certificated package delivery operator will consider the risks associated with hazardous materials transportation in their operations. In addition, the SRA serves as a critical link between the 14 CFR and 49 CFR regulatory frameworks and the certificated package delivery operator's unique operating environment. Therefore, FAA proposes to require certificated package delivery operators transporting hazardous materials to submit an SRA acceptable to FAA when seeking a will-carry authorization.

The SRA should properly assess the unique UAS-related risks associated with the certificated package delivery hazardous materials operations and that they have developed appropriate risk mitigations to reduce the risk to an acceptable level. Furthermore, an SRA should have appropriate technical and scientific analysis to explain and address these risks.

FAA notes that certificated package delivery operations will vary depending on the types and quantities of hazardous materials being transported per flight and operations. In addition, FAA lacks the data to know the impact of different quantities and types of hazardous materials on various aircraft systems. Therefore, it is imperative that the operator, who knows their system and operations the best, conduct the appropriate analysis to understand the risks they are introducing into the NAS. In many cases, the safety of the operation will depend on what the UAS is flying over, supplemental aircraft or operator carrier mitigations, and the nature of the hazardous materials involved. For example, aircraft systems (*e.g.*, parachutes), operational considerations (*e.g.*, routing relative to

people and property on the ground), localized emergency response capability, the nature and quantity of hazardous materials onboard, and novel mitigations to contain hazardous materials (*e.g.*, aircraft or operator supplemental packaging or containers) are just some of the unique variables the SRA may cover. For these reasons, FAA proposes to require the submission of an SRA acceptable to FAA for a certificated package delivery operator seeking a will-carry authorization to transport hazardous materials.

FAA has developed draft AC 108–XX, *14 CFR part 108 Unmanned Aircraft systems (UAS) Carrying or Dropping Dangerous Goods Safety Risk Assessment*, to support the development of the SRA acceptable to the Administrator, which is included in the docket. This AC focuses on the requirements and considerations that a certificated package delivery operator should make in developing an SRA acceptable to the Administrator. FAA requests comment on this draft AC and will issue a final version to coincide with the final rule's publication.

v. Authorization To Deliver or Unload Hazardous Materials by Releasing or Dropping Such Materials Above Ground Level

In addition to a will-carry authorization, FAA proposes that will-carry certificated package delivery operators seeking authorization to intentionally release or drop hazardous materials as a form of delivery must obtain an additional FAA authorization allowing them to do so. To apply for and obtain this authorization, FAA proposes that an operator would need to have a hazardous materials training program and hazardous materials procedures and instructions and would need to submit an SRA acceptable to FAA to ensure they account for the unique characteristics for releasing or dropping hazardous materials above ground level.

Intentionally dropping hazardous materials as a part of routine operations differs from the traditional method for unloading hazardous materials from an aircraft. Before the development of UAS, except for special aircraft operations in accordance with 49 CFR 175.9(b), unloading hazardous materials from an aircraft has traditionally been conducted by personnel physically removing the package from the aircraft. However, UAS provides operational methods of unloading packages, including hazardous materials packages, by releasing or dropping from above ground level.

¹³¹ Nothing in this section is intended to remove the manual content required as a condition of 49 CFR 175.9(b)(6) when hazardous materials are to be dispensed or expended during flight for weather control, environmental restoration or protection, forest preservation and protection, flood control, avalanche control, landslide clearance, or ice jam control purposes.

As these unloading methods are not traditional, UAS operators must consider additional risks to ensure their operations are conducted safely. These risks are not limited only to people and property on the ground at the time of delivery, but to people handling the package, such as a subsequent traditional air carrier. These risks are often distinct from those identified in the considerations to accept, handle, load, or transport the hazardous material in flight, which are proposed in the will-carry authorization. Therefore, FAA believes that a will-carry certificated package delivery operator should consider the unique circumstances for intentionally dropping or releasing a package and incorporate these considerations in their hazardous materials training program, hazardous materials procedures and instructions, and SRA, as proposed in obtaining their will-carry authorization. Specifically, FAA proposes that certificated package delivery operators seeking this authorization must ensure that their hazardous material training program, hazardous materials procedures and instructions, and SRA acceptable to the administrator be inclusive of risks to people and property on the ground resulting from intentionally dropping or releasing hazardous materials. The operators should also consider the risks to other people who may subsequently transport or handle the dropped package, such as traditional air carriers, ground transportation carriers, and recipients. These considerations may be incorporated in the hazardous materials training program, hazardous materials procedures and instructions, and SRA acceptable to the Administrator used to meet the will-carry authorization requirements, as new versions for this authorization requirement, or a combination of the two.

In addition, FAA believes that the SRA should include technical information proportionate to the level of risk for each hazardous material being dropped or released above ground level. The certificated package delivery operator should fully understand the identified hazards and develop appropriate risk mitigations. For additional details on developing an SRA acceptable to the Administrator, see the discussion on the draft AC in the SRA Acceptable to the Administrator section.

FAA notes that this authorization would not be required for special aircraft operations, such as agricultural operations, to release hazardous materials during flight when operating in accordance with 49 CFR 175.9(b).

10. Agricultural Operations (§ 108.575)

Currently, agricultural operations using UA are conducted under 14 CFR part 137, which provides rules for conducting agricultural aircraft operations. However, part 137 was written for traditional aircraft, rather than UA. As such, there are provisions in part 137 that cannot be met by UA operators. FAA has been issuing part 137 exemptions for operators conducting agricultural operations with UA. The proposed agricultural operations certificate will create regulations related to agricultural aircraft operations that are specifically tailored to the needs and risks of part 108 UAS.

In § 108.575(a), FAA proposes that an operator conducting agricultural operations with a part 108 UA that does not comply with the requirements for agricultural permitted operations must obtain an agricultural operating certificate. As described below, FAA believes operations outside of the scope of an operating permit are of a higher risk and would therefore benefit by the risk mitigations associated with obtaining an operator certificate. FAA uses the same definition of agricultural operations as is used in part 137.

In § 108.575(b) and (c), FAA proposes to prohibit dispensing operations directly over people and to limit operations to Category 3 population density areas or lower, as described in section VI.H. These proposed requirements would be consistent with existing regulatory and practical considerations for agricultural operations. Dispensing of economic poisons and any other substance intended for treatment, nourishment, propagation, pest control, preservation and pest control may be hazardous to persons if applied directly overhead. FAA must ensure the protection of persons not only in the air but on the ground, and therefore would prohibit dispensing operations directly over people, unless authorized by FAA. In addition, both manned and unmanned agricultural operations typically take place in sparsely populated areas over non-populated areas, operating close to the ground while dispensing and close to structures. Should a UA collide with the ground or a structure, persons may become vulnerable to the associated hazard from material carried on the aircraft. However, by limiting an agricultural operation to an area that is less likely to have persons nearby, the vulnerability to persons greatly decreases. Unlike agricultural operations conducted under a permit, which are limited to population

densities of Category 1, certificated agricultural operations would be limited to Category 3 population densities as the certification process enhances standardization and increased operational reliability through accepted training and operational manuals as well as ongoing FAA oversight.

FAA recognizes that individual states, counties, townships etc. may have specific limitations or restrictions regarding agricultural spraying that may be more restrictive than what is proposed in this preamble. To that end, FAA proposes in § 108.575(e) that certificated agricultural operators may not dispense, or cause to be dispensed from a UA, economic poisons for use other than for which it is registered, contrary to any safety instructions or limitations as described by the product label, or in violation of any law or regulation of the United States. In addition, FAA proposes that certificated agricultural operations comply with all safety instructions or limitations on the product label as well as any applicable laws or regulations of the United States.

In § 108.575(f) FAA proposes the same relief from the requirements in paragraph (e) as currently allowed under part 137 for operators dispensing economic poisons for experimental purposes when under the supervision of a Federal or State agency authorized by law to conduct research in the field of economic poisons or when operating under a permit U.S. Department of Agriculture issued pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136).

In proposed § 108.575(g) FAA would require that operators conducting operations under an agricultural part 108 operating certificate must have and keep current a comprehensive training program that is tailored for their proposed operation. The training program would need to contain, at a minimum, knowledge requirements consisting of steps to be taken before starting operations, including survey of the area to be worked, safe handling and storage of and the proper disposal of used containers for those, the general effects of and agricultural chemicals on plants, animals, and persons, with emphasis on those normally used in the areas of intended operations; and the precautions to be observed in using poisons and chemicals, primary symptoms of poisoning of persons from, the appropriate emergency measures to be taken, and the location of poison control centers, performance capabilities and operating limitations of the aircraft to be used and, safe flight and application procedures. FAA believes that by requiring a training

program with the included above areas tailored to their operation, any additional risk associated with an individual operation would be further reduced.

Finally, FAA is proposing in § 108.575(h) that no person may supervise or participate in an agricultural unmanned aircraft operation unless they have completed the operator's training program as required in § 108.575(g). As further described in section VII.A of this preamble, FAA is not requiring airman certification for operations conducted herein. Therefore, FAA would rely on the knowledge and skill requirements discussed in section VII.C to ensure that adequate knowledge and skill has been obtained prior to operation. Completion of the training program should be comprehensive, and failure to achieve a reasonable grade or average on the training program materials would likely not demonstrate sufficient skill to conduct safe operations.

11. Aerial Surveying Operations (§ 108.580)

As described in section VIII.B.8, FAA recognizes the value of UA operations conducted for the purposes of photography, videography, mapping, inspecting, or patrolling. However, aerial surveying operations with an operating permit would be limited to an aircraft weight of no more than 110 pounds, a population density of Category 3 or lower, and fewer than 25 active aircraft.

FAA recognizes that operators may want to operate with UA for aerial surveying operations weighing more than 110 pounds, with a greater number of active aircraft, or in an area with a greater population density than what is allowed under permitted operations. To ensure these operations may still be safely conducted, FAA finds that risk is best managed through the standardization and continued oversight of the certification process. With the advancement of technology and UA design, FAA anticipates many variants, sizes, and weights of UA performing aerial surveying functions, and FAA proposes that the certification process could provide the appropriate safeguards to facilitate those operations. FAA also understands that operators for aerial surveying purposes may maintain 25 or more active UA for their operation, and therefore does not propose a limit on the number of active aircraft an operator may hold when operating under a certificate that permits aerial surveying operations.

FAA proposes to enable a pathway for aerial surveying operations to be

conducted in higher than Category 3 population densities through the certification process. However, as operating weight increases, so does the overall risk to people on the ground. FAA therefore proposes in § 108.580(b) that aerial survey operations conducted with a UA weighing more than 110 pounds be limited to Category 4 population density areas, or lower. FAA believes that greater risk of higher weight UA, increased number of active aircraft, and higher population density category operations, can be mitigated by the certification process, which requires FAA evaluation, observations, and continued surveillance. An operating certificate adds various levels of risk mitigation such as FAA accepted training programs, and continued FAA oversight.

12. Civic Interest Operations (§ 108.585)

As described in section VIII.B.7, civic interest operations are operations conducted under contract for government agencies, law enforcement, and public safety entities using UA for various purposes, including forest and wildlife conservation (including wildfire recovery, wildlife conservation, and tracking climate change) and operations in support of public safety (including fire, accident, and disaster response). In addition, FAA proposes that, when operating in support of a government entity, the operator must coordinate and deconflict operations with the law enforcement or government emergency management agency responsible for the incident response in advance and throughout the duration of the operation.

Whereas permitted operations for civic interest are limited to fewer than 25 active aircraft, FAA proposes that operations conducted under a civic interest operating certificate would not be limited to a specific number of UA. Management oversight of an operation would be accomplished through an operating certification process, which ensures continued FAA oversight and would reduce risk as the entire operation is under initial and continued scrutiny of FAA by virtue of the operating certificate.

As with permitted operations, FAA proposes in § 108.585(b) that civic interest operations must be conducted by an entity contracted to a Federal, State, local, Tribal, or territorial government to be considered civic interest. These operations would be civil operations, and would not fall under the public aircraft operations statute, as further discussed in section VIII.B.7.

To further mitigate the risk associated with operations with these larger UA, FAA proposes in § 108.585(c) that operations conducted with UA with a gross weight of more than 110 pounds would be limited to Category 4 population density areas or lower. Operations within a population density of greater than Category 4 greatly increases the risk to persons on the ground as the area of operation becomes more saturated with people. FAA does not anticipate a need for civic interest certificated operation with a UA weighing more than 110 pounds to occur within greater than Category 4 population densities. However, this requirement would be subject to relief per the Administrator's authorization, should an operator make a proposal that would provide sufficient assurance that these operations could be safely conducted over a higher population density. Operations of aircraft weighing 110 pounds or less could operate in any population density. Notwithstanding the population density restrictions of this section and proposed § 108.185, FAA would allow operations to be conducted over any population density to the extent necessary to safeguard lives in imminent threat. Given the potential nature of these types of operations, FAA believes that an incremental increase in ground risk would be justified in life-saving operations.

IX. Maintenance and Alterations (Subpart F)

A. Applicability

In subpart F, FAA proposes rules for the maintenance and alterations of UAS operating under this part. This covers the persons authorized to perform maintenance and alterations, the performance of maintenance on the UAS, life-limited parts, batteries, repairs and alterations, and operations after maintenance or alterations.

This FAA proposes to exclude from the applicability of this subpart the maintenance or alterations of automated data service provider equipment approved under part 146 of this chapter, the maintenance or alteration of a UA and its AE that is operated and maintained in accordance with parts 43 and 91 of this chapter, and the maintenance or alterations of AE not under the direct control of the operator.

B. Persons Authorized To Perform Maintenance (§ 108.605)

Part 107 does not prescribe any maintenance requirements; however, the operational framework for proposed part 108 is predicated on the reliability

of the UAS. Moreover, UAS operating under this part would be more technologically complex than most UAS operating under part 107. Because proposed part 108 would be operationally expansive by allowing larger UA to operate BVLOS in the NAS, UA reliability is a paramount risk mitigation. Having a structured system of maintenance ensures that the UAS is maintained to a standard that enhances its reliable and safe operation. Accordingly, as stated in proposed § 108.600(a), subpart F prescribes the maintenance and alterations requirements for UAS operating under part 108.

FAA recognizes that the UAS may include AE that are not under the direct control of the operator, and FAA does not intend to make operators responsible for the maintenance of those AE elements. It is anticipated that most, if not all, of the AE outside the control of the operator are likely under the control of an automated data service provider, who would be responsible for maintaining the AE they use to provide services under proposed part 146. In addition, there may be other AE not under the direct control of the operator that is not addressed in the manufacturer's maintenance instructions in proposed § 108.720, such as the infrastructure provided by a cellular company providing data connectivity to the aircraft in flight or network servers provided by an online hosting platform that is providing the flight control software platform. It would be unreasonable to leverage an additional maintenance requirement on the UA operator to maintain that equipment. Therefore, the proposed maintenance requirements do not include requirements for the operator to maintain AE not under the operator's direct control. Furthermore, the maintenance and alterations for UAS that are operated and maintained in accordance with parts 43 and 91 of this chapter would be governed under those rule parts, and the requirements of part 108 likewise would not apply.

C. Persons Performing Maintenance and Alterations (§ 108.605)

Similar to the approach for operations personnel, FAA is not proposing certification requirements for maintenance personnel for UAS operating under this part for numerous reasons. The lower risk nature of the operations, the variability of aircraft design and characteristics in the industry, the move to design that is more heavily dependent on automation and software programming, and the rapid change and innovation in this

field would all make it difficult for FAA to create a one-size-fits-all knowledge and skills certification process for those performing maintenance and alterations on these UAS. Though this proposal would not require certification, FAA recognizes that properly trained and qualified personnel that perform maintenance and alterations are vital to ensuring the continued airworthiness of the aircraft. Therefore, in § 108.605, FAA proposes requiring the operator to ensure that personnel performing maintenance and alterations on the operator's UAS are qualified, through basic skills and knowledge obtained in accordance with the training requirements in § 108.315, to perform the assigned maintenance task or alteration using the manufacturer's maintenance instructions. In addition to being qualified, FAA proposes that the operator must also specifically authorize a person to perform the maintenance or alterations on the aircraft.

FAA considered creating a new type of repairman certificate specifically for UAS, but for the reasons stated above found that this would be unnecessary and impractical at this time. As discussed in section VII, FAA has determined that airman certification is not necessary for relevant personnel conducting operations under the provisions of part 108. As with the proposed personnel requirements, FAA proposes that responsibility for maintenance rests with the operator, which in most cases would be a company.

D. Unmanned Aircraft Maintenance (§ 108.610)

Under proposed § 108.610(a), the operator must ensure its employees who perform maintenance on a UAS use the methods, techniques, and practices prescribed in the UAS manufacturer's maintenance instructions that are required by § 108.720(a). Further, the operator is obligated to ensure the UAS is in a condition for safe operation. In addition, as stated in proposed § 108.610(b), the operator would need to inspect the UAS in accordance with the manufacturer's inspection criteria found in the manufacturer's instructions.

The person performing maintenance would be required to use the methods, techniques, and practices prescribed in the manufacturer's maintenance instructions provided at the time of purchase of the UAS by the operator. Though this rule would not require the person performing maintenance to hold a mechanic or repairman certificate, it is incumbent on the operator to ensure that maintenance occurs in a manner

that keeps the UAS in a condition for safe operation under part 108.

The operator must also have the UAS inspected according to the requirements in the maintenance instructions. Improperly performed maintenance or lack of inspections at the required intervals could result in loss of control and a subsequent crash of the UA.

FAA has long relied on maintenance providers' compliance with the information provided by the aircraft manufacturer to ensure aircraft remain in a condition for safe operation. For UAS operated under this part, FAA similarly expects maintenance requirements would be prescribed by the manufacturer in the maintenance instructions required by § 108.720(a). The UAS manufacturer is in the best position to know how to service and maintain the UA and its directly associated AE. In addition, under proposed § 108.40 and § 108.45, FAA would prescribe standards for maintenance record keeping and service difficulty and interruption reporting. The purpose of maintenance is to ensure continued safe operation by systematically inspecting the UAS for damage and deterioration; inspecting or replacing, as required, flight essential parts; and testing its system for proper operation. These maintenance functions have been shown to enhance the reliability of aircraft in other forms of aviation.

The BVLOS ARC final report stated that "risk is mitigated when the UAS configuration matches the original design (or as revised) and when required actions (inspections, replacements, and repairs) have been accomplished." In line with this ARC statement, FAA proposes to require in § 108.720(a)(2) that manufacturers develop operating and maintenance instructions that include identification of flight essential parts and their associated inspection criteria or life limits. It is important that the maintenance instructions include the inspection criteria to ensure the operator proactively finds wear or damage, and repairs or replaces the part before a failure can occur. Further, the maintenance instructions must include life limits for parts so that a part can be proactively replaced before it becomes worn or damaged and a failure can occur. Timely inspection or replacement of flight essential parts will further enhance reliability and mitigate risk. Under proposed § 108.610(b), operators would be required to follow the manufacturer's inspection criteria.

In addition, under proposed § 108.610(c), each operator of a UAS would be required to have all

inoperative equipment and items not in a condition for safe operation repaired as prescribed in the manufacturer's maintenance instructions prior to operating the aircraft. Safety is predicated on all equipment functioning as designed. Operators certificated under the more stringent requirements of proposed subpart E would have more robust FAA oversight and certification and be able to operate with some inoperative equipment per proposed § 108.555, as discussed in section VIII.C.6 of this preamble.

E. Life-Limited Parts (§ 108.615)

Identifying, tracking, replacing, and disposing of life-limited parts once they have reached their service life limit is a cornerstone of safety in aviation and is just as crucial for UAS. FAA proposes in § 108.615 that an operator cannot operate a UA with parts that have exceeded their life limit. Further, in order to operate a UA, the operator must track the status of life-limited parts and replace them at any manufacturer-determined interval. An operator will be expected to comply with replacement intervals to ensure that the UA stays in a condition for safe operation.

As with other forms of aviation, once a life-limited part has reached the end of its life cycle, it must be properly dispositioned to ensure that it will not be reintroduced into service. This replacement and disposition process would require the operator to track the status of each life-limited part installed on the UA to ensure that the life cycle of the part is not exceeded, as stated in proposed § 108.615(b). Any tracking would need to uniquely identify the part and its removals and reinstallations. This proposal would further require the part to be dispositioned in a manner in which its status is clear to anyone who may come into possession of the part. This could be accomplished in several ways as provided in § 108.615(c), including: a method that uniquely identifies the part and its status, such as a tag, record, document, or other marking, made or attached to the life-limited part; physically separating the part from good parts; or even mutilating or destroying the part to prevent its reinstallation onto another aircraft. Tracking the status of life-limited parts is essential to ensure compliance with the replacement intervals of life-limited parts and preventing possible catastrophic failures by use of a part outside of its life limit. For the same reasons, if the part is sold, transferred, or given to someone else, the life-limited parts status must be clearly identified as described in proposed § 108.615(d).

F. Unmanned Aircraft Batteries (§ 108.620)

Many UA use batteries as a primary power source and do not have onboard generators to recharge the batteries in-flight. While this is starting to emerge in manned aviation as well, use of batteries as a primary power source is much more prevalent in the UAS industry. Most UA do not have any backup or reserve power source should the batteries fail. This poses some unique considerations about needing to ensure the health and status of the batteries.

Battery-powered UA often use lithium batteries as an inflight power source. Lithium batteries have a greater risk of fire and swelling than other technologies due to their internal chemistry. Operating a lithium battery at or beyond its limits can lead to greater internal resistance, which can lead to more heat, resulting in a thermal runaway cycle with increasing temperature escalation. As lithium batteries age, their energy capacity and ability to deliver power decreases with time and usage. Per proposed § 108.620, operators would be required to implement a battery monitoring program to ensure that each battery's state of health (SOH) is not compromised. Operators would benefit from having an SOH battery monitoring program because the program would lead to removing compromised batteries from service before failure while maximizing the service life of the batteries.

Proposed paragraph (b) would require that operators remove from service any batteries that experience significant degradation or inadequate levels of performance to prevent any safety of flight issues. Batteries that are significantly degraded or depicting inadequate levels of performance may significantly reduce the UA's range and ability to perform emergency actions. Operators unable to conduct a flight to a safe landing location due to a depleted battery that is degraded or not adequately performing would not be in compliance with this section. It is the operator's responsibility to determine at what point the battery meets these criteria and remove the battery from service prior to creating a safety of flight issue. Most charging systems for batteries have built-in monitoring that provide this functionality automatically, so FAA does not anticipate that this will be a heavy burden to implement.

G. Repairs and Alterations (§ 108.625)

Unlike other forms of aviation, FAA is proposing that part 108 repair and alteration data be authorized only by the

manufacturer. Under proposed §§ 108.740 and 108.750, the manufacturer is responsible to maintain the continued operational safety for the products they produce and must have access to the design data for any repairs and alterations made to the UA to ensure that aircraft design integrity remains in compliance to the standards. Further, as required in § 108.755, the manufacturer of the UAS that has received airworthiness acceptance must authorize any repair or alteration. As recommended by the BVLOS ARC, this approach mitigates risk by ensuring the UAS remains in a configuration that meets the original or revised design requirements. For this concept to work, an operator that wants to perform a repair or alteration to the aircraft must either reference standard information already provided by the manufacturer in the maintenance instructions or ask the manufacturer to provide or approve repair data for the specific repair or alteration. An operator could develop their own repair or alteration, but the operator would need to have the manufacturer review the data and determine that the aircraft would remain in compliance with subparts G and H.

Software updates to UA, whether individual aircraft or an entire fleet, are also considered alterations. Under this proposed construct, it is the manufacturer's responsibility to ensure the software updates have been thoroughly tested and maintain the aircraft's COS as described in section X.K. This does not include configuring user-interface items or end-user flight parameters per the software provided by the manufacturer. Proper configuration and setup are still the responsibility of the UA operator.

It is important to note that, consistent with the definition of "maintenance" in 14 CFR 1.1, under proposed § 108.625(b) the simple replacement of parts or assemblies with identical, or alternative parts or assemblies identified by the manufacturer, is not considered a repair or alteration. As such, the requirements of proposed § 108.625 would not apply.

H. Operations After Maintenance (§ 108.630)

As with other forms of aviation, FAA is proposing in § 108.630(a) that, after any maintenance or alteration, an operator can only operate the UAS after that UAS is approved for return to service by a person that the operator has authorized. In addition, the operator must ensure the record of the maintenance actions as provided for in § 108.40 is completed prior to operation

of the UAS, as further detailed in section V.

Further, when a maintenance or alteration action has been accomplished that may have appreciably affected the flight characteristics or substantially affected the safe operation of a UAS, paragraph (b) proposes that an operational check of the UAS would need to be conducted prior to operation. The operational check could include power-on systems based self-checks, ground-based checks, short takeoff and hover checks, or full flight checks, depending on the nature of the repair or alteration and the assurance needed to ensure the repair or alteration was completed satisfactorily. Under proposed paragraph § 108.630(c), where the operational check would include a flight, it must not be conducted over people or moving vehicles. This helps to mitigate risk to persons and property should anything go wrong during the flight. These return-to-service operational checks would be conducted under the operator's existing permit or certificate.

X. Procedures for Unmanned Aircraft System Airworthiness (Subpart G)

A. Unmanned Aircraft System Airworthiness

FAA proposes a regulatory framework for determining the airworthiness of unmanned aircraft for proposed part 108 operations. There is a need to establish a new risk-based airworthiness process for UAS intended to be operated BVLOS under proposed part 108. Under this new process, called airworthiness acceptance, the UAS would meet performance-based design, production, and airworthiness requirements by using a means of compliance (MOC) that would consist of consensus standards accepted or approved by FAA and would show it is in a condition for safe operation. To receive airworthiness acceptance under proposed part 108 airworthiness framework, FAA would require a manufacturer to submit a DOC that its UAS design conforms to the design, test, production, and airworthiness requirements of subparts G and H of part 108 and is in a condition for safe operation. An operator would only be authorized to use a UAS that has an airworthiness acceptance.

FAA considered the safety continuum when developing requirements associated with an airworthiness acceptance. The safety continuum is one way FAA established the appropriate level of safety based on risk presented by the aircraft and its operational profile. The proposed requirements for

part 108 are intended to balance the needs of the flying public, manufacturers, and operators with the societal expectation of safety.

FAA considered utilizing part 107 for these operations but found it to be insufficient due to the lack of mitigations to ensure the safety of routine BVLOS operations and only addressing small UAS. Part 107 does not have regulatory requirements that ensure the airworthiness of the UA. Unlike part 107, which only allows limited BVLOS operations under the terms of a waiver with substantial operating limitations, 108 allows for routine BVLOS operations over populations of persons on the ground without the use of visual observers or waivers. Airworthiness of the UA becomes a factor in assuring the safety of those on the ground. Consequently, FAA considers the level of FAA oversight and FAA scrutiny of part 107 UAS to be insufficient for the scope and risk of part 108 operations. Therefore, FAA proposes an airworthiness acceptance process to help mitigate that risk with UAS design standards.

FAA considered the BVLOS ARC's recommendation to develop an airworthiness framework for UAS that closely resembles special airworthiness certification of light-sport category aircraft under part 21 using industry consensus standards. In their final report, the UAS BVLOS ARC recommended FAA create a new process for qualification of UA with a mass and speed of up to 800,000 ft-lb of kinetic energy, which is representative of the existing light sport aircraft category, considering maximum weight and airspeed limits. Existing light sport aircraft have an upper weight limit of 1,320 pounds (600 kilograms), which is approximately 800,000 ft-lbs. of kinetic energy when flying at their maximum speed of 120 knots. At an equivalent weight, light sport aircraft pose a higher risk based solely on the fact that people are always on board and any loss of control event may result in at least one fatality, regardless of what is below the aircraft. This contrasts with part 108 where a loss of control event may result in a fatality on the ground but is mitigated by operating limitations tied to population density of the overflown area and airworthiness requirements. Further, under proposed part 108, larger UA would have different operating limitations than smaller UA. Though FAA used the BVLOS ARC recommendations in developing a maximum weight for UA operating under part 108, design and operation limits were set in such a way that they are appropriate for the qualitative risk

for UAS under the proposed rule as compared to that of existing light sport category aircraft. Further discussion on maximum size, weight, and speed can be found in section XI.B.

Based on the ARC's recommendations, FAA considered creating a new UAS SAC for proposed part 108 operations, which would have consisted of two categories based on the risks associated with the operating environment and the mass and speed of the UA, one for small UA (Category 1), and one for UA weighing not greater than 1,320 pounds (Category 2). By creating two categories, FAA would have established a process for issuing SACs to UAS based on existing part 21 procedures to enable BVLOS operations under part 108, depending on the operators' CONOPS. This approach would have created a means to differentiate the eligibility of classes of aircraft based on the risk posed by these operations, such as whether the UA will be operated over people or the size of the UA. The SAC process would require a higher level of initial FAA oversight than would be necessary for part 108, because it would require FAA to conduct an airworthiness inspection of each UAS produced. As discussed earlier, there are no crew members or passengers on board, and ground risk is mitigated, in part, by operating limitations tied to population density of the overflown area. The proposed airworthiness acceptance would appropriately mitigate ground risk associated with a UA failing in flight by imposing performance-based design standards that would increase the reliability of a UAS eligible to operate under part 108. Therefore, FAA considers that the level of FAA oversight and FAA scrutiny for a special airworthiness certification may not be necessary for the scope and risk of part 108 operations.

The proposed airworthiness regulations under part 108 aim to prevent loss of flight or loss of control incidents stemming from factors such as structural integrity, software and hardware functionality, performance attributes, and operational factors. The proposed design and performance standards would require the UAS to withstand all expected flight and ground loads during its operations without compromising the UAS's safe operation.

Implementing design and manufacturing processes to consensus standards in the development and production of UAS systems and components is necessary to minimize the likelihood of loss of UA performance or critical functionality.

Accordingly, the UAS's design and manufacture under this proposal is intended to appropriately address these risks.

FAA therefore proposes utilizing an airworthiness acceptance process, adding subparts G and H of part 108, specifying the requirements for design, performance, testing, production, and FAA acceptance of part 108 UAS.

B. Associated Elements (§ 108.5)

To further enhance safety and operational efficiency within the NAS, FAA proposes regulating UA's AE along with the UA itself as part of the airworthiness acceptance process. AE plays a critical role in UAS operations. FAA proposes defining AE, in § 108.5, as those elements that are not directly affixed to a UA and are necessary to interact with the UA for safe flight during all normal, abnormal, or emergency flight operations.

AE is a widely used term and encompasses a wide range of components, such as ground control station, pilot interface equipment, Fleet Management systems, and cloud-based computing solutions. It also includes C2 links, which cover direct radio as well as internet and cellular/satellite communications. Equipment for launch and recovery, ground-based radars and radios, and third-party services such as weather and weather monitoring are also considered AE. Third-party services may also need to comply with proposed part 146. Depending on the level of interaction with the UAS, additional equipment such as battery chargers, landing pads, markers, and specialized containers or "hangar boxes" for data transfer and software updates may qualify as well.

Section 108.880 addresses the proposed AE design and performance requirements. The specific requirements of this section will be discussed in section XI.Q. As proposed in § 108.720, the manufacturer would be required to provide a list of all acceptable configurations of UA and AE, which would allow operators and regulators to identify the requirements and standards necessary for each component, reduce the likelihood of system failures, and improve the overall safety of UAS operations.

C. Applying for a Part 108 Airworthiness Acceptance

For purposes of the proposed part 108 airworthiness acceptance framework, the manufacturer would include any person or entity who is taking responsibility for the final design and production of the UAS. "Manufacturer" as the term is used in this proposed rule

would encompass both the producers of UAS and the integrators who combine various parts, assemblies, or materials, regardless of whether these are sourced domestically or internationally. For part 108 purposes, manufacturers would include integrators and any person or entity responsible for ensuring compliance to the standards of subparts G and H of part 108. It would be their responsibility to demonstrate that every material, part, component, assembly, or system within a UAS meets the standards of subparts G and H, regardless of whether they were produced in-house or supplied by a third party.

1. Eligibility for Airworthiness Acceptance (§ 108.700)

Section 108.700(b) proposes eligibility requirements for airworthiness acceptance. All manufacturers would be required to meet the eligibility requirements prior to submitting a DOC. Proposed § 108.700(b)(1) states that for the manufacturer to be eligible to apply for a UAS airworthiness acceptance, the UAS must be manufactured in the U.S., or be manufactured in a country with a Bilateral Airworthiness Agreement addressing UAS or a Bilateral Aviation Safety Agreement with associated Implementation Procedures for Airworthiness addressing UAS; or an equivalent airworthiness agreement. As discussed in section X.L, FAA would retain oversight authority under part 108 through audits and inspections. Without the UAS being manufactured in the U.S. (barring instances where there are agreements with foreign entities), FAA cannot efficiently fulfill its oversight responsibilities, as access may be withheld or limited. Appropriate oversight is necessary to ensure the safety of the NAS.

FAA is also considering leveraging its broad statutory authority to ensure the safety of the NAS to specifically regulate the operation of foreign-manufactured UAS looking to operate in the NAS. FAA is asking for specific public comment on whether there should be any particular manufacturing restrictions on foreign manufacturers intending to manufacture UAS under this rule, such as manufacturing outsourced by a foreign manufacturer to a U.S. manufacturer or a U.S. manufacturer's production of a UAS using foreign designs or parts from a covered country. FAA is also asking for comment on whether there should be any particular restrictions on the operation of foreign-manufactured UAS by private entities beyond those already provided in law. If there should be restrictions on the foreign-manufacture

or design of UAS, or on the operation of foreign-manufactured UAS, please provide suggestions for implementing the restrictions. Also, what security risks do foreign-manufactured UAS present to U.S. national interests when operated in the NAS.

FAA would rely on a manufacturer's airworthiness DOC as evidence of compliance with the requirements of subparts G and H, therefore the manufacturer's authorized representative or agent must have knowledge of the requirements and what the attestations in the DOC mean. Under proposed § 108.700(b)(2), any authorized representative or agent, who is responsible for signing and certifying the statements in the DOC, of the manufacturer would be required to be trained and certified to make the declaration. FAA expects industry to develop and implement training and certification to enable manufacturers to fully understand FAA regulatory requirements and policies applicable to airworthiness acceptance of UAS and the means necessary to meet applicable requirements. Proposed § 108.700(b)(2) would require fulfillment of this training to be eligible to submit a DOC. Further, training must be conducted by an organization that trains and certifies quality assurance staff in accordance with FAA-accepted consensus standards. To demonstrate completion of a training program for manufacturers and manufacturer's authorized representatives or agents who sign declarations of compliance, FAA would expect the training providers to issue a certificate of completion as evidence of compliance with part 108.

2. Submitting a Declaration of Compliance (§§ 108.710)

Section 108.710(a) proposes that a manufacturer requesting airworthiness acceptance would be required to submit a DOC that meets the requirements of § 108.715. The DOC is an application for airworthiness acceptance and a means to attest to FAA that the manufacturer has demonstrated compliance with all UAS design, production, test, and airworthiness requirements of part 108 using FAA-accepted or approved MOC. A manufacturer's submission of a DOC would be necessary to obtain airworthiness acceptance by FAA for the specific UAS make, model, series and serial number listed on the DOC. This would mean that each UA would need to obtain airworthiness acceptance.

The manufacturer would do this by submitting a DOC via an electronic form available on FAA's website. Recognizing that multiple identical UA will be

manufactured in a single production run, FAA proposes to provide manufacturers with the ability to efficiently submit DOC documentation for up to 500 UA at once through an online portal; paper applications would not be accepted. A web-based tool would be the only method available for applying for airworthiness acceptance. The web-based tool would securely transmit the completed application and related documents, if required, to the appropriate FAA office for processing. FAA acceptance of a manufacturer's DOC establishes airworthiness acceptance, which is necessary for eligibility to obtain an operations permit or certificate to conduct operations under part 108. FAA would accept the manufacturer's DOC as an attestation that compliance to the applicable requirements has been shown. If additional information is required, the proposed record retention requirements of § 108.760 require manufacturers to make available any supporting information used to demonstrate compliance, which may include information supporting compliance with the requirements of subparts G and H, upon request by FAA. This would include a manufacturer's technical data substantiating compliance for FAA review.

D. Means of Compliance (§§ 108.705 and 108.710)

Proposed § 108.710(b) requires a manufacturer seeking airworthiness acceptance for a UAS to comply with subparts G and H of part 108 using a MOC, consisting of voluntary consensus standards, that would be accepted or approved by FAA. FAA uses the term "MOC" to refer to the means the manufacturer uses to show that its UAS is designed, produced, and tested to conduct the manufacturer designated operation(s) under part 108.

Rather than using prescriptive requirements, FAA proposes manufacturers use voluntary consensus standards as an MOC to meet performance based UAS design test, production and airworthiness requirements of subparts G and H.¹³²

An accepted MOC would provide an acceptable manner by which a UAS manufacturer can comply with specific provisions of part 108, subparts G and H, with the exception of noise requirements. An accepted MOC is reviewed by FAA, no objections are found, and its use is communicated to the public. An approved MOC would provide an acceptable manner by which

a UAS manufacturer would comply with part 36 noise requirements. FAA approves, rather than accepts, an MOC for part 36 noise requirements to maintain consistency with FAA's practices used in noise certification for other aircraft, including FAA's approvals of equivalent noise testing procedures. FAA's approval of noise standards is necessary to verify that the standard meets FAA's obligations pursuant to 49 U.S.C. 44715 to limit aircraft noise.

Similarly, FAA's acceptance of voluntary consensus standards for design and production requirements allows FAA to determine if the standard meets the applicable requirements of subparts G or H. Using voluntary consensus standards accepted or approved by FAA would be the only means to show compliance to the requirements of subparts G and H, except for the noise and cybersecurity carve outs mentioned in section X.E of this preamble. Voluntary consensus standards are developed by industry organizations, in meetings open to all interested parties, and often with input from FAA. The standards produced by consensus standards bodies therefore are based on input from a broad range of perspectives.

FAA intends for industry to develop consensus standards that serve as the MOC for the specified UAS design, test, production, and airworthiness requirements to obtain airworthiness acceptance. To propose a consensus standard as an MOC to the requirements of subparts G and H of part 108, proposed § 108.705(a)(1) allows a voluntary consensus standards body to submit a voluntary consensus standard to FAA for acceptance as a means of compliance for satisfying a requirement of subpart G or H of this part. This would be done in a manner acceptable to FAA. Once a consensus standard is submitted to FAA for acceptance, § 108.705(a)(2) proposes that, if FAA determines the applicant's proposed MOC satisfies the requirements of subparts G and H, FAA would notify the applicant it has accepted the MOC. To inform the public which MOCs are available to them for demonstrating compliance with the requirements of subparts G and H of part 108, § 108.705(a)(3) proposes FAA would publish a notice in the **Federal Register** announcing acceptance of the standard to the public as proposed or with modification. This notice would provide an opportunity to the public to comment on the specific details of the MOC and to propose alternatives or enhancements to the standard for FAA review and acceptance. If FAA receives

comments on the MOC, FAA will adjudicate any comments received and publish a final notice of its acceptance of the MOC, with any accepted modifications. For purposes of compliance with part 36, voluntary consensus standards bodies may develop corresponding noise consensus standards. To increase the likelihood of FAA's approval of the noise consensus standards, voluntary consensus standards bodies are encouraged to seek FAA's feedback throughout the standards development process. The process for submitting an MOC to FAA and notifying the voluntary consensus standards body for noise would parallel the general process for submitting a MOC for § 108.705, in a manner acceptable to FAA. To inform the public which MOCs are available to them for demonstrating compliance with the noise requirements, § 108.705(b)(3) proposes FAA would publish a notice of availability in the **Federal Register** announcing approval to the public and will make the noise consensus standards available on *FAA.gov*.

FAA's review and acceptance or approval process of an MOC is not intended to restrict industry's ability to develop consensus standards, but rather enables FAA to confirm that an industry-developed consensus standard for UAS design, operation, production, maintenance, or airworthiness complies with the proposed performance-based regulatory requirements of subparts G and H. Further, FAA seeks input on whether FAA should develop MOCs that could be used in lieu of consensus standards developed by voluntary consensus standards bodies.

E. Compliance With Design, Test, Production, Noise, and Airworthiness Requirements (§ 108.710)

Determining compliance with consensus standards is essential to enable airworthiness acceptance of a UAS for operations under part 108. Accordingly, FAA is proposing in § 108.710 that the UAS would need to be designed, tested, and produced to the requirements in subparts G and H, and this compliance must be determined by individuals who have been appropriately trained in making those determinations.

Section 108.710(b) proposes that a manufacturer would need to have a UAS that meets the design, test, production, and airworthiness requirements specified in subparts G and H using MOC approved or accepted by FAA. For the design, testing, production, and airworthiness requirements, these MOC would be voluntary consensus standards accepted

¹³² FAA Order 8000.376, *Development and Use of Voluntary Consensus Standards* (Mar. 4, 2024).

by FAA. Manufacturers demonstrating compliance with part 36 would use either an FAA-approved noise consensus standard or other methods listed in proposed § 36.0. In addition, manufacturers would comply with cybersecurity requirements by using an FAA-accepted standard, which would not be required to be submitted by a voluntary consensus standard body. FAA would approve industry standards for compliance with part 36 noise requirements. However, FAA would accept industry standards for the remaining airworthiness requirements of this rule. Consensus standards must either be accepted or approved by FAA to be used as an MOC under the proposed rule. This is further explained in section X.E of this preamble.

A manufacturer would only submit an airworthiness DOC for FAA acceptance after the manufacturer has ensured their UAS meets all applicable part 108 requirements. The DOC requirement is intended to ensure that a UAS entering the airspace has met applicable airworthiness standards and that the manufacturer would be able to provide the necessary support for the UAS.

This proposal would further require development of training to enable the manufacturer to fully understand the regulatory requirements and policies applicable to the airworthiness acceptance of part 108 UA and the means necessary to meet applicable requirements. In view of the criticality of this need and FAA's primary reliance on the manufacturer's DOC, § 108.710(c) proposes that only individuals who have been trained on determining compliance with the applicable FAA-accepted or approved consensus standards would be able to make the determination that the UAS meets those consensus standards and therefore the requirements of proposed part 108. This proposed requirement emphasizes the necessity for individuals involved in determining compliance with design, test, production, and airworthiness requirements, such as engineers, quality assurance professionals, and maintenance experts tasked with making compliance findings, to undergo training. The training required for § 108.710(c) is different than what was discussed earlier in § 108.700(b). The training in proposed § 108.700(b) is meant for the individual signing the DOC so they understand the DOC process and the responsibilities included with submitting a DOC. In contrast, the training in § 108.710(c) would include a comprehensive explanation of the specific requirements of applicable consensus standards, and methodologies for accurately assessing

compliance with these standards. FAA considers that training would reduce the number of inaccurate DOCs submitted. Without full knowledge and awareness of the specific requirements of subparts G and H and the MOC with these requirements, a manufacturer's agent or representative would not be able to ensure the accuracy of a DOC. FAA proposes training to ensure UAS manufacturers and those individuals determining compliance with design, testing and production requirements are fully aware of the regulatory requirements and methods of compliance increasing the integrity of the DOC system.

F. Declaration of Compliance (§ 108.715)

The DOC serves as the manufacturer's attestation that the UAS complies with the applicable requirements through use of FAA-accepted or approved MOCs. FAA proposes in § 108.715(a) to require a manufacturer submit a DOC for acceptance by FAA in a form or manner acceptable to FAA. The DOC would require the manufacturer to identify the specific UAS, designate the operation the UAS is designed to conduct, attest that the required documentation exists, demonstrate accountability, and declare compliance.

Proposed § 108.715(b)(7) through (16) would require the manufacturer to attest to the applicable compliance requirements of subparts G and H and part 89 (Remote Identification of UA). Proposed §§ 108.715(b)(1) through (6), 108.715(b)(10), and (14) are discussed below. The specific compliance requirements for paragraphs (7) through (9), (11) through (13), (15), and (16) is explained more fully in section V of this preamble. FAA considers these attestations to be foundational for submission of a DOC for airworthiness acceptance.

1. Identification

Per proposed § 108.715(b)(1), a manufacturer would provide their name and contact information on the DOC. This contact information would include physical address, telephone, and email address and would ensure that FAA knows who the responsible entity is and how to contact them in case a noncompliance or a safety issue arises that requires FAA to visit the manufacturer or the manufacturer's facility to resolve the issue.

2. Make/Model/Series/Serial Number

Per proposed § 108.715(b)(2), the DOC would identify the UAS by make, model, series, serial number, and date of manufacture to ensure the appropriate

configuration is declared compliant and tracked by the manufacturer. The UA serial number must be compliant with the Remote Identification of Unmanned Aircraft, Design and Production serial number requirements of § 89.505. Maintaining a consistent UAS make, model, and serial number configuration from flight test through production is necessary to ensure the UAS on the DOC complies with the requirements of subparts G and H of part 108. Operators would also benefit from knowing which specific UAS make, model, series, and serial number have received airworthiness acceptance, which is necessary for obtaining an operating permit or certificate.

3. Designated Operation

Section 108.715(b)(3) proposes that manufacturers seeking airworthiness acceptance for their UAS would need to designate any part 108 operational purpose the UAS is designed to conduct. The operational purpose should be stated in the UAS operating instructions as required by § 108.720(a)(1). The manufacturer is in the best position to determine if the UA has sufficient structural integrity, performance, and capability to conduct any permitted or certificated operations of § 108.400 and § 108.500. This proposed requirement is necessary to ensure UAS designated to conduct part 108 operations are designed and constructed to the appropriate consensus standards. Failure to establish and validate adequate material strength, UA performance, and design properties to accommodate a designated operation could cause loss of functionality or structural failure resulting in loss of aircraft control.

4. Consensus Standards

As stated in section X.E of this preamble, the MOC to the specified UAS design, production, and airworthiness requirements are industry consensus standards accepted or approved by FAA. Proposed § 108.715(b)(4) through (6) would require the manufacturer to specify FAA-accepted or approved consensus standards or cybersecurity standard used to determine compliance on their DOC. FAA must understand which requirements the UAS was manufactured under to address any noncompliance or safety issue that may arise. Further, as proposed in § 108.745, FAA retains authority to conduct a review of the manufacturer's technical data substantiating compliance. Having a listing of FAA-accepted or approved consensus standards used to design, test, and produce the UAS will ensure

application of the appropriate standards.

5. Documents

To ensure UAS are operated and maintained appropriately and are in the proper configuration, manufacturers of UAS would be required to declare in § 108.715(b)(10) they will, upon request, make available to any registered owner, the NTSB, or FAA the documents specified in § 108.720. Proposed § 108.720 would require the manufacturer to prepare operating instructions, maintenance instructions, and a configuration control document and make them available to registered owners, NTSB, and FAA upon request. FAA intends for industry to develop consensus standards acceptable to FAA to serve as a MOC to these document requirements. The specifics of these documents and who they are made available to are described further in section X.G of this preamble.

6. Regulator Access

Proposed § 108.715(b)(14) requires manufacturers to state in their DOC that, at the request of FAA, they will provide unrestricted access to their facilities, to all data, documentation, and allow FAA to witness any tests necessary to determine compliance with § 108.715 or other applicable requirements of chapter I of title 14, or other information as requested by FAA. The DOC, when signed by the UA's manufacturer, would provide consent to FAA inspection of its facilities, and constitutes an assertion that the information contained in the document is true. To fulfill its oversight responsibilities, FAA may require access to a manufacturer's facilities or any data for the purpose of auditing compliance with applicable standards. This access enables FAA to take those actions necessary to verify unsafe conditions have been properly addressed or respond to a UA accident or incident. The affirmative requirements are proposed in § 108.745. These requirements are more fully described in section X.L of this preamble regarding inspections and audits.

7. Accountability for Persons Submitting Declarations of Compliance

Given the criticality of a manufacturer's DOC in obtaining airworthiness acceptance, FAA is proposing requirements that individuals making compliance declarations are trained in the use of consensus standards. Proposed § 108.715(c) would require the DOC to be signed by the manufacturer's authorized representative or agent who is certified

and trained on the requirements associated with the issuance of a DOC by an organization that trains and certifies quality assurance staff in accordance with a consensus standard that has been accepted by FAA.

This proposal would require development of training to enable the manufacturer to fully understand the regulatory requirements and policies applicable to the airworthiness acceptance of part 108 UA and the means necessary to meet applicable requirements. A manufacturer meeting the training and certification requirements of proposed § 108.700(b)(2) for eligibility to submit an airworthiness DOC would satisfy the requirements of proposed § 108.715(c). By requiring these parties to be appropriately trained, the airworthiness acceptance process can ensure integrity in its risk-based approach. These proposed training and certification requirements of § 108.715(c) would be necessary for manufacturers to create a DOC account and submit declarations of compliance for the specific UAS make, model, and serial number.

Section 108.715(d) proposes that, if the manufacturer has demonstrated compliance with the testing requirements and other requirements of subpart G of part 108, FAA will accept the DOC and notify the manufacturer that FAA has accepted their DOC. FAA acceptance of a manufacturer's DOC means the UAS has received airworthiness acceptance. Unlike airworthiness certificates issued by FAA under 14 CFR part 21, FAA will not be issuing paper documentation to accept the airworthiness of the UAS. FAA will utilize electronic means to convey acceptance to the manufacturer. Once accepted, FAA will make details of the UAS with airworthiness acceptance available on its website to aid operators in selecting UAS with FAA airworthiness acceptance. This information would be useful to operators who wish to conduct BVLOS operations under proposed part 108 operating requirements. UAS with airworthiness acceptance would be eligible for part 108 operations either under a permit or certificate.

G. Required Documents for Airworthiness Acceptance (§ 108.720)

To ensure that operations supervisors, flight coordinators, maintenance personnel, and other interested parties have the necessary information to conduct UAS BVLOS operations in the airspace safely, § 108.720 proposes that manufacturers seeking airworthiness acceptance would be required to prepare a series of documents. Under

this proposal, FAA would require operating instructions (proposed § 108.720(a)(1)), maintenance instructions (proposed § 108.720(a)(2)), and a configuration control document (proposed § 108.720(a)(3)) for each UAS. FAA expects industry consensus standards bodies to propose standards as the MOC for the development of these documents. In addition, § 108.720(b) proposes that manufacturers would need to make these documents available to any registered owner, the NTSB, or FAA upon request for any UAS with an airworthiness acceptance. The detailed requirements for these documents are described below.

Proposed § 108.720(a)(1) would require manufacturers to prepare operating instructions for each UAS when submitting a DOC for FAA airworthiness acceptance. Under proposed § 108.720(a)(1)(i), operating instructions would contain procedures and limitations to accommodate all operating conditions likely to be encountered in the UAS's intended operations, including normal, abnormal, and emergency procedures. FAA expects these operating limitations would address certain weather phenomena such as freezing precipitation, takeoff, or landing crosswind limits, hot or cold weather procedures, and other conditions likely to be encountered during its intended operation. FAA also expects any controlled airspace limitations would be included. A UAS operated in environments beyond the limits of its design could lead to loss of control of the UA leading to an incident or accident. Operating instructions that include normal, abnormal, and emergency procedures would ensure the flight coordinator is informed on how to operate the UAS and knows the steps necessary to respond to changing conditions affecting the safe operation of the UAS, reducing the likelihood of human error. Instructions and limitations that apply to all operations using the UAS would not need to be repeated for designated part 108 operations.

Proposed § 108.720(a)(1)(ii) would require manufacturers to list all the manufacturer-designated operations, as defined in §§ 108.400 and 108.500, that may be safely conducted using the UAS, including all AE, in the operating instructions. This requirement would ensure that an operator knows which operations the UAS is designed for and that those operations can be conducted within the safe operating limitations of the UAS. This would inform operations supervisors and flight coordinators

which operations are within the capabilities of the UAS.

Proposed § 108.720(a)(1)(iii) would require the manufacturer to designate the ratio of UA to flight coordinators that has been designed and validated during flight testing under subpart H of part 108. This allows the operations supervisor to know the maximum ratio of flight coordinator to number of aircraft which the UAS is designed to support. Operational limitations on operating permits and certificates may ultimately reduce this ratio but may not increase it. According to proposed § 108.210(a), the default operating limitation is an operator may only conduct operations at a UA-to-flight coordinator ratio of 1:1. An operator would need to seek a higher ratio, up to the maximum UA to flight coordinator ratio designated by the manufacturer in the operating instructions, during the permitting or certification process. Furthermore, an operator may only conduct operations at a UA-to-flight coordinator ratio equal to or less than what the manufacturer has specified in the operating instructions as proposed in § 108.210(c).

Proposed § 108.720(a)(1)(iv) states that the UAS operating instructions would need to include the following statement from the manufacturer: “No determination has been made by FAA whether the noise levels of this aircraft are or should be acceptable for operation in any location.” This statement, consistent with the proposed revisions of § 36.1581, would provide operators with awareness that they are solely responsible for compliance with any operational noise abatement procedures and requirements for the locations where the UA is operated. Manufacturers would also be required to indicate in the operating instructions that the aircraft has demonstrated compliance with part 36 and provide the demonstrated noise levels of the aircraft. Both statements are consistent with the requirements in proposed § 36.1581(h).

Proposed § 108.720(a)(1)(v) states that the UAS operating instructions would need to include a list of the parts and installed equipment necessary for the operation of the aircraft, or a list of equipment that is allowed to be inoperative. This information is necessary to ensure operators comply with proposed § 108.555 and to keep operators informed about the operational status of their systems.

Proposed § 108.720(a)(2) would require the manufacturer to develop maintenance instructions that include procedures necessary to ensure continued safe operation of the UA and

its AE, including, but not limited to, inspection criteria, repairs, and life limits. FAA expects manufacturers would develop maintenance instructions that detail the necessary steps to perform maintenance tasks, such as replacing a battery, or to inspect a propeller for damage or wear. Maintenance instructions may contain tasks and procedures to conduct maintenance, inspections, tests, and checks that includes various elements of the UA, such as the airframe, motor, propeller, rotor, systems, and AE as applicable. These procedures are necessary to ensure the continued safe operation of the UAS.

Established maintenance and inspection intervals or life limits would ensure no component, part, or system of the UAS is used beyond its established service life, reducing the likelihood of failure. Service life would be established based on demonstrated capabilities. Extending beyond defined service life could result in a loss of flight or unrecoverable loss of UA control. Examples of unrecoverable loss of UA control could include loss of control, flyaway, or inability to maintain safe distance.

Inspection criteria typically include a schedule for performing maintenance and inspections, expressed in time in service, calendar time, number of system operations, or any combination thereof. By incorporating these elements into the maintenance instructions, the manufacturer ensures the operator of the UAS is informed on maintenance actions necessary to ensure the continued safe operation and that components are properly maintained, inspected, and managed throughout the lifecycle of the UAS. This proactive approach to maintaining the UAS contributes to the overall safety and operational reliability of the UA, reducing the likelihood of accidents or incidents caused by component wear or failures.

While it is the manufacturer's responsibility to ensure all combinations of components of the UAS have been thoroughly evaluated to function together as a system, it is also the operator's responsibility to ensure that the chosen configuration of the aircraft conform to the configuration control document. By providing a configuration control document with the UAS, the manufacturer would identify all allowable configurations of the UAS. This information would ensure flight coordinators are operating a UAS in the proper configuration for a particular operational purpose. Therefore, to ensure flight coordinators are operating a UAS in the appropriate

configuration for a given operational purpose, proposed § 108.720(a)(3) would require manufacturers to create a Configuration Control Document that defines all acceptable configurations of both the UA and its AE. To satisfy this requirement, FAA expects manufacturers to create and maintain a document defining all acceptable configurations of both the UA and the AE. This configuration control document should identify all hardware by part number, identify all software by version number, and define acceptable combinations if multiple options exist. Unevaluated and untested combinations of UAS components may introduce unexpected reliability or safety risks. Configuration control also would support COS objectives by allowing an expedited survey of the fleet to identify additional configurations which may demonstrate an unsafe condition. See section X.K of this preamble for further discussion regarding COS.

Proposed § 108.720(b) would require the operating instructions, maintenance instructions, and configuration control document to be made readily available by a manufacturer to any registered owner, the NTSB, or FAA, if requested. This requirement would ensure that operators have the information necessary to operate the UAS safely and perform any required maintenance. Further, the NTSB and FAA should have the ability to review these documents to ensure compliance of UAS and verify airworthiness acceptance, especially in the event of a safety incident or accident.

H. Flight Data and Data Reporting (§ 108.725)

Under this proposal, in § 108.725(a), manufacturers of the UAS that has received airworthiness acceptance would be required to develop and maintain a system dedicated to the collection of flight data across all models of UAS produced by that manufacturer. This system would actively capture and securely store flight information, encompassing, but not limited to the data required in § 108.45(a)(2) which would include make, model, series, serial number, flight duration, altitude, speed, location, and any incidents or anomalies recorded during flight operations. The implementation of such a data collection system would serve as a cornerstone for enhancing safety, facilitating detailed post-flight analyses, and fostering continuous improvement. Traditionally, these data collection systems are already voluntarily implemented within the industry to analyze flight data and identify safety

issues during developmental testing and to conduct accident investigations. Many manufacturers collect and store the information FAA proposes, driven by a blend of internal performance monitoring and engineering practices. By requiring this practice, FAA proposal not only aligns with current industry standards but also ensures uniformity of data collection across all manufacturers.

Under proposed § 108.725(b), manufacturers of the UAS that has received airworthiness acceptance would be required to preserve records of flight data for a period no less than two (2) years subsequent to the data's acquisition. This retention policy would support investigations in the event of incidents or anomalies, ensuring regulatory compliance, and supporting the ongoing enhancement of safety protocols. While UAS might be operational for periods extending beyond two (2) years, FAA anticipates configuration adjustments, software updates, and system advancements will render data older than two years obsolete. These changes are likely to render historical flight data less reflective of the current state and capabilities of the fleet. Therefore, a two (2) year retention period is considered both practical and sufficient for maintaining relevant and actionable flight data records and balancing interests in data retention.

Section 108.725(c) proposes, to safeguard the privacy and security of flight data; manufacturers of the UAS that has received airworthiness acceptance would need to implement security measures. These measures would need to ensure the confidentiality and integrity of the collected data. The implementation of such security measures is essential for protecting sensitive information from unauthorized access or breaches. Any developed flight data standards would consider these security measures.

Manufacturers of the UAS that have received airworthiness acceptance would be required to grant FAA access to the collected flight data upon request under proposed § 108.725(d). This requirement would ensure that FAA has the necessary information to perform comprehensive safety analyses, engage in regulatory oversight, and respond promptly to concerns or inquiries. Section 108.725(d) also proposes the collected flight data would be provided to FAA in a manner acceptable to FAA. Providing access to data in a format compatible with FAA systems would streamline the process of data review and facilitates effective communication between manufacturers and FAA, contributing to the overall safety and

efficiency of the national airspace. FAA expects to provide guidance on acceptable methods for providing data.

I. Quality Assurance System (§ 108.730)

Section 108.730 proposes the UAS would need to be designed, produced, and tested under a manufacturer-established and documented quality assurance system to ensure that each UAS produced conforms to its design and is in a condition for safe operation. Establishing and documenting a quality assurance system would ensure that UAS meet applicable design, production, and airworthiness requirements and are manufactured and tested in accordance with identified consensus standards in a consistent manner. Meeting the proposed quality assurance requirements, using applicable FAA-accepted consensus standards, would mitigate the likelihood of using obsolete design drawings or procedures, improper materials or manufacturing techniques, and inadequate testing procedures that could result in the UAS not conforming to its design and jeopardize the safe operation of the UAS. A well-documented quality assurance system would allow manufacturers or third-party auditors to verify that the UAS is produced in accordance with established procedures and suitable for operations in the NAS.

A single defect or error in production or maintenance can have significant consequences, including equipment failure, accidents, property damage, and even loss of life. A robust quality assurance program helps to identify and prevent potential issues before they occur. Such a quality assurance program could include regular inspections, testing, and monitoring of aircraft and components to ensure that they meet established quality and safety requirements of FAA-accepted consensus standards.

A quality assurance system should include items such as product configuration control, training, document control, change control, supplier control, and material control as well as inspections, audits, and identification and handling of nonconforming material. The quality assurance system could also include a quality assurance record, which is the permanent record of quality assurance for each UA produced by the UAS manufacturer. While retaining its ability to inspect the manufacturer's facility and quality assurance system under proposed § 108.745, FAA would rely on a manufacturer's DOC and the MOC cited within as primary evidence of

compliance to the requirements of § 108.730 for a quality assurance system.

J. Production Acceptance (§ 108.735)

Prior to airworthiness acceptance and sale to an operator, the manufacturer must conduct a production acceptance inspection and perform testing for each UAS produced. Section 108.735(a) and (b) proposes each manufacturer inspect and test each UAS produced under manufacturer-established and documented production acceptance procedures to demonstrate the UAS has no hazardous operating characteristics or design features; and is in a condition for safe operation. Inspection and testing are essential in validating the UAS conformance to design standards. Performing inspection and testing under a documented production acceptance procedure would verify that each aircraft does not have any unforeseen hazardous flight characteristics and would ensure that the UAS was properly constructed. This inspection and testing would ensure no product is introduced into the NAS before all safety issues are thoroughly addressed, thereby preventing deployment of potentially unsafe systems. Further, this inspection and testing would ensure that the UA's structure is of sufficient strength for its intended operations and that the interface with its AE is performing as intended. FAA recognizes that flight testing every UA produced may not be necessary for every manufacturer and production system, therefore FAA invites comment on when a documented production acceptance procedure may allow for an evaluation that does not include flight test to ensure the aircraft is in a condition for safe operation.

Manufacturers would need to obtain an operating permit for flight testing purposes prior to conducting any production testing in the NAS, per proposed § 108.470.

As stated in proposed § 108.715(b)(3), the manufacturer designates in the airworthiness DOC the specific part 108 operations the UAS is designed to conduct. The production acceptance inspection and test procedures required by proposed § 108.735(c) would need to further demonstrate that the UAS has been designed and constructed to conduct any permitted or certificated operations of proposed §§ 108.400 and 108.500 that the manufacturer designates. Production acceptance inspection and testing would validate that each UAS is capable of safely conducting a manufacturer-designated part 108 operation.

As part of the proposed production acceptance procedure, the UAS

manufacturer would conduct an inspection of the UAS to ensure that the UAS complies with the applicable standards and is in a condition for safe operation. A UAS that is not in a condition for safe operations would not be eligible for airworthiness acceptance.

The inspection would be conducted prior to submission of the airworthiness DOC, as required in § 108.715(b)(13). The goal of the inspection would be to identify issues of non-compliance that have the potential to affect the safe operation of the UAS prior to it being sold to an operator. To ensure the UAS complies with the applicable standards used to demonstrate compliance with subparts G and H of part 108, FAA would expect this inspection to include a review of the records and documents required for airworthiness acceptance.

FAA expects the inspection to include a review of the maintenance instructions, operating instructions, and configuration control documentation required in proposed § 108.720(a)(1) through (3) for completeness and accuracy. As part of this inspection, the manufacturer should verify that the maintenance inspection instructions are available for the UAS and that they apply to the make, model, series, and serial number of the UA being inspected. In addition, the manufacturer would confirm that the aircraft maintenance records show compliance with all applicable UAS manufacturer's safety bulletins at the time of declaration and a verification that the maintenance instructions include procedures for reporting in-service safety issues to support proposed § 108.740, as described in section X.H of this preamble, Flight Data and Data Reporting, in a manner acceptable to FAA. For a UAS that has a type-certificated product or article installed, the inspection would ensure any applicable Airworthiness Directives for that product or article are complied with by the UAS manufacturer before submitting an airworthiness DOC. Finally, the manufacturer would review the configuration control documentation to ensure the UAS's make, model and serial number conform to the manufacturer's approved configuration, as required by proposed § 108.720(a)(3).

FAA anticipates that industry would develop acceptable and appropriate consensus standards to comply with the performance-based requirements in proposed § 108.735. Production acceptance procedures would allow a UAS buyer to receive a complete UAS that conforms to the manufacturer's design data and would provide the manufacturer with an opportunity to detect and fix any missing, broken,

misaligned, or improperly installed components or systems and would ensure all documents required by proposed § 108.720 are complete and accurate.

K. Continued Operational Safety Program (§ 108.740)

In the context of part 108, COS is an oversight program consisting of audits, evaluations, education, and accident/incident investigations, used to ensure UAS in-service continue to meet the safety requirements, standards, and regulations for airworthiness acceptance. A COS program is the method a manufacturer uses to support in-service safety following production acceptance and entry into service of a UAS.

FAA considers the implementation of a COS program by UAS manufacturers essential to maintaining the safety of part 108 UAS, the NAS, and people that may be impacted by UAS operations on the ground. Therefore, proposed § 108.715(b)(11) proposes that a manufacturer must declare that it will support the UAS by implementing and maintaining a documented COS program as required in proposed § 108.740.

Proposed § 108.740(a) requires the manufacturer to implement and maintain a documented COS program as declared in the DOC. This COS program would need to be in accordance with the specified FAA-accepted consensus standard.

Section 108.740(b) proposes that the COS program would need to address monitoring and resolution of in-service safety issues and identified non-compliance with subparts G and H of part 108. This must include provisions for the issuance of safety bulletins from the manufacturer to all owners and include a process for notifying FAA and all owners of the UA model at issue of safety issues and noncompliance, including their planned resolution. This must also include a process for providing advance notice to FAA and all owners of the UAS in question of a discontinuance or provider change of the COS program, which is essential for ensuring uninterrupted coverage for a manufacturer's fleet in service. FAA anticipates that the notification of safety issues to the owners could be achieved through means such as a manufacturer's website or through a product registration process with the manufacturer.

A well-documented COS program would be utilized by the manufacturer to effectively monitor and resolve in-service safety-of-flight issues. When such monitoring identifies a safety

issue, manufacturers would be required to take appropriate action to resolve those issues, such as the issuance of safety bulletins to address unsafe conditions for their products.

Lastly, proposed § 108.740(c) would require manufacturers of the UAS that has received airworthiness acceptance to report any identified hazard involving their UAS models to FAA within 10 calendar days of the manufacturer becoming aware of the hazard. Such reports should include pertinent flight data to aid in the investigation and mitigation of potential safety risks, thereby enhancing the safety of UAS operations. While FAA is proposing that operators will be reporting incidents and accidents to the manufacturer, analysis of that flight data by a manufacturer may reveal previously unidentified hazards.

The combined requirements in proposed § 108.740 would facilitate communication of safety-of-flight issues to the community and would enable subsequent owners and operators to address safety-of-flight issues. Reporting safety-of-flight issues would also assist FAA in discovering product hazards, compliance issues, and identifying risks of injury. A manufacturer of the UAS that has received airworthiness acceptance reporting would be a timely and effective source of information because manufacturers often learn of potential product safety problems at an early stage of the product's life cycle. Following a discovery of noncompliance, FAA proposes in § 108.740(b)(3) the manufacturer of the UAS that has received airworthiness acceptance must develop a process for notifying FAA and all owners of all safety issues and noncompliance, including their planned resolution. The notification to FAA would describe the nature of the noncompliance and how the manufacturers of the UAS that has received airworthiness acceptance plans to address it.

Notification to owners of that UAS is a critical step in ensuring COS. Such notification could take the form of a notice on a manufacturer's website, electronic notification to owners who have registered the UAS with the manufacturer of the UAS that has received airworthiness acceptance, or an update to the software used for the UAS, which advises the operator of the change in status. Manufacturers should exercise diligence to ensure the intended audience receives communications involving any safety-of-flight issues that would impact the UA part 108 operations.

Routine BVLOS operations of UAS of various sizes and capabilities for various

operational purposes are likely to reveal safety issues related to design, maintenance, and training that require resolution to ensure the safety of the NAS. Manufacturers supporting their UAS designs through implementation of a COS program are more likely to identify potential safety issues and implement effective strategies for resolving the safety issue before becoming prevalent throughout the fleet of UAS, increasing the overall safety of the NAS.

L. Inspections and Audits (§ 108.745)

While FAA would rely on a manufacturer's DOC as evidence of compliance to the design, production, test, and inspection requirements of subparts G and H of part 108, FAA proposes in § 108.745(a) that each manufacturer of the UAS that has received airworthiness acceptance must, upon request, allow FAA to inspect its facilities, technical data, reports, any manufactured UA in their possession, and any other necessary information to verify compliance with this subpart. While FAA will rely on the DOC, there may be circumstances, such as incidents or accidents, that warrant FAA to closely review the manufacturer's facilities or information. This access enables FAA to take the actions necessary to verify unsafe conditions have been properly addressed or respond to an accident or incident. In addition, this access enables FAA to ensure compliance with the part 108 airworthiness requirements.

Section 108.745(b) further proposes that any manufacturer of the UAS that has received airworthiness acceptance must allow FAA to witness tests to determine compliance with part 108. Due to the rapidly evolving nature of the UA industry, consensus standards may require new test methodologies. In an effort to verify that the methods of compliance (in this case, tests) meet the airworthiness requirements, FAA may require access to, among other things, witness these tests, evaluate their results, conduct oversight, and audit compliance with applicable standards.

Section 108.745(c) proposes that any manufacturer of the UAS that has received airworthiness acceptance must submit to independent inspections or audits by voluntary consensus standards bodies, or their delegates, who is standard the manufacturer used in submittal of the DOC, in accordance with an FAA-accepted MOC. Further, § 108.745(d) proposes that the manufacturer of the UAS that has received airworthiness acceptance must, upon request, make available the results

of any independent inspections or audits to FAA.

While FAA retains the ability to inspect and witness tests, independent inspections and audits by voluntary consensus standards bodies are also necessary. Independent inspections or audit programs ensure provisions of the consensus standard comply with regulatory and procedural requirements. Submitting to independent audits ensures standards being used as MOCs are being applied in a way intended by the voluntary consensus standards bodies. Independent audits also allow a voluntary consensus standards body to assess the accuracy and effectiveness of standards being used as an MOC. If shortfalls are found in the standards themselves or in the way they are being used, the voluntary consensus standards bodies will have the information needed to effectively update their standards to ensure compliance with the regulations are being satisfactorily demonstrated.

By providing an impartial evaluation of a manufacturer's practices, and adherence to regulatory standards, these audits unveil insights into risk management, potential inefficiencies, and areas for improvement. This provides assurance that manufacturers comply with the requirements of subparts G and H. Independent audits enhance the quality of declarations of compliance and safeguard the interests of all stakeholders, which contributes to the overall safety of flight operations. Providing access to the results of these independent audits and inspections to FAA ensures that FAA can take any necessary corrective action regarding either an accepted standard or an airworthiness acceptance.

M. Design Changes (§ 108.750)

Incorporating new design elements may require a change to the UA or AE design that already has FAA airworthiness acceptance. Section 108.750(a) proposes that only the manufacturer of the UAS that has received airworthiness acceptance may make design changes to the UAS. Design changes are considered changes to the technical data that defines the UAS design, configuration, or performance. It is possible that a manufacturer would become aware of the need for design changes from a variety of sources (such as incidents, accidents, market surveys, etc.). The manufacturer must evaluate proposed design changes for effects on compliance prior to implementation of the design change. FAA expects voluntary consensus standards organizations to develop standards to provide a process for demonstrating that the change and areas affected by the

change comply with the applicable requirements of part 108. Only the manufacturer has the necessary UAS technical data to determine compliance with the design, production, and test requirements of subparts G and H and is the entity that submitted the DOC with those requirements.

Any design change must result in a configuration that is shown to be compliant to the requirements of this part. To ensure design changes to the UAS are implemented properly by the manufacturer, proposed § 108.750(b) states any design change to a UAS with FAA airworthiness acceptance would need to have demonstrated compliance with the requirements of subparts G and H using an MOC.

Proposed § 108.750(c) requires all documentation affected by the design change be updated to maintain control of the configuration following the design change. Affected documentation should include the operating instructions, maintenance instructions, and the configuration control document. The manufacturer of the UAS that has received airworthiness acceptance should evaluate the level of the design change and determine how any planning, implementation, and supporting documentation will be affected by the change.

N. Repairs and Alterations (§ 108.755)

Section 108.755(a) proposed that the manufacturer of the UAS that has received airworthiness acceptance must authorize any repair or alteration under § 108.625. The manufacturer is expected, pursuant to proposed § 108.755(b), to evaluate the details of any proposed repair or alteration for effects on compliance with the applicable requirements of subparts G and H and must not authorize any repair or alteration that does not result in continued compliance with the applicable requirements. FAA maintains that under part 108, the manufacturer is uniquely positioned as the entity with comprehensive knowledge of the system and access to proprietary information, making them the only qualified entity to confirm that conformance to subparts G and H remains intact. This approach guarantees that any repairs or alterations uphold the UA's airworthiness by consistently adhering to the requirements specified in subparts G and H. Further, requiring the manufacturer of the UAS that has received airworthiness acceptance to authorize repairs or alterations could also act as a deterrent to the operator in making beneficial modifications or using third-party components that might improve performance or cost-efficiency

but result in non-compliance with regulatory requirements. FAA invites comments on this approach and suggestions for potential alternatives.

Where a UAS undergoes a repair or alteration that affects the flight characteristics or demonstrated reliability, FAA proposes § 108.755(c) to ensure a UAS is tested in accordance with the testing requirements of subpart H. FAA anticipates that certain repairs and alterations will necessitate comprehensive testing, whereas others may demonstrate compliance through alternative means, such as analysis or bench testing. For example, a repair to a damaged fuselage or wing assembly may have different testing requirements than a software alteration.

Since the effects of a repair or alteration can vary, FAA cannot list all possible repairs and alterations that will affect the flight characteristics or reliability. However, a repair or alteration that does affect flight characteristics or reliability could fail to conform with subpart G and H. FAA expects industry to identify when additional developmental and function and reliability testing would be necessary to demonstrate compliance with subparts G and H in any MOC proposed for FAA acceptance.

O. Record Retention (§ 108.760)

Section 108.760(a) proposes that each manufacturer who submits a DOC would need to retain and make available to FAA, upon request, all supporting information used to demonstrate compliance with the requirements of subparts G and H. Supporting information may include, but would not be limited to, relevant documentation such as test plans, test results, compliance data, flight logs, and any other technical data used to show compliance.

Technical data could consist of the drawings and specifications necessary to define the configuration and the design features of the UAS, information on dimensions, materials, software, and processes necessary to define the structural strength of the UAS, the list of flight essential parts including maintenance and inspection instructions or life limits, and any other data necessary to determine airworthiness or noise characteristics. In the event of a safety issue, or if FAA initiated an action to address a compliance issue, this information would be critical to determine the cause, scope, and severity of the safety issue or non-compliance.

Section 108.760(b) further proposes that any manufacturer who submits a DOC for a UAS must retain the

information described in proposed § 108.760(a) for two (2) years following the cessation of support for the COS of the UAS listed on the DOC. The ability to access detailed records, particularly regarding compliance and configuration control, enables swift identification and resolution of potential safety concerns or compliance issues. By providing FAA with access to this data, any investigation, audit, or review can be conducted more efficiently, ensuring rapid responses to emerging safety concerns, and maintaining the safety of the NAS. The 2-year retention policy conforms to the precedent set forth with FAA's Operations of Small Unmanned Aircraft Systems Over People final rule published January 15, 2021, which required a person who submits a DOC to retain and make available to FAA all supporting information used to demonstrate compliance for two years after the cessation of production in § 107.165. Since FAA expects UAS with airworthiness acceptance under part 108 will be used more than two (2) years following the end of production, FAA proposes for part 108 that the record retention period would extend two years from when the UAS is no longer supported by the manufacturer's COS program.

P. Rescission (§ 108.765)

Compliance is an ongoing process. As such, FAA maintains its authority to continuously evaluate that an MOC satisfies the applicable regulatory requirements and may, as a result of an audit, data analysis, reports from operators, or other information, rescind acceptance of an MOC.

Use of voluntary consensus standards bodies' processes to develop MOC to performance-based regulations provides both FAA and industry with a means to rapidly adapt to changing technology and better respond to market conditions while continuing to enable safe operations within the NAS. However, there is no assurance that a MOC, once accepted, will continue to enable safe operations within the NAS. As such, § 108.765(a) proposes a regulatory provision allowing FAA to rescind a MOC.

Under this proposal, FAA would exercise its authority to rescind its acceptance of a MOC if FAA determines that a MOC does not meet any or all of the requirements of subparts G and H. FAA does not anticipate exercising this option frequently, as FAA typically collaborates with industry in the development of acceptable standards. If FAA determines a standard no longer meets the requirements of this rule, FAA would rescind the acceptance of

the MOC by publishing a notice of rescission in the **Federal Register**. An identified safety issue, stemming from a MOC that is deficient, could lead to a non-compliance resulting in UAS incidents or accidents. Therefore, FAA finds it critical that a process for rescinding acceptance of a MOC is included in proposed 108 rule to ensure all FAA-accepted MOC provide the most comprehensive methods of complying with the requirements of subparts G and H. Rescinding a MOC for any potential hazard or noncompliance with subparts G and H does not automatically lead to rescinding the airworthiness acceptance of a UAS, resulting in the UAS being ineligible for flight operations. The decision to rescind a MOC depends on the potential effects on safety of flight, and each case will be handled individually. If a MOC proves insufficient, FAA may proceed by rescinding airworthiness acceptances which relied on the rescinded MOC for compliance. In addition, manufacturers of UAS whose airworthiness acceptance have been rescinded, based on a rescission of a MOC, can revise their design to comply with an FAA-accepted MOC and submit a new DOC.

As routine BVLOS operations under part 108 occur, FAA may receive information of a safety issue or non-compliance through audits, data analysis, reports, from UAS operators and manufacturers, or other sources. To ensure UAS with airworthiness acceptance continue to meet design and performance requirements, FAA proposes procedural rules to govern rescission of FAA airworthiness acceptance. Section 108.765(b) identifies the reasons FAA may rescind a manufacturer's airworthiness acceptance for any non-compliance or safety concern related to the design, manufacture, or performance of any UAS declared compliant with subpart G and subpart H. Proposed § 108.765(c) states that the proposed rescission process would include FAA notifying the manufacturer of the UAS that has received airworthiness acceptance of the proposed rescission. Section 108.765(c)(1)–(4) proposes that the notice would set forth the Agency's basis for the proposed rescission and provide the manufacturer 30 calendar days to submit evidentiary information to refute the proposed rescission. FAA would initiate rescission of an airworthiness acceptance if the manufacturer's UAS no longer complies with the design and performance requirements of subpart G and subpart H, or if FAA finds any information provided by the manufacturer on their

DOC is no longer true. The objective of the proposed rescission is to inform the manufacturer of the safety issue or non-compliance, provide FAA's basis for the proposed rescission, and provide an opportunity for the manufacturer to resolve it. An unresolved safety issue or non-compliance has the potential to cause incidents or accidents leading to possible injury. A manufacturer of the UAS that has received airworthiness acceptance who fails to resolve or respond to FAA's proposed rescission will have their FAA airworthiness acceptance rescinded, which rescinds airworthiness acceptance of the UAS. A UAS with a rescinded airworthiness acceptance is no longer eligible to conduct part 108 operations; therefore, it is in the manufacturer's best interest to either refute or resolve the non-compliance or safety issue within the 30-day period proposed in § 108.765(c)(2) to the satisfaction of FAA to avoid rescission of the airworthiness acceptance of the UAS. The 30-day period is established based on public comment to the Operations Over People rule, and FAA has determined the same rationale applies here.

Section 108.765(d) would also propose an emergency rescission process for an FAA airworthiness acceptance. Prior to rescission of airworthiness acceptance, FAA would typically initiate the notification process in § 108.765(c) with the manufacturer of the UAS that has received airworthiness acceptance. However, if FAA determines that an emergency exists and public safety requires an immediate rescission of an airworthiness acceptance, FAA would be able to exercise its authority under 49 U.S.C. 46105(c) to issue an emergency order rescinding an airworthiness acceptance.

Under these circumstances, rescission would go into effect immediately, without FAA initiating the notification process or the rescission procedures previously described. The order would remain in effect until the basis for issuing the order no longer exists. However, an emergency order would be considered a final agency decision; as such, a manufacturer may appeal the decision.

XI. Design and Testing Requirements for Airworthiness Acceptance (Subpart H)

A. General (§ 108.800)

Subpart H includes FAA's proposal related to defining performance-based design, production, and airworthiness requirements for UAS operating under this part. Subpart H is intended to

provide clear direction to voluntary consensus standards bodies regarding consensus standards they will propose as a MOC to meet regulatory requirements. FAA expects that this would facilitate more rapid development of these consensus standards. It would also result in more accurate and comprehensive consensus standards that are better able to address the design, production, and airworthiness requirements for airworthiness acceptance of UAS.

To receive airworthiness acceptance under part 108, the manufacturer would be required to comply with all the requirements in subparts G and H. The only way for a manufacturer to ensure compliance with the airworthiness design and performance requirements in part 108 would be to comply with a consensus standard developed by a voluntary consensus standards body and accepted by FAA as a MOC. For compliance with noise requirements, manufacturers would be able to comply through FAA-approved consensus standards or other procedures specified in part 36. Manufacturer compliance with the performance-based design, production, and airworthiness requirements proposed in subparts G and H is necessary to ensure the safety of a wide range of UAS that may be accepted under this proposal. FAA expects that compliance with these proposed requirements would reduce the occurrence of loss of flight and loss of control, resulting in UA that are safe for their intended operations. Loss of flight means a UA's inability to complete its flight as planned, up to and through its originally planned landing. Loss of flight includes scenarios where the UA experiences controlled flight into terrain, obstacles, or any other collision, or a loss of altitude that is severe or non-reversible. Loss of control means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. A loss of control means spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristics, or similar occurrence, which could generally lead to crash. These definitions for "loss of flight" and "loss of control" are consistent with airworthiness criteria used during the Durability and Reliability type certification process.¹³³

¹³³ Airworthiness Criteria: Special Class Airworthiness Criteria for the Matternet, Inc. M2

FAA proposes § 108.800 which identifies the purpose of subpart H and identifies what UAS are eligible for airworthiness acceptance. To be eligible for airworthiness acceptance, as proposed in § 108.800(b), the UAS would need to meet three criteria. First, the UAS would need to meet the requirements of subparts G and H of part 108. Second, the UA would not be able to be an airship. Third, the UA cannot be designed to allow for any person on board during operations.

The first criteria is self-explanatory in that the UAS needs to meet the requirements of subparts G and H. This requirement mitigates common hazards associated with UAS operations and ensures a design that can operate safely in the NAS. This also ensures that the UAS complies with the noise standards applicable to that UAS.

Subpart H would not allow for airships to be eligible for airworthiness approval under part 108. This is because UA operating under part 108 would be required to cede right-of-way to other aircraft which are broadcasting ADS-B Out, per proposed § 108.195. The low speed and relatively long response times to control inputs make it unlikely that an airship would be able to maintain safe separation by avoiding detected aircraft. Finally, subpart H does not allow an aircraft to be designed for carriage of crew or passengers. FAA wished to preclude any manufacturer from using part 108 to circumvent the experimental airworthiness certification process, under part 21, for passenger carrying aircraft. If a person is aboard the aircraft, the determination and mitigation of risk changes significantly. To allow for operations as written in this part while maintaining the level of design and operational rigor defined in part 108, no person can be allowed on a UA operating under part 108.

B. Size, Weight, and Speed (§ 108.805)

FAA proposes § 108.805 which identifies size, weight, and speed design limitations for UA. To be able to obtain an airworthiness acceptance the UA design would need to meet three criteria. First, the UA's wingspan or lateral span would not be able to exceed a lateral span of 25 feet. Second, the UA would not be able to exceed a maximum weight of 1,320 pounds (600 kilograms) gross weight, including anything attached to or carried by the aircraft. Third, the UA would not be able to

Unmanned Aircraft and Airworthiness Criteria: Special Class Airworthiness Criteria for the Percepto Robotics, Ltd. Percepto System 2.4 Unmanned Aircraft.

exceed 87 knots ground speed during normal operations.

When determining the size of UA that can safely operate in the NAS, the risk to persons and property on the ground, or ground risk, must be considered. The ground risk of an aircraft is determined by assessing the combination of aircraft reliability and consequence of failure. To limit the maximum consequence of failure, the total crash area of the aircraft must be limited. A maximum wingspan or lateral span of 25 feet was selected to limit the number of people within a potential crash area, thereby limiting ground risk. FAA is leveraging industry standards such as ASTM F3442/F3442 and RTCA MOPS for ACAS sXu when selecting the 25 feet maximum wingspan or lateral span. This span would provide consistent boundaries when defining DAA parameters.

As discussed in section X.A, FAA considered the BVLOS ARC recommendation and part 107 operations when determining weight and speed design limits for airworthiness acceptance under part 108. The maximum gross weight of an aircraft, including anything attached to or carried by the aircraft, operating under part 108 would be set at 1,320 pounds (600 kilograms), within the BVLOS ARC recommendations and JARUS limitations based on maximum kinetic energy.¹³⁴ Likewise, under part 107, UAS maximum operational speed is limited to 87 knots or less during normal operations. Positive service experience under both part 107 and under BVLOS operating exemptions has been gained for aircraft operating at ground speeds up to 87 knots. Based on this experience, and lacking data on the effects of increased speeds, FAA has determined 87 knots or less would be an appropriate limitation for UAS operating under part 108. A manufacturer may seek regulatory relief from any of these UA criteria.

C. Simplified User Interaction (§ 108.810)

Simplified user interaction (SUI) aims to make flying safer, simpler, and more accessible by using automation to simplify UA operation for flight coordinators while maintaining safety. SUI automates the tasks that are most error prone, need constant practice, and can distract the flight coordinator. This automated approach offers safety and economic benefits.

SUI is intended to streamline operations, reduce loss of control incidents, and eliminate the need for

advanced flight training. Based on granted exemptions and VLOS operations under part 107, FAA recognizes the increased use of SUI by industry through these existing operating approvals.¹³⁵ The proposed SUI requirements leverage current design practices to further automate UAS operations. FAA is embracing these technologies as the next path forward in integrating UAS into the NAS.

Proposed § 108.810 would require design and performance requirements for UAS to exhibit highly automated features and functions. This requirement is necessary for BVLOS as it would enhance the safety of UAS operations by replacing direct manual control of the UA with automated controls. Flight controller access is limited to high-level inputs, which are implemented by the automated control system of the UA. SUI is especially important for enabling one-to-many flight operations as the task of actively controlling multiple aircraft simultaneously would require exceptional piloting skill.

This requirement for SUI features would not permit “pilot in the loop” designs that rely on manual control where the flight coordinator is responsible for providing inputs through devices such as rudder pedals, a stick, yoke, or throttles, to include hand controllers with joysticks that are popular among hobbyists. Pilot in the loop controls such as push buttons, knobs, and touch screens would only be permitted to enable the flight coordinator to execute simple commands, such as changes in airspeed, altitude, and heading. Proposed § 108.810(a) would require consistent and predictable controllability, stability, and maneuverability using automated flight controls, not relying on manual flight control inputs. This consistency and predictability should be demonstrated through repeatable, smooth transitions between turns, climbs, descents, and level flight throughout the flight envelope and operating environment limits. Designs that demonstrate consistency and predictability throughout the flight envelope will enable accurate assessment of performance and reliability during testing. Further, proposed § 108.810(a) would require that controllability, stability, and maneuverability be met at all flight and ground loading configurations within the UA’s prescribed weight limits. Changes to flight and ground load

configurations, such as changes to attitude, releasing payload, transitioning from VTOL to forward flight, should not cause UA controllability, stability, and maneuverability to be inconsistent or unpredictable. Furthermore, the UAS’s automated flight envelope and path protection systems should be taken into consideration when analyzing (including test conditions) compliance to the controllability and maneuverability requirements. The UA should have the necessary flight stability to prevent loss of flight during normal, abnormal, and emergency procedures shown by natural or artificial means, or a combination of both. Some examples of abnormal or emergency scenarios include collision avoidance, aborted missions, power system failures, and forced landings.

Proposed § 108.810(b) would require UA designs that are resistant to operation outside of the flight design envelope during any phase of flight. To be resistant to operations outside of the flight design envelope, the UAS should have the capability to maintain dynamic stability, regardless of external forces, under all foreseeable conditions, including failure conditions. Designs that would allow an aircraft to operate beyond its demonstrated limits could result in loss of control which could jeopardize the continued safe flight and landing of the UA.

Proposed § 108.810(c) would require prevention of loss of control of the UA due to degradation or nonavailability of external services, systems, operator input, or signals. The UAS should have capabilities and necessary features to control the aircraft in the case of a loss of external services, such as third-party services, used in communicating, controlling, or providing system inputs to the UA. The design must incorporate contingencies accounting for loss of services or functions that ensure safety of the NAS and people on the ground.

Proposed § 108.810(d) would require the UAS to have a means to discontinue flight as soon as practicable without creating a safety hazard. An operator may need to discontinue or suspend a flight for a variety of reasons such as unexpected weather conditions, a system malfunction, or the presence of other hazards such as a flock of birds or an aircraft near, or intersecting, the route of flight. Discontinuing or suspending a flight may include options such as an immediate landing, a return flight to the UA’s point of departure, a diversion to an alternate landing site, a course change, or in-place hover until any hazards have passed. The UAS should be equipped with features that allow for the flight controller to

¹³⁴ JAR-DEL-SRM-PDRA-05, Pre-Defined Risk Assessment, PDRA-05, for Aerial Work Operations.

¹³⁵ Exemption 18339D, 19111B, 19398A, 21097, and 22003.

interrupt, abort, or command an emergency landing during all phases of flight. This capability to discontinue flight must provide the ability to have the aircraft take appropriate action as soon as practicable while maintaining safety and not creating a possible additional safety hazard. The capability of discontinuing flight would ensure that potential damage to other aircraft, property, or people is prevented should an adverse situation arise, such as erroneous behavior of the UA. The flight discontinuation capability would allow for the UA to be redirected by the operator, in the event of an emergency, as when called upon by national and local airspace governing agencies.

To prevent a safety hazard associated with unnecessary landings, any design which discontinues flight should prevent inadvertent activation. It should also be designed such that false positives, incorrectly entered data, and other human errors do not cause inadvertent activation.

D. Signal Monitoring and Transmission (§ 108.815)

Proposed § 108.815(a) would require that the UA be designed so that it can receive from and transmit to AE all information that is required for continued safe flight and operation. The ability of a UA to engage in two-way communication with its AE is important for the safety of flight operations. This bidirectional flow of information enables real-time flight adjustments, which can be essential given the dynamic nature of the NAS. It allows UAs to respond promptly to changes in air traffic, no-fly zones, or adverse weather conditions. Continuous communication also permits remote monitoring and control by flight coordinators, who can proactively address potential issues, maintaining the UA's optimal condition and preventing safety hazards. Maintaining a two-way communication between UA and AE is foundational to ensuring their responsiveness, adaptability, and full control throughout the flight. Examples of such information may include position and location information, weather data, or aircraft health status.

Proposed § 108.815(b) would require the UAS design to execute a safe predetermined action in the event of a link timeout. During lost link events it is important for the UA to respond with an appropriate safe predetermined action, thereby minimizing risks to other users of the NAS during flight operations. This requirement ensures that the UA is equipped to handle such disruptions safely and efficiently. The operating instructions in proposed

§ 108.720 would address all options and capabilities of the UA for contingency responses. In the proposed MOC to these requirements, FAA expects industry to define and standardize safe predetermined actions such as return to home, loiter, continue flight, etc. a UA could execute during a link timeout event. There may be multiple acceptable safe predetermined actions, but the predetermined actions should be standardized based on the category of permitted or certified operation. Further, FAA also expects industry to define the link timeout metric as part of any proposed MOC, as it may be variable based on the type of permitted operations and associated ground and air risks. As part of this link timeout metric, FAA expects both uplink and downlink timeouts to be addressed.

E. Position, Navigation, and Timing (§ 108.820)

Proposed § 108.820 states that the UA would need to be capable of sustaining position, navigation, and timing with accuracy to maintain a safe distance from other aircraft in the airspace in which the UA operates. Position, navigation, and timing (PNT) work together as an integrated system to support safe UA operation within the NAS. A UA typically determines its position by receiving signals from satellites or ground-based systems, navigates by calculating its path and movements relative to that position, and uses precise timing to synchronize these processes. Accurate PNT is necessary for effective conformance monitoring or collision avoidance systems.

PNT data from a UA supports the safe coordination of airspace with other users of the NAS. Discrepancies in the UA's navigational data can complicate the process of deconflicting airspace, increasing the risk of close encounters with other NAS users. Furthermore, inaccuracies may lead other users, particularly those utilizing UTM systems, to underestimate the proximity of a UA, potentially resulting in unsafe situations. The UAS must further represent its PNT with a minimal margin of error because a UAS that incorrectly represents its position poses a heightened risk of colliding with other aircraft or obstacles. By ensuring PNT accuracy, a UA can maintain safe distance from other NAS users and facilitates a well-coordinated flight environment.

F. Collision Avoidance (§ 108.825)

Proposed § 108.825 will require all UAS obtaining airworthiness acceptance to have the capability to avoid aircraft in accordance with proposed § 108.195.

Proposed § 108.195 provides the operating requirements for avoiding collisions with aircraft departing from or arriving at an airport or heliport or equipped and broadcasting their position using ADS-B Out or electronic conspicuity equipment.

Typically, a collision avoidance system should incorporate two aspects. First, the ability to identify a hazard should have the fidelity and range to identify heading, position, and airspeed for aircraft with sufficient time to allow action to be taken to maintain safe distance. Second, the UA should have flight performance characteristics throughout its documented flight envelope and operating environment limitations that are sufficient to maintain safe distance from those aircraft.

Providing a means of detecting aircraft is an important component in avoiding midair collisions. Any procedures associated with collision avoidance must be contained in the operating instructions required by § 108.720(a)(1).

G. Anti-Collision Lighting Requirements (§ 108.830)

Proposed § 108.830(a)(1) and (2) would require installation of anti-collision lighting, which, when illuminated, must be visible for at least 3 statute miles when operating at night. This intensity is aligned with current manned aviation practices and based on positive history in manned aviation, this intensity supports collision avoidance with aircraft not equipped with ADS-B Out. This requirement also aligns with the anti-collision lighting requirement in 107.29(b) for small UA. Proposed § 108.830(a)(3) would require that the anti-collision lights need to have a flash rate, colors, and fields of coverage that enhance visibility. Establishing flash rates, colors and fields of coverage would enhance the visibility of UA for other aircraft operating in the NAS. FAA is proposing that these parameters remain performance-based so adequate adjustments to the parameters can be made as technology develops to enhance visibility.

Consensus standards bodies should define consistent parameters for anti-collision lights to identify UAS operating in the airspace, distinguish from other lights in the area such as cell phone towers and streetlights, and allow for a safe distance to be maintained. These lights would serve as a key safety feature to increase the visibility of UA to other aircraft, pilots, and air traffic controllers in the vicinity. This enhanced visibility helps to prevent midair collisions, close encounters, and

other incidents that could endanger both UA and manned aircraft operating in the same airspace. By providing a clear indication of the UA's presence, position, and trajectory, lighted anti-collision lighting enables other airspace users to maintain safe distance.

Section 108.830(b) proposes the design may allow for the deactivation or reduction of intensity of the anti-collision lights in accordance with proposed § 108.250(c). Allowing the operator to deactivate or adjust the intensity of anti-collision lighting is based in safety. In diverse UAS operational environments, full-intensity lighting can, at times, be counterproductive. For instance, in foggy conditions, intense lighting may cause glare, posing risks to other pilots. Similarly, during specialized operations like nighttime flights in populated areas or near wildlife, a deactivation or reduction of intensity can prevent undue disturbances.

H. Position Lighting Requirements (§ 108.835)

Section 108.835 proposes that UA with a lateral span of at least 96 inches would need to be equipped with position lights that meet certain specifications or would need to have operating instructions that include a limitation prohibiting night operations. Position lights serve a key role in ensuring an aircraft's visibility, allowing other airspace users to accurately discern its location, orientation, and trajectory during night hours. Without these lights, the risk of collisions increases, as the ability for visual identification and spatial awareness among pilots and operators can be compromised. The requirements proposed in § 108.835 are consistent with manned aviation requirements and would ensure UAS position lighting standards match all other aircraft in the NAS.

Section 108.835(a) proposes that, to ensure their effectiveness, the installation of left and right position lights would be required on both sides of the aircraft. These lights would need to be positioned as far apart as possible to maximize their visibility. When the aircraft is in its normal flying position, the red light would be on the left side, while the green light would be on the right side. This arrangement would help pilots and other airspace users identify the aircraft's direction and orientation during flight. FAA suggests that for UA with a lateral span of less than 96 inches it would be impractical to differentiate red and green position lights from each other, complicating the determination of the direction of travel. This could limit

a pilot of a manned aircraft's reaction time, potentially not allowing adequate time for corrective measures to prevent a collision. FAA invites comments related to the lateral span lighting proposal.

In addition to the left and right position lights, § 108.835(a) proposes to require a white light mounted on the aft portion of the aircraft or on the wingtip. The rear position light enhances the aircraft's visibility from behind, ensuring that other airspace users can maintain proper situational awareness and avoid potential collisions.

By adhering to these positioning and color requirements, which are common to most aircraft operating in the NAS, part 108 aircraft can contribute to a safer, more coordinated, and efficient operational environment for all users in the airspace. Section 108.835(b) proposes that, if an aircraft is not equipped with position lights, an operating limitation prohibiting night operations would need to be included in the operating instructions in proposed § 108.720(a)(1). Implementing such a limitation in the operating instructions ensures clear communication of operational boundaries. This operating limitation aims to maintain a high standard of safety in night flying conditions, safeguarding not only the UA but also the overall airspace for other users.

I. Power Generation, Storage, and Distribution System (§ 108.840)

The power generation, storage, and distribution system in a UAS plays an important role in its overall functionality and safety. This includes powering essential flight control systems, navigation aids, communication devices, associated elements, and any payload-specific equipment. The integrity of this system is vital for continuous, safe flight operations, as it ensures that all components receive the necessary power to function correctly throughout the flight. Therefore, proposed § 108.840(a) would require that the UAS be designed to provide power for all connected electrical loads.

Proposed § 108.840(b) would require that the power generation, storage, and distribution system be able to ensure that no single failure or malfunction of this system would result in loss of flight or loss of control. This requirement emphasizes the necessity for an electrical system designed with redundancies and safeguards to prevent or minimize the impact of failures or malfunctions. By ensuring the reliability of the power system, the UAS is better equipped to maintain safe operation,

even in the face of unexpected failures, thereby preventing loss of flight, loss of control, or compromising safety.

J. Propulsion System (§ 108.845)

Section 108.845(a) proposes that the propulsion system would need to have the necessary reliability, durability, and endurance for safe flight without failure, malfunction, or excessive wear, throughout the expected life cycle of the propulsion system. A propulsion system failure or malfunction can lead to a sudden loss of thrust or lift, which is essential for maintaining the aircraft's forward motion and altitude. Failure of the propulsion system could result in loss of flight or loss of control. A reliable propulsion system with the durability and endurance throughout the expected life cycle reduces loss of flight occurrences and ensures safety of persons and property on the ground and other NAS users.

Section 108.845(b) proposes that the propulsion system would need to be designed not to exceed safe operating limits under normal operating conditions. Normal operating conditions and operating limits would be defined by the manufacturer in the UAS operating instructions. Operating limits that cannot be influenced by the flight coordinator, such as the maximum rotational speed of a motor, need to be determined by the manufacturer and imposed as a limit in the design of the UAS, though they may not need to appear in the operating instructions. This minimizes the risk of catastrophic failures due to overstressed components or systems.

Section 108.845(c) proposes the propulsion system must be designed so that a loss of power or a power failure does not lead to a loss of control of the UA. This ensures the UA design has a contingency for loss of power and will not result in a failure which could jeopardize the safety of the UA and surrounding environment, such as asymmetric thrust.

FAA is not proposing prescriptive propulsion requirements to promote continued development, innovation, and improved efficiency of UA propulsion systems. FAA anticipates that voluntary consensus standards bodies would develop new consensus standards for various categories of propulsion systems.

K. Fuel System (§ 108.850)

Section 108.850(a) proposes that, if the UAS is equipped with a fuel system, the fuel system design would need to provide a means for the safe removal or isolation of fuel from the rest of the UA. To prevent fuel leaking or fuel

contamination, and to provide a means for safely handling and transporting the UA on the ground, it must be possible to either remove all fuel onboard or ensure it is safely isolated within tanks or lines in such a way that the fuel system minimizes the risk of fire. Section 108.850(b) proposes that UA would need to be designed to retain fuel, preventing leaking or fluid buildup, under all likely operating conditions. This will reduce the likelihood of a fire by not introducing the fuel to an ignition source. Proposed § 108.850(c) would require the UA to have ventilation and drainage where flammable fluid or vapor may exist. Proper system design accounting for fuel retention, ventilation, and drainage prevents the accumulation of flammable fluids or vapors. Changes in temperature, pressure, aircraft attitude, or acceleration loads are all examples of potential causes of leaking or pressure build-up, either of which could be a source of fire. By adhering to these requirements, potential fuel-related incidents such as leaks or spills that could result in fires or explosions are effectively minimized.

L. Fire Protection (§ 108.855)

Proposed § 108.855 would require the incorporation of design features that can sustain both static and dynamic deceleration loads without resulting in structural damage to the fuel or electrical system components or their attachments. In the event that the UA has a hard landing or crashes, the design must ensure that such an event will not result in structural damage to components of the UA likely to contribute to a post-event fire as the deceleration load shifts. Examples of components that must meet § 108.855 include fuel tanks, fuel lines and fittings, batteries, wiring harnesses, or wiring attach points. Fuel and electrical system crashworthiness involve designing and testing these systems to demonstrate fuel remains safely contained and sources of electrical current remain safely separated from the fuel as loads shift. This would ensure that fuel leaks do not reach potential ignition sources and that electrical power does not become an ignition source, resulting in a post-incident fire. By actively implementing such design features, the risk of fire-related incidents is significantly reduced, enhancing the overall safety of the UA during operation, and protecting lives and property on the ground, or safeguarding from other hazards, in the event of an accident.

M. Software (§ 108.860)

Proposed § 108.860(a) would require that all software that may affect the safe operation of the UA function properly and have dependability. Dependability means the software code produces the consequences for which it was written, without adverse effects, in the manufacturer defined environment. Essential components and functions of the UA, such as propulsion, flight control, navigation, and DAA, are controlled by software. Due to software's influence over essential components, it is important to minimize the occurrence of software errors to ensure its dependability. Therefore, software should be designed, verified, and implemented according to standards that confirm it dependably fulfills its intended purpose.

Proposed § 108.860(b) would also require manufacturers to track, control, and document any changes made to the software throughout the life cycle of the UAS within a configuration management system. A configuration management system for software is a set of practices and tools designed to manage and track changes in software development, ensuring consistency, control, and traceability of each version of software components. Such a configuration management system would enable manufacturers to maintain the integrity and consistency of the software. In addition, proposed § 108.860(c) would require manufacturers to capture and record any defects or modifications made to the software within a problem reporting system. A problem reporting system is a structured tool that facilitates the identification, documentation, and tracking of issues or defects. Such a problem reporting system would allow for a comprehensive overview of the software's status, thereby facilitating continuous improvement efforts. Thorough and continuing software development significantly reduces software errors, ultimately contributing to a safer and more reliable UAS operations and facilitates continuous improvement efforts.

N. Electronic Hardware (§ 108.865)

Proposed § 108.865(a) would require all electronic hardware in the UAS to perform its intended functions within the manufacturer-defined operating and environmental limitations. This requirement would ensure consistent system performance and safety by requiring that all electronic components operate effectively within their specified parameters, under typical usage scenarios. This predictability is

essential for system integrity, as it allows for the accurate assessment and management of risks associated with electronic system failures, which could otherwise compromise the safety of the UA.

Operating limitations may include the boundaries of conditions under which the electronic systems are designed to function, including variables like voltage, current, and data processing requirements. These limitations ensure that the hardware can handle the demands of its operational tasks without failure. Operational environment limitations consider external factors such as temperature, humidity, vibration, and electromagnetic interference that the UAS may be exposed to during UA operation. By proposing that electronic hardware withstand both sets of limitations, FAA would ensure that UAS would be able to operate safely and reliably in diverse conditions, from the physical stresses of flight to variations in weather and electromagnetic environments.

Section 108.865(b) proposes that electric hardware must be designed and installed so they do not have an adverse effect on the safe operation of the UA. An adverse effect on safety would be those effects that could negatively impact the safety and airworthiness of the UA. An example of potential adverse effects includes the disruption of signal integrity through electromagnetic interference, which could stem from improper shielding or placement of electronic components. Such interference could degrade the performance of navigation and communication systems, leading to loss of flight or loss of control. By establishing design and installation standards that mitigate these risks, this ensures continued safe UAS operations, even in the presence of potential sources of electronic interference.

O. Systems and Equipment (§ 108.870)

Section 108.870(a) proposes that a UAS would need to have all systems and equipment necessary for safe flight, considering any systems or equipment necessary to operate the UAS in the intended airspace class or required for the operation. This requirement is determined by the class of airspace in which the manufacturer intends the UAS to operate and any specific operational demands. For example, § 108.180(b) proposes avoiding collisions with aircraft not broadcasting their positions using ADS-B Out. Similarly, § 108.185(d)(5)(ii) which proposes the same requirement as § 108.180, but when operating over Category 5 population densities. This

provision ensures that UAS are prepared and capable of navigating and operating safely within their designated operational environments, accounting for the complexity and variability of NAS requirements. Different classes of airspace have varying levels of traffic density, airspace restrictions, and safety considerations which may require unique equipment. By ensuring UAS are adequately equipped for their intended operational environment, this regulation aims to minimize risks of collision and ensure efficient use of airspace.

Section 108.870(b) proposes that installed systems and equipment would need to perform their intended function within the operating limitations and environmental limitations for which the aircraft is designed. FAA emphasizes that systems and components should be evaluated to ensure that any potential failure or malfunction will not compromise the UA's control. This holistic assessment approach safeguards against systemic vulnerabilities that could lead to operational failures. FAA expects systems and components within those systems to be considered separately and in relation to each other. As with electronic hardware, systems and equipment would need to perform throughout the intended operating and environmental limitations. The same reasoning given in electronic hardware for why both types of conditions need to be accounted for is valid here.

Section 108.870(c) proposes that no probable failure shall result in a hazardous outcome. This requirement is meant to prevent unsafe outcomes stemming from individual component failures. Probable failure conditions are those failure conditions anticipated to occur one or more times during the entire operational life of each UAS.¹³⁶ These are not hypothetical or highly unlikely failures but are considered within the realm of possibility based on historical data, engineering analysis, and operational experience. Probable failures could arise from a range of sources, including wear and tear, manufacturing defects, design limitations, and other impacts.

It is important to prevent such failures from leading to a hazard such as a loss of flight or control. UAS, like all aircraft, rely on a complex interplay of systems and components to operate safely and effectively. A failure in one of these systems—be it navigation, propulsion, communication, or control—could jeopardize the UA's ability to maintain flight or be controlled, leading to potentially unsafe outcomes. This could include unintended entry into restricted

airspace, collisions, or uncontrolled descent, each posing significant risks to public safety, property, and the integrity of national airspace.

The proposed requirement set forth in § 108.870(c) is designed to ensure that UAS are engineered and maintained to a standard where probable failures do not compromise the UA's core operational capabilities. This could involve robust design practices, thorough testing and evaluation of components and systems, and regular maintenance and inspection routines. The objective is to identify and mitigate risks associated with probable failures, ensuring that a single probable failure does not lead to a hazardous outcome.

In implementing this requirement, manufacturers should consider redundancy, fault tolerance, and fail-safe mechanisms in the design and operation of UAS. Redundancy involves the inclusion of systems or components that prevent loss of functional capabilities in the event of a failure. Fault tolerance refers to the ability of a system to continue operating properly in the event of a failure. Fail-safe mechanisms are designed to bring the aircraft to a safe state in the event of a failure.

P. Cybersecurity (§ 108.875)

To maintain the security and airworthiness of UAS equipment, systems, and networks, proposed § 108.875 would require that UAS equipment, systems, and networks, addressed separately and in relation to other systems, be protected from unauthorized electronic interactions.

Intentional Unauthorized Electronic Interaction (IUEI) refers to “a circumstance or event with the potential to affect the aircraft due to human action resulting from unauthorized access, use, disclosure, denial, disruption, modification, or destruction of information or aircraft system interfaces. Note that this includes malware and the effects of external systems on aircraft systems but does not include physical attacks or electromagnetic jamming.”¹³⁷ An adverse effect on safety would be those effects that could impact the safety and airworthiness of the UA and its operation. Protecting against IUEI involves systematically preventing, avoiding, and mitigating malicious interference with aircraft systems. Unauthorized interference with a UAS could have both safety and security impacts.

Cybersecurity protection efforts must be informed by standards acceptable to FAA. For cybersecurity, there may be acceptable standards produced by entities other than voluntary consensus standards bodies. Cybersecurity standards and guidelines, such as the Cybersecurity Framework developed by National Institute of Standards and Technology (NIST), typically promote protection by utilizing a risk assessment that demonstrates how security and safety risks associated with IUEI are identified and assessed. The risk assessment identifies which equipment, systems and networks require protection from IUEI. If a cybersecurity risk is identified that can adversely affect the safety of the UAS, the manufacturer can then develop mitigation plans and provide them to the operator. This would ensure a comprehensive and consistent approach to maintaining the safety of the UA's equipment, systems, and networks tailored to the risks commensurate with UAS. FAA expects that a standard with similar requirements to the NIST Cybersecurity Framework would be found acceptable as a MOC for cybersecurity. FAA invites comments on cybersecurity standards for UAS.

Q. Associated Elements Design and Performance Requirements (§ 108.880)

Section 108.880(a) proposes that each associated element would need to be designed to perform its intended function under all operating conditions specified in the UAS operating instructions. The intended function includes both aircraft performance and ability to successfully complete the operation for which the aircraft was designed, such as small package delivery or agricultural operations. Both the AE, as well as the UA itself, must be designed such that the UA operates as intended in all expected operating conditions, whether those conditions are encountered by the UA or the AE. The operating instructions need to include operating limitations of the UAS that address operational environment conditions, adverse weather, collision avoidance, cybersecurity, lightning, hazardous materials, weight, and balance. Operating instructions need to also include normal and abnormal procedures likely to be encountered in the intended operations. The UA and AE must be integrated in such a way that the AE does not introduce additional safety hazards in the NAS. By ensuring the AE can perform its intended function throughout its expected range of operating conditions, the proposed rule would mitigate these

¹³⁶ JARUS SORA v 2.5.

¹³⁷ See FAA Order 8110.107B, *Monitor Safety/Analyze Data*, page 2–2 (October 13, 2023).

potential hazards. For example, if AE includes a launcher, the acceleration force imparted on the UA should not exceed its design limit. In addition, as proposed in § 108.880(b), any probable failure or malfunction of the AE or any of its components must not result in a hazard. For the purposes of this proposed rule, a hazard would be any condition that could foreseeably cause or contribute to an incident or accident. These situations must be mitigated to provide for safe operation of the UA.

Proposed § 108.880(c) requires that the AE would be designed to continuously monitor, display, and transmit information required for safe flight and operation. This may include, but would not be limited to, parameters related to energy storage, propulsion, detection systems, flight safety, signal strength, as well as flight and navigation information like airspeed, heading, altitude, and location. FAA expects an acceptable MOC to identify the relevant information that will be displayed for the designated operational purpose.

To reduce the likelihood of human error when conducting any manufacturer-designated operation, the human-machine interface should be considered in the development of the AE because AE is typically the interface between humans and the UAS. Monitoring and displaying the status of critical parameters to the flight coordinator would enable successful and efficient management of the UA's flight. These design features would contribute to a more reliable, safe, and secure operation, ultimately promoting the successful integration of UAS into the NAS.

R. Suitability and Durability of Materials (§ 108.885)

Proposed § 108.885 would require the suitability and durability of materials used in the UAS to account for the effects of all operational and operating environment conditions expected during operation. Materials used for aircraft components and structures would need to meet the loads and stresses of all operations within the UA's flight envelope for the life of the UA or defined maintenance interval. The UA should be designed and manufactured with materials that permit its structure and components to withstand those stresses likely to be encountered. Such stresses could result from wind gusts, temperature extremes, humidity extremes, or ground handling. Adhering to material specifications and considering the most adverse conditions during design would prevent structural failures, which could lead to loss of

flight or loss of control, throughout its operational life.

S. Operating Environment Conditions (§ 108.890)

Proposed § 108.890(a) would require that the UAS have design characteristics to accommodate operating environment conditions likely to be encountered during its intended operations. Aircraft systems and structures may not function as intended if operating conditions are not accounted for in an aircraft's design. Such environmental conditions, such as variations in temperature, wind, rain, ice, and humidity, may alter the safe operation of a UA. Therefore, if operations are intended in these conditions, the UA design would be required to account for them. This proposed requirement is necessary to enable UA to be properly designed and constructed to conduct safe ground and flight operations in the specific operating environments for which the aircraft is designated to operate in. UA systems or structure unable to accommodate the environment in which it is operating may lead to loss of flight or loss of control.

Under proposed § 108.890(b) in lieu of the requirements of § 108.890(a), the UAS would be required to have the capability to identify and avoid or exit those conditions the UA is not designed to operate. This requirement is intended to restrict flight into known environmental conditions in which the UA is not designed to operate. This requirement also is intended to either prevent inadvertent flight into such conditions or provide a means for detecting those conditions for which the UA is not designed to operate. These requirements along with the operating instructions ensure the flight coordinator is informed about the environmental conditions in which the UAS can be utilized.

T. Lightning Protection (§ 108.895)

Proposed § 108.895 would require a UA to either incorporate design characteristics that protect the UA from loss of flight or control due to lightning strikes or have an operating limitation that explicitly prohibits flight operations in weather conditions that are conducive to lightning activity. The latter would apply when the manufacturer did not demonstrate during developmental testing that the UA can withstand lightning strikes. Lightning strikes present a significant hazard to the UAS, capable of causing immediate loss of flight or loss of control. By ensuring that UAS are inherently designed with lightning protection features, this requirement

aims to safeguard against the primary risks associated with lightning, such as electrical system failures, ignition hazards, and structural damage.

Recognizing the diverse range of UA designs and operational capabilities, the proposed regulation offers an alternative for cases where it is not feasible for the manufacturer to demonstrate lightning protection. In such instances, the UA would be subject to an operating limitation, listed in the operating instructions, that explicitly prohibits flight operations in weather conditions conducive to lightning activity. This approach provides a flexible regulatory framework that accommodates the technical and economic constraints of developing lightning-protected UAS while ensuring that safety remains the paramount consideration. By restricting operations in potentially hazardous weather conditions, this operating limitation serves as a precautionary measure to minimize the risk of lightning strike incidents.

U. Flight Data Recorder (§ 108.900)

Incidents and accidents may result in serious injury or fatality for persons on the ground or onboard other aircraft. Fundamental to ensuring further incidents or accidents are mitigated is the ability to determine root cause and implement any necessary corrective actions. The inability to determine root cause and implement corrective actions may lead to further incidents and accidents with the same unidentified cause.

Therefore, proposed § 108.900(a) would require that the UA, GCS, or both, be equipped with a flight data recording system. This regulation works in tandem with the flight data requirements in § 108.725. This system must capture and record onboard system and data from initial powerup through shutdown. This proposed requirement would ensure that a system captures relevant data to recreate the flight and determine the root cause of incidents and accidents. In addition, § 108.900(b) requires the recorded data to be in a standardized format and readily accessible to FAA and NTSB, and readable without requiring proprietary software. This is to help ensure data integrity in the event of an investigation and to support regulatory analysis and oversight.

The data must be readily accessible to FAA or NTSB to provide relevant information for engineers, technicians, maintenance crews, and operators to identify root causes and resolve safety of flight issues. By analyzing this data, the manufacturer, operator, and FAA can efficiently determine the root cause of

failures and monitor the UA's overall health. Furthermore, the retrievability and standardization of the data enables the NTSB to better analyze and investigate UA accidents. This comprehensive approach to data recording and accessibility ensures that relevant information, including system inputs, outputs, data bus logs, signal strength indicators, and sensor data, could be utilized in determining root cause.

V. Flight Data Analysis (§ 108.905)

Section 108.905 proposes that a UAS would need to be designed to capture and record all flight data necessary for trend analysis, failure identification, and root cause analysis. Designing a UAS to capture and record flight data is important for ensuring safety and reliability. The manufacturer of the UAS that has received airworthiness acceptance is responsible for ensuring continuing operational safety of their UAS designs. Access to the flight data identified in this section enables the manufacturer to perform a detailed analysis of incidents, identifying trends and root causes of failures, which is essential for developing preventive measures and improving design. It supports ongoing regulatory compliance, facilitates acceptance processes, and enhances operational efficiency by enabling trend analysis and targeted maintenance strategies. Moreover, analyzing flight data can inform training programs. These training programs would serve to reduce operator errors and increase the overall safety of UAS operations.

Such data collection and analysis not only improves safety and reliability but also builds stakeholder confidence by demonstrating a commitment to rigorous safety standards. As UAS operations become more integrated into the NAS, the ability to proactively manage and mitigate risks by leveraging comprehensive data analysis is indispensable. This approach would ensure that UAS technology evolves in a manner that prioritizes the safety of both the UAS and the NAS.

W. Noise (§ 108.910)

This proposal would apply 14 CFR part 36 noise standards to part 108 UA.¹³⁸ Specifically, § 108.910 would require UA seeking airworthiness acceptance under part 108 to demonstrate compliance with part 36. The changes to part 36 propose the methods of compliance that would be

available to a UA that does not conform to a type certificate. A manufacturer could demonstrate compliance using an FAA-approved industry consensus standard or, where there are no noise consensus standards, using current part 36 procedures that are appropriate for the UA or a combination of requirements approved by FAA appropriate for the UA.

This approach would provide flexibility in the methods of compliance for UA. It considers different procedures and pathways, in addition to the traditional noise certification process in part 36, that will provide for more streamlined compliance for UA requesting an airworthiness acceptance. The methods of compliance for the noise requirements are discussed in more detail in section XII.A, Updates to Noise Requirements.

X. Placards (§ 108.915)

Section 108.915 proposes that the UAS would be required to display all placards necessary for safe handling and operation. Placards providing safety information related to hazmat marking, no-step, no hand hold, danger propeller, etc., relay vital information to operators and maintenance personnel. This requirement contributes to the safety of the personnel working with the UA, including first responders and third parties, while also helping to protect the aircraft from damage due to improper handling. The dimensions of the placard and its text would need to be adjusted based on the UA's size, ensuring legibility. FAA understands the broad range of size of aircraft that may be produced under this part and expects industry to develop standards to accommodate the different designs while ensuring this safety information is properly displayed.

Y. Identification and Marking (§ 108.920)

Proposed § 108.920 would require UA to comply with 14 CFR part 45, which provides aircraft marking requirements. Part 45 marking requirements would not be required for the control station or any other associated element of the UAS. Section 45.11 of 14 CFR requires a fireproof data plate inside the aircraft to ensure that critical information about the aircraft's construction and operation is available in case of an emergency. The data plate contains information such as the aircraft's manufacturer, model number, and serial number. It may also include information about the aircraft's fuel capacity, electrical system, and other important details. In the event of an accident or emergency, first responders and investigators need

accurate and reliable information about the aircraft's construction and operation to help determine the cause of the incident and to take appropriate actions to mitigate any hazards.

As part 45 of title 14 CFR was implemented before regulation of part 108 UAS, several sections of that part need to be updated to accommodate part 108 UAS. FAA proposes to add § 45.1(a)(4) to make part 45 apply to UA operated under part 108. In addition, FAA proposes modifying § 45.10 by adding § 45.10(a)(3) to allow for the marking of UA operated under part 108.

Proposed § 45.11 would add a new paragraph to require UA manufacturers under subparts G and H of part 108 to mark each aircraft with a fireproof identification plate. Proposed § 45.11(i) would provide three requirements for the fireproof identification plate, which are all consistent with markings for other aircraft. First, the plate would need to include the information found in § 45.13 using an approved method of fireproof marking. Second, the plate would need to be secured in a manner that it will not likely be defaced or removed during normal service or lost or destroyed by accident. Third, the data plate should be securely attached to the exterior of the UA fuselage, ensuring it remains legible and easily readable from the ground when the aircraft is not being operated. This placement facilitates straightforward identification and inspection by individuals on the ground, including first responders who can view the number without handling the aircraft.

To facilitate compliance with regulations and ensure safe operation, proposed § 45.13(a)(8) would require that the data plate clearly display the "Part 108" designation, if applicable, which would differentiate the aircraft from part 107 and part 91. This information will be valuable to both operators and regulators in determining where the aircraft is authorized to operate and provide consistency and uniformity in marking requirements across products in the NAS. FAA proposes to redesignate § 45.13 (a)(8) to § 45.13 (a)(9).

Part 45 also has specific requirements for the size of markings on different types of aircraft. The size of the markings depends on the type of aircraft, the purpose of the marking, and the location of the marking on the aircraft. For example, FAA requires that aircraft registration markings, including the unique N-number, be at least 12 inches tall on large aircraft, such as commercial airliners. This is to ensure that the markings are easily visible and legible from a distance, and can be read

¹³⁸ For further discussion on proposed changes to FAA noise requirements and the applicability of 14 CFR part 36, see section XII.A of this preamble.

by air traffic controllers, pilots, and other aircraft personnel. On smaller aircraft, such as GA or private aircraft, FAA requires that the registration markings be at least three inches tall.

As proposed in § 45.29 (b)(4), the registration number of the UA would need to be displayed with 12-inch markings on the external surface if the surface is large enough for 12-inch markings. If the external surface is not large enough for 12-inch markings, then the manufacturer must use 3-inch markings. FAA recognizes that not all aircraft operating under part 108 can comply with these requirements due to size. Proposed § 45.29 (i) states that, if the size of the aircraft does not allow for 3-inch markings, marks as large as practicable would need to be placed on the largest surface. The marks would need to be maintained in a condition that is legible, affixed to the UA in such a way that it will remain affixed for the duration of each operation, and displayed on an external surface of the UA.

Z. Additional Design and Performance Requirements for Operational Purposes (§ 108.925)

In addition to the other design and performance requirements in §§ 108.800 through 108.920, the UAS would need to be designed and constructed to conduct any manufacturer-designated operation as outlined in § 108.400 and 108.500 safely. Whether the UA is being used for package delivery, agricultural dispensing, inspecting powerlines, or any other type of operation, there are specific hazards involved with specific operations that manufacturers are responsible for accounting for in their UAS designs. Proposed § 108.925(a) would require that the UAS be designed to account for any operational and environmental conditions and hazards not addressed under §§ 108.800 through 108.920 for any manufacturer-designated permitted or certificated operations as defined in §§ 108.400 and 108.500.

The purpose of this requirement is to capture the unique additional design requirements associated with the specific manufacturer designated permitted or certificated operations. This proposed performance requirement is necessary to ensure that aircraft are designed and constructed to withstand foreseeable flight and ground loads associated with those manufacturer-designated operations. Failure to establish and validate adequate material strength and design properties to accommodate these permitted and certificated operations could cause structural failure resulting in loss of UA

control or introduce hazards to persons on the ground due to the nature of the operations.

Section 108.925(b) proposes that, for operations involving the carriage of hazardous materials, the UA or airborne transport container or tanks would be required to have sufficient structural integrity to contain the hazardous material without allowing leakage or release of the material in the event of a hard landing or crash. Containment of hazardous materials is especially important upon a hard landing or crash where the likelihood of leakage or release is greatest. Hazardous materials, if leaked or released, have the potential to cause immediate harm to health or property. Without proper containment, the public could be harmed, and first responders could be exposed to materials that could hinder their operations or require specialized equipment or procedures to mitigate.

AA. Testing

FAA is proposing a structured test and evaluation process that manufacturers would be required to follow to validate their UAS designs and demonstrate reliable design for the operational purpose. Testing would include both the UA and any AE for each UAS make and model. The proposed structured testing process is expected to be accomplished in two phases. Phase one is developmental testing, as required by proposed § 108.930, which is intended to validate a manufacturer's UAS design for compliance with the design and performance requirements of part 108, subpart H from initial ground testing, through first flight, and eventual compliance demonstration for each new make and model of UAS. Phase two would be function and reliability testing, required by proposed § 108.935, which is intended to demonstrate the manufacturer's UAS design has the necessary reliability to operate BVLOS in the NAS for the designated purpose without creating a hazard to persons on the ground or other airspace users.

FAA expects that voluntary consensus standards bodies would propose developmental and reliability testing standards. Once accepted by FAA, these testing standards would serve as a MOC with the testing requirements of this proposed rule and would address parameters to be evaluated prior to safe introduction of the UAS into the NAS. Testing standards would also address any test, analysis, and simulation necessary to validate alterations, repairs, or changes in design to a UAS with airworthiness acceptance. These testing standards should entail a

comprehensive evaluation of the UA's performance across its flight envelope and throughout all intended operational parameters. The intent of this testing is to verify and validate the expected performance of the UAS and to ensure the design and materials used in the UAs construction offer the necessary strength and durability for all operations as designated by the manufacturer. For example, to ensure that aircraft electrical and electronic systems will continue to operate safely without interruption, failure, or malfunction, an aircraft to be used for powerline inspection would be tested in a representative High Intensity Radiated Field (HIRF) environment expected in service.

Pursuant to proposed §§ 108.105(b) and 108.470(a), before commencing any tests outlined in this section, the manufacturer would be required to possess a valid flight test permit.

1. Developmental Testing (§ 108.930)

Developmental testing is the phase of design maturation when the manufacturer will validate their proposed UAS design complies with the requirements of subpart H. Proposed § 108.930(a) would require a manufacturer to conduct flight testing of the UAS to achieve or validate compliance with design and performance requirements of subpart H in an operationally representative environment and throughout the flight envelope. Developmental testing is necessary to ensure a design has been adequately validated prior to locking the configuration of the UAS and conducting function and reliability testing. Configuration lockdown refers to the process of finalizing and securing the design, settings, and options of a system, software, or AE to prevent unauthorized changes. This ensures the system design remains consistent and operates as intended by preventing modifications to its configuration during testing.

Flight testing is required to validate end-to-end functionality of the UAS in an operationally representative environment. This ensures that all components of the UAS work harmoniously under expected operational scenarios, including those that may only be theoretical or may not be fully replicable in simulated environments. Further flight testing should include testing of the aircraft at the margins of design and performance to validate the design and determine appropriate limitations.

FAA recognizes manufacturers may use simulation, analysis, component tests, ground tests, flight tests, or a

combination thereof, to show compliance with this subpart. Therefore, § 108.930(b) proposes analysis may be used in combination with flight testing to validate compliance with this subpart. For certain components or systems and some designated operations, methods other than flight testing may prove to be more accurate. FAA wants to allow for use of these other methods if appropriate.

If simulation is used in an analysis to validate compliance during testing, FAA also proposes in § 108.930(b) that the simulation must be validated using an FAA-accepted MOC. Validated simulations ensure accuracy and fidelity providing a reliable representation of real-world scenarios by showing that the simulation accurately predicts the outcome of physical testing. This reliability is essential for safety, as it ensures that any derived models or conclusions accurately mirror real-world conditions and responses, minimizing the risk of unforeseen issues or discrepancies when applied in actual operations. Once validated, the manufacturer can use simulations for derivative models that fit within the simulation's parameters. Recognizing the critical safety implications, FAA expects consensus standards bodies to develop acceptable standards that include provisions for developing and validating simulations. A manufacturer would rely on these standards as acceptable means of demonstrating compliance with the requirements of subpart H.

Section 108.930(c) proposes that, before proceeding to function and reliability testing, the manufacturer ensures the UAS configuration has no hazardous operating characteristics or design features and is safe for the intended operation. This step ensures that the aircraft is fully prepared for reliability assessments, and that no product is introduced into the NAS before all safety issues are thoroughly addressed. Such diligence ensures that the UAS meets the required safety standards, thereby preventing premature deployment of potentially unsafe systems.

In addition, § 108.930(d) proposes developmental testing would be required to validate that any probable failure of the UAS will not result in a loss of flight or loss of control of the UA. Probable failures, such as those related to propulsion systems, C2 link, GPS, flight control components with a single point of failure, the control station, and any AE identified by the manufacturer should be evaluated for compliance with this requirement. All components

of the UAS used for testing should be operated in accordance with the UAS operating instructions and each test should occur at the critical phase and mode of flight, using the highest UA-to-flight coordinator ratio. UAS with fail-safe design features demonstrated through acceptable developmental testing standards reduce the likelihood of incidents and accidents by ensuring no probable failure of the UAS results in loss of flight or loss of control of the UA. This demonstrated functionality is necessary to show a UAS design has an acceptable level of safety to be operated for the manufacturer-designated purpose.

2. Function and Reliability Testing (§ 108.935)

Proposed § 108.935(a) would require each manufacturer to perform function and reliability testing for each UAS make, model, and configuration. This requirement is intended to demonstrate that the specific configuration of each make and model produced by a manufacturer has the necessary reliability to conduct operations in the NAS for the manufacturer-designated purpose. Each serial number or ranges of serial numbers of a particular make and model would not require reliability testing. Once a particular make, model, and configuration has demonstrated compliance with function and reliability testing requirements, compliance with Quality Assurance § 108.730 and Production Acceptance § 108.735 requirements ensure each serial number of a particular make, model, and configuration produced by a manufacturer complies with the requirements of subpart H.

Section 108.935(b) proposes each UAS make, model and configuration complete no less than 150 failure-free flight test hours. A failure-free flight test is one where the UAS is operated and flown without experiencing any failures that could lead to a loss of flight, loss of control, non-conformance with UAS traffic management, loss of safe distance, or results in an unplanned landing. An unplanned landing is one that was previously unscheduled during the test or is necessitated due to failures that result in loss of function or redundancy for safe operation.

The occurrence of any of these outcomes resulting from a probable UAS failure condition increase the likelihood of an incident or accident which could result in injury or property damage. The minimum of 150 flight hours is based 14 CFR 21.35(f)(2) requirements, which are the flight test requirements for part 21 certificated aircraft. By demonstrating a UAS design does not have any of these

occurrences over a minimum of 150 flight hours, the manufacturer would show their UAS has the necessary reliability to be operated in the NAS, increasing the likelihood of a safe operation.

Only UAS with acceptable reliability, demonstrated through acceptable means, would achieve airworthiness acceptance, which is necessary to operate in the NAS. FAA expects function and reliability testing to be conducted in accordance with consensus standards accepted by FAA.

Section 108.935(c) proposes testing must be conducted in an operationally representative environment, as defined in §§ 108.400 and 108.500, and as designated by the manufacturer. Before entering the NAS, the UAS must establish a baseline for function and reliability in its operational environment. Function and reliability testing within the representative environment of the intended operations properly demonstrates that baseline before entering the NAS. This further ensures the manufacturer's designated UAS operational purpose may be conducted safely and reliably. FAA expects any voluntary consensus standards to encompass a specified minimum number of operational cycles for both UA and AE. The primary objective is to verify that the UAS reliability meets the expected minimum performance characteristics. Any supplementary design features needed for specific operations should be rigorously evaluated to confirm their reliability and suitability for the intended purposes. In addition, design features should demonstrate the appropriate reliability for the flight and ground loads expected in service. A UAS that is unable to withstand the ground loads expected in service, such as crew handling, loading, unloading, or servicing could fail due to unexpected fatigue and wear resulting in loss of flight or loss of control.

To ensure UAS designs continue to have acceptable reliability following the completion of testing proposed in § 108.935(b), § 108.750(b) proposes the manufacturer of the UAS that has received airworthiness acceptance must demonstrate compliance with the requirements of subparts G and H of this part for any design change to a UAS. Without this requirement, a design change such as replacing an existing servo actuator or speed controller with a new manufacturer's part number would likely have an effect on flight characteristics of the UA, thereby affecting its reliability. Only through thorough function and reliability flight testing of the new design can the

demonstrated reliability of the UAS be maintained. Industry is well-suited to determine best practices for evaluating a design change that would have an effect on the demonstrated reliability of the UAS. Therefore, FAA expects industry to develop consensus standards to determine the appropriate number of function and reliability flight testing hours necessary to ensure any changes in design are thoroughly evaluated and the new UAS configuration continues to have no hazardous operating characteristics or design features; and is in a condition for safe operation.

XII. Corresponding Regulatory Updates

A. Updates to Noise Requirements

In the MOSAIC NPRM, FAA proposed to amend the applicability of 14 CFR part 36 to include noise requirements for aircraft that do not conform to a type certificate.¹³⁹ Specifically, FAA proposed to add § 36.0 to address such aircraft. This separation of § 36.0 from the remainder of part 36 was intended to keep the requirements of aircraft requiring a type certificate clearly separated from those which do not.

This proposal extends the MOSAIC NPRM's § 36.0 approach to UAS as part of airworthiness acceptance under part 108. Similar to the proposal in MOSAIC, manufacturers would demonstrate compliance with part 36 noise requirements through either FAA-approved noise consensus standards or other methods provided for in § 36.0. Under proposed part 108, manufacturers would attest to compliance with part 36 as proposed in subparts G and H of part 108.

1. Noise Certification Background

Pursuant to its authorizing legislation in 49 U.S.C. 44715, FAA has the responsibility to "protect the public health and welfare from aircraft noise." This responsibility came with broad authority to adopt regulations and noise standards to carry out this mandate. When promulgated in the 1970s, the statute mandated that noise regulations be created and required the application to aircraft seeking new type certificates. At that time, FAA applied the part 36 noise certification regulations when the agency issued type certificates. This represented the provision in 44715(a)(3) that acts as the "floor" for FAA's duty to exercise its authority. The agency's much broader authority over aircraft noise remains discretionary.

The MOSAIC NPRM proposed an expansion of applicability of part 36 to aircraft that had not received type

certificates. FAA explained that it had initially determined that there was little value in assessing the noise from aircraft that did not receive type certificates as the aircraft were low in number and in many cases may have been a single aircraft of its kind. More recently, FAA found there were larger numbers of these aircraft operating that did not conform to a type certificate, overtaking those historical presumptions. As such, FAA indicated in MOSAIC that it could no longer justify the exclusion of these aircraft, including light sport aircraft in 14 CFR 21.190 and some experimental aircraft subcategories under 14 CFR 21.19, and their noise impact on communities under its statutory responsibility. The MOSAIC NPRM provided an opportunity to recognize and address the noise created by these aircraft. The NPRM explained that the proposed expansion of the applicability of part 36 to these aircraft acknowledges that noise certification was part of the overall certification scheme for aircraft and appropriate for modernization.

FAA has the statutory obligation to regulate noise under 49 U.S.C. 44715, and discretionary authority to apply noise standards for aircraft with or without type certificates. FAA is proposing to use a similar noise regulatory approach for UAS operating under part 108 as FAA proposed for MOSAIC aircraft. In both cases, these aircraft would not have type design certificates, but rather special airworthiness certificates (*i.e.*, MOSAIC) or an airworthiness acceptance (as proposed in this rule).

FAA proposes to approach regulating noise for part 108 aircraft in the same manner that FAA proposed regulating noise for light sport aircraft in the MOSAIC NPRM. Like the MOSAIC proposal for light sport aircraft, this proposed rule does not call for type certification of aircraft to be operated under part 108. The regulatory approach for noise that was proposed in the MOSAIC NPRM, described herein, is being considered for this rulemaking. As described in section III.A.6, FAA uses the safety continuum to determine the appropriate level of regulatory oversight over a variety of aircraft. Because FAA finds that proposed part 108 operations falls between part 107 operations and light sport aircraft operations on the safety continuum, and because these two classes of aircraft similarly would not have type certificates, FAA is proposing to extend the MOSAIC regulatory framework to part 108 operations as it applies to noise. FAA requests comments on its proposed use of the MOSAIC approach for regulating noise to UA operating under part 108.

FAA also requests comments and feedback on other possible approaches that could be taken for FAA to use its discretionary authority to regulate, or not regulate, noise produced by UA operating under proposed part 108.

In comparison to conventional aircraft operating from airports and in the NAS, UAS will frequently operate in closer proximity to noise sensitive areas. These UAS operations may occur with a higher tempo of operations and with noise signatures that tend to be time-varying and disruptive to persons on the ground. Operations using these UAS were not contemplated when FAA initially promulgated its noise regulations. Even though these aircraft would not go through a traditional type certification process, FAA acknowledges that these aircraft and their potential noise impact on communities are within its statutory responsibility.

When FAA adopted part 107 in 2016, which allowed certain small UAS operations without requiring airworthiness certification or any exemption, waiver, or certificate of authorization, FAA chose not to apply the noise certification standards of part 36. This decision was based on the limited aircraft size and restricted operating environment prescribed in part 107.

Since the promulgation of part 107, several UAS models have demonstrated compliance with part 36, with several more UAS models currently in the process. In addition, there has been a significant increase in the number of UAS and UAS operators and a rapid advancement of UAS technologies.

Experience with UAS operations has revealed that these aircraft operations are significantly different from those of the conventional aircraft. These different operations include package delivery or infrastructure inspection. The UAS aircraft are expected to operate at lower altitudes and in much closer proximity to persons that are not participating in the flight but who are exposed to its effects. Further, these aircraft are of unconventional design and incorporate newer technologies, such as distributed propulsion, electric battery power, and unique VTOL capabilities. Researchers have not yet determined how these new features and unique noise characteristics affect people's responses to their noise. The current noise limits and test criteria in part 36 do not consider these characteristics or operating environments because the standards and regulations were written to address traditional manned aircraft designs. For these reasons and as UAS operations

¹³⁹ See 88 FR 47650.

expand significantly and as airworthiness standards are developed, such as those for vehicles operating under proposed part 108, FAA sees the need to propose noise regulations for these UA.

2. Noise Certification: Current Status

The primary emphasis in noise certification is on controlling aircraft noise. That is done by assessing noise at its source, the aircraft itself, rather than its operations generally. For traditional aircraft, this assessment occurs when noise is measured at the time of type certification. Through the creation of noise limits for various aircraft types and the development of measurement procedures and methods that are relevant to day-to-day operation, FAA meets its primary statutory obligation to protect the public health and welfare by assessing the noise profiles of aircraft as they are developed and by setting a defined noise limit with which an aircraft must not exceed before it is given a type certificate and permitted to operate. The limits are set based on weight, design, and means of propulsion. There are a set of standards and limits for fixed wing small airplanes, one for jets, one for helicopters, and one for tiltrotors. As new aircraft designs are developed, FAA gathers the appropriate data to determine what is acceptable for noise production by the aircraft type to fulfill the agency's statutory responsibilities. These standards, limits, and their adoption into regulations are how FAA meets its obligation to protect public health and welfare from aircraft noise and how that obligation is appropriately and consistently administered.

Traditionally, noise certification has been required only for aircraft that conform to a type certificate, though it is considered an airworthiness characteristic of an individual aircraft. As discussed earlier, the expansion of the domestic fleet to include routine operations of UAS that are not type certificated has caused FAA to consider its statutory responsibility regarding these aircraft and address noise from both type certificated and non-type certificated aircraft. As is required by FAA's statutory mandate, the existing limits and procedures for noise certification have been developed in a manner that considers the economic reasonableness, technological practicability, and appropriateness for the aircraft to which it would apply.¹⁴⁰ These criteria also guided the expansion

of the noise requirements proposed here.

Currently, noise certification is a performance-based two-step process used to test an individual aircraft (or model) using the procedures of part 36. The first step is to measure the noise levels created by an aircraft at different operating points. The second step is to determine whether the noise levels measured during testing are at or below the regulatory noise limit, demonstrating that the aircraft complies with part 36. Since it does not require any specific technology or equipment be installed on an aircraft, part 36 functions as a performance standard; the test shows that as configured, an aircraft is below or above the regulatory limit. Notably, the noise regulation process does not itself create operational restrictions.

This overall proposed modernization of airworthiness qualifications and categories in part 21 and airworthiness acceptance in part 108 present a unique opportunity for FAA to modernize its noise responsibilities within the framework of the various aircraft certification and airworthiness processes that allow operation with or without type certificates. FAA is aware that type certification has long been avoided in part to skirt the noise regulations.

As noise requirements would expand to cover aircraft that do not have type certificates, FAA is open to consideration of different procedures and paths that will both meet its statutory obligations and allow for more streamlined compliance for those UAS receiving airworthiness acceptance. Those compliance mechanisms are proposed in § 36.0. Nothing about these proposed regulations may be interpreted to alter the current noise certification limits or test requirements for type-certificated aircraft.

3. Applicability to Part 108

Proposed § 36.0 would apply to all aircraft for which an applicant seeks an airworthiness acceptance in accordance with part 108. Proposed § 36.0(a) lists the compliance requirements for aircraft that do not conform to a type certificate. Section 36.0(a)(1) contains the language that was proposed in the MOSAIC NPRM. This proposal would add § 36.0(a)(2) and require that the noise regulations of part 36 apply at the time an applicant submits an application for airworthiness acceptance of an aircraft. Further, as described in section IX.G, Repairs and Alterations, if there would be any repairs or alterations to a UAS with airworthiness acceptance, the proposal would require that the UAS

maintain compliance with the requirements of subparts G and H of part 108, including compliance with the part 36 requirements.

This proposal would include all the requirements proposed in MOSAIC for this section in § 36.0(b)(1). It would also identify the aircraft subject to these requirements. This proposal would add § 36.0(b)(2) and require that for UAS going through an airworthiness acceptance process under part 108, the applicant must be able to document their compliance with part 36 prior to submitting the DOC required in § 108.715(b). First, an applicant would demonstrate the UAS, usually in its noisiest operating configuration, does not exceed the noise limit specified for an aircraft of its kind and weight, which is specified in part 36, the applicable consensus standard, or the requirements determined by FAA to be appropriate for the aircraft. The number that results from the test is called the aircraft's noise level and it must be no louder than the applicable noise limit required by part 36. The second part of demonstrating compliance concerns the test procedures and analyses that may be required (depending on the aircraft), and documenting that they conform to the requirements in part 36 for the aircraft. FAA anticipates that this provision would be applicable to certain UAS that may be similar to aircraft covered by an existing appendix in part 36. Those UAS may choose to comply with the applicable appendix.

Proposed §§ 36.0(c) and (d) would provide options to demonstrate compliance with part 36 requirements ranging from using part 36 appendices applicable for aircraft design when the design fits into existing categories, using FAA-approved noise consensus standards when they are available, or a combination of requirements as approved by FAA. FAA has previously acknowledged that existing part 36 standards and procedures may not be adequate to address noise certification of certain types of UA.¹⁴¹ When no appropriate noise standards exist in part 36 for an aircraft, FAA has developed limits and procedures that apply to an individual aircraft model, in the form of rules of particular applicability (RPA) as an interim approach to noise certificate aircraft before a generally applicable standard is developed. FAA has been gaining knowledge and experience on UAS noise through working with stakeholders, including industry, academia, and NASA. Further, FAA has

¹⁴¹ *Noise Certification Standards: Mattnet Model M2 Aircraft* final rule; rule of particular applicability, 87 FR 55878 (Sept. 12, 2022).

¹⁴⁰ 49 U.S.C. 44715(b).

been actively engaged at ICAO and working with noise experts from other civil aviation authorities in developing a generally applicable, internationally harmonized noise standard for UAS designs. Once such standard is developed at ICAO into Annex 16, FAA expects to go through the regulatory process to incorporate that standard into part 36 if it is deemed appropriate. A general noise standard for UAS is unlikely to be available until after the publication of this proposal.

As proposed in the MOSAIC NPRM, § 36.0(c) lists the first method of compliance that would be available to an aircraft that does not conform to a type certificate: the use of a noise consensus standard. FAA expects the industry to develop noise consensus standards for use by manufacturers of aircraft and by individuals. Before a consensus standard could be used to demonstrate compliance with part 36 for an aircraft that does not conform to a type certificate, the standard would have to be approved by FAA and based on part 36 noise limits. FAA expects that any consensus standards would not be limited to physical measurements of noise taken during test flights. They might instead be based on empirical data or analytical modeling if the underlying noise prediction methods are found to be robust.

In evaluating new noise consensus standards to be used to demonstrate compliance with § 36.0 for part 108 UAS, FAA expects to consider the following factors, which are similar to the factors described in the MOSAIC NPRM:

(1) The methods in the standard, whether based in physical noise testing or through validated and/or generally accepted noise prediction methods, are environmentally responsible, economically reasonable, technologically practicable, and appropriate for the aircraft to which it would apply (see 49 U.S.C. 44715(b)(4));

(2) The standard must consider developments in other associated fields (such as research programs into quantification and control of aircraft noise) and participation by stakeholders;

(3) The noise levels generated from using the prediction methods must be within 90 percent of confidence limits and must be within ± 3 A-weighted decibels (dBA) when compared to results from using the full noise measurement procedures in the corresponding appendix of part 36 or an FAA-published RPA for a UAS; and

(4) The standard must clearly document all assumptions used in the

development, validation, results, and limitations of the methods presented.

FAA expects that these factors would be different in certain regards from what was described in the MOSAIC NPRM because these consensus standards would address a relatively new technology that is designed and operates differently than a traditional manned aircraft. In particular, the third factor uses a ± 3 dBA difference in the confidence limit instead of the ± 2 dBA proposed in MOSAIC. This difference accounts for the evolving prediction methods for UAS. Further, under this third factor, the consensus standard would be compared to the prediction methods either in part 36 or in an FAA-adopted RPA for UA, whereas under MOSAIC, the consensus standard would only be compared to the procedures in the applicable appendix in part 36.

A modeling-based consensus standard would be expected to reduce the cost of noise compliance. Not only would there not be a need to physically test every model (or aircraft), but consensus standards would also allow manufacturers to use the predictive capabilities of those standards to guide and support aircraft design decisions in earlier phases, avoiding costly redesign or modifications.

Accordingly, proposed § 36.0(c) would allow the use of a consensus standard for an aircraft that does not conform to a type certificate when the standard has been approved by FAA, and FAA finds that the standard is appropriate for the aircraft and applies to the specific design. FAA anticipates that manufacturers of aircraft will work to develop such noise consensus standards as an added value for their products, and to facilitate compliance with noise requirements at an early stage.

If there is no approved noise consensus standard available and appropriate to the UA, another means of demonstrating compliance with part 36 would be required. As proposed in MOSAIC, § 36.0(d) lists the methods of compliance with part 36 available for an aircraft that does not have an applicable noise consensus standard. The first determination is whether the aircraft is found by FAA for noise purposes to be the same as or sufficiently similar to a type-certificated aircraft covered by § 36.1. If it is the same or similar, FAA expects to document this determination as part of its existing noise certification process. As with MOSAIC, in proposed § 36.0(d)(1)(i) for part 108 UA, if FAA finds there is such a type-certificated aircraft, then the applicant for airworthiness acceptance may choose to

retest its aircraft using the same part 36 standards that apply to the type-certificated aircraft, or adopting the noise levels for the type-certificated aircraft that are the same or sufficiently similar in design to the aircraft when the aircraft has not been altered to result in an acoustical change. FAA expects that § 36.0(d)(1)(ii) only would apply where the UA would be the same or sufficiently similar in design to a type-certificated aircraft such that the noise levels are the same. The part 108 aircraft would need to be able to demonstrate the same noise levels as the type-certificated aircraft.

Alternatively, if FAA finds that the applicant's aircraft is not the same or similar to an aircraft noise certificated under § 36.1, the applicant would be able to demonstrate noise compliance using the noise requirements determined by FAA to be appropriate for the aircraft. This provision, proposed § 36.0(d)(2), is intended to allow the agency the maximum flexibility in finding an acceptable combination of requirements that are appropriate for the aircraft presented. FAA would be able to build a noise compliance basis for an aircraft using parts of current regulations in part 36, regulations in part 36 that are no longer used for new certifications, accepted noise compliance standards that are not published in part 36 (such as those applicable to single aircraft model), and portions of accepted noise consensus standards. The noise limits established in part 36 would still apply, but the method of compliance would consist of tests or analyses that work for a particular aircraft, while allowing for the whole of the noise compliance basis to be assessed according to the statutory mandate for economic reasonableness and technological practicability. This kind of flexibility is not available under § 36.1 for type-certificated aircraft. It is designed to assist applicants for airworthiness acceptance, especially for new aircraft designs that do not fit neatly into historical categories.

As an example, FAA has adopted RPA to provide requirements for specific aircraft.¹⁴² Those noise requirements have included modifications to the part 36 test procedures, reference conditions, and noise limits for the specific aircraft. FAA may provide similar noise requirements for aircraft under part 108.

¹⁴² FAA has published several in the **Federal Register**. The first: Noise Certification Standards: Matternet Model M2 Aircraft, 87 FR 55878 (Sept. 12, 2022). Several have followed, as listed here: www.faa.gov/about/office/org/headquarters/offices/apl/aee/noise/uas_noise_certification.

4. Exceptions to Noise Applicability

Section 36.0(e) provides exceptions from demonstrating compliance with the requirements of part 36 for certain aircraft. Paragraphs (e)(1)–(3) were proposed as part of the MOSAIC NPRM. FAA does not anticipate that these paragraphs would apply to part 108 UAS because these exceptions are specific to aircraft with certificates under part 21.

For purposes of part 108, FAA proposes in § 36.0(e)(4) that UAS designed and used exclusively for agricultural UA operations under part 108 would be excepted from meeting the noise requirements of part 36. Certain aircraft that historically have been designated exclusively for agricultural aircraft operations (as defined in 14 CFR 137.3), have been excepted from the requirements of part 36 (see § 36.1(a)), subject to some conditions. FAA is proposing to extend this exception in part 36 for agricultural operations for part 108 UA that are specifically designed for these operations and have an airworthiness acceptance that limits the purpose and use of these aircraft to agricultural operations. As agricultural operations occur largely over non-populated or rural areas, the imposition of noise standards would not result in enough public benefit to justify imposing the costs of compliance.

FAA requests comment on whether any other categories of aircraft should or should not be subject to part 36 noise requirements, including any technical or economic data that support the comment.

The process of noise certification for an aircraft that does not conform to a type certificate is intended to be simpler, with lower costs for manufacturers and owners that introduce significant alterations to their aircraft. The traditional processes of demonstrating compliance to noise requirements can be complex, requiring technical skills and experience with acoustic measurement that most aircraft owners do not have. Conducting such testing using accredited professional services can also be expensive. Moreover, the best noise performance is often achieved by informed decisions early in the design process rather than by later design additions or modifications. Like the noise certification basis for type-certificated aircraft, FAA must approve the applicable noise compliance standards for an aircraft before it is tested, or the applicant risks the tests and data being deemed unusable for demonstrating compliance with part 36. But the

addition of consensus standards and the application of other methods of demonstrating compliance proposed here are all intended to create a simpler, less restrictive process while maintaining FAA's mandate to protect the public health and welfare.

5. Other Changes to Noise Certification

As in the MOSAIC NPRM, FAA proposes to amend other sections of part 36 (*i.e.*, § 36.1) to include references to aircraft that do not conform to a type certificate where the requirements would apply.

The MOSAIC NPRM proposed to amend § 36.3, Compatibility with airworthiness requirements, by breaking the applicability into two paragraphs for type-certificated aircraft and aircraft that do not conform to a type certificate. This proposal would add a new paragraph (c) to specifically address part 108 UAS. This new paragraph would maintain the requirements currently in § 36.3, but tailor the requirements to the airworthiness acceptance process that is described in subparts G and H of part 108. No changes to the existing requirements of the section are proposed.

Building on the MOSAIC proposal, § 36.1501, Procedures, noise levels, and other information, would be amended by adding a sentence indicating that the operating instructions for aircraft under part 108 would have to include the noise levels achieved during airworthiness acceptance. This proposal would be consistent with the requirements for other aircraft subject to part 36. No changes to the existing requirements of the section are proposed.

This proposal also builds on the MOSAIC NPRM proposal to amend § 36.1581, Manuals, markings, and placards, by adding a new paragraph (h) to describe the requirements for an aircraft that does not conform to a type certificate. This proposal would add text to the introductory language in paragraph (h) indicating that for aircraft subject to part 108, compliance with part 36 must be documented as described in § 108.720. A parallel requirement is in proposed § 108.720(a)(1), which would require that the operating instructions include the statements of compliance required under § 36.1581(h). As proposed, the operating instructions would include a statement that the aircraft has demonstrated compliance with part 36 and the demonstrated noise levels of the aircraft. In addition, paragraph (h) also would state that no operating limitations are prescribed as part of part 36 certification, and that part 36 does

not affect any operating limitations designated for an aircraft by other regulations. The actual operating limitations statement is included in the new paragraph (h) because the current paragraph of § 36.1581 where it appears applies only to type-certificated aircraft.

B. Updates to Other Operating Rules

1. Part 43—Maintenance, Preventive Maintenance, Rebuilding, and Alteration

FAA proposes to amend the applicability in § 43.1 to provide that part 43 does not apply to aircraft being operated under part 108. As with part 107, the regulations proposed in part 108 would govern maintenance and alterations of UAS receiving airworthiness acceptance and conducting operations within the United States under part 108. As such, the maintenance and alteration requirements in part 43 would not apply to these UAS. However, the maintenance and alterations for UAS that are operated under part 91 are maintained in accordance with part 43 of this chapter as applicable, and the requirements of part 108 likewise would not apply.

2. Part 45—Identification and Registration Marking

FAA is proposing changes to the applicability of part 45 as well as conforming amendments to §§ 45.10, 45.11, 45.13, and 45.29. These additions are fully discussed in section X.Y of this preamble.

3. Part 48—Registration and Marking Requirements for Small Unmanned Aircraft

FAA proposes to amend the applicability of part 48 in § 48.1 to provide that part 48 does not apply to aircraft being operated under part 108. This change is fully discussed in section VI.A.2 of this preamble.

FAA is also proposing to change the requirement in 14 CFR 48.110(a)(7) to allow the serial number of a remote identification broadcast module to be listed on more than one Certificate of Aircraft registration only when the applicant information required in §§ 48.110 (a)(1)–(a)(4), is the same on all Certificates of Aircraft Registration. This change will allow remote identification broadcast modules to be more easily shared between small unmanned aircraft owned by the same person or entity. This change primarily affects owners of unmanned aircraft that are issued a certificate of aircraft registration pursuant to § 48.100 for small unmanned aircraft operated for

any purpose other than exclusively limited recreational operations. Currently, owners of small unmanned aircraft operated for any purpose other than exclusively limited recreational operations must delete and then re-enter the remote identification serial number information on a Certificate of Aircraft Registration when a remote identification broadcast module is moved from one small unmanned aircraft to another owned by the same person or entity. This change will eliminate this burden, while still ensuring that the remote identification broadcast information can be associated with the registered owner or entity.

4. Part 89—Remote Identification

FAA is proposing the addition of § 89.511 as well as conforming amendments to § 89.505 and § 89.515. These additions are fully discussed in section VI.K of this preamble.

5. Part 91—General Operating and Flight Rules

i. Applicability

FAA proposes to amend the applicability of § 91.1 to describe that, except as provided in § 108.180, part 91 does not apply to aircraft being operated under part 108. As with part 107, the regulations proposed in part 108 would govern operations of UAS conducted BVLOS within the United States. As such, the requirements in part 91 would not apply to those operations. However, corresponding changes to §§ 91.113 and 91.225 are needed, as discussed below, to accommodate the proposed updates to right of way requirements for aircraft operations under part 91.

ii. Right-of-Way Rules: Except Water Operations

FAA proposes to amend § 91.113 to inform operators operating under part 91 of the new right-of-way construct proposed with the issuance of part 108. Specifically, that a UA conducting operations under part 108 of this chapter would have the right-of-way over other aircraft in flight unless the other aircraft is operating in a Category 5 population density area as described in § 108.185, operating in Class B or C airspace as described in § 108.180(b), or departing from or arriving at an airport or heliport. Manned aircraft also have right-of-way if they are equipped and broadcasting their aircraft's location using ADS-B Out equipment that meets the requirements of § 91.227, or electronic conspicuity equipment that meets the performance requirements of § 108.195(a)(2)(ii). FAA proposes to make these conforming updates in part 91 to establish that the change to the

right-of-way rules is generally applicable. For further discussion on the proposed changes to right-of-way requirements, see section VI.J.

iii. Automatic Dependent Surveillance-Broadcast (ADS-B) Out Equipment and Use

FAA further proposes to amend § 91.225 to except ADS-B Out equipment from operating in the transmit mode when operated solely to meet the conspicuity requirements as proposed in the revised § 91.113 and proposed § 108.195. As discussed in section VI, equipment operated per proposed § 91.225(f)(3) will not meet the requirements of ADS-B Out equipment operated to comply with either § 91.225 or § 91.227, nor is it intended to be used for air traffic. The equipment operated to meet conspicuity requirements would only be used to make a UA aware of the presence of a manned aircraft that the UA must yield to. Therefore, FAA is proposing that the use of this equipment would be at the discretion of the individual operator.

6. Part 107—Small Unmanned Aircraft Systems

i. Applicability

FAA proposes amending § 107.1(b)(3) by removing the reference to section 333 of Public Law 112–95. Section 333 was replaced by 49 U.S.C. 44807 in the 2018 FAA Reauthorization Act. The last exemptions issued under section 333 were issued in 2018 and had 2-year durations, therefore expiring in 2020. As there are no longer any section 333 exemptions, it is unnecessary to include the reference in the regulation any longer.

FAA proposes amending § 107.1(b)(4) by striking the words “that has been issued an airworthiness certificate.” This simplifies the applicability of part 107 by simply referencing aircraft that are operating under part 91, whether or not they have an airworthiness certificate. This amendment accounts for any aircraft that are operating under part 91 with a determination made under 49 U.S.C. 44807 that an airworthiness certificate is not needed for the operation.

FAA proposes adding § 107.1(b)(5) to state that part 107 does not apply to the operation of UAS BVLOS operations. As proposed part 108 is specifically intended to cover all BVLOS operations, it is logical to explicitly state that BVLOS operations would not be covered by part 107, in order to avoid any confusion.

FAA proposes adding § 107.1(b)(6) to state that part 107 does not apply to the

carriage of property or packages by aircraft for compensation or hire. This amendment to § 107.1 would reflect the proposed amendments to part 107 rules relating to air carriers. For more information, refer to section XII.B of this preamble.

ii. Aviation Safety Reporting Program

FAA proposes to add § 107.8, which would prohibit FAA Administrator from using reports submitted to NASA under the Aviation Safety Reporting Program (or information derived therefrom) in any enforcement action except information concerning accidents or criminal offenses, which are wholly excluded from the Aviation Safety Reporting Program. As discussed in section V.B.4, adding this prohibition to part 107 would be consistent with how such reports are protected and used for part 91 pilots and other airspace users who are subject to FAA regulations. FAA and NASA have recognized the benefit of having accurate, candid, and timely reports of unsafe (or potentially unsafe) conditions in the NAS, and this would create that same consistency within part 107.

iii. Prohibition on Interference With a Remote Pilot in Command

FAA proposes to add § 107.10, which would codify that no person may assault, threaten, intimidate, or interfere with a remote pilot in command or visual observer in the performance of their duties regarding the operation of a UA. As discussed in section V.B.2, this requirement is necessary to protect the safety or efficiency of the NAS. Bad actors who interfere with UAS operations may endanger public safety and persons or property—both in the air or the ground—which is anathema to FAA's obligation to ensure the safe and efficient use of the NAS.

iv. Updates to Certain Areas Within Controlled Airspace at or Below 400 Feet AGL

FAA proposes to amend § 107.41 to enable the same access to certain areas within controlled airspace at or below 400 feet AGL as part 108 operators. Under this amendment, airspace authorization would only be required in those portions of Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport that FAA specifically designates as requiring authorization.

Currently, operators under part 107 must obtain an authorization from FAA to access any area within controlled airspace on a case-by-case basis. This is accomplished by using either

FAADroneZone or a LAANC service provider.

LAANC and FAADroneZone collect data about the operator, including contact information, location and altitude of operation, date of operation, and time of operation. Once the operator has authorization through LAANC or FAADroneZone, they usually do not have any other interaction with FAA prior to accessing the airspace. FAA is currently reviewing the requirement to collect this data considering no air traffic services are being given to UAS operating 400' AGL and below.

Designated airspace requiring prior authorization would be compiled annually in FAA Order JO 7400.[XX], which FAA would incorporate by reference into § 107.41. FAA would then publish periodic designation updates for airspace requiring prior authorization in the **Federal Register** and seek public comment through an NPRM. After considering comments and making any appropriate adjustments, FAA would publish the adopted designation updates in a final rule. At the end of the year, FAA would apply the updates to FAA Order JO 7400.[XX+1] and then incorporate the new version of the Order by reference. The currently incorporated version of FAA Order JO 7400.[XX] would be available on FAA's website, along with any periodic updates. In addition to making these designations available on its website, the agency anticipates making electronic information available for service providers to incorporate into their UAS information service offerings. Finally, FAA recognizes that, under certain circumstances, it could need to designate additional controlled airspace as requiring authorization, on an immediate or temporary basis. Accordingly, FAA proposes that, to maintain safety or security of aircraft operations, the Administrator may designate additional controlled airspace as requiring authorization under this section.

v. Technical Amendment To Remove Airspace Waiver

FAA is also proposing a technical amendment to § 107.205 that would eliminate paragraph (h) of that section and no longer allow the waiver of § 107.41 (Operation in certain airspace). Section 107.41 generally prohibited small UAS from operating in controlled airspace unless authorized by ATC. FAA made that provision waivable because it anticipated that among the many requests to operate in controlled airspace, there would be some premised on the technical capabilities of the small UAS operation and that the safety

analysis would prove burdensome to ATC. However, since the rule, FAA made it possible for small UAS operators to easily and efficiently request for authorization to operate in controlled airspace online (e.g., LAANC or FAADroneZone) and for FAA to grant or deny the authorizations without overly taxing ATC. As a result, FAA has the ability to process all small UAS airspace authorization requests through these online tools without having to use the waiver process. Indeed, FAA no longer uses the waiver process for this purpose. For that reason, FAA is proposing to make this technical amendment to eliminate a provision that is no longer used that may cause confusion for small UAS operators.

vi. Updates to Rules Governing BVLOS and Operations for Compensation or Hire

FAA proposes to amend § 107.1 to remove the applicability of part 107 to the operation of UAS beyond the VLOS of the operator. Since part 108 will be the rule set that governs the operation of UA BVLOS of the operator, it no longer makes sense to provide waivers to the part 107 rules for this type of activity. Any relief sought should be done under the auspices of part 108.

FAA proposes to further amend § 107.1 and § 107.205 to restrict the carriage of any property or packages by aircraft for compensation or hire. This had previously been allowed under part 107 in limited circumstances, primarily as long as the delivery was within line of sight of the remote pilot in command. Coupled with other restrictions in part 107, such as the prohibitions from operating over people and the restrictions on the carriage of hazmat, this was not intended to be a widespread activity and was not intended for large commercial ventures. The risk structure of part 107, which does not require any type of UAS design assurance, nor any form of operator qualifications, does not align with the risks posed with large commercial ventures. Therefore, FAA intends to remove the applicability for the carriage of property or packages by aircraft for compensation or hire from part 107 and restrict that activity to part 108, which is more risk appropriate. Part 108 will require all UA to have design assurance and an airworthiness acceptance issued by the manufacturer of the aircraft. Furthermore, the operator will have to attest to their capability to conduct safe operations and receive either an operating permit or operating certificate to conduct operations. Operators will also have to receive approvals for each area they intend to operate in, which

will give FAA more visibility of where operations are occurring and provide for better ability to oversee these types of activities.

7. Part 119—Certification: Air Carriers and Commercial Operators

FAA proposes to amend the applicability of § 119.1 to describe that part 119 does not apply to aircraft operated under part 108. When promulgating part 107, FAA noted that the time was not then appropriate for creating a process for air carriers for UAS operations.¹⁴³ As discussed in the 2016 Final Rule, the Department has continued to assess if the requirements for air carriers are appropriate for UAS operations, including the need for air carrier certificates issued under part 119 and the operating regulations of part 135 or part 121.

In developing the proposed regulations for part 108, FAA concluded that it is not necessary to include part 108 operations within part 119, as proposed part 108 incorporates the relevant aspects of part 119 in a manner that is appropriate for UAS that can be operated under this part. For more details, please refer to section IX.B.1.

8. Part 133—Rotorcraft External-Load Operations

FAA proposes to amend the applicability of § 133.1 to state that part 133 does not apply to aircraft operated under part 108. Part 133 prescribes the requirements for external load rotorcraft operations. As with part 107 operations, FAA has determined that the requirements for external load operations are not analogous to part 108 operations. The proposed design requirements of part 108, combined with the operational limitations proposed in part 108 obviate the associated risk of external load operations.

9. Part 135—Operating Requirements: Commuter and on Demand Operations and Rules Governing Persons on Board Such Aircraft

FAA proposes to amend the applicability of § 135.1 to state that part 135 does not apply to aircraft operated under part 108. Part 108 is a fully contained set of operating requirements necessary for the safe conduct of BVLOS operations in the United States. Therefore, the operating requirements in part 135 would not be applicable to these operations and would only result in confusion if applied to part 108 BVLOS operations. In addition, BVLOS UA operations currently being

¹⁴³ 81 FR 42036, 42076 (June 28, 2016).

conducted under part 135 are expected to transition to part 108 within a reasonable timeframe after the rule becomes effective. FAA understands that, to make that transition, existing operators will need time to update their fleets with UA that conform to the airworthiness requirements of the rule and meet other regulatory obligations. However, FAA does not intend for these operations to continue under part 135 for an indefinite amount of time.

10. Part 137—Agricultural Aircraft Operations

FAA proposes to amend the applicability of § 137.1 to state that part 137 does not apply to aircraft operated under part 108. As further discussed in sections VIII.B and VIII.C, this rule proposes requirements for agricultural operations conducted with UAS. These proposed requirements are specific to the operating profile of UAS, unlike the regulations in part 137, which were developed and implemented for traditional manned aviation. In the course of issuing exemptions from various part 137 regulations for UAS, FAA has determined what the appropriate requirements are for UAS agricultural operations, as captured in this proposed part 108, and thus it is not necessary to apply the requirements of part 137 to these types of operations. In addition, BVLOS UA operations currently being conducted under part 137 are expected to transition to part 108 within a reasonable timeframe after the rule becomes effective. FAA understands that, to make that transition, existing operators will need time to update their fleets with UA that conform to the airworthiness requirements of the rule and meet other regulatory obligations. However, FAA does not intend for these operations to continue under part 137 for an indefinite amount of time.

XIII. Part 146: Automated Data Service Providers

A. Introduction

FAA recognizes the pressing need to enable UTM services, which help manage risks for BVLOS UAS operations.¹⁴⁴ Facilitating the use of automated data services is an important step in realizing UTM services that

could optimize NAS safety, security, and efficiency. Through this rulemaking, FAA proposes to create a regulatory framework that would enable the development, growth, and continued innovation of automated data services, beginning with those in support of the UTM ecosystem.

Data automation is a method of data management that relies on technology to collect, process, analyze, and transform raw data into usable information. Typically, automated data service providers use a distributed computational system—essentially a network—to gather raw data, process it, and then provide it in a usable format to the data recipient or user. FAA proposes a new part 146 to regulate those providers who use data automation systems to support certain UTM services necessary for BVLOS operations. The automated data service providers subject to regulation under proposed part 146 may, or may not, be directly involved in the aircraft operation. Nonetheless, they would provide flight services to help operators conduct their operations safely and efficiently. As such, FAA anticipates that most BVLOS operations would rely on automated data services to meet operational requirements proposed in part 108. Other operators may also rely on automated data service to fulfill their operational requirements, which are further discussed later in this proposed rule.¹⁴⁵

Automated data services may fulfill a variety of purposes depending on their exact functionality. Nonetheless, as discussed later in this preamble, FAA is only interested in automated data services that support operators in fulfilling their operational obligation without compromising the safety or efficiency of the NAS. In other words, only automated data services that are used by operators to mitigate additional risk that may be introduced in the NAS as a result of their aircraft operation would be subject to this rulemaking, *i.e.*, part 146 requirements.

FAA anticipates many benefits from enabling the provision of automated data services. For example, automated data services that provide strategic deconfliction of UAS operations would reduce the risk of midair collision between UA, thereby reducing the risk of harm to people and property on the ground. Other kinds of automated data services may support operators' DAA responsibilities, which would include

providing surveillance information or avoidance maneuvering instructions. Automated data services may also help operators avoid flight into terrain or dangerous weather, or loss of flight control, by providing operators with specialized data before and during flight operations to manage a variety of risk factors. These data service providers will play an important role in addressing safety concerns and in mitigating risk inherent in BVLOS operations. Because of this key role, these data service providers warrant FAA oversight to help ensure the continued safety and efficiency of the airspace.

Some stakeholders may be more familiar with the concept of automated data service provider under other names. For example, “third-party service provider”, “UAS service supplier (USS)”, or “Supplemental Data Service Provider (SDSP)” are concepts familiar to many stakeholders active in the UA industry. This is because operators often outsource complex data functions that support unmanned flight operations to these third parties with the appropriate technological expertise, equipment, and scaled networks. Under proposed part 146, all these services and providers of those services that would fall within the umbrella term *automated data service provider*.

Whether the automated data services are self-provided or outsourced to a third-party, any entity that provides an automated data service which FAA requires to be certified under part 146 would be subject to proposed part 146 regulations.¹⁴⁶ As stated earlier, not every automated data service provider would necessarily fall within the scope of proposed 146. Only those that provide the automated data services to support an aircraft operators' ability to comply with an FAA regulation would be subject to part 146. Put simply, if an operator is using the automated data service provider to do something for which FAA requires a certified service provider, then the provider, as well as the automated data service that the operator uses, will be subject to part 146 requirements. For example, an entity providing strategic deconfliction services for BVLOS operations in

¹⁴⁴ The term “UTM” refers to a set of automated data services provided by a federated, distributed network of providers and an all-encompassing framework for managing multiple UAS operations. UTM system relies on NAS users and service providers to provide the services that collectively form the UTM ecosystem. The ecosystem will eventually include services for flight planning, communications, collision avoidance, and weather, among other capabilities.

¹⁴⁵ See section XIII.F.3 for a further discussion on the breakdown of operations that may be supported via automated data services provided through part 146.

¹⁴⁶ By mentioning self-provisioned automated data services, FAA means automated data provided in-house by the operator to support their own aircraft operations. In this scenario, the operator would still be subject to undergoing the part 146 certification and service authorization process to provide their own automated data service. FAA is taking this approach to ensure that any automated data service introduced into the NAS, regardless of the service being provided by a third-party vendor or self-provisioned by the operator, that FAA must first vet the service.

controlled airspace under part 108 would be subject to proposed part 146. This is because certificated strategic deconfliction is a requirement for those operations. Conversely, an entity providing automated data services to monitor the temperature of perishable cargo such as food deliveries or blood samples would not be subject to part 146 requirements. This is because though important to the operator, monitoring this is not an aviation safety or efficiency concern regulated by this chapter. And as proposed in this rule, FAA would require automated data services to be services that promote NAS safety and efficiency, as well as support an operator's ability to comply with an FAA requirement, to fall within the scope of part 146. Services that meet these requirements would be eligible, but not required, to obtain a 146 certificate, if the service they offer is not required to be provided by a 146 certified provider.

The emergence of automated data service providers presents FAA with an opportunity to consider FAA's oversight role in a way that is responsive to the pace of technological advances and the safety and efficiency of the airspace. Recent and ongoing innovations in the aviation market are expected to bring various benefits, but also present corresponding risks. To keep pace with these technological advances, while maintaining the safety and efficiency of the NAS, FAA is taking an incremental approach toward regulating automated data services. This proposed rule would focus on services that enable operations under proposed part 108; however, it could be scaled to support more complex unmanned and manned aircraft data services including through future rulemaking(s) that enable services to support operations by aircraft with a pilot on board. Automated data service providers may eventually provide services that would support larger and more complex aircraft operations, such as those that would support the advanced air mobility (AAM) market.¹⁴⁷

¹⁴⁷ FAA Reauthorization Act of 2024 (Pub. L. 118–63, section 951) defines AAM as a transportation system that uses manned or unmanned aircraft that is comprised of urban air mobility (the movement of passengers or property by air between two points in different cities or two points within the same city using an airworthy aircraft that has advanced technologies, such as distributed propulsion, vertical takeoff and landing, powered lift, nontraditional power systems, or autonomous technologies; a maximum

While FAA has considered how automated data services can support operations under the particularities of a part 108 operational paradigm developed for unmanned aircraft operating in limited airspace areas and below 400 feet, it has not considered under what conditions these services could be applied in established operational constructs for traditional manned or AAM aircraft. Importantly, the services themselves are in a nascent stage and will evolve quickly as part 108 operations increase. As the automated data service industry matures, FAA will undoubtedly consider ways to leverage the services to benefit other aviation sectors.¹⁴⁸

There are inherent challenges associated with regulating technology services. FAA recognizes that prescriptive requirements or technical specifications could be outdated or obsolete before it can complete the rulemaking process. To balance the need to enable innovative services, maintain the safety and efficiency of the NAS, and be nimble enough to accommodate rapid technological changes, FAA proposes flexible, performance-based requirements that can evolve as technology advances in this dynamic operating environment. FAA proposes a risk-based regulatory approach that draws on FAA's long history and experience managing risk in the NAS, but also incorporates novel elements appropriate for the dynamic nature of the technology sector. For these reasons and consistent with this proposed rule's overall approach, FAA proposes to leverage the work and expertise of voluntary consensus standard bodies as it evaluates the safety and effectiveness of automated data service providers. FAA would rely on industry-led consensus standards and capitalize on the adaptability they offer. Parties applying to operate as an ADSP would still need to meet FAA requirements and any public interest requirements.

Aircraft traffic management for BVLOS operations under proposed part 108 is fundamentally distinct and separate from traditional ATM. For traditional aviation, FAA engages in both ATC and ATM. The primary responsibility of ATC is the separation

takeoff weight of greater than 1,320 pounds; and is not urban air mobility).

¹⁴⁸ For these reasons and more, which are discussed in the following section of this preamble, FAA does not intend to limit services provided by automated data service providers to those that only support UAS operations, even if it is anticipated that proposed part 146 would predominantly be used to support UAS BVLOS operations under proposed part 108, at this time.

of aircraft. They control traffic in and around airports, in the terminal, and through en route airspace. Controllers speak directly with pilots, notifying them of traffic or weather statuses in their vicinity. Pilots depend on the instructions they receive from ATC to travel safely and efficiently. In contrast, air traffic managers facilitate a “system approach” to managing traffic that considers the impact of individual actions on the whole system. Managing disruptions in airspace capacity (for example caused by bad weather, traffic overloads, or emergencies) requires consideration of who or what may be impacted by events, and a coordinated mitigation effort to ensure safety and efficiency in the delivery of air traffic services. These services are critical to ensuring the safety and efficiency of the NAS.

FAA has preliminarily concluded that the traditional model of ATM is not proportional, relative to the low level of risk BVLOS operations under part 108 would introduce to the NAS. This is especially true because, as proposed, FAA places operational requirements as well as aircraft airworthiness requirements—including SUI—on the UAS to mitigate the inherent risk associated with conducting BVLOS operations under part 108.¹⁴⁹ Taking a risk-based approach, FAA does *not* propose to manage either separation of aircraft or the system-wide efficiency of part 108 operations through its ATC and ATM functions. Instead, to address the likely risk these operations may pose to other emerging entrants, traditional aviation, people and property on the ground, and the overall efficiency of the NAS, FAA proposes to create a regulatory framework under which operators can rely on automated data service providers to aggregate and disseminate information about operations—especially to appropriately deconflict BVLOS operations. Service providers will still be subject to FAA oversight and review to ensure their services are conducted adhering to principles the public has come to expect from existing air traffic services, including the ability to access public airspace.

Under this proposal, UTM would essentially be a federated network of information to provide all users with

¹⁴⁹ As stated earlier in this preamble, the aircraft airworthiness requirements proposed under part 108 aim to prevent loss of flight or loss of control incidents stemming from factors such as structural integrity, software and hardware functionality, performance attributes, and operational factors. The design and performance standards would require the UAS to withstand all expected flight and ground loads during its operations without compromising the UAS's safe operation.

situational awareness of other operations in the airspace. Instead of FAA playing a centralized role in separation and efficiency of UA flights, the automated data service providers would provide information that operators would need to deconflict and manage the efficiency of their own operations. As a result, the term “unmanned traffic management” may be a misnomer. More accurately, the UTM system FAA proposes to adopt is better described as providing the information operators need to manage their own operations safely and efficiently.

Moreover, FAA concluded that it would be neither practical nor efficient for FAA to model UTM services on traditional ATM. First, FAA could not effectively provide ATM-like services for UAS using existing equipment and technologies. Air traffic surveillance systems were designed to identify aircraft large enough to carry people on board. As a result, radar and other surveillance systems do not reliably detect UAS, which are usually significantly smaller than aircraft that transport people. While other objects, such as birds, are sometimes detected on radar, this is not consistent or predictable because the efficacy of finding these objects depends on terrain and other local conditions. As such, FAA surveillance systems are not suitable to reliably track small and highly maneuverable objects such as UAS. These systems were designed to help controllers identify, track, and separate manned aircraft that primarily operate above 400 feet AGL. At lower altitudes, differences in terrain can interfere with accurate radar returns. For example, there are many areas within U.S. controlled airspace that feature hills, valleys, mountains, and other natural features that radar cannot penetrate. In addition, FAA surveillance systems must filter out false targets generated by phenomena such as trucks driving on bridges. Densely populated areas may also have man-made structures that serve as obstacles interfering with the efficacy of radar and other surveillance tools. In sum, FAA does not currently have the minimum tools and technology to provide consistent or reliable ATM-like services for UAS operating at 400 feet AGL and below.

Second, even if FAA could acquire the appropriate tools and technology to identify and track UAS operating 400 feet AGL and below, FAA would nonetheless face challenges staffing

these operations.¹⁵⁰ FAA could not add these responsibilities to existing air traffic controllers because they would direct controllers’ attention away from managing the rest of the traffic in the NAS and could thereby introduce a new hazard to traffic management for manned aircraft operating at higher altitudes. Accordingly, to provide ATM-like services, FAA would have to find a way to staff ATM operations at each of its 520 ATC tower facilities and 147 Terminal Radar Approach Control (TRACON) facilities.¹⁵¹ Such an increase in responsibilities would require an exponential increase in the existing air traffic controller workforce.¹⁵² FAA does not currently have the resources to sufficiently support that effort.

Since ATM services are not tailored to the needs of UA operating in the NAS,¹⁵³ other types of services are necessary to ensure BVLOS operations are safe and efficient. For the purposes of enabling BVLOS operations proposed in this rule, UTM services would have to include strategic deconfliction and conformance monitoring.¹⁵⁴ In addition, FAA will have to create conditions for stakeholders to innovate and develop other technological solutions to enhance

¹⁵⁰ FAA is both the civil aviation authority and the air navigation service provider (ANSP) for the United States. FAA has statutory responsibilities to set standards and certify aircraft, airmen, and facilities per sections 106(g) and 40101 of 49 U.S.C. In addition, per 106(g) and 40103 of 49 U.S.C., FAA is responsible for ensuring the safe and efficient use of navigable airspace. FAA carries out its responsibilities by developing air traffic rules, assigning the use of airspace, and controlling air traffic through a complex network of air traffic control towers, terminal radar approach control facilities, air route traffic control centers, and flight service stations. Each day, FAA is responsible for serving tens of thousands of commercial and private aircraft operating in 29 million square miles of airspace. Through its ATM system, FAA coordinates the movements of these aircraft to ensure they operate at safe distances from each other and to manage disruptions to normal air traffic flow. FAA’s ability to manage air traffic in the airspace of the United States is predicated on the Agency knowing who is operating in the airspace and, if necessary, on being able to communicate with those airspace users. About 45,000 flights are handled by FAA ATC per day. FAA estimates 858,000 commercial drones will be registered by 2026; if 5% of those flew in a given day, and ATC provided services to those flights, it would double the number of flights covered.

¹⁵¹ Available at www.faa.gov/air_traffic/by_the_numbers.

¹⁵² Pang, Y., et al. Air Traffic Controller Workload Level Prediction using Conformalized Dynamical Graph Learning (2023), available at arxiv.org/pdf/2307.10559.pdf.

¹⁵³ Unlike the ATM system that is managed by FAA, the UTM system relies on NAS users and service providers to provide the services that collectively form the UTM ecosystem.

¹⁵⁴ See proposed § 108.190 regarding the requirements for strategic deconfliction and conformance monitoring when conducting certain operations under part 108.

aircraft operations and mitigate risk. For this type of crowd-sourced data or network to work, everyone contributing data or other information services to the UTM system must be reliable and consistent. All stakeholders must have confidence that each service provider meets the same minimum standards, and that there is no “weak link” in the interdependent system. Proposed part 146 would meet this need by establishing the minimum standards and oversight responsibilities necessary to enable a successful, stakeholder-driven UTM system. FAA will also need to assess the procedures and operations of networks to ensure that they are consistent and adhering to FAA regulation and policy.

B. Legal Authority To Regulate Automated Data Service Providers

Prior to FAA Reauthorization Act of 2024, Public Law 118–63, section 932, which directs FAA Administrator to establish procedures, including rulemaking, to approve third-party service suppliers—discussed in section II.B of this preamble—Congress has long focused on directing FAA’s incremental approach to regulating automated data service providers and their services. First, Congress directed FAA to develop a comprehensive plan for UAS integration in FAA Modernization and Reform Act of 2012 (Pub. L. 112–95), codified at 49 U.S.C. 44802. Subsequently, Congress updated section 44802 in the Reauthorization Act of 2018, directing FAA to consider “the potential use of UTM and other technologies to ensure the safe and lawful operation of unmanned aircraft in the NAS.”¹⁵⁵ Furthermore, Congress specifically directed FAA to create a UTM Implementation Plan.¹⁵⁶ Congress contemplated that UTM systems would be “privately operated” and directed FAA to “outline the roles and responsibilities of industry and government in establishing UTM services,” while also “recognizing the primary private sector role in the development and implementation of [. . .] future expanded UTM services.”¹⁵⁷ In addition, Congress requested the development of safety standards related to UTM services applicable to unmanned aircraft operations below 400 feet AGL.¹⁵⁸

Second, FAA has authority to regulate air agencies under chapter 447 of 49 U.S.C. Under statute, FAA may issue certificates to air agencies (49 U.S.C.

¹⁵⁵ See Public Law 115–254, 342(b)(1) (2018).

¹⁵⁶ *Id.* at § 376(c).

¹⁵⁷ *Id.* at §§ 360(b)(6) and 376(c)(2).

¹⁵⁸ *Id.* at § 376(d).

44702) as well as “examine and rate” air agencies (49 U.S.C. 44707). Congress defined air agencies to include certain aviation schools (§ 44707(1)), repair stations (§ 44707(2)), and “other air agencies the Administrator decides are necessary in the public interest” (§ 44702(3)). FAA proposes to regulate automated data service providers that support aircraft operations using a distributed computational system under this authority to regulate air agencies.¹⁵⁹ Regulation of these automated data service providers is necessary in the public interest. In 49 U.S.C. 40101(d), Congress identified the following matters for FAA to consider as being in the public interest: “assigning, maintaining, and enhancing safety and security” and “encouraging and developing civil aeronautics, including new aviation technology.” Enabling automated data services to mitigate the potential risk that BVLOS operations could pose to the NAS would enhance aviation safety and aid in the development of new aviation technology.

Lastly, and most recently, FAA Reauthorization Act of 2024 directs FAA Administrator to establish procedures, including rulemakings, to approve third-party service suppliers, including those who supply UTM services to support the safe integration and commercial operation of UAS.^{160 161} In accordance with this provision, FAA Administrator must ensure, to the maximum extent practicable, that industry consensus standards are included as an acceptable MOC in the approval process for third-party services. Further, in establishing this approval process, Congress directs FAA Administrator to “define and implement criteria and conditions for the approval and oversight of third-party service suppliers that (A) could have a direct or indirect impact on air traffic services in the NAS and (B) require FAA oversight.”¹⁶² In addition, the Administrator “shall establish procedures by which UAS can use the capabilities and services of third-party

service suppliers to support operations.”¹⁶³

In response to these congressional directions, FAA would establish the regulatory framework and the requirements for regulating automated data service providers as well as their service in proposed part 146. Automated data service providers would be regulated as air agencies; and FAA would rely on the use of industry standards, to the maximum extent practicable, to develop requirements of those services.

C. BVLOS ARC Recommendations

In 2021, the BVLOS ARC issued recommendation TP 2.1, stating that “FAA should adopt a regulatory scheme for third-party services to be used in support of UAS BVLOS.” The BVLOS ARC further recommended that FAA issue certificates to “third-party service providers” (including UTM service providers) that fall into one of seven categories based on the functionality of the service that is being provided. At a high level, proposed part 146 is based on this recommendation; however, the specifics of part 146 differ from the ARC recommendations in a few key areas.

The BVLOS ARC recommended that FAA follow a MOC and DOC approach for certifying automated data services, similar to the process FAA adopted for broadcast Remote Identification (ID) under 14 CFR part 89. FAA agrees that some automated data service providers should be able to use a DOC to comply with regulatory requirements; however, fundamental differences between UTM services and remote identification mean that FAA cannot rely wholly on the DOC process to address safety and efficiency concerns.

FAA promulgated the Remote ID rule in response to concerns about public safety and security. The remote identification data elements provide information to government officials and other people on the ground or in the air about UA operations. The information can be used to distinguish compliant airspace users from those potentially posing a safety or security risk. A failure of a broadcast Remote ID module affects a single UAS, and such a failure is unlikely to cause an unsafe condition beyond that which may already exist. In contrast, automated data services may support or manage hundreds or thousands of UAS at once. A service failure may have cascading impacts on other services and on many UAS in different parts of the NAS. In this interdependent system, a small failure could have outsized consequences. FAA

does not believe the DOC and MOC model is responsive to the type of risk an automated data service failure could present to the UTM ecosystem. As a result, FAA determined that in some, but not all, circumstances, the potential consequences of failure demand a higher level of oversight and scrutiny from FAA.

The BVLOS ARC also recommended that anyone should be able to apply to FAA to receive an automated data service provider certification—with minimal information about how the provider is structured. FAA determined that such an approach is inconsistent with how the Agency regulates other users. To determine that the automated data service provider can reliably and consistently provide an automated data service, FAA needs access to information about the automated data service provider, its overall operating practices, and how the provider addresses data management, cybersecurity, and quality systems, etc. As such, FAA proposes to require automated data service providers obtain part 146 certificates. As a part of the certification process, FAA would establish procedures to verify the organizational capability of that provider and their ability to comply with FAA requirements. These proposed certification requirements are further discussed later in this preamble.

Another BVLOS ARC recommendation was for FAA to create regulatory text to recognize specific UTM services.¹⁶⁴ Specifically, the ARC recommended identifying the following service providers: networked remote identification, strategic deconfliction, constraints services, conformance monitoring, operational planning, C2, and DAA. Based on previous experience, FAA is concerned that such an approach would unintentionally hinder automated data service providers that wish to innovate or provide a service that adds value but that does not fit into one of those seven pre-defined categories. Accordingly, FAA does not propose to limit automated data service providers to specific pre-defined services. Instead, FAA would leverage the use of industry standards and the safety objective of each automated data service’s standards to regulate automated data service providers under proposed part 146.

D. Overview of Proposed Part 146

FAA proposes a new part 146, titled Automated Data Service Providers, in title 14 of the CFR. This part would establish the process by which FAA

¹⁵⁹ See 49 U.S.C. chapter 447.

¹⁶⁰ Per § 932(f) of Public Law 118–63, third-party service supplier means “an entity other than FAA that provides a distributed service that affects the safety or efficiency of the national airspace system, including UAS service suppliers, supplemental data service providers, and infrastructure providers, such as providers of ground-based surveillance, command-and-control, and information exchange to another party.” FAA’s proposal for defining automated data service provider, who are also referred to as third-party service suppliers, is in alignment with this definition.

¹⁶¹ See Public Law 118–63, 932.

¹⁶² *Id.* at § 932(c)(1).

¹⁶³ *Id.* at § 932(c)(2).

¹⁶⁴ See BVLOS ARC Report, p. 157.

would regulate automated data service providers as well as their services and associated networks. The purpose of part 146 is to provide a regulatory framework for appropriate government oversight of automated data services that support aircraft operations. At the same time, the framework is designed to be flexible enough to accommodate the natural evolution and development of the technologies and systems on which these services are based upon. Through proposed part 146, FAA seeks to balance the need to ensure the safety and efficiency of the airspace without impeding the development of new and innovative services that could otherwise bring services that enhance the safety of operations and offer new economic opportunities.

Under proposed part 146, a person may obtain a certificate and authorization to provide automated data services using a distributed computational system for the purpose of showing compliance with the requirements under this chapter.¹⁶⁵ While the certificate is meant to address the service provider's holistic ability to provide automated data services of a certain caliber, the service authorization is meant to address the individual service's capability as well as the provider's ability to provide that specific service—thereby integrating the service into the NAS for it to be used by aircraft operators. The person would need to submit an application to FAA for review. If FAA determined that the person has met FAA's requirements, FAA would then issue their requested part 146 certification and service authorization. Under this proposed rule, FAA proposes the application process for automated data services providers seeking part 146 certification and service authorization. FAA also proposes the requirements automated data service providers would be required to comply with to maintain their part 146 certificate. FAA anticipates the creation of an electronic platform for processing applications under proposed part 146. This platform for managing part 146 applicants and automated data service providers would be available on FAA's website, upon finalization of this rulemaking effort.

To maximize flexibility without sacrificing safety, FAA proposes a two-part approval process patterned after—but not identical to—other FAA regulatory constructs. This process

requires the data services provider to obtain a certificate at the organizational level and then obtain authorizations for the individual services it provides. This is comparable to the way FAA regulates part 145 repair stations. Under that construct, the organization must seek a certificate to operate as a repair station but must also hold the specific ratings necessary to perform a particular type of repair. Proposed part 146 is substantially similar in that FAA would evaluate the service provider's qualifications both at the organizational level and at the individual service level. FAA proposes to categorize services into three levels—Service Level 1, 2, or 3—which are described in greater detail in the sections that follow.¹⁶⁶

The issuance of a certificate enables FAA to provide regulatory oversight of the applicant—corporation, organization, etc.—that intends to deploy the service. The certificate would indicate that the applicant is capable of reliably providing data services of a specific tier or service level. As part of the certification process, applicants would be required to submit information proving their ability to comply with the requirements of proposed part 146.¹⁶⁷

The automated data service provider would also have to obtain an FAA authorization to provide specific services. This construct enables FAA to provide regulatory oversight over each service an applicant seeks to introduce into the NAS. As part of the process for seeking such authorization, the service provider would have to demonstrate why their service is needed to support UAS operations. As a part of this process, certificated service providers would also have to show that any new service they seek to introduce into the NAS is designed in accordance with an FAA-accepted industry consensus standard or standards. This is because safety remains FAA's top priority; as a result, FAA will not approve experimental or unproven technologies. FAA must be reasonably confident that any service that will be introduced into the NAS has been vetted and tested by industry and other stakeholders to ensure that the technology is mature and interoperable with other UTM technologies. Requiring services to meet

applicable standards is meant to streamline this process. By facilitating collaboration—including but not limited to automated data service providers and aircraft operators working together—FAA would be able to confidently maintain the safety and efficiency of the NAS.

After FAA issues a part 146 certificate and authorizes a specific service, the service provider may begin providing the service. Under proposed part 146, FAA anticipates that most applicants would go through the process of applying for a certificate just one time. Once certificated as automated data service providers, those certificated providers may seek additional service authorizations as they plan to deploy additional services. In most situations, the certificated service provider would not need to adjust their certificate. However, if the certificated service provider seeks to provide services in a higher category, they may need to upgrade their certificate. In this scenario, FAA would not revisit the provider's certificate holistically. Instead, FAA would only address the additional requirements the provider would need to meet to obtain a higher-level certificate.¹⁶⁸

E. Subpart A—General

Subpart A of proposed part 146 lays out the general requirements for complying with part 146. This proposed subpart describes the framework under which FAA would regulate service providers and their services. First time applicants would go through parallel FAA review processes to determine that the service provider, as an organization, and the services it seeks to provide meet FAA minimum requirements. This subpart also proposes the applicability of part 146 and defines common terms used. Lastly, this subpart discusses the proposed FAA requirement that prohibits anyone from engaging in fraudulent or deceptive practices in connection with proposed part 146.

1. Applicability (§ 146.1)

FAA proposes that part 146 would apply to anyone using or seeking to use a distributed computational system to provide automated data services to support an aircraft operator's ability to comply with FAA regulatory requirements.¹⁶⁹ FAA anticipates that

¹⁶⁶ See section XIII.F.3 of this preamble for further discussion on the three service levels and their corresponding level of oversight.

¹⁶⁷ Per § 146.115, the appropriate certification information to submit to FAA would range from declarations of compliance to providing substantial data and evidence proving the applicant's capability to provide their service. This would depend on the service level that the applicant is seeking certification for.

¹⁶⁸ For further discussion on the categories of service levels, see section XIII.F.3 of this preamble.

¹⁶⁹ A distributed computational system takes the commonly accepted meaning in the software industry: a system that relies on one or multiple pieces of software, running simultaneously on one or multiple computer(s), to provide a set of functions.

¹⁶⁵ As discussed later in this preamble, FAA would define a distributed computational system to mean a system that relies on one or multiple piece(s) of software, running simultaneously on one or multiple computer(s), to provide a set of functions.

most part 146 providers would be third-party organizations that provide their services under contract to operators. However, FAA does not refer to these services broadly as “third-party services” because some organizations may choose to provide these services in-house instead of contracting with a third-party. For example, a UAS operator with an operating component dedicated solely to providing an automated data service to fulfil that company’s need to support BVLOS operations would be required to comply with part 146. For these reasons, part 146 requirements would apply to automated data services, irrespective of whether they are provided in-house or by a third-party.

Proposed part 146 would exclude certain services that FAA regulates through other means. This is because FAA does not intend for proposed part 146 to replace, duplicate, or create redundancies with existing certification, authorization, or approval programs. Specifically, part 146 would exclude those services FAA regulates as a part of the aircraft certification process under 14 CFR part 21. Services that meet a regulatory requirement for aircraft, airframe, or parts certification in subchapter C would continue to be evaluated through existing processes and regulations for their respective certifications. Similarly, proposed part 146 would not apply to the requirements under 14 CFR subchapter J, including the requirements for regulating navigational aids under that subchapter. Those services, which pertain to ATC equipment and non-federal navigation systems, have an existing approval process, and therefore would not be subjected to part 146.¹⁷⁰

Additional exceptions to the applicability of proposed part 146 include services provided to airspace users through LAANC UAS USS. In qualifying a USS to be a LAANC service provider, FAA uses its “other transaction” acquisition authority to enter into a Memorandum of Agreement (MOA) with such USS. Through an onboarding process with FAA, LAANC service providers become qualified as well as agree to abide by a set of documented terms and conditions regarding the technical administration of the service and how it is administered to the public.¹⁷¹ LAANC USS are fully responsible for the development and operation of their

software applications. Proposed part 146 would create a redundant set of provisions for LAANC USS, and for this reason, FAA proposes that services provided through LAANC would not be subject to part 146 requirements.

FAA views this proposed rule as an incremental step toward integrating UA and other emerging technologies into the NAS, with the current primary objective of enabling routine UAS BVLOS operations. To focus on this objective, FAA anticipates that part 146 will primarily support proposed part 108 operations at this time. Accordingly, FAA proposes to except the use of automated data services provided under part 146 for aircraft operations with an onboard pilot in command.¹⁷² FAA added this exception because aircraft operations conducted with an onboard pilot in command may not share operational environments, nor the technology, of those that would scale operations under proposed part 108. On the other hand, FAA anticipates that the technological evolution of automated data services supporting proposed part 108 operations may easily transition to support aircraft operations, such as AAM, given common technical environment and operator involvement of such operations.¹⁷³ FAA may revisit this decision to include the use of automated data service under proposed part 146 to support manned operations as aviation technology advances and automated data service providers become essential to other types of NAS users. Under those circumstances, FAA would engage in additional notice and comment rulemaking to address specific issues associated with the new technology.

Finally, FAA does not intend to use part 146 to regulate any services that support general business functions. In addition to promoting safety or efficiency of the NAS, only services used by aircraft operators, enabling them to comply with FAA regulatory requirements, would fall within proposed part 146. For example, distributed computation system services that support general office functions, such as payroll, accounting, or word processing would not fall within

proposed part 146. Nor would it apply to services that manage an organization’s ground transportation or non-aviation-related supply chain services.

2. Definitions (§ 146.5)

Proposed part 146 would bring a new population of air agencies under FAA’s regulatory umbrella. These new organizations bring with them concepts and terminology that have not historically been part of FAA’s lexicon. Accordingly, many of the terms frequently used in proposed part 146 are not currently used in other FAA regulations. Many of these terms relate to software engineering generally, or to automated data service provisioning, capabilities, and specific functions. Defining these terms will facilitate consistent use of a common lexicon and thereby assist part 146 applicants or any persons involved in providing or procuring automated data services. As such, FAA proposes the following definitions in § 146.5:

FAA proposes to define the term *authorized services* to mean those services a certificated automated data service provider is authorized to provide under part 146. FAA anticipates that authorized services could include but are not limited to: strategic deconfliction services for identifying flight path conflicts before takeoff and managing collision risk between UA; conformance monitoring to provide time-sensitive alerts so that the UAS operator maintains their flight path; DAA services, which provide surveillance information or avoidance maneuvering instructions to operators; or micro-weather forecasting services that are not available from conventional NAS weather sources.

FAA proposes that *automated data service provider* means a person using a distributed computational system to provide automated data services that support aircraft operations. Automated data service providers would encompass persons who provide their own services for their own operations (often referred to as vertically integrated companies) as well as persons who provide distributed services as a third-party provider. FAA anticipates automated data service providers will be comprised of companies, governmental entities, or other organizations.

FAA proposes that a *distributed computational system* means a system that relies on one or multiple piece(s) of software, running simultaneously on one or multiple computer(s), to provide a set of functions. Automated data services would be provided through these systems to support aircraft

¹⁷⁰ AC 146–1, titled Automated Data Services, which is included with this docket, provides additional guidance for the limited subset of persons affected by this delineation.

¹⁷¹ See 49 U.S.C. 106(l) and (m).

¹⁷² FAA recognizes that there may be a need to use automated data service to support aircraft operations conducted outside of part 108. FAA discusses this proposal further in section XIII.F.4 of this preamble per the proposed requirements in § 146.115.

¹⁷³ See FAA’s Urban Air Mobility (UAM) Version 2.0 Concept of Operations, available at www.faa.gov/sites/faa.gov/files/Urban%20Air%20Mobility%20%28UAM%29%20Concept%20of%20Operations%202.0_0.pdf. This ConOps describes FAA’s vision in potentially implementing UAM—a subset of Advanced Air Mobility (AAM).

operations. An example of a distributed computational system is the infrastructure used by an entity that provides strategic deconfliction services to part 108 operators. In this example, the computer server operated by the entity that supplies the information or data processing to the part 108 operator is the distributed computational system.

FAA proposes that *major update* means a change to the software version that includes substantial changes to the application programming interface (API), or the features and functionality, such that the new version is not backward compatible with previous versions. Major updates include a new API endpoint or signature. They constitute significant revisions and may fundamentally change what the service does or how it supports operators. An aircraft operator who does not make the required changes to support the new version of a major software update would lose functionality of the service after the update.

FAA proposes that *minor update* means a change to the software version that changes the API, may include new features or functionality, and remains backward compatible. As a minor update may substantively change a service's features and functionality, users may be required to make changes to their aircraft and AE to integrate the minor version update properly. An aircraft operator who does not make the required changes would remain unaffected by the minor software update while operating on the older version.

FAA proposes that *patch update* means a change to the software version that does not change the API and is used for backward-compatible bug fixes and performance improvements. Patch updates often improve performance, fix bugs, or address security vulnerabilities but do not change the overall functionality or features of the service.

FAA proposes that *third-party vendor* means an entity that provides a distributed software capability necessary for a certificated service provider to meet the requirements of this part but for which the certificated service provider does not have direct control over the personnel, software code, or organizational processes. Examples of third-party vendors, as defined by FAA in this part, would include cloud storage providers, cloud database infrastructure providers, and cloud-based network monitoring tools. When appropriate, certificated service providers may leverage third-party vendors to develop, deploy, update, or repair authorized services. The distinction between an automated data service provider and a third-party

vendor is significant under part 146. Whereas the former is subject to regulatory oversight by FAA because it directly affects the safety and efficiency of the NAS, the latter refers more broadly to software and tools that entities regularly rely on to provide business support functions that are not aviation specific.

3. General Requirements (§ 146.10)

Proposed § 146.10 establishes the framework under which FAA would regulate automated data services as well as providers of those services. That framework would consist of two primary regulatory functions. The first would require entities providing automated data services to obtain a certificate from FAA. The second would require those certificated entities to obtain authorization from FAA to provide individual services. Proposed § 146.10 would lay the foundation for the rest of part 146 by establishing the requirement that only certificated entities can provide services and that those services they provide require FAA authorization.

4. Falsification, Reproduction, Alteration, or Omission (§ 146.15)

For FAA to properly perform its oversight role, it must receive candid and truthful communications from regulated parties. Proposed § 146.15 would require truthful and candid submissions in applications, records, or reports used to comply with part 146. Failure to do so by, for example, purposefully falsifying, reproducing, altering, omitting information from FAA could lead FAA to deny, suspend, or revoke a certificate or authorization or issue a civil penalty.

Automated data services must be properly and transparently regulated as they support operations affecting the U.S. airspace's safety and efficiency. FAA requires factual and accurate information to effectively conduct regulation and ensure safety. As such, FAA proposes, in § 146.15(a), to prohibit the act of any fraudulent or intentionally false entries in any application, record, or report made under this part, as well as any reproduction or alteration of such documents for fraudulent purposes. In addition, FAA proposes in § 146.15(b) to prohibit persons from knowingly concealing a material fact in any application or record used to show compliance with FAA requirements. This would apply to applications and records related to both provider certificates and service authorizations, and any other information a person

submits to FAA under proposed part 146.

Lastly, to hold persons accountable for actions specified in proposed § 146.15(a) and (b), FAA proposes in § 146.15(c) that any such fraudulent or prohibited act or omissions conducted with regards to proposed part 146 to be subject to FAA penalties. Those penalties include the suspension or revocation of any certificate, approval, or authorization issued by FAA, a civil penalty, or the denial of an application for part 146 certification and service authorization. By enforcing penalties due to non-compliance with the candor and truthfulness requirements, FAA anticipates that it would increase compliance with the requirements proposed under part 146 and therefore ensure the safety and efficiency of the U.S. airspace.

Of note, while proposed § 146.15 authorizes FAA to take action for a regulated party's failure to meet its duty of candor and truthfulness in interactions with FAA, FAA may take certificate actions for other reasons. All NAS participants play a role in ensuring safe and efficient operations that are consistent with the public interest. In the age of advanced aviation, those participants will notably include automated data service providers who must, to contribute to a safe and efficient airspace, comply with rules and be held accountable for their actions. For that reason, it is worth highlighting that 49 U.S.C. 44709(b) authorizes FAA to amend, modify, suspend, or revoke any part of certificate when it decides that safety in air commerce or air transportation along with the public interest requires that action.

F. Subpart B—Certificate

Part 146 would establish a new type of air agency requiring an FAA-issued certificate for certain automated data service providers that support aircraft operations using a distributed computational system. Many of the advanced UAS operations in this proposed rule would rely on automated data services to help ensure the safety and efficiency of those operations. Furthermore, these advanced UAS operations would rely on the existence of an integrated and cooperative ecosystem of services. FAA anticipates that the data service providers would provide services to their specific end users, creating an information exchange between those with privity of contract. However, to be successful, the ecosystem would also have to rely on other data service providers exchanging information continuously with each

other to provide operators with the information they need about the operating environment for safe and efficient operations. Collectively, the service providers would create a federated, non-centralized network in which each data service provider contributes information that other data service providers rely on to service their own individual users. In this operating environment, as proposed, each provider would rely on others in the network to provide accurate and reliable information; together automated data service providers would be able to provide accurate and reliable information to their users. Though the quality of the network relies on these individual contributions, as peer participants, the individual service providers have no authority to hold one another accountable for providing accurate and reliable information. To help address this problem, FAA proposes to set minimum requirements to help ensure that only qualified automated data service providers can participate in these networks. Proposed subpart B establishes those requirements and describes how to obtain a certificate to provide automated data services under proposed part 146.

1. Application (§ 146.100)

FAA proposes in § 146.100 that each person seeking to be certificated as an automated data service provider would be required to submit an application in a form and manner acceptable to the Administrator. The applicant would be required to provide all the information identified in subpart B, which is described in the following section of this preamble. FAA anticipates establishing a web-based application process that applicants could use to provide their materials electronically. FAA would provide instructions for submitting an application in guidance or other reference materials.¹⁷⁴

2. Applicant Information (§ 146.105)

Proposed § 146.105 would require the applicant to provide general business information about the organization seeking a part 146 certificate.

Proposed § 146.105(a) would require the applicant to submit the name, address of principal place of business, telephone number, and email address for the person seeking a certificate. FAA would use this standard contact information to identify, locate, and communicate with the organization. This information is necessary so that

FAA can expeditiously reach the service provider to conduct oversight activities, as well as to follow up with requests for information when reviewing certification and authorization requests.

Proposed § 146.105(b) would require the applicant to submit documentation related to their ownership structure. Corporate applicants would provide information identifying anyone who owns five percent or more of the total voting stock. If that stockholder is not the sole beneficial owner, the applicant would also provide the name and address of the beneficial owners. For purposes of this section, stock owned directly or indirectly by an individual's spouse, child, grandchild, or parent is attributed to the individual. This means that the aggregate stock of the individual and any of these relatives would be considered together for purposes of determining whether the individual owned at least five percent of the stock. An individual could not avoid the disclosure requirement in this paragraph by distributing stock among the relatives identified in this section in an effort to lower their ownership level below the reporting threshold. For non-corporate entities, FAA requests information about anyone with a financial interest in the organization.

An important part of determining whether an applicant is qualified to hold a certificate is understanding who controls or influences the organization and determining whether they are capable of complying with FAA's proposed requirements. In the case of corporate entities, FAA decided to set the voting stock ownership reporting requirement at 5 percent or more because it considers that anyone below the 5 percent threshold is likely unable to exert control or influence over the organization. This information serves several purposes. First, FAA would use this information to determine whether the organization or one of the beneficial owners thereof previously held an ownership or management position with a part 146 certificated service provider. As explained in the sections that follow, information related to individuals or entities with ownership interests and individuals holding management positions in the applicant's organization is relevant to FAA's application evaluation. If any of these people contributed materially to circumstances that resulted in FAA taking adverse action against a previous certificated service provider, FAA may deny the application.¹⁷⁵ Requiring the applicant to identify the individuals and entities

that would exercise some kind of control over the organization would help prevent an unqualified applicant from disguising their ownership structure to "reincarnate" into a new organization.

Second, this (Ownership) information would help FAA understand whether those exercising control over the organization were otherwise unqualified because of prohibitions on their ability to do business in the U.S.

Proposed paragraph (c) would require the applicant to provide the name of an accountable executive that exercises authority over the organization's operations. For purposes of this section, the term accountable executive would take the same meaning as in 14 CFR 5.25. As discussed later in this preamble, FAA proposes to require part 146 certificated service providers to incorporate certain SMS provisions per the requirements in 14 CFR part 5. One such requirement is to identify an accountable executive, per § 5.25.

In paragraph (d) of this section, FAA would require the applicant to demonstrate that they are authorized to conduct business in the United States. If the individuals or entities exercising control over the organization are prohibited or otherwise unable to do business in the United States, FAA would not issue them a certificate. FAA is cognizant that the automated data services contemplated under this rule would contain a trove of digital information about American citizens, patterns of life, and commercial activities that criminal organizations and foreign adversaries could seek to exploit. The information FAA seeks about authorization and ownership would help prevent someone prohibited from doing business in the United States from disguising themselves as a legitimate organization.

Proposed paragraph (e) would require applicants provide any other relevant documentation the Administrator deems necessary to verify their identity, corporate ownership, and authority to conduct business in the United States. FAA would use this documentation to verify that the certificated service provider is the person permitted to conduct business in the United States. This information is also important because FAA expects foreign U-Space and UTM companies to seek reciprocal certification in the U.S. Under this provision, FAA would provide a means to verify such applicants and determine whether they are capable of doing business in the United States, if applicable.

¹⁷⁴ AC 146-1, Automated Data Services, would provide applicants with the process for obtaining a part 146 certification and service authorization. This AC is available in this rulemaking docket.

¹⁷⁵ See discussion of proposed § 146.120 in section XIII.F.5 of this preamble.

3. Service Levels (§ 146.110)

FAA proposes a risk-based approach to the service provider certification process that is based on the operation the provider seeks to support. As stated earlier in this preamble, FAA developed the proposed aircraft, personnel, and operational requirements to primarily address the risk BVLOS operations could introduce to the NAS. These requirements include important risk mitigations designed to help ensure the safety and efficiency of the NAS, but also the safety and security of people and property on the ground. FAA's oversight role in proposed part 146 would be to help ensure that the automated data service an operator uses to meet their part 108 requirements is provided by a provider that is qualified by FAA. It follows, then, that FAA does not intend for part 146 to provide a redundant set of provisions to mitigate the risk already included in the proposed part 108 requirement. Instead, proposed part 146 would address the residual risk that is not already addressed through part 108 provisions. Because proposed part 108 operator and aircraft requirements provide for many safety mitigations, part 108-compliant aircraft and operations therefore pose a relatively small residual risk profile.¹⁷⁶

FAA proposes to regulate part 146 service providers that support part 108 operations in a way that is commensurate with the residual risk these aircraft and operations are assumed to pose to the NAS. Therefore, FAA proposes in § 146.110(b)(1) to categorize services that support part 108 operations as Service Level 1.¹⁷⁷ FAA anticipates, however, that some aircraft manufacturers and operators may seek regulatory relief to deviate from the requirements in proposed part 108. As discussed in the preceding paragraphs, FAA's balance of risk mitigations depends on compliance with all of FAA's part 108 regulations. Operations that rely on regulatory relief may disrupt this balance and, as a result, increase the residual risk associated with those operations. As such, in proposed § 146.110(b)(2), FAA would identify these operations that require

regulatory relief from part 108 as those that require services categorized as Service Level 2.¹⁷⁸

Any services that do not meet the requirements of Service Levels 1 or 2 would fall within Service Level 3. Service Level 3 would be reserved for operations with the highest level of residual risk—for example BVLOS operations conducted outside 14 CFR part 108.¹⁷⁹ FAA anticipates that not all operators will seek to operate under proposed part 108. In the absence of the proposed part 108 mitigations designed to address risk associated with BVLOS operations, these operations may present unmitigated risks to the NAS. As such, FAA proposes in § 146.110(b)(3) to identify these services as Service Level 3. Under these circumstances, FAA would reserve the right to apply the highest level of review—including FAA oversight and regulatory requirements—to an applicant's qualifications for Service Level 3 certification.¹⁸⁰

As part of the application process for part 146, applicants would be required to identify the service level for which they seek certification. Specifically, FAA proposes to require each applicant to identify whether they seek certification for the provision of services categorized as Service Levels 1, 2, or 3. This service level identification is meant to guide applicants through the application process for part 146 certification and subsequent service authorization. By identifying their

¹⁷⁸ Consistent with FAA's risk-based approach, FAA proposes that this increase in risk warrants additional scrutiny and verification of the service provider's applications. Accordingly, FAA proposes in § 146.115(b), discussed in more detail in the following section, to require the service provider submit documentation describing how the applicant meets the requirements. This means that a Service Level 2 provider would not be able to rely on a declaration of compliance. The increased risk profile would mean that the application would have to submit documentation describing what it will do to meet application requirements. Whereas a Service Level 1 applicant could submit an attestation that they comply, a Service Level 2 applicant would submit an attestation with explanations explaining how they comply.

¹⁷⁹ As stated earlier in this preamble, FAA proposes a risk-based approach to the service provider certification process that is based on the operation the provider seeks to support.

¹⁸⁰ Consistent with FAA's risk-based approach, FAA would require in proposed § 146.115(c) that applicants for Service Level 3 certification to submit documentation and supporting data demonstrating that the applicant meet applicable requirements. Whereas a Service Level 2 provider would be required to describe how they meet the requirements, a Service Level 3 provider would have to provide data that proves that they meet the requirements. FAA anticipates that this could include technical specifications, test results, and other data and documentation showing the effectiveness of the applicant's system. Proposed § 146.115(c) is discussed in more detail in the following section.

service level, the applicants would then be prompted to substantiate their application package with the appropriate certification requirements, per proposed § 146.115 which is discussed further in the following section. Based on projected demand for BVLOS operations, FAA anticipates that the majority of applicants will seek a Service Level 1 certification, a modest number of applicants will seek Service Level 2 certification, and few, if any, applicants will seek a Service Level 3 certification. Though FAA does not anticipate significant demand for Service Level 3 certificates, FAA decided to propose this level to ensure that, as operations and support services evolve, there would be a regulatory path in place to certify providers of new or unforeseen capabilities.

Table 5 presents a summary of the provisions FAA proposes in § 146.110, which describe the service levels and their corresponding operational envelope. FAA proposes this risk-based framework to provide a level of oversight that is proportionate to the complexity of the operation supported by the automated data service provided under proposed part 146. FAA seeks comment on this proposed framework for categorizing service levels under part 146. Specifically, the Agency invites comment to determine whether this triage of service levels—based on mitigating any residual risk that may be added to the NAS due to the aircraft operation—is the best way to incrementally introduce automated data service providers as well as their services into the NAS.

TABLE 5—SERVICE LEVELS

Service level	Type of part 108 operations
Level 1	Services to support part 108 operations without regulatory relief.
Level 2	Services to support part 108 operations with regulatory relief.
Level 3	Services that do not fall within Service Levels 1 or 2, that support operations that are not conducted under part 108 of this chapter.

4. Certification Requirements (§ 146.115)

Proposed § 146.115 describes the necessary information applicants need to submit to FAA to determine their qualification for part 146 certification. After applicants identify their service level for certification under proposed § 146.110, applicants would then be prompted under proposed § 146.115 to substantiate their application package

¹⁷⁶ Consistent with this risk-based approach, operations conducted under part 107 are considered lower risk than those under part 108.

¹⁷⁷ Subsequently, in proposed § 146.115(a), FAA would allow Service Level 1 providers to demonstrate compliance with the applicable certificate requirements using a declaration of compliance. Filing a declaration of compliance represents a relatively low burden for the applicant to demonstrate compliance. FAA determined that this lower burden would be an appropriate way to address the residual risk compliant operations could pose. Proposed § 146.115(a) is discussed in more detail in the following section.

by submitting the appropriate qualification information, corresponding to the identified service level.¹⁸¹ This substantiated information the applicant provides must be submitted in a form and manner acceptable to the Administrator, which would correspond with the service level of each service. Under this construct, automated data service providers applying for multiple service authorizations along with their part 146 certificate would submit their certification information to correspond to the highest service level they seek to be certificated under.¹⁸²

Proposed § 146.115(a) would require applicants for a Service Level 1 certificate to submit a DOC, attesting to their ability to meet the requirements of subparts D and E of proposed part 146, both of which are discussed in more detail below. As stated earlier, proposed part 108 operations would have many existing mitigations in place, therefore rendering Service Level 1 services appropriate to support part 108 operations. FAA would allow Service Level 1 providers to demonstrate their compliance with the applicable certificate requirements using a DOC. Filing a DOC represents a relatively low burden for the applicant to demonstrate compliance. FAA determined that this lower burden would be an appropriate way to address the residual risk that compliant part 108 operations could pose to the NAS. As such, for providing Service Level 1 services, the applicant would be required to establish their compliance with proposed part 146 requirements by declaring to FAA that they have systems and processes in place that meet the requirements of subparts D and E of proposed part 146.

¹⁸¹ As stated earlier in this preamble, FAA believes that structuring this parallel application process supports FAA vision in efficiently reviewing application for part 146 certification and service authorization. Under this parallel process, applicants would be able to undergo the application process in a more efficient manner. This application structure would also reduce the likelihood of expending unnecessary time and resources, by both FAA and the applicant, on an application for a certificate without an associated application for an automated service, only to later discover that the applicant may not even be able to market or deploy the requested service. For further discussion on subpart C, service authorization requirements, see section XIII.G of this preamble.

¹⁸² FAA intends on publishing an AC titled Automated Data Service Provider Certification and Service Authorization, AC 146-1, to guide potential service providers through the application process for part 146 certification and service authorization. This AC would inform applicants on the proper information that would be required to accompany their application, per the requested certificate service levels (service level 1, 2, or 3) and specific service. FAA invites public comments on this AC, which accompanies this proposed rulemaking, and is available on FAA's docket.

The requirements for proposed subparts D and E are described in detail in subsequent sections.

Proposed § 146.115(b) would require applicants for a Service Level 2 certificate to submit documentation to supplement the declarations of compliance to FAA describing their ability to meet the requirement of subparts D and E of proposed part 146. As stated earlier, Service Level 2 services are those that may be used to support part 108 operations that require the use of regulatory relief; such operations may introduce additional risk to the NAS. As a result of this increased risk, a service provider seeking to support such operations would also have to substantiate their application. This means the service provider would have to submit an application that includes documentation describing what the applicant would do to meet part 146 requirements. Whereas a Service Level 1 applicant would have to submit an attestation stating that they comply with part 146 requirements, a Service Level 2 applicant would have to submit an attestation explaining how they will comply with part 146 requirements.

For these reasons, FAA would require applicants for Service Level 2 certification to substantiate their application with a description of how they will comply with part 146 requirements. To demonstrate their ability to comply with subpart D, the applicant would be required to provide a declaration as well as a description explaining how they are able to comply with each requirement in that subpart. Similarly, to demonstrate their ability to comply with subpart E, the applicant would be required to provide a declaration as well as a description explaining how they are able to comply with each requirement in that subpart. The requirements for proposed subparts D and E are described in detail in subsequent sections.

Lastly, applicants seeking a Service Level 3 certification would be required to supplement their declarations of compliance with the submission of certain documentation or supporting data to demonstrate their ability to comply with subparts D and E of proposed part 146. FAA would require providers of Service Level 3 services to significantly substantiate their application package with evidentiary data to demonstrate their capability to comply. Whereas a Service Level 1 provider would be required to declare they meet the requirements, and a Service Level 2 provider would be required to declare and describe how they meet the requirements, a Service

Level 3 provider would have to declare and provide data that proves they meet the requirements. FAA anticipates that substantiating data could include technical specifications, test results, and other data and documentation showing the effectiveness of the applicant's system. The requirements for proposed subparts D and E are described in detail in subsequent sections.

Special provisions would apply to applicants seeking a proposed part 146 certificate for the first time. Proposed § 146.115(d) would require anyone seeking a certificate for the first time to simultaneously submit an application for their first service authorization as well. Under this provision, FAA would issue a certificate only to those applicants who demonstrate that they are ready to provide services. FAA would not devote resources toward issuing a certificate to an entity that is unprepared to begin providing services.

As a global leader in aviation safety and efficiency, FAA is also a strong proponent of international harmonization. In § 146.115(e), FAA proposes to provide an avenue for qualifying foreign-based certificated service providers to operate in the United States. Specifically, FAA proposes that a service provider who presents proof of an authorization to provide automated data services from a country with which the United States has a bilateral safety agreement covering the provision of data services comparable to those in part 146, may be deemed to meet the application requirements in § 146.115.¹⁸³ Proof of an authorization should include corporate documents establishing ownership and control of the entity. For example, in 2022, the European Aviation Safety Agency (EASA) began drafting regulations for U-Space Service Providers (USSP) providing automated data services in the European Union. Those regulations were effective as of 2023. Under those regulations, USSP gain certification from any European Union Member State or from EASA and deploy their services in U-Space airspace regions authorized by their certificate. Reciprocity would markedly simplify and streamline the introduction of foreign-based certificated service providers into the U.S. airspace, while ensuring FAA has sufficient oversight.

FAA would facilitate the creation of a reciprocal certification process. FAA and many other civil aviation authorities already have processes in place to recognize each other's certifications for aircraft, avionics, and other systems through existing bilateral aviation safety agreements. By way of a

similar bilateral aviation safety agreement, FAA may find a foreign-based service provider's certification to be in alignment with part 146 requirements. That said, foreign qualification does not guarantee that FAA would determine the foreign-based certificated service provider meets all requirements in proposed part 146. FAA reserves the right to consider the certificated foreign-based service provider's ability to comply with all the proposed part 146 requirements.

By enabling the process of reciprocity, FAA would incentivize the introduction of foreign-based services that have been proven successful—so long as they meet all proposed requirements in part 146. Proposed § 146.115(e) would allow FAA to continue its global harmonization efforts.

5. Evaluation of Application (§ 146.120)

Proposed § 146.120 would establish the terms under which FAA would evaluate a part 146 certificate application. Once an applicant submits all the required information for part 146 certification, proposed paragraph (a) would authorize FAA to review the application and decide whether to approve or deny the application. To facilitate the evaluation, proposed paragraph (a) would also allow FAA to request supplemental information from the applicant at any time during the application process.

Proposed paragraph (b) would authorize FAA to issue a part 146 certificate to an applicant that demonstrates they meet the requirements for obtaining a certificate—these are identified in proposed § 146.115 and discussed in the preceding sections. Paragraph (b) would also authorize FAA to place conditions or limitations on the certificate as necessary.

Proposed paragraph (c) lists the bases on which FAA may deny a request for a certificate, including:

- (1) the applicant does not meet the requirements of proposed part 146;
- (2) the applicant holds a part 146 certificate that is under suspension or is in the process of being revoked or suspended;
- (3) the applicant previously held a part 146 certificate that was revoked;
- (4) the applicant has filled or is intending to fill a management position with an individual who exercised control over or who held the same or a similar position with a certificated service provider under this part whose certificate was revoked or suspended, or is in the process of being revoked or suspended, and that individual materially contributed to the

circumstances resulting in the revocation or suspension;

(5) an individual who will have control over or substantial ownership interest in the applicant had the same or similar control or interest in a certificated service provider whose certificate was revoked or suspended, or is in the process of being revoked or suspended, and that individual materially contributed to the resulting revocation or suspension; or

(6) for failing to comply with other applicable legal requirements. FAA is responsible for maintaining the safety and efficiency of the NAS. If FAA believes that an applicant is not reliable or could otherwise introduce a hazard into the NAS, then FAA would deny the application. FAA would also look to ensure that an automated data service provider from another country is authorized or is not otherwise prohibited from conducting business in the United States. None of these factors is dispositive; however, they provide valuable information for FAA to consider when evaluating whether the applicant is willing and able to comply with proposed part 146. Though FAA could deny the application based on any of these factors, FAA maintains its discretion to make its decision in the interest of safety.

6. Obligation to Update (§ 146.125)

To ensure that a certificate application is based on accurate and relevant information, proposed § 146.125 would require an applicant to keep their materials up to date until they receive a decision from FAA. This applicant may be an automated data service provider submitting their application for FAA certification and service authorization for the very first time, or they may be a certificated service provider submitting an application to amend their part 146 certification. Under this provision, FAA would provide applicants with the opportunity to amend their application prior to FAA issuing its decision.

For example, an applicant may have a change in ownership structure; or an applicant might upgrade their system in a way that changes the way the system interfaces with other systems. In such instances, proposed § 146.125 would require the automated data service provider to provide information about the change to FAA. In order to make accurate decisions about an applicant's ability to comply with proposed part 146, FAA must have the most current information available at the time it makes its decision. As such, FAA would require the applicant to report any changes to their application in a form

and manner acceptable to the Administrator. This is crucial for FAA to be aware of the statuses and dealings of persons under the Agency's purview. As such, FAA would require that the applicant, whether it be a first time or returning applicant, to report their changes to FAA within 10 days of being aware of the change. FAA anticipates that 10 days would provide the certificated provider or applicant with sufficient time to report their changes to FAA.

7. Term of a Part 146 Certificate (§ 146.130)

Under proposed § 146.130(a), a part 146 certificate would remain valid until it is either surrendered by the service provider or revoked or suspended by FAA. In other words, a certificate issued under proposed part 146 would not have an expiration date. Nonetheless, FAA may revoke or suspend a certificate if it finds that the certificated service provider is not in compliance with FAA requirements.

FAA proposes for a part 146 certificate to remain in effect indefinitely, with no requirement to renew or reissue the certificate after a set time, because there is no safety basis for FAA to levy such a requirement. Once a certificate is issued, the certificated service provider has an ongoing obligation to maintain their certification; this means they would be required by proposed part 146 to continue to operate in ways consistent with the privileges of the certificate. This includes maintaining an SMS, having change management procedures, reporting certain off-nominal behaviors to FAA, and addressing service difficulty reports from operators.¹⁸⁴ The totality of these ongoing certificate requirements places the certificated service provider in a position of being responsible for proactively managing risk and remaining accountable to FAA for compliance.

In practice, FAA expects to have ongoing contact with certificated service providers through separate processes defined in subpart E as authorized services go through routine software update cycles. For example, certificated service providers would notify or seek approval from FAA when making certain software updates, which is described in subpart E. Such software update notifications, which would happen periodically based on the service provider's deployment timeline

¹⁸⁴ FAA's proposed provisions for each of these requirements are further discussed in section XIII.H of this preamble; the corresponding regulatory text is in subpart D of proposed part 146.

rather than arbitrary FAA-defined intervals, would give FAA opportunities to verify continued compliance with the service provider's certificate requirements. Conversely, an absence of software update notifications over a long period—at least a year, given the typical pace of software development lifecycles—may signal to FAA the need to initiate an inspection under its regulatory authority to verify whether the service provider complies with its certificate requirements. This approach enables FAA to provide a risk-proportionate degree of oversight and reduces unnecessary inspection and certificate review activities when there is no evidence that may indicate a safety or compliance issue.

A previously certificated automated data service provider that seeks to offer services of a higher service level than allowed under its original certificate (for example, seeking to provide Service Level 2 services, when it was certificated for Service Level 1 services) would need to submit a new application for certification per the provisions of proposed § 146.130(b). However, the operator would only need to provide information relevant to the new or amended service. For example, if an automated data service provider is initially certificated for Service Level 1 services and then decides that it also wants to deploy Service Level 2 services, the automated data service provider would need to submit only the necessary information that is relevant for FAA to evaluate and determine whether the automated data service provider is qualified to be certificated as a Service Level 2 service provider, along with the associated level 2 service authorization request.

Lastly, proposed paragraph (c) would prohibit an automated data service provider from transferring its certificate to another person without FAA's express approval. This would include the prohibition of transfers in the event an automated data service provider sells or transfers its assets to another entity. In such cases, the new person would be required to apply for a part 146 certificate; this allows FAA to verify that the person meets part 146 requirements. FAA proposes to prohibit the transfer of part 146 certificates from one organization to another—including the transfer of a certificate in the event of bankruptcy—without approval from the Administrator. By doing so, FAA seeks to prevent the creation of loopholes, which could have allowed persons to circumvent FAA application and evaluation process proposed under part 146.

G. Subpart C—Service Authorizations

FAA proposes that an automated data service provider would have to demonstrate its qualifications in two ways. The first would be by obtaining a certificate, as discussed in the preceding subpart. The second would be by obtaining FAA authorization to provide a specific service or services. Subpart C proposes the requirements for obtaining these service authorizations. The following sections describe the process by which automated data service providers may request and be issued an FAA service authorization under proposed subpart C of part 146.

1. Request for Authorization (§ 146.200)

Proposed § 146.200 lays out the general requirements to obtain an authorization to provide a service under proposed part 146. This is to help ensure that a specific automated data service meets a defined set of technical and performance capabilities based on an industry consensus standard. The authorization process would also ensure that the applicant is capable of providing that service in accordance with part 146 requirements. To verify an applicant's ability to comply with proposed service authorization requirements, FAA proposes in paragraph (a) that any person seeking authorization to provide an automated data service under part 146 would be required to submit the information identified in subpart C in a form and manner acceptable to the Administrator.

In addition, proposed paragraph (b) would prohibit anyone from obtaining a service authorization without a valid service provider certificate. This reiterates FAA's proposed requirement that only service providers that already hold a certificate or service providers applying to obtain a certificate, may apply for a service authorization. For first-time applicants, this means that FAA processes the certificate and the initial service authorization application together. The process is designed to help ensure that FAA focuses its resources on evaluating only those service providers with valid part 146 certificates (or in the process of applying for certificates).

In the subsequent sections of this preamble, FAA discusses the proposed process for requesting a service authorization, the specific requirements, and FAA's evaluations of those requests.

2. Authorization Requirements (§ 146.205)

Proposed § 146.205 would establish the requirements for obtaining a service authorization. The purpose of these

requirements would be to provide a minimum level of information FAA would need to verify that the service is designed to meet minimum performance requirements, and that the service provider is capable of providing the service at its respective service level.¹⁸⁵

Proposed paragraph (a) provides an overview of the application process. This paragraph establishes five principal steps an applicant must take to apply for a service authorization under part 146. First, the applicant must establish the minimum performance requirements for the service they seek to provide. Proposed paragraph (b) describes how to set those minimum performance requirements. Second, the applicant must demonstrate that they are capable of meeting those minimum performance requirements. Proposed paragraph (c) describes how the applicant would do this. Third, the applicant must demonstrate that the service meets the automated data exchange requirements and software update requirements in proposed subpart E. Fourth, the applicant must show that the service would support an aircraft operator's ability to comply with an FAA operating requirement. Finally, the applicant must demonstrate that the automated data service is designed in accordance with a published industry consensus standard. These five principal steps are discussed in more detail as follows.

i. Establish Minimum Performance Requirements

FAA is taking a flexible approach in regulating automated data services. This includes allowing applicants to identify and establish the minimum performance requirements for each automated data service they seek to provide, within certain parameters. The minimum performance requirements must be based on an industry consensus standard and support compliance with FAA operating requirements. Proposed paragraph (b) provides additional information on how to establish the minimum performance requirements. Under that provision, the applicant would be required to submit the following information.

First, the applicant must submit an overview describing the service and its intended use. This would include identifying the service, explaining what it does, and what kind of operations the service would support. By requiring an

¹⁸⁵ See sections XIII.F.3 and XIII.F.4 of this preamble for the discussion on the various service levels and the information the applicant would need to submit to FAA, per the identified service level, in accordance with proposed §§ 146.110 and 146.115.

applicant to describe the automated data service and its intended use, FAA would identify and verify the specific type of service the applicant seeks to deploy. Using this information, FAA would be able to determine whether the automated data service is within the scope of services FAA may authorize under proposed part 146. If the service is not within the scope of part 146, FAA could provide this feedback to the applicant prior to them unnecessarily devoting additional resources to the application.

Second, the applicant must provide FAA with all representations it makes to service users regarding the capabilities, quality-of-service, limitations, and responsibilities of the service provider and responsibilities of the service user related to the authorized service. Representations to service users refers to advertisements the automated data service provider uses to procure business with aircraft operators for the authorized service. FAA would use the service provider's representations to service users to set baseline expectations for how the service should perform. Other minimum requirements, such as interoperability with other national systems and FAA regulations may apply. FAA anticipates that users will rely on data services to meet other requirements in FAA's regulations. Users—and by extension the UTM ecosystem—rely on those representations to conduct BVLOS operations safely and efficiently. As a part of the authorization process, FAA would verify that the data service capabilities meet the provider's safety and efficiency representations. FAA would need this information to validate the service's capability and functionality during the application process. FAA would also use these representations to set the baseline at which it would hold the service provider accountable for meeting its own minimum performance standards.

Third, the applicant must submit technical specifications describing the service's system architecture and functionality. FAA would use this information to understand the service and its functions, as well as how it is represented as part of the UTM network—*i.e.*, how the service interacts with other automated data service providers or participants of the UTM ecosystem. In addition, FAA would use the technical specifications to perform these validation activities regarding a service's function, capabilities, and limits, which are discussed in the prior paragraph.

ii. Demonstrating Applicant's Capability

Proposed paragraph (c) of § 146.205 requires the applicant to submit specific data and documentation regarding their service to demonstrate their capability of meeting the minimum performance requirements established in paragraph (b) of § 146.205. The way an applicant demonstrates their capability and the type of data and documentation would depend on the service level of the automated data service, which must be submitted in a form and manner acceptable to the Administrator. As such, in accordance with § 146.115, the applicant would be required to provide FAA with the following information to demonstrate their ability to provide an automated data service in accordance with proposed part 146 requirements.¹⁸⁶

For services categorized as Service Level 1, *i.e.*, services to support part 108 operations, the applicant would be required to provide FAA the following three declarations: first, a declaration describing the service's intended use; second, a declaration stating that the applicant has records documenting all representations to service users regarding the capabilities, quality-of-service, limitations, and responsibilities of the service provider and service user related to the service; and third, a declaration that the applicant has records documenting the service's technical specifications, including its system architecture and functionality. By making these declarations, the applicant is affirming their understanding of part 146 requirements and is attesting their continued obligation to comply with FAA requirements for providing these services, as declared.

For services categorized as Service Level 2, *i.e.*, services to support part 108 operations requiring regulatory relief, the applicant would be required to supplement their declarations with the provision of a summary or description of the service they seek to deploy under proposed part 146. This would include a description of the service and its intended use; all representations to service users regarding the capabilities, quality-of-service, limitations, and responsibilities of the service provider and service user related to the authorized service; and technical specifications of the service describing the service's system architecture and functionality. By providing these descriptions, the applicant is

¹⁸⁶ Proposed § 146.115 provides a breakdown of the type of data and documentation an applicant needs to provide FAA for them to adequately demonstrate their ability to provide a service at a specific service level.

demonstrating to FAA their understanding of how the service they seek to provide would support an aircraft operation. They would also describe what the service user's roles and responsibilities would be for continuing to use the service.

For services categorized as Service Level 3, *i.e.*, services to support aircraft operations beyond the scope of part 108, the applicant would be required to supplement their declarations of compliance with the provision of evidentiary data and documentation to FAA demonstrating their capability to provide the service. The submission of data or documentation includes providing FAA with a copy of service provider's documentation describing the service and its intended use; copy of the service provider's agreement containing all representations of the service to the users regarding the service's capabilities, quality-of-service, limitations, and responsibilities of the service provider and the service user as it relates to the authorized service; and a copy of the service provider's technical specifications of the service's system architecture and functionality. These submissions would include copies of the applicant's testing and evidentiary data of the service's performance, in addition to providing evidence of the applicant's capability to provide that Level 3 service. Because services categorized as Service Level 3 may support aircraft operations with a higher residual risk than part 108 operations, FAA would require service providers supporting such operations to prove their capability to support such operations. FAA would review the evidentiary data and documentation of these services to verify that the results of those services are capable of supporting complex BVLOS operations that are beyond the scope of part 108.

iii. Demonstrating the Automated Data Service Meets Subpart E of Proposed Part 146

To demonstrate that the automated data service meets FAA proposed requirements in subpart E, applicants would be required to demonstrate that their automated service meets the automated data exchange requirements in proposed § 146.400, as well as the software update requirement in proposed § 146.405. To do so, FAA would require applicants to submit certain data and documentation to FAA for review. Similar to the discussion in section XIII.G.2.ii of this preamble, the type of data and documentation would depend on the service level of the automated data service the applicant seeks to deploy. This in turn would

prompt applicants to submit documentation commensurate to the complexity of the aircraft operation the service would support. The type of documentation each applicant would be required to provide is as follows.

For services categorized as Service Level 1, *i.e.*, services to support part 108 operations, the applicant would be required to provide FAA declarations, ensuring FAA that the applicant's automated data services meet the automated data exchange requirements proposed in § 146.400. Those include declarations attesting that the automated data service is interoperable, employs safeguards, contains an authentication method, and uses a non-repudiation method. These requirements are described in more detail in the sections that follow. With regards to software updates, the applicant would be required to submit declarations affirming that they have methodologies to verify that their software updates would perform in accordance with § 146.405.

For services categorized as Service Level 2, *i.e.*, services to support part 108 operations requiring regulatory relief, the applicant would be required to supplement their declarations of compliance with submissions of summaries or descriptions of how the applicant's automated data service meets the automated data exchange requirements proposed in § 146.400. This would entail the submission of documentation to FAA describing how the automated data service is interoperable, employs safeguards, contains an authentication method, and uses a non-repudiation method. Similarly, to demonstrate their ability to comply with § 146.405, the applicant would be required to submit a summary describing the applicant's software updates and testing methodology, assuring FAA that they are capable of releasing software updates that would not adversely affect a person's ability to operate safely in the airspace.

Lastly, for services categorized as Service Level 3, *i.e.*, services to support aircraft operations beyond the scope of part 108, the applicant would be required to supplement their declarations of compliance by providing evidentiary data and documentation demonstrating that the automated data service meets the proposed automated data exchange requirements of subpart E. This includes providing FAA with copies of the automated data service's test results, assuring that the automated data service has been proven to be interoperable, employs safeguards, contains an authentication method, and uses a non-repudiation method.

Similarly, FAA would require the applicant to submit data and documentation demonstrating that their software updates and testing methodology can be released without adversely affecting aircraft operations that would rely on their service.

iv. Demonstrating the Automated Data Service Authorization Supports Operator Compliance With FAA Regulations

To scope the type of automated data service that may be provided under proposed part 146, FAA would require applicants to demonstrate to FAA how the automated data service they seek to deploy would support aircraft operator compliance with FAA regulations. As stated earlier in this preamble, not every automated data service provider would need a part 146 certificate. FAA would issue certificates for only those automated data services that operators can use to meet a regulatory requirement.

For example, under proposed part 108, operators who want to conduct UAS BVLOS operations in certain controlled airspace would be required to have capabilities in place for strategic deconfliction and conformance monitoring as proposed in § 108.180.¹⁸⁷ Both strategic deconfliction and conformance monitoring are automated data services that may be provided under proposed part 146. In contrast, an entity providing automated data services to monitor the temperature of perishable cargo such as food deliveries or blood samples would not be subject to part 146 requirements. This is because though important to the operator, monitoring this is not an aviation safety or efficiency concern regulated by this Chapter.

v. Demonstrating the Automated Data Service Meets an Industry Consensus Standard

Further, as stated in proposed § 146.205(a)(5), basing an automated data service on an industry consensus standard would facilitate FAA's effort of ensuring that an automated data service would support an aircraft operation—by either promoting its safety or efficiency. This is due to the fact that standard setting organizations are comprised of various stakeholders including aircraft operators, manufacturers, and automated data service providers. By sheer participation of these diverse audiences and the representation of their viewpoints, FAA anticipates that it would promote innovative development of automated data services that reflect

an operational need.¹⁸⁸ FAA's approach to enabling BVLOS operations leverages stakeholder engagement to help provide solutions to the challenges of safely and efficiently integrating UAS into the NAS. As a key part of this approach, service providers would have to show that any new service they seek to introduce into the NAS is based on an industry consensus standard or standards. FAA proposes this approach to find the right balance between encouraging innovation and industry-led solutions, while at the same time ensuring that the NAS does not become a test bed for unproven technology. Safety remains FAA's top priority; as a result, FAA will not approve experimental or unproven technologies for unmitigated or routine use in the NAS. FAA must be reasonably confident that any service that will be introduced into the NAS has been independently vetted and tested by industry stakeholders to help ensure that the technology is mature and interoperable with other UTM technologies. FAA believes that requiring services to meet an industry consensus standard or standards strikes the appropriate balance between innovation and safety concerns.¹⁸⁹

3. Evaluation of Request (§ 146.210)

Proposed § 146.210 describes the process FAA would use to approve or deny a service authorization request. Proposed paragraph (a) states that FAA would evaluate the information, materials, or any supporting documentation submitted by the applicant seeking authorization for deploying a specific automated data service. FAA would review the applicant's submission to help ensure that they meet the authorization requirements in proposed § 146.205, which are discussed in the preceding section. In addition, FAA may request supplemental information during the application process to support its evaluation process.

¹⁸⁸ Consensus standards bodies consist of potential automated data service providers as well as users of those services, which include aircraft operators, manufacturers, etc. Within this context, service providers and service users would work together with FAA, communicating industry needs for automated data services that would promote the expansion of complex operations, while maintain the safety and efficiency of operations in the NAS.

¹⁸⁹ This approach is in line Congress' direction in the FAA Reauthorization Act of 2024, Pub. L. 118–63, section 932. Per that section, “the Administrator shall ensure that, to the maximum extent practicable, industry consensus standards, such as ASTM International Standard F3548–21, titled ‘UAS Traffic Management (UTM) UAS Service Supplier (USS) Interoperability’, are included as an acceptable means of compliance for third-party services.”

¹⁸⁷ See section VI.G of this preamble.

Proposed paragraph (b) would authorize FAA to issue an authorization if the applicant meets the requirements in proposed § 146.205. However, that authorization could come with conditions. Proposed § 146.210(b) would also authorize FAA to place limits or conditions on the authorization to the extent necessary in the interest of safety. FAA anticipates that there will be unknown variables associated with the novel services that could be deployed by part 146 certificated automated data service providers. The authority to place tailored limits or conditions on service authorizations would provide FAA more flexibility to approve services, so long as appropriate mitigations are in place. This serves to both enable innovation and simultaneously protect the safety and efficiency of the NAS.

Proposed paragraph (c) would provide for FAA to deny a request for authorization if one of several conditions is not met. These include if the applicant does not hold a certificate (or is not simultaneously applying for a valid certificate per proposed 146.115(d)), or the applicant does not meet all of the requirements of proposed § 146.205.

Proposed paragraph (d) would prohibit the transfer of an authorization from one service provider to another. This provision would ensure that a service continues to operate in accordance with its minimum performance requirements, as the applicant would establish, per § 146.205(b). Per that requirement, the applicant for service authorization is responsible for establishing the minimum requirements of services they seek to deploy under part 146—so long as the services meet certain baseline requirements proposed by FAA. Therefore, through this provision, FAA would maintain the integrity of the automated data service's capability and functionality, as established. In addition, FAA would prohibit transfers of authorized automated data services in the event the automated data service provider sells or transfers its assets to another entity. In such cases, the new person would be required to apply for a part 146 certificate and subsequent service authorization to receive an FAA approval to operate under part 146. This allows FAA to verify that the person with an FAA-issued service authorization meets part 146 requirements. Lastly, by doing so, FAA would prevent the creation of loopholes by prohibiting persons from circumventing FAA application and evaluation processes as proposed under part 146.

H. Subpart D—Certificated Service Providers

Proposed subpart D contains requirements for certificated service providers to comply with once they have obtained a part 146 certificate. As stated earlier in the preamble, to operate under part 146, automated data service providers would be required to obtain a certificate at the organizational level in accordance with subpart B, and then obtain authorizations for the individual services it provides in accordance with subpart C. To certificate the automated data service provider at the organizational level, they must demonstrate to FAA that they are capable of meeting the requirements of this subpart D of part 146. These subpart D requirements, which relate to cybersecurity, quality management systems, training, reportable occurrences, and data retention, are described in the sections that follow. Further, once certificated, the automated data service provider has an ongoing obligation to continue compliance with these requirements in order to maintain their part 146 certification.

1. Minimum Requirements (§ 146.300)

Proposed § 146.300 would establish the requirements applicable to certificated service providers providing services regulated under part 146. A certificated service provider would be required to remain in compliance with these requirements in order to maintain their certificate.

Unless otherwise authorized by the Administrator, proposed paragraph (a) would require the certificated service provider to remain in compliance with the terms of their certificate. Similarly, proposed paragraph (b) would require the certificated service provider to comply with the terms of an FAA-issued service authorization. These provisions unequivocally establish the certificated service provider's legal obligation to comply with the terms of their certificate and with service authorizations on an ongoing basis. In addition, these provisions provide a regulatory basis for FAA to bring an enforcement action against the certificated service provider for failure to comply with the terms of either the certificate, the service authorization, or both. FAA does not foresee situations where the certificated service provider is unable to comply with the terms of their part 146 certificate or service authorization. Nonetheless, FAA understands that circumstances may occur when the automated data service provider may request regulatory relief

from those requirements. For this reason, FAA proposes to allow certificated service providers to deviate from complying with the terms of their certificate or authorization, if authorized by the Administrator.

Proposed paragraph (c) would require a certificated service provider to maintain their facilities, equipment, software, and data necessary to comply with the terms of the certificate and service authorizations issued under proposed part 146. Certificate requirements would include cyber and data security requirements per proposed § 146.305; quality management system requirements per proposed § 146.310; change management requirements per proposed § 146.315; training requirements per proposed § 146.320; reporting requirements per proposed § 146.325; record retention requirements per proposed § 146.330; automated service data exchange requirements per proposed § 146.400; and software update requirements per proposed § 146.405. Both the certificate and service authorizations requirements are discussed in the sections that follow.

FAA anticipates that many, if not all, certificated service providers will rely on third-party vendors to support their operations and, in some cases, service offerings. Proposed paragraph (d)(1) explains that third-party services that are not specific to an aviation safety function would not require FAA approval. For example, many companies outsource their human resources and personnel recruiting services to external parties. FAA does not expect these external parties, or third-party vendors, to be held responsible for compliance with proposed part 146 if their job function is not linked to any services issued under proposed part 146.

In contrast, proposed paragraph (d)(2) would require the third-party vendor to hold a service provider certificate and obtain a service authorization if the vendor's service is specific to an aviation safety function. For example, consider the scenario under which a certificated service provider deems it necessary to outsource some of their authorized services software maintenance responsibilities to a third-party. This third-party could be providing a crucial function in conducting the authorized service software updates, which FAA would otherwise regulate under proposed § 146.405 (described in subsequent sections). To prevent creating loopholes or regulatory gaps under which someone could outsource safety-critical responsibilities to someone over which FAA does not exercise oversight, FAA would require those vendors to also

comply with the certificate and service authorization requirements issued under proposed part 146. In this way, FAA would ensure that essential services affecting aviation safety remain subject to proposed part 146. Proposed paragraph (d)(2) would help ensure that only those entities who have demonstrated their capability to FAA under this proposed part can introduce services—with the risks and mitigations associated with them—into the NAS.

Proposed paragraph (e) would require that a certificated service provider under this part to provide their automated data service to users in a reasonable and non-discriminatory manner, as applicable. FAA emphasizes that automated data service providers do not have the authority to provide operators with access to the NAS, as that authority resides solely within FAA. However, certain services—such as strategic deconfliction—have the capability to coordinate its user's operational intent with others in the network, and therefore may prevent other operators from operating in that space for a specific time. This may result in a certificated service provider's anticompetitive treatment of the airspace. Under this provision, FAA highlights that a certificated service provider must abstain from providing its users with preferential treatment, thereby providing reasonable and non-discriminatory access to the airspace.¹⁹⁰

Proposed paragraph (f) would require certificated service providers to be authorized to conduct business in the U.S. and otherwise be in compliance with applicable law, including but not limited to those relating to data privacy and security. The purpose of this proposed provision is to make clear that the certificates and authorizations contemplated under proposed part 146 in no way override or supersede other applicable legal requirements. FAA does not intend to affect any legal obligation a service provider must abide by to operate in the U.S. Under this proposed requirement, FAA would require any certificated service provider to uphold their legal obligation to remain in compliance with any applicable U.S. government laws and regulations, not

just those within FAA's purview. Those legal obligations could include, but are not limited to, any laws or regulations related to data privacy, security, use of spectrum, and restrictions on import or export of technology.

2. Cybersecurity (§ 146.305)

Proposed § 146.305 would require certificated service providers to take certain actions to maintain their cybersecurity. FAA recognizes that malicious attempts to disrupt the automated data service systems regulated under proposed part 146 have the potential to impact the safety and efficiency of the NAS. Bad actors may wish to disrupt services with the intent of extorting a ransom, or simply to wreak havoc and cause damage. Personal or proprietary information may be sought for financial gain of the attacker. To prevent or mitigate the occurrences of such events, it is in the interest of both FAA and all involved entities to help ensure that appropriate cyber and data securities are in place for all connected systems. Preventing and mitigating negative outcomes from a malicious actor infiltrating systems protects the safety and efficiency of the NAS by ensuring the integrity and reliability of the information exchanged between service providers and, ultimately, their users. As such, FAA proposes the following requirements in § 146.305 in order to mitigate risk to the NAS associated with a service provider's vulnerability to potential cyber or data security threats.¹⁹¹

Proposed paragraph (a) would require certificated service providers to develop and implement cybersecurity policies and processes to protect networks, devices, and data from unauthorized access and to help ensure integrity, accuracy, and reliability of the services provided to the customer or service user. By proposing this cybersecurity policy requirement, FAA would facilitate protection and mitigation against the aforementioned security threats. This would include, but not be limited to, cyber threats that could adversely affect the authenticity or integrity of data that could affect the safety and efficiency of the NAS.

More specifically, under proposed paragraph (b), FAA would require each certificated service provider under proposed part 146 to develop the following cybersecurity policies for the

protection of data, including processes for:

- (1) protecting software, hardware, and network computing infrastructure necessary to protect the authorized service from unauthorized access;
- (2) ensuring the certificated service provider's employee access privileges are limited to those necessary to fulfill normal job duties;
- (3) preparing for, responding to, and mitigating the impact of cyber attacks;
- (4) collecting and analyzing data to measure the effectiveness of the cybersecurity policy and processes; and
- (5) revising the cybersecurity policy.

These proposed requirements are based on the Cybersecurity and Infrastructure Security Agency's "Secure by Design" best practices. FAA encourages service providers to engage in best practices for cyber and data security; however, FAA determined that it was in the interest of public and aviation safety, to propose these particular elements as requirements. By proposing these requirements as performance-based requirements, FAA believes it would encourage the continuous improvement of the automated data service provider's cybersecurity policy. FAA does not believe it would be effective to prescribe cybersecurity requirements by rule because service providers must be able to rapidly adjust cybersecurity measures to keep pace with the pace at which new cybersecurity threats are introduced.¹⁹² FAA anticipates that service providers may be able to demonstrate compliance with this provision by relying on industry consensus standards. For example, FAA would consider ISO 27001 to be one way, but not the only way, to demonstrate compliance with proposed § 146.305.

3. Quality Management System (§ 146.310)

Proposed § 146.310 would require certificated service providers to have a quality management system in place to help ensure that the provision of authorized services continue to meet the minimum requirements of this proposed part on an ongoing basis. The safety and efficiency of the NAS requires NAS participants to remain in compliance with FAA requirements as well as improve their existing processes.

Quality management systems are regularly used in both the aviation and software industries. An abundance of globally recognized standards for quality management exists and may serve as resources. The proposed

¹⁹⁰ As the regulatory entity responsible for the efficient use of airspace under 49 U.S.C. 40103(b), requiring impartiality facilitates FAA efforts in ensuring optimized use of the NAS. Additionally, FAA recognizes the need to establish a priority of operations schema, which would guide service providers as well as operators in identifying priorities of operations and provide guidance to service providers on resolving conflicts when they exist among operators of the same priority level. FAA's priority schema, for applicable automated data services, is addressed in AC 146-1, which is available in the public docket for comment.

¹⁹¹ As a common industry practice, FAA would recognize ISO 27001:2022 as an acceptable means of compliance with proposed § 146.305. An applicant may declare, describe, or present its certification with this standard to show that it meets those regulatory requirements—depending on the part 146 certification's service level.

¹⁹² Available at www.cisa.gov/securebydesign.

requirements for a quality management system are intended to help ensure certificated service providers have the processes and monitoring systems in place to identify the risk of a service failure preemptively—either those provided on their own or subcontracted services—and have the means to manage that risk proactively. The ultimate objective is for the certificated service providers to engage proactively preventing failures that could introduce risk or hazards into the NAS. As such, FAA would require certificated service provider to have the following quality management system procedures for each authorized service. These include procedures for an SMS per 14 CFR part 5; software update procedures; oversight procedures for third-party vendors affecting the authorized services; testing and verification procedures; and procedures receiving reports of any service difficulties.

Proposed paragraph (a) would require each certificated service provider to develop, implement, and document a quality management system acceptable to the Administrator. By doing so, FAA would help ensure that the services provided by the certificated service provider, or any services provided by third-party vendors that the certificated service provider relies on, has an appropriate method in place for identifying and addressing risk proactively. FAA views having a quality management system as a critical aspect to help ensure that each service provider continues to provide services that are safe, reliable, and are provided in accordance with the requirements of their FAA-issued certificate and service authorizations.

Proposed paragraph (b) would require the certificated service provider's quality management system meet certain provisions of FAA's SMS regulations in 14 CFR part 5 to leverage its existing safety management processes and principles into the quality management system proposed under this part.¹⁹³ FAA determined that applying existing SMS requirements—that many aviation industry stakeholders are already familiar with—would be a better approach than to create new quality management requirements that would duplicate or potentially conflict with existing safety management process or protocols.

FAA recognizes, however, that not every provision in 14 CFR part 5 could apply to automated data service providers. This is because many of the provisions are tailored to aircraft operators and manufacturers.

Accordingly, proposed paragraph (b) would not require certificated service providers to comply with §§ 5.7, 5.9, 5.11, 5.13, 5.15, 5.27, and 5.71(c). Each of these part 5 provisions are tailored to apply to aircraft manufacturers or operators and are provisions with which part 146 certificated service providers could not comply. The certificated service provider would have to comply with part 5 requirements, including but not limited to, documenting and implementing a plan to address their safety policy, safety risk management, safety assurance, and safety promotion.¹⁹⁴ FAA anticipates that it would provide additional guidance to assist certificated service providers so they can familiarize themselves with the core principles of SMS and implement compliant programs.

Proposed paragraph (c) would require the quality management system to include a process for managing software updates in a way that reduces the risk of introducing a hazard to the services authorized under proposed part 146. Proposed § 146.405—described in section XIII.I.2 of this preamble—identifies specific provisions applicable to each particular software update. In contrast, proposed § 146.310(c) directs the certificated service provider to have a procedure that applies broadly at the organizational level. FAA anticipates that certificated service providers will leverage industry best practices or consensus standards to design and implement effective procedures to comply with this proposed requirement.

Proposed paragraph (d) would require certificated service providers to manage risk when they use third-party vendors for essential service capabilities. FAA understands that certificated service providers will almost always depend on third-party vendors for essential capabilities such as cloud storage, databases, platform management, and other software development tools. FAA does not propose to regulate those other parties; however, FAA does propose to require the certificated service provider to take appropriate steps to help ensure that the services they rely on are performing correctly, as these services can be essential to the overall functionality of the certificated service provider's authorized automated data service. For instance, FAA expects a certificated service provider to promptly update any third-party vendor's software that they rely on to help ensure the software is performing correctly, as outdated software could disrupt the certified service provider's ability to

maintain uptime for its users. As previously expressed, a networked UTM ecosystem requires confidence that each participant is delivering reliable services and can uphold the high level of safety the public expects from anyone operating in the NAS. For the overall UTM ecosystem to operate effectively and efficiently, a certificated service provider must not only function correctly but also ensure that the third-party vendor services they depend on are also functioning correctly.

Proposed paragraph (d) would require certificated service providers to monitor their third-party vendors' services to detect failures or other performance issues that could adversely impact the certificated service provider's ability to meet the requirements of this part. If the certificated service provider's offering to users relies on availability or performance of these third parties, the service provider would need to be aware of issues with the third-party to be able to appropriately inform users of potential system degradation or downtime.

Proposed paragraph (e) would require the certificated service provider to develop, implement, and document procedures to test and verify that authorized services continue to meet requirements applicable to those services. The processes must identify the frequency of testing and the criteria the certificated service provider will apply to determine whether those services comply with this part. The certificated service provider must make all documentation of the testing and verification under this section to the Administrator upon request. FAA proposes these provisions for two reasons. The first is to mandate that the certificated service provider remain vigilant in its oversight of its own service. The second is to help ensure that FAA, in discharging its own oversight responsibilities, has sufficient documentation to determine whether the certificated service provider remains in compliance.

Proposed paragraph (f) would require part 146 certificated service providers to create a system so that their users could submit reports about service issues that create or could create a risk to operations. Specifically, certificated service providers would be required to have a means for users to submit reports related to the failure, malfunction, or defect in an authorized service when that problem has endangered or may endanger the safe operation of an aircraft. FAA acknowledges that the certificated service provider cannot monitor every aspect of every service it provides at all times. For this reason,

¹⁹³ See 14 CFR part 5.

¹⁹⁴ For more information about SMS, see www.faa.gov/about/initiatives/sms.

many of the provisions in this proposed rule are designed to create systems to identify and bring problems to the certificated service provider's attention without FAA's involvement. In essence, these processes and procedures are force multipliers that allow the certificated service providers to benefit from the vigilance and observations of everyone who participates in or benefits from the networked services. To this end, FAA wants to help assure users so they can relay this information effectively and efficiently so that certificated service providers can identify and address anomalies that could affect the safe operation of UA.

To facilitate users reporting service problems, FAA proposes that the certificated service provider make the reporting system easily available to users and provide users with notice of the system. Ultimately, FAA intends for certificated service holders to evaluate and address, if appropriate, these reports in accordance with their SMS (as required under proposed § 146.310). However, FAA proposes that the certificated service provider would be required to produce the reports—as well as documentation showing corrective action, if any—in response to a request from FAA.

4. Change Management (§ 146.315)

FAA proposes change management requirements to establish processes by which a certificated service provider would successfully effectuate changes within their organization. This would involve the process of establishing a successful feedback loop within an organization to help ensure that anyone working for a certificated service provider, whether employed directly or under contract, have the same foundational knowledge regarding their internal policies as it relates to the provision of automated data services under proposed part 146. Change management policies are designed to help ensure that a service provider has a systematic process for developing and implementing a change to their services. For example, consider a certificated service provider that changes their software coding platform. If not implemented properly within the organization that would include providing proper training on this new coding platform, persons involved in maintaining an automated data service's code may inadvertently affect the quality of that service, thereby affecting the conformity or quality of the authorized service as initially approved by FAA. A change management policy would include provisions to avoid this outcome by making sure that updates,

amendments, or other changes a certificated service provider applies to their authorized automated data service's software or technology does not adversely affect the performance level of the service under proposed part 146.

Accordingly, in proposed § 146.315(a) FAA would require certificated service providers to develop, implement, and document a change management policy. Further, in proposed paragraph (b), FAA would require certificated service providers to notify FAA, in writing, of any change to its software or technology that may affect the provider's ability to meet the authorized service requirements of part 146. FAA recognizes that proposed paragraph (b) and proposed § 146.405 both require the certificated service provider to report software updates and that, in certain circumstances, this reporting could be redundant. Accordingly, proposed § 146.315(b) would not apply when a certificated service provider complies with the reporting requirements of proposed § 146.405.¹⁹⁵

Proposed paragraph (c) would allow FAA to review a certificated service provider's change management documentation supporting a change to their authorized service. The purpose of proposed paragraph (c) is to help ensure that FAA, in discharging its own oversight responsibilities, has sufficient documentation to determine whether the certificated service provider remains in compliance with the requirements of proposed part 146.

5. Training Program (§ 146.320)

Proposed § 146.320(a) would require each certificated service provider to establish a training program so that anyone who performs functions related to the development or performance of authorized services has the knowledge and skills necessary to help ensure the certificated service provider's compliance with this part. The proposed training requirement would apply both to the certificated service provider's direct employees and to anyone else the certificated service provider engages to perform these functions. FAA anticipates that many certificated service provider's employees will have software industry experience; however, they might not have extensive knowledge or experience

with aviation safety. To help bridge this potential knowledge gap and ensure that personnel remain knowledgeable and current with relevant aviation safety and efficiency topics, FAA proposes that certificated service providers be required to provide those individuals with initial and recurrent training.

To that end, FAA proposes in § 146.320(b) the minimum training topics that should be included in a certificated service provider's training program. Specifically, FAA proposes that the training would need to cover the following topics at a minimum: best practices in distributed software development; applicable regulations and Advisory Circulars relating to automated data service providers, airspace classification, operating requirements, and flight restrictions; aviation safety culture concepts; and best practices in the provision of automated data services for aviation users.

Proposed § 146.320(c) would require the training program to include recurrent training elements for all applicable workers, including individual contractors that impact the authorized service's development and performance. Certificated service providers would be required to provide this recurrent training at least once per calendar year. Recurrent training would help individuals remain proficient in their job duties—as it relates to the development and performance of authorized automated data services.

6. Reportable Occurrences (§ 146.325)

FAA has an ongoing obligation to maintain the safety and efficiency of the NAS. To do so, FAA needs to be aware of occurrences or incidents that jeopardize NAS safety and efficiency. FAA proposes to require certificated service providers to report certain events, specifically those with an adverse effect on their services. This reporting requirement is designed to inform FAA of accidents, incidents, and precursor safety events and occurrences in the NAS.

Proposed § 146.325 would require certificated service providers to report the following incidents in a form and manner acceptable to the Administrator: unscheduled service outages; security breaches that result in unauthorized access to the certificated service provider's networks, devices, or data, irrespective of whether it affects the integrity, accuracy, or reliability of the services provided to the service recipient; and any other occurrence that is specifically identified as a reportable occurrence in the service provider's certificate or service authorization.

¹⁹⁵ For further discussion on this topic, see section XIII.L.2 of this preamble. In that section, FAA proposes that each certificated service provider perform any software updates to their authorized service in accordance with proposed § 146.405, which includes its own set of requirements for releasing software changes and notifying FAA of those changes.

Reportable occurrences constitute a vital data source that FAA and certificated service providers may use for proactive and generative safety assurance. This data would be helpful for multiple reasons, including but not limited to providing crucial insights into the reliability of authorized services that FAA uses to inform its safety oversight functions. Automated data service providers are fairly new participants in the NAS; this information would provide valuable insight into the strengths and weaknesses of the aviation ecosystem as FAA continues to work to integrate UAS into the NAS. In addition, FAA would use the information to help with the iterative process of identifying market trends and the direction UAS innovation is going. This information helps FAA prepare today for the operations of tomorrow. Lastly, through these reports, FAA would support FAA's safety oversight functions.

7. Record Retention (§ 146.330)

Proposed § 146.330 would require certificated service providers to maintain certain records so that FAA can hold the provider accountable for complying with part 146 requirements. Specifically, proposed paragraph (a) would require each certificated service provider to retain data and documentation submitted to FAA in support of their certificate application for the duration of their certificate, plus an additional 24 months. Proposed paragraph (b) would require each certificated service provider to retain service specific information for the duration of their service authorization, plus an additional 24 months. This service-specific information would include: (1) documentation and data submitted to the Administrator in support of their application for an authorized service; (2) records of testing required under subpart E of this proposed part;¹⁹⁶ (3) any service difficulty or supplemental reports submitted to the certificated service provider about a failure, malfunction, or defect in an authorized service.

The proposed time periods for retaining service and certificate information would provide FAA with access to crucial information,

particularly regarding organizational compliance and potential service defects. With regards to the retention of documentation supporting the certification and service authorization of the service provider, FAA anticipates that this information is usually retained by the grantee for the duration of their organization or service operation. This information would be used to demonstrate proof of the certificated service provider's part 146 certificate and service authorization, and proof of compliance with FAA requirements in accordance with this proposed part. With regards to retaining individual service testing or difficulty reports, the proposed records retention requirement would enable FAA to access historical records in the event of a service issue that jeopardizes aircraft operation in the NAS. FAA understands that aviation technology, including software development in support of these automated data services, is evolving at an accelerated rate. The accelerated technological evolution may cause a failed service update or a service difficulty report. By requiring service providers maintain such data for an additional 24 months past such incident(s), FAA would be able to access historical data and identify potential safety concerns or compliance issues that might not be readily apparent from more recent documentation. In addition, through these records, any FAA investigation, audit, or review could be conducted more efficiently, ensuring rapid responses to emerging safety concerns, and maintaining the safety of the NAS.

Proposed paragraph (c) would authorize the Administrator to request the certificated service provider to retain additional data, as necessary, in the interest of safety, efficiency, and fair access. FAA proposes this provision because the regulations of automated data service providers is a fairly new regulatory framework. As this industry evolves, FAA may find it necessary to require the retention of additional records, especially if they would be necessary for safety or efficiency of the airspace. FAA seeks comments on what other kinds of data would be crucial to require potential service providers to retain, and the length of time that would be a sufficient retention period. Further, FAA recognizes the value of certain information exchanged between service providers to national security Departments and Agencies. FAA seeks comments on what information may be shared regarding operations and operators to help national security Departments and Agencies to determine

if they are being conducted safely, securely, and responsibly. In addition, FAA seeks comments on how this type of information could be shared with those national security partners.

Proposed paragraph (d) would require certificated service providers to keep records of the data exchanged with service users or other airspace users. This would apply to all data exchanged, including but not limited to server logs and notice of service downtime (these information requirements are described in the discussion of proposed § 146.405(c) in the following sections). This proposed provision is consistent with the data retention policies regarding FAA-provided air traffic decision support tools, surveillance, and other equipment. Once an automated data service has been authorized in accordance with this proposed part, FAA would require certificated providers to maintain all data exchanged with service users for a minimum of six months from the time of the data exchange. This data retention period gives FAA enough time to become aware of whether a safety related event occurred and to gain access to the necessary data to investigate the incident. FAA seeks comment on whether six months is sufficient time for FAA to obtain and review records of data exchanged between service providers and service users under this part.

Proposed § 146.330(e) would require a certificated provider to retain records of training given to its personnel for a minimum of two (2) years following completion of that training. In the event of an employer-employee separation, FAA would require the certificated service provider to retain record of that employee's training for 12 months after their separation from employment. The certificated service provider would be responsible for ensuring that its personnel have met the training requirement under proposed part 146. To hold the certificated service provider accountable for complying with these requirements, FAA would need to review the training records—be it an existing or previous employee for the automated data service provider.

Lastly, FAA proposes in § 146.330(f) that if FAA requests any of the required records retained under this proposed part, the certificated service provider would be required to provide those requested records to FAA within a reasonable timeframe after receiving the request. FAA proposes this requirement so that in the event of an FAA investigation or analysis, FAA may obtain the necessary information to reassess a certificated service provider's

¹⁹⁶ As proposed in § 146.405(c), FAA would require a certificated automated data service provider to test any software changes they want to apply to their automated data service prior to releasing the updated service to their users. The certificated service provider would be required to maintain records of this testing—determining that the software changes were successful—in accordance with proposed § 146.330(a) for the duration of their part 146 certificate, plus an additional 24 months.

certificate or authorization. Further, under this provision, FAA could effectively investigate and verify a certificated provider's compliance with and conformance to their obligations under this part. In the event of nonconformance based on an FAA inspection of the certificated service provider's records, FAA could initiate the appropriate suspension or revocation actions. FAA does not define a specific time period in which to produce the records. What constitutes a reasonable time would depend on the nature of the documentation, how it is kept, and the volume of data stored. Nonetheless, FAA invites comments on whether to require the production of records within a specific timeframe after receiving a request, and if so, what would be considered a reasonable timeframe to produce the required records.

I. Subpart E—Authorized Service Requirements

Proposed part 146 would create a regulatory framework to enable automated data service providers to participate in a federated, non-centralized network. One defining characteristic is for data shared in this network to meet a minimum set of requirements so that the information exchanged is accessible among data service providers or individual users that rely on that data. And in certain cases, the providers rely on each other in the network to holistically provide accurate and reliable information.¹⁹⁷

This type of industry-led and managed network has many benefits for participants and end users; however, one significant drawback is that service providers participate as peers without authority to hold one another accountable for providing accurate and reliable information. To remedy this problem, proposed subpart E would

establish minimum requirements applicable to authorized services. This would include requirements for how each authorized service would exchange data as well as the requirements for updating a data service through software updates.

1. Authorized Service Data Exchange Requirements (§ 146.400)

The quality of the network depends on the quality of the data exchanged within it. FAA proposes to set minimum requirements for the authorized services that facilitate the exchange of that data. The purpose of these requirements is to mitigate the risk of corrupted, unreliable, or inaccurate data within the network. To that end, proposed § 146.400 would require services authorized under this part to be interoperable, employ safeguards, use an authentication method, and use a non-repudiation method. These requirements are described in the paragraphs that follow.¹⁹⁸

Proposed paragraph (a), which addresses interoperability, would require the certificated service provider to be able to exchange data automatically and securely with both their service users or with other certificated service providers when necessary for provision of the service, irrespective of the user's or other provider's digital platform.¹⁹⁹ By requiring the interoperability of authorized services, FAA would facilitate the use of common machine-readable data formats and industry-accepted data transfer methods. Further, this provision would facilitate the ability for separate systems to share crucial information in a compatible manner, reducing friction and information loss as data is exchanged between service users or other certificated service providers.

Proposed paragraph (b) would require the certificated service provider to employ safeguards and other measures to help ensure the integrity, accuracy, and reliability of data exchanged with their own service users or subscribers that may include other certificated providers. This provision would help ensure data services that are being provided or exchanged among certificated providers and service users would contain true, accurate, and reliable information. Safeguarding an authorized automated data service under proposed part 146 would make it so that the data received by an aircraft operator would accurately reflect the information provided by the certificated service provider. Similarly, the data transmitted back to the certificated service provider would accurately reflect the correct operator information. Safeguards that prevent interception, modification, and retransmission of this data are critical to ensure that false data, modified by an outside force, is not presented as the genuine version. Otherwise, operators or service users may rely on inaccurate or false data, which could compromise the aircraft operation, and therefore the safety or efficiency of the NAS. For example, if a UA that strayed from its intended flight path had its location data intercepted, modified, and retransmitted such that the UA appeared to be following its intended path, the operator may not be aware of a flyaway event occurring, which could introduce a collision risk.

Proposed paragraph (c) would require the certificated service provider to use an access and authentication method that prevents unauthorized access to or interference with data exchanged with service users that may include other certificated service providers. This would help ensure that the data exchanged under proposed part 146 is protected from unauthorized access or interference and would help prevent data from being manipulated by a malicious actor. While no data security provisions are entirely impervious to bad actors, this provision would assure service users or aircraft operators of a level of protection from an external entity attempting to maliciously inject erroneous data into their system.

Proposed paragraph (d) would require the certificated service provider to use a validation and verification method that provides assurance of the integrity and origin of the data exchanged with their service users or subscribers. In the software development industry, this concept is often referred to as “non-repudiation” and is often implemented as message signing. While data authentication protects the information,

¹⁹⁷ FAA acknowledges that there are automated data service providers, such as SDSP, whose services are only meant to be shared with its users. Such service providers would therefore not need to share their data with other automated data service providers to comply with proposed part 146. In contrast, automated data service providers, such as USS, are expected to exchange information not only with the service users, but also with similar automated data service providers in the network for the services to function optimally. FAA anticipates that information regarding each individual service's characteristics and system architecture services—e.g., a DAA service provided by an SDSP versus a strategic deconfliction service provided by a USS—would be required to be provided to FAA under proposed § 146.205 for FAA to determine whether to authorize the service under proposed part 146. FAA clarifies, however, that all automated data services—be they services provided by USS or SDSP—are required to meet the minimum data exchange requirements of proposed § 146.400 to comply with proposed part 146 requirements.

¹⁹⁸ In accordance with the terms in proposed subpart C of part 146, applicants would submit documentation to support their compliance with these requirements. FAA anticipates that applicants will choose to rely on industry consensus standards to meet these requirements.

¹⁹⁹ FAA recognizes that not all automated data services are required to exchange their services with their users as well as other automated data service providers. For example, automated data service providers of strategic deconfliction services are required to share their data with USSs in the network for the service to function optimally. In contrast, automated data service providers providing DAA services are only required to provide their services to the service users or operators. FAA clarifies that this provision is intended to explain whether the automated data services fall under a USS or SDSP, the service must be provided and accessible to all service recipient(s)—be it the end user only or the user as well as other automated data service providers in the network—for the service to function optimally.

non-repudiation would assure service users, or aircraft operators, that the data exchanged is coming from a trusted source. This would allow the service users to trust that a certificated automated data service provider provided the data source. Through this provision, one can be assured that the data exchanged has reached the intended user. In other words, it provides assurance that the data user or the aircraft operator is who they say they are, and the source of the data, or the service provider, cannot deny they were the one who sent the data. This provision facilitates the importance of establishing trust and traceability from the service provider and service user.

Proposed paragraph (e) would require that a certificated service provider under this part to provide their automated data service to users in a reasonable and non-discriminatory manner, as applicable. FAA emphasizes that automated data service providers do not have the authority to provide operators with access to the NAS, as that authority resides solely within FAA. However, certain services—such as strategic deconfliction—have the capability to coordinate their user's operational intent with others in the network, therefore may prevent other operators from operating in that space for a specific time. This may result in certificated service providers' non-equitable treatment of the airspace. Under this provision, FAA highlights that a certificated service provider must abstain from providing its users with preferential treatment, thereby providing reasonable and non-discriminatory access to the airspace.

2. Software Updates (§ 146.405)

An automated data service provider likely will update or change the software that its service runs on many times over the lifetime of the service. There could be a number of different reasons for this. A service provider could decide to make changes to modernize or improve the efficiency or quality of its service. Or, it could decide to offer new services or add new features to existing services. In other circumstances, the service provider might want to make remedial changes to help ensure the security of their systems. For example, proposed subpart D includes security requirements that include maintaining cyber and data security processes, quality management systems, and change management systems so it can identify potential vulnerabilities and take remedial action in a timely manner. Usually, remedial action takes the form of a software update to prevent the vulnerability from

interfering with the quality of the service or to prevent someone from exploiting those vulnerabilities to the detriment of the users or the network itself.

In addition to identifying vulnerabilities and appropriate remediation(s), the service provider must also ensure that the software update does not introduce any new vulnerabilities or exacerbate any existing problems. Each time a service provider deploys an update to correct an error, there is risk that it will not function properly. To minimize this risk, which could potentially affect all participants in the network, FAA proposes certain requirements related to the development, testing, and deployment of software updates.

Proposed paragraph (a) would require a certificated service provider to verify that prior to releasing any software changes to their FAA-authorized service, those changes would not adversely affect the person using the service. This provision would minimize the risk of software updates inadvertently impacting the authorized services' users, and therefore affecting their ability to operate safely in the U.S. airspace. For purposes of this section, FAA proposes to describe "person" to include customers of the certificated service provider as well as other airspace users or services that rely on exchanging data with the authorized service.

Proposed paragraph (b) would require a certificated service provider to use a generally accepted industry standard for assigning version numbers to any software changes to their authorized automated data service. As stated earlier, a certificated service provider may perform a software update to their authorized service for a number of reasons, including but not limited to, improving the efficiency or quality of their authorized service. To track updates, software developers assign version numbers to the updated version of the software; those updates include performing a patch, minor update, or major update.²⁰⁰ Currently, there are existing versioning standards for software updates. Whenever software changes are made, software developers assign version numbers to their software changes according to those existing standards. Therefore, rather than establish new versioning procedures, FAA intends on leveraging the use of existing consensus standards for the

maintenance of authorized automated data services under proposed part 146.

Proposed paragraph (c) would require that a certificated service provider conduct testing prior to releasing any software changes. This is to verify that the changes do not adversely affect the authorized service's ability to meet the requirements of proposed part 146.²⁰¹ In addition, all documentation of testing and verification of software changes must be readily available to FAA, and made available no later than 24 hours after receiving a written request from FAA.²⁰² FAA anticipates certificated service providers will engage in best business practices including documenting all of their product testing—in this case, software update testing. FAA's main objective is to help ensure the safety of each software change prior to introducing an updated service into the NAS. FAA does not intend to impose an administrative burden of requiring automated data service providers to provide FAA with proof of each test conducted in accordance with this proposed part. However, FAA retains its authority to require certificated service providers to show proof of their software testing once they receive a written request from FAA, in the interest of safety.

Lastly, FAA proposes that FAA may request the certificated service provider to conduct additional testing or verification to demonstrate that their authorized services meet the minimum performance requirements of part 146. FAA would do so to verify that the testing conducted is sufficient, and the software changes are safe to introduce, or re-introduce, into the NAS. With regards to conducting additional testing or verification, FAA would require those to be conducted as soon as practicable after receiving an FAA written request. For the sake of promoting flexible regulatory requirements, FAA does not intend to set a specific timeframe for when the certificated service provider should conduct their additional testing or verification after receiving an FAA request. Instead, FAA anticipates that each certificated service provider would conduct their additional testing or

²⁰¹ Those requirements include the data exchange requirements per proposed § 146.400. In accordance with § 146.400, FAA proposes that each authorized service under proposed part 146 contains the following requirements: interoperability, safeguards, authentication, and non-repudiation.

²⁰² As proposed in § 146.330(a)(2), record retention requirements, FAA would require certificated service providers to retain records of testing required under subpart E of part 146, which would include software updates testing, for the duration of the service provider's part 146 certificate plus an additional 24 calendar months.

²⁰⁰ See proposed § 146.405(f), discussed later in this section of this preamble.

verification as soon as they are able to do so, to provide their service users with their latest updates, therefore promoting their own business ventures.

Proposed paragraph (d) would require certificated service providers to provide reasonable notice to all service users prior to any software change or anticipated service downtime as a result of the software update. This notice would include the date, time, and expected downtime duration of that service. Proposed paragraph § 146.405(d)(2) would require the service provider notify users in advance of a software change in order for the user to have adequate time to determine if the change to the service affects the user, and if so, make the required adjustments due to the change. In addition, as proposed in § 146.405(d)(3), each notice would provide a description of the software change, including: (1) the version identifier; (2) an explanation regarding the nature of the change; (3) identification of differences in service features, functionality, or user experience; and (4) explanation of any actions the user must take to ensure the authorized service is performing as intended following the change. This information would be crucial for service users to understand the scope and impact of the software change and anticipated downtime duration as well as whether the changes could affect operations.

In addition, proposed paragraph (d) would require certificated service providers to keep a record of each software update or changes under this section for not less than two years from the date the update was released. FAA may rely on this information to investigate potential non-compliances in the event of any service malfunction; this duration would provide FAA with sufficient time to determine whether to take enforcement action.

Rather than prescribe a set requirement for what would be considered reasonable notice, each certificated service provider should have a thorough understanding of their authorized service, and the potential disruption that may take place in the event of a software update. Apart from FAA notification requirements explained in the following paragraph, in most cases the certificated provider would be in the best position to determine what would be considered reasonable notice regarding any scheduled downtime. Reasonable notice would allow service users to properly evaluate the potential effects of the downtime on their operations, as well as make any necessary operational adjustments. FAA welcomes comment

on whether there is a specific timeframe that should be considered reasonable notice.

Proposed paragraph (e) would establish FAA notification requirements for releasing software updates to automated data services based on the type of software changes. These types of updates are—patch, minor update, and major update.²⁰³ FAA proposes requirements for these three types of service software updates commensurate with the potential risk the update could present to the safety of the operation that relies on that service. This potential risk would also depend on the service level of the service that is undergoing a software update. As such, proposed paragraph (f) would establish approval requirements for releasing software updates. The proposed notification and FAA approval processes are each explained in the paragraphs that follow.

First, patch updates are version changes to a software that address bugs or performance improvements internal to the service. Patch updates often improve performance, fix bugs, or address security vulnerabilities. They do not change the overall functionality or features of the service and the version is backward compatible. In addition, the application programming interface (API) endpoint remains unchanged. An API is a software feature that allows two different applications to interface or “talk to each other.” The API endpoint is the place where the API receives requests to access functionality and data. Typically, the endpoint is a web address. In the case of a patch update, the web address would not change.

Ultimately, service users can upgrade or downgrade from the patch incrementally without having to make changes to how they use the service. Regardless of the service level of the service undergoing the patch update, because the software change would not alter the service’s functionality, API, and compatibility, FAA determined the risk to aviation safety to be extremely low. For these reasons, patch updates can be released by certificated service providers without the need for providing prior notice to FAA, nor receiving an FAA approval for the release of such update. As discussed in § 146.405(d)(4) (in the preceding paragraphs), FAA proposes to require certificated service providers to document and maintain a record of the patch update for two years.

Second, minor updates are version changes to software that add new

features and generally create a new API endpoint for that version. In the case of an API endpoint update, typically the previous API endpoint remains fully functional, which means that the user can continue to use legacy functionality without doing anything, or they can upgrade and take advantage of the new features or functionality. When the user upgrades their service, per the software update, they may need to make changes to their aircraft or its AE to properly integrate the minor update. In either case, the service would typically maintain backward compatibility with the aircraft or AE that is relying on the service. This is important because, irrespective of whether the user chooses to upgrade or not, backward compatibility means they would still be able to access legacy functionality of the service.

Because minor updates may substantively change the features and functionality of the service, FAA assesses the safety risk of these software changes to be higher than those associated with patch updates. This is because the minor update would change the service’s API, and therefore the service information may not be accessed the same way as initially developed. This could lead to a service user’s inability to access information that may be necessary for the aircraft operation. The impact of minor updates on the service’s performance would also depend on the service level of the service.²⁰⁴ Accordingly, FAA proposes in § 146.405(e)(1) that certificated service providers must notify FAA—via a portal on FAA’s website—prior to releasing a minor update. Specifically, prior to releasing a minor update, certificated service providers would be required to notify FAA at least one (1) business day prior to release of a Service Level 1 service, at least three (3) business days prior to release of a Service Level 2 service, and at least five (5) business days prior to release of a Service Level 3 service. This provides FAA an opportunity to review documents from the certificated service provider to help ensure that the change to the service will continue to comply with its authorization and will not create a new unsafe condition or hazard for aircraft operators using the service.

Finally, major updates would be significant revisions or a redesign of the software. These changes are not backward compatible and fundamentally change what the service does or how it works. Major updates to

²⁰³ Proposed definitions for patch, minor, and major software updates are in § 146.5 and are discussed in this preamble in section XIII.E.2.

²⁰⁴ The higher the service level, the higher the residual risk that may be introduced into the NAS because of the operation that relies on that service.

a software substantively change the API, which may result in a new API endpoint or signature.²⁰⁵ FAA believes that these changes could create hazards to safe operations and thus the risk is high enough to warrant FAA approval. As a result, FAA proposes in § 146.405(f) to require certificated service providers to obtain FAA approval prior to releasing a major software update to Service Level 2 or Service Level 3 services.²⁰⁶ This is because major updates would significantly change the software, and therefore the service’s features and functionality, all of which could lead to compatibility issues between versions. The effects and magnitude of the changes would be unknown until tested.²⁰⁷

In addition, because major updates would constitute such significant changes to the software, FAA proposes in § 146.405(g) that, unless otherwise authorized by the Administrator, the certificated service provider would be required to have procedures in place to transition service users from the older software to the updated one safely, rather than suddenly discontinuing the superseded software versions. In order to transition safely, FAA proposes to require the certificated service providers to: (1) maintain the most recent previous version of the authorized service with full functionality for a minimum of 60 days from the release date; and (2) notify service users a minimum of seven (7) calendar days prior to removing full functionality of the prior version of the authorized service.

Nonetheless, FAA understands that there may be exceptions to

discontinuing superseded software versions as proposed in § 146.405(g), especially with regards to maintaining a preceding version of a service if it is no longer in operation. For this reason, FAA proposes in § 146.405(h) that the provision of § 146.405(g)(1) may not apply if the authorized service is provided by more than one certificated provider, and the major software update would need to take place in a coordinated, planned, or simultaneous manner to maintain its interoperability.

For example, certain automated data services would need interoperability to function optimally. As such, automated data service providers that provide a specific service relying on interoperability may need to update their software in a coordinated manner; this is to guide their service users into using the latest version of the automated data service. Through this coordinated effort of enrolling their service users into using the latest version of their software, the older version of the software would be rendered obsolete—especially because all parties would be using the latest version. For this reason, FAA determined to except automated data service providers from maintaining the most recent previous version of the authorized service with full functionality for a minimum of 60 days from the release date. Nonetheless, a seven (7) calendar day minimum notice from § 146.405(g)(2) would be required under the proposal.

To clarify the proposed provisions for issuing notifications and requesting approvals in accordance with this proposed section, FAA summarizes the

necessary requirements for patch, minor updates, and major updates, depending on each service’s service level in table 6. Similar to the continuum framework of service levels and residual risk, FAA developed this framework for notifying and approving software updates to be proportional to the impact of software updates on the authorized service. The rationale for this differentiation is to set the level of FAA review (if any) proportional to the severity of hazards that could be introduced by the update to the service. In most cases, the certificated service provider need not wait for explicit approval from FAA prior to issuing a software update. In many cases, certificated service providers would issue software updates iteratively to fix bugs, add features, or improve overall functionality (e.g., to increase the total number of operators it could support simultaneously). FAA also understands that cybersecurity vulnerabilities must be addressed quickly and that undue delays could be detrimental to users or the network. The required notification interval enables FAA to prioritize how it manages changes to services, with time to provide limited review as needed. In the event a potential problem is identified, and in the event of a major software update to Service Level 2 or Service Level 3 services, this notification requirement would allow FAA to delay the release of the software update while it conducts further review.

TABLE 6—SOFTWARE UPDATES NOTICE, APPROVAL, AND RETENTION REQUIREMENTS

	Service level 1	Service level 2	Service level 3
Patch:			
FAA Notification?	No	No	No.
FAA Approval?	No	No	No.
Record Retention	2 years since update		
Minor:			
FAA Notification?	at least 1 business day prior to re-lease.	at least 3 business days prior to release.	at least 5 business days prior to release.
FAA Approval?	No	No	No.
Record Retention	2 years since update		
Major:			
FAA Notification?	at least 5 business days prior to release.	N/A	N/A.

²⁰⁵ An API signature is a method used to secure and authenticate API communications.

²⁰⁶ Service Level 1 services are considered to pose the lowest residual risk to the NAS as they support aircraft operations with multiple mitigations in place, rendering changes to these services as non-critical to safety of the operation. As such, FAA

does not consider major updates to service level 1 services to require FAA approval prior to release. However, service level 1 service providers are required to notify FAA at least five (5) business days before releasing any major software updates.

²⁰⁷ AC–146–1, available in the docket associated with this rulemaking, as proposed includes

guidance to the public regarding how to submit documentation to FAA requesting Agency approval prior to releasing a major update to a service. This documentation may include traceability matrices, and test results to FAA for major updates to Service Levels 2 and 3.

TABLE 6—SOFTWARE UPDATES NOTICE, APPROVAL, AND RETENTION REQUIREMENTS—Continued

	Service level 1	Service level 2	Service level 3
FAA Approval?	No	Yes	Yes.
Record Retention	2 years since update		

J. Subpart F—Due Process

FAA proposes subpart F of part 146 to define conditions under which FAA may revoke or suspend the issuance of an automated data service authorization. Proposed subpart F would also address stipulations for reconsideration, including conditions under which an applicant may petition FAA to reconsider the denial, suspension, or revocation of an authorization issued under part 146. FAA does not intend for this subpart to apply to the process of appealing FAA decisions to suspend or revoke a part 146 certificate issued in accordance with this part. FAA does not intend to create a redundant set of provisions with regards to the Agency's appeal process. FAA has an existing set of provisions for the process of appealing FAA initiated decisions to modify an already issued certificate—including suspending or revoking a part 146 certificate—in 14 CFR part 13. As such, the existing process of appealing FAA decisions with regards to an FAA initiated certificate action in 14 CFR part 13 would also apply to certificates issued under part 146. Nonetheless, if FAA issued a decision to deny an application for part 146 certification, including a denial to amend a returning applicant's certificate's service level, the applicant may petition FAA to reconsider such decision under proposed part 146.

1. Revocations and Suspension
(§ 146.500)

Each certificate or authorization issued under this part is subject to ongoing review by the Administrator. However, while FAA has an existing set of provisions in part 13 of 14 CFR governing the process of FAA initiated actions with regards to certificates issued under part 146, this process does not apply to automated data services authorization issued under part 146. As such, FAA proposes in § 146.500(a) that the Administrator may revoke or suspend an authorization issued under this part upon a determination that the certificated service provider is not in compliance with this part. Certificated service providers in non-compliance may impact NAS safety and efficiency. As the government authority responsible for maintaining the safety

and efficiency of the U.S. airspace, FAA has authority to oversee compliance with FAA requirements. FAA may exercise this authority to require certificated service providers to comply with the proposed part 146 certification and service authorization requirements in order to maintain their certificate or service authorization.

As an alternative to revoking a service authorization, FAA proposes in § 146.500(c) that the Administrator may suspend an automated data service authorization issued under this part without prior notice or opportunity to cure if the Administrator determines it is in the interest of safety to immediately remove that service from participating in the NAS. FAA recognizes that errors may occasionally happen and could impact an operator's ability to conduct safe aircraft operations. These errors could be a result of a service issue but also could be a result of an operator's mistake. Rather than simply revoke the certificated service provider's authorization, this provision provides FAA with the ability to suspend the service authorization while investigating the cause for error. Furthermore, it provides the certificated service provider with the opportunity to remediate the issue of non-compliance instead of having FAA exercise its revocation authority. However, per proposed § 146.500(b), if the certificated service provider does not fix the problem of non-compliance, FAA could revoke the certificated service provider's part 146 service authorization in the interest of safety.

2. Petition to Reconsider (§ 146.505)

FAA endeavors to enable the integration of complex UAS operations such as BVLOS operations in the NAS, while ensuring measures are in place to integrate those operations safely. FAA wishes to engage NAS stakeholders to enable more complex UAS operations in a safe, efficient, and equitable manner. FAA believes it can do so by approving technologies that enable complex UAS BVLOS operations. Because FAA's highest priority is the safety and efficiency of the NAS, FAA also intends to promote and enforce compliance with its regulations. Balancing fairness with FAA's responsibility to enforce its

regulations, FAA proposes to offer automated data service providers impacted by a revocation, suspension, or denial with the opportunity to correct any identified insufficiencies with their service. However, FAA's mission is to provide the world's safest, most efficient airspace. If an automated data service provider jeopardizes NAS safety or efficiency, FAA would exercise its oversight authority to prevent them from adversely affecting the safety and efficiency of the NAS.

To that end, FAA proposes in § 146.505(a) that any applicant or service authorization holder may submit a petition to FAA to reconsider its decision to deny, suspend, or revoke a part 146 service authorization issued under this proposed part. Similarly, an applicant may petition FAA to reconsider its decision to deny an application for part 146 certification, including applications to amend the certificate's service level. FAA proposes that such petitions must be submitted by the applicant or certificated service provider in a form and manner acceptable to the Administrator. Applications must be submitted to FAA within 60 calendar days of FAA-issued denial of a certificate, or FAA-issued denial, revocation, or suspension of a service authorization issued in accordance with this part.

FAA proposes in § 146.505(b) that the applicant or previously certificated service provider's petition for reconsideration must demonstrate that FAA issued the denial, revocation, or suspension in error. Further, the petition to FAA must include one of the following elements: a material fact exists that was not previously presented to the Administrator; the Administrator relied on a material error of fact in issuing the decision; or the Administrator did not correctly interpret a law, regulation, or precedent. To issue its final decision, FAA will consider the information in the submitted petition to determine whether to withdraw or keep its decision issued in accordance with proposed part 146.

K. Proposed Advisory Circulars

FAA proposes to publish the AC 146–1, Automated Data Services, to provide guidance to automated data service providers seeking certification and

authorization to provide a service in accordance with proposed part 146. AC 146–1 would provide guidance for automated data service providers, including guidance for applying for part 146 certification, and the use of certain standards as a means to comply with proposed part 146 requirements.²⁰⁸ AC 146–1 would also provide guidance for demonstrating capability to be granted FAA authority to provide an authorized automated data service in accordance with proposed part 146. Lastly, AC 146–1 would provide guidance on the materials to provide to FAA in relation to automated data services data exchange requirements and software update semantics.

As part of this guidance, FAA would reference the use of certain automated data services that may be used by operators to comply with FAA operating requirements. These services would be used to mitigate any residual risks associated with an ongoing operational need. These automated data services may be based on published industry consensus standards as a whole or may represent certain aspects of a standard (or standards). To guide the public through the process of leveraging the use of these services to comply with FAA requirements, FAA would issue appendices to AC 146–1. Each appendix would comprise a service provider standard order (SPSO), which would represent one way but not the only way to demonstrate compliance with the performance-based regulations under proposed part 146. A list of appendices, comprising each SPSO that FAA anticipates publishing in association with this rule follows:

1. Appendix A, SPSO–1a: Strategic Deconfliction (Strategic Conflict Detection & Resolution, and Aggregate Conformance Monitoring).

2. Appendix B, SPSO–2a: Conformance monitoring FAA seeks comments on whether additional guidance or procedures are needed to expand operations using automated data service providers.

XIV. Regulatory Notices and Analyses

A. Regulatory Impact Analysis

Executive Orders 12866 (“Regulatory Planning and Review”) requires agencies to regulate in the “most cost-effective manner,” and to make a “reasoned determination that the benefits of the intended regulation justify its costs.” The Office of Management and Budget has determined that this proposed rulemaking is a significant regulatory

action as defined in section (3)(f)(4) of Executive Order (E.O.) 12866. Accordingly, the following sections provide analysis of the regulatory impact of the proposal, including the applicable baseline, potential costs and benefits, and uncertainties.

1. Baseline for the Analysis

The baseline for the analysis includes the existing regulatory framework and practices for conducting BVLOS operations, the affected entities and operations under this framework, and existing risks of these activities.

i. Regulatory Framework

As described in section III, FAA currently authorizes BVLOS and larger and more complex operations through waivers and exemptions. Part 107 provides safety regulations for small UAS weighing less than 55 pounds. Waiver authority in part 107 accommodates new technologies and unique circumstances if the Administrator finds that proposed operation can be conducted safely in terms of the waiver. The waiver application generally must outline how the operator intends to conduct the operation safely, including risk mitigation strategies, and FAA includes terms and conditions in the waiver issued.²⁰⁹

Part 107 only applies to UAS that weigh less than 55 pounds at takeoff. Not only is there a maximum weight, but there is also a limitation on what rules can be waived.²¹⁰ To fly a UA that exceeds the maximum weight limit of part 107 or obtain relief from the nonwaivable provisions of part 107, the UA operator must petition for an exemption. The exemption petition must describe how the operator will safely conduct the operation, and FAA will include conditions and limitations in the exemption issued. In addition, an exemption requires justification on how the petition is in the public interest and when precedent setting, petitions for exemptions are made available for public notice and comment in the **Federal Register**. FAA publishes the petitions for exemptions and the

decision document in response to those requests to the public docket.²¹¹

ii. Affected Entities and Operations

The proposed rule would affect certain UA manufacturers and operators, and entities seeking authorization to provide automated data services. Manufacturers of UA used in BVLOS operations would have new requirements. UA operators would be able to apply to conduct BVLOS operations for the following activities: package delivery, agriculture, aerial surveying, civic interest,²¹² UA operations training, demonstration, recreation, and flight testing. Companies that provide data, processing capacity, or other software support for UAS could become an automated data service provider.

Previously granted waivers and exemptions provide insight on the potentially affected entities.²¹³ There are 9 operators with exemptions that currently authorize BVLOS operations for UA over 55 pounds, including in package delivery operations and operations to support infrastructure inspection.²¹⁴ There are also approximately 230 additional (unique) operators that hold waivers indicative of BVLOS operations with UA up to 55 pounds.²¹⁵ These entities span a wide range of industry categories, such as agriculture, mapping, photography, and conservation. There are also about 30 U.S.-based manufacturers of the UA used under these waivers and exemptions.²¹⁶ Current LOAs provide information on entities that may provide automated data services. Table 7 summarizes the potentially affected entities. Table 8 shows the number of part 119 UAS package delivery

²¹¹ These dockets are available at www.regulations.gov.

²¹² Includes forest and wildlife conservation, including wildfire recovery, wildlife conservation, and tracking climate change, and operations in support of public safety, including fire, accident, and disaster response.

²¹³ FAA has also denied requests for waivers and exemptions. The extent to which these denials represent entities that would continue to pursue acceptable BVLOS terms and conditions is unclear.

²¹⁴ The docket numbers are: FAA–2023–1827 and FAA–2022–0124; FAA–2022–0921; FAA–2019–0628; FAA–2020–0499; FAA–2019–0573; FAA–2018–0835; FAA–2022–0268; FAA–2020–0620; FAA–2021–0746.

²¹⁵ For this analysis, the waived sections include: §§ 107.31, 107.33, 107.35, and 91.113. Based on waivers as of January 1, 2024.

²¹⁶ Based on waivers of § 107.31 from May 2023 to May 2024 and the current exemptions for BVLOS.

²⁰⁸ See, e.g., ISO 23629–12.

²⁰⁹ Part 107 waivers issued, and the sections waived, are available at www.faa.gov/uas/commercial_operators/part_107_waivers/waivers_issued.

²¹⁰ Types operations that are waivable under part 107 include operations from a moving vehicle (§ 107.25), daylight (§ 107.29), VLOS (§ 107.31), with visual observers (§ 107.33), multiple small UAS (§ 107.35), yielding right of way (§ 107.37(a)), over people (§ 107.39) and in other airspaces (§ 107.41) and removing certain other limitations (§ 107.51).

operators operating under part 135 through exemptions. Table 9 shows

BVLOS operations tracked within FAA's partnership programs.

TABLE 7—POTENTIALLY AFFECTED ENTITIES ¹

Category	Count
Operators ¹	239
Manufacturers ¹	30
Automated data service providers	² 2

¹ Based on waivers and exemptions for BVLOS operations as of May 2024.

² As described in section VII.I.2, FAA has issued LOAs associated with an operational waiver or exemption for strategic deconfliction service provision to two entities. Automated data services will be required for certain BVLOS operations.

TABLE 8—UAS PACKAGE DELIVERY OPERATORS

Operator	Location of operations ¹
Drone Express	NC.
DroneUp, LLC	Dallas/Fort Worth, TX.
Causey Aviation Unmanned	NC.
Zipline	Salt Lake City, UT, with expansion plans in progress for Dallas/Fort Worth, TX and Seattle, WA.
Amazon	Phoenix, AZ and Tolleson, CA.
UPS Flight Forward, Inc	Winston-Salem, NC.
Wing Aviation, LLC	Primarily in TX and VA, with expansion plans.

Source: FAA (see: https://www.faa.gov/uas/advanced_operations/package_delivery_drone).

¹ Current operations are limited by the need for case-by-case environmental assessments which take about one year. By the final rule, FAA anticipates having a nationwide assessment which will expand locations.

TABLE 9—BVLOS FLIGHTS, 2024 ¹

Category	Count ²	Hours
Environmental survey	6	3
Infrastructure inspection (linear)	583	192
Infrastructure inspection (non-linear)	197	44
Package delivery	80,955	9,309
Public safety	4,337	526
Research	103	18
Total	86,181	10,092

Source: FAA data (includes BEYOND and Partnership for Safety Program, exemptions, and waivers).

¹ Operational BVLOS flights (with and without observers) and flights using multiple UA.

² Count of single leg (one-way) flights.

Additional examples of BVLOS operations in these categories that have developed under the current regulatory structure include the following: ²¹⁷

- Routine and supplemental inspections. For example, BNSF Railway began inspecting 150-mile segments of railway track in New Mexico by late 2015.
- Three state Departments of Transportation (KS, ND, NC) were in FAA's Integrated Partnership Program. OH DOT, with partners, is developing SkyVision, a ground-based detect and avoid system.
- After Hurricane Milton in FL, Florida Power and Light used UAS to assess damage. Georgia Power implemented a pilot program utilizing drones for comprehensive aerial inspections.

• Public safety agencies employ UAS for search and rescue operations, disaster response and recovery, law enforcement, firefighting, and traffic accident and crime scene investigation.

The proposed rule may also attract new operators, manufacturers, and automated data service providers compared to operating under the existing framework. For example, some entities may find the proposed rule requirements easier to navigate compared to describing how they will operate safely in a waiver or exemption request. Other entities may commence operations due to increased demand for BVLOS services. The types of affected entities are also likely to expand as technologies and use cases develop over time. In addition, entities holding waivers and exemptions from rules other than part 107 (e.g., agricultural operation under part 137) may be able

to operate under part 108.²¹⁸ Finally, part 91 operators not equipped with ADS-B Out or EC equipment may be affected in terms of losing right-of-way to UAS.

iii. Risks

The greatest risks posed by current BVLOS operations include collision with manned aircraft, UA, and structures on the ground, that could result in property damage and fatalities or injuries to persons on the ground.²¹⁹ While there are risks under the existing

²¹⁸ Exemptions for UAS that provide relief from provisions within 14 CFR part 137 reflect UAS which are too heavy to fly under part 107. Since proposed rule permits heavier aircraft, these operators may transition to operate under part 108.

²¹⁹ See, e.g., comments from the National Agricultural Aviation Association and the Helicopter Association International on petition to amend Exemption No. 18601, available at www.regulations.gov/document/FAA-2019-0573-0078.

²¹⁷ Industry materials provided to the Office of Information and Regulatory Affairs, Office of Management and Budget, available at: www.reginfo.gov.

part 107 framework,²²⁰ the BVLOS ARC found that there have been no fatalities and only one serious injury attributable to BVLOS operations under pilot programs.²²¹

Commenters on current exemptions have also described considerations related to noise, privacy, and security from BVLOS operations, and impacts on the environment from package delivery operations.²²² For example, as FAA summarized, some commenters expressed concerns with the annoyance, stress, and emotional or physical discomfort caused by increased auditory and visual noise attributed to UA operations and UA intrusions on personal space. Other commenters were concerned with noise pollution, stating that UAs make an irritating noise, and that this would multiply as other companies begin or increase operating. These concerns continue to be present. In 2024, residents in College Station, Texas expressed concern regarding noise levels associated with drone deliveries to the City Council; the Mayor then wrote a letter to FAA regarding the operator's request to expand the service.²²³ The letter acknowledged that the operator's intent to use a newer quieter drone should have a positive effect on the perceived noise levels.

iv. Uncertainties

A key uncertainty in the baseline for the analysis is the extent to which BVLOS operations are constrained by the current regulatory framework versus other factors that may affect each use case including technological, logistical, and financial considerations. That is, industry growth is occurring in the absence of the rule. For example, with its part 135 certification, DroneUp states it will have authorization to fly BVLOS up to five miles allowing a 300% increase in serviceable households and will continue to work with FAA to expand operations.²²⁴ Flytrex also states its service is growing fast and it is working to expand operations while

adhering to the latest regulations.²²⁵ Seven UAS operators have now obtained part 135 certification to operate as air carriers (as shown in table 8) and FAA has received additional applications. Similarly, there is uncertainty regarding operational risks that would emerge with continued BVLOS operations via waivers and exemptions.

2. Impact of the Rule

As described in the baseline, FAA is already approving BVLOS operations, and operations using UA over 55 pounds, through waivers and exemptions. With the proposed rule, FAA would be codifying streamlined processes for these approvals that it has developed over the past few years. The proposed rule would provide a repeatable and consistent process in regulation and would eliminate the need for individual waivers and exemptions.

For manufacturers, the proposed rule relies on industry consensus standards for UA design. Once developed and approved, however, the proposed rule would require operations under part 108 to use UA that meet the standards. This may represent an incremental cost to operators (depending on the price differential with current UA) and a market opportunity for US manufacturers. The proposed rule would provide certainty for manufacturers in both the standards and requirement for US manufactured UA.

For operations, there may be little incremental impact because the proposed rule codifies existing processes. For example, FAA streamlined the approval process for part 137 agricultural operators to operate UA over 55 pounds. Agricultural operators typically operate in visual line of sight but with heavier UA needed for agricultural tasks, specifically spraying pesticides and herbicides. Proposed part 108 provides for permitted or certificated (depending on the overflown population density) agricultural operations with UA over 55 pounds, replacing the streamlined exemption process. Similarly, for package delivery, the process for initial part 119 UAS operators operating under part 135 originally took years whereas more recent operators have obtained certification much quicker. Proposed part 108 would reflect this more recent experience and provide a dependable process. FAA has also streamlined the process for police departments (and other emergency services) to obtain a

waiver to use detect and avoid technology to operate UA BVLOS; the proposed rule provides regulatory structure to eliminate the need for these waivers.

For automated data services, the proposed rule again relies on industry consensus standards. Once approved, however, the proposed rule would establish requirements for use of such services, which represents a cost for operators and a new market for providers. The main impact of the proposed rule in this sector relates to low altitude deconfliction of UA. While there has not been a need yet for these services because of the limited operations with multiple operators in the same geographic area, there is a need for this deconfliction with scaled BVLOS operations. The proposed rule provides a regulatory structure under which service providers can operate at scale; as of June 2025, FAA and industry are testing this technology at one location.

3. Benefits

The benefits of the proposed rule are the incremental values that result from the increased integration of UAS into the NAS, specifically BVLOS operations. These benefits would derive from increased regulatory certainty and efficiency in the process for initiating and continuing applicable operations under the proposed rule, such that benefits accrue sooner compared to the current process for enabling these operations. The proposed regulatory framework is also likely to enable a scale of operations not achievable under the current approach. For example, the BVLOS ARC found that regulatory changes are necessary to support industry growth. FAA Reauthorization Act of 2024 (and 2018), as well as the Agency's own experience trying to tailor existing regulations to UAS operations are also indicative of industry constraints under the existing framework. The proposed rule may also result in benefits that would not occur under the current process, such as those associated with an automated data service provider certification and service authorization.

i. Types of Benefits

The BVLOS ARC identified broad categories of societal benefits that may be achieved through BVLOS operations including economic, safety, and health (table 10). These categories represent incremental impacts of BVLOS operations in general, and the magnitude of benefits would depend on the extent to which operations scale

²²⁰ See, e.g., NTSB accident report ERA24LA079, available at data.ntsb.gov/carol-main-public/basic-search.

²²¹ BVLOS ARC Report, at 11 (Mar. 10, 2022).

²²² See, e.g., summary of comments regarding intrusiveness and privacy and environmental concerns on Exemption No. 18601, available at www.regulations.gov/document/FAA-2019-0573-0059.

²²³ City of college Station, *Letter to FAA Regarding Amazon Drones* (Jul. 15, 2024), available at www.cstx.gov/news/archived_news/letter_to_fa_a_regarding_amazon_drones.

²²⁴ DroneUp, *DroneUp Secures FAA Part 135 Certification, Revolutionizing Drone Delivery for All* (Dec. 3, 2024), available at www.droneup.com/news/part135.

²²⁵ See generally, FlyTrex, available at www.flytrex.com/.

under the rule compared to the existing regulatory framework.

TABLE 10—CATEGORIES OF BENEFITS OF UAS BVLOS OPERATIONS

Category	Description
Economic	Use cases that provide an economic benefit such as cost savings and expanded market opportunities.
Safety	Operations that result in improved safety such as replacing risk in manned aviation operations and public safety use cases or monitoring the perimeter of a large critical infrastructure facility.
Health	Operations could potentially lead to opportunities to improve both individual and community health, such as delivery of vaccines or important medications.

Source: BVLOS ARC Report (March 2022).

a. Economic Benefits

Economic benefits arise from the range of use cases through new and expanded market opportunities and cost savings. For example, to the extent that sales of various products or services increase under the rule above and beyond what would occur under the current regulatory framework (*i.e.*, not simply offsetting existing sales), this represents new economic activity and thus benefits. The rule will also increase the market for and providers of automated data services.

New economic activity may also enhance health and the availability of services to growing communities. Enabling BVLOS operations could also have a transformative impact on logistics and a variety of infrastructure inspections. Automated data services may provide a cost-effective, safe, and scalable means for those UAS operators to meet some of their regulatory requirements. FAA anticipates that a market would develop to provide these services following the implementation of this rule.

b. Safety Benefits

Safety benefits would accrue to the extent that a variety of operations could be executed more safely, and on a greater scale than currently conducted. As shown in table 9, many operations, such as infrastructure inspections are already being conducted with UAS beyond VLOS. The proposed rule may amplify these operations beyond or sooner than what would occur under the existing framework. Safety benefits could accrue through modifying existing activity, such as replacing traditional methods (*e.g.*, manned aviation or truck delivery) with UAS, or through new activity (additional public safety operations).

For example, for package delivery, safety benefits are influenced largely by how many of the UA operations would be replacing traditional delivery methods, and how many would be in addition to traditional delivery methods. A delivery that replaces

traditional delivery methods can be expected to result in significant safety increases. As discussed above, FAA has not observed any fatalities due to BVLOS UAS use, but traffic fatalities remain a leading cause of death in the United States so substitution toward UA and away from delivery trucks is likely to lead to a reduction in fatalities.

Conversely, if the flights represent new sales, then there would be minimal impact on safety benefits. In addition, though there have been no observed fatalities due to BVLOS UAS operations, it is conceivable that a dramatic increase in the number of operations could reveal such a risk. However, it is also possible that the processes and standards laid out in proposed part 146 would result in lower risk with greater adoption due to network effects such as UAS sharing data and well-defined roles and rules.

Similarly, in agriculture, the potential for incremental aviation safety benefits²²⁶ depends on the extent to which those operators still conducting manned operations switch to UAS. The proposed rule would not obligate any changes. Manned aircraft also have larger yields and operators may not have any incentive to switch to a fleet of UAS if they do not have the capital to buy multiple UAS.

The ARC also identified that UAS operated BVLOS could result in benefits to include monitoring critical infrastructure. Critical infrastructure is also an area where unauthorized UA pose a security threat. Benefits would be attributable to the rule to the extent that more such operations, or more timely operations, are enabled through the permitted or certificated process under the rule.

²²⁶ Based on data from NTSB Accident and Incident Database/Incidents from FAA Accidents and Incident Database (A/IDS), in 2024 there were 13 fatal accidents, eight (8) accidents resulting in serious injury, and eight (8) accidents resulting in minor injuries among agricultural operations under part 137.

c. Health Benefits

BVLOS operations could have a transformative impact on logistics such as for the timely delivery of health care products (*e.g.*, medications). Benefits would accrue to the extent that such services reach a greater percentage of the population compared to under the existing framework. Further, these benefits could especially impact rural communities where health access is limited.

ii. Magnitude of Benefits

Estimating the magnitude of benefits of the rule would require forecasting BVLOS operations and associated impacts with and without the rule and estimating the value of the incremental changes. Because BVLOS operations are still developing under the existing regulatory framework and the regulatory environment represents only one potential impediment to scaling these operations, there is substantial uncertainty in doing so. FAA currently does not identify BVLOS operations separately in its UAS forecast;²²⁷ with the completion of a final rule, part 108 activity can be specifically identified in future forecasts.

Nonetheless, industry has commissioned studies to estimate the benefits of UAS, including BVLOS operations, that foresee values in the hundreds of millions of dollars. These studies illustrate the motivation behind desired investments in BVLOS technologies. Benefits attributable to the rule would be the portion of this value, if achieved, that can be directly tied to removing regulatory impediments through the rule.

Given the uncertainty, FAA has not quantified the benefits of the rule. Indeed, societal values may also change over time, in either direction, since the range of logistical and environmental outcomes have only been experienced on a limited or pilot scale. Technological or changes on other

²²⁷ Available at www.faa.gov/data_research/aviation/aerospace_forecasts/unmanned_aircraft_systems.pdf.

fronts may also affect the future and values.

With this caveat, the studies show how benefits may scale under specific scenarios. For example, one study of package delivery operations²²⁸ showed that in five years, in a single U.S. metropolitan area, UAS delivery could recover up to \$582.5 million per year in total time savings for consumers;²²⁹ generate up to \$284,000 per year in new annual sales for a participating local business;²³⁰ assist as many as 66,000 residents who lack access to a vehicle and 22,000 with mobility challenges to obtain their prescription medication; avoid up to 294 million miles per year in road use and up to 580 car crashes per year; and reduce up to 113,900 tons of carbon dioxide emissions per year.²³¹

For this scenario, FAA would value reduced fatalities and injuries resulting from car crashes using the value of statistical life (VSL) and the Maximum Abbreviated Injury Scale (MAIS).²³² For example, reduction in the risk of one fatality generates benefits equal to the VSL (approximately \$12.5 million). Reduction in the risk of serious injury generates benefits equal to the fraction of the VSL associated with MAIS level 3 (.105), or approximately \$1.3 million (.105 × \$12.5 million). Similarly, the value of reduced emissions can be estimated using the social cost of greenhouse gases.²³³

These results are specific to the three representative metropolitan areas (Christiansburg, VA; Austin, TX; and Columbus, OH) chosen to represent

cities with varying population densities and transportation challenges. They also reflect existing drone capabilities as well as assuming drone delivery can match or exceed existing delivery services for cost and convenience. Therefore, the extent to which the results can be extrapolated more widely or the extent to which implementation will occur in the absence of the rule is uncertain.

Zipline also provides references to studies of the positive health impact of its UAS package delivery operations in foreign countries,²³⁴ suggesting the potential for gains in rural areas of the United States. Zipline also asserts its flights reduce the carbon emissions of deliveries by 97 percent compared to gas cars. Again, based on the social costs of greenhouse gases, the value of reduced emissions could be significant. As with the previous study, the ultimate adoption and extent to which it would not occur in the absence of the rule is uncertain.

The magnitude of benefits shown in these examples would be reduced by any disbenefits from increased risks that accompany new or scaled BVLOS operations, including noise, annoyance, and privacy intrusions, as well as any increased safety risks from drone interactions with manned aviation or persons and property on the ground. Technological advancements and rule requirements may alleviate the potential for some effects (e.g., deconfliction and avoidance reducing potential for collisions) but not all (e.g., increased operations enabled by quieter drones may increase annoyance from flying objects). Again, given the limited scale of BVLOS deployment to date, the extent to which existing concerns and any early incidents can be extrapolated under the rule is uncertain.

In summary, benefits would be attributable to the proposed rule to the extent BVLOS operations are constrained under the current regulatory framework or accrue sooner under the proposed rule. For example, the BVLOS ARC maintained that regulatory predictability and certainty are important to provide the marketplace with stability. Though granting individual exemption petitions may enable UAS operators to meaningfully scale operations,²³⁵ the pace may be much accelerated under a rulemaking framework. Realizing benefits sooner is significant considering the social rate of time preference (e.g., discounting future

benefits by 3 percent annually). New entrants due to increased demand for BVLOS services under the simplified regulatory structure would also represent new economic activity attributable to the proposed rule. Subtracted from these positive impacts would be any negative values from any increases in risks that accompany new or scaled BVLOS operations.

iii. Uncertainties

The key uncertainty in the analysis of benefits is the rate and extent to which affected entities and new entrants take advantage of the proposed rule to increase BVLOS operations. Uncertainty also relates to the effectiveness of the proposed requirements in not increasing risks in the NAS.²³⁶ In the event of any accidents or incidents (e.g., encounters with manned aircraft), reactions could slow growth of BVLOS operations to a pace more similar to that under the current regulatory framework. There are also uncertainties with respect to the impacts of different use cases. For example, one study noted that “instead of accelerating the retirement of surveying and mapping professionals, drones have proven to be practical tools that enhance the quantity and quality of services that existing professionals provide.”²³⁷

Given uncertainties regarding the extent of new economic activity, associated effects such as impacts on emissions are also uncertain. For example, reductions in emissions would be driven by using electrically powered UA instead of gasoline or diesel-powered land vehicles.²³⁸ The electricity would still result in some emissions being created, as it must be generated. The quantity of those emissions depends on the type of power generation plant used to produce electricity, which in turn depends on the location of the UAS being charged. However, power generation facilities are generally more efficient than vehicle engines at extracting energy from fuel and can implement more rigorous filtering of exhaust, and so the emissions would potentially be reduced regardless of the location.

²²⁸ Virginia Tech Office of Economic Development and the Grado Department of Industrial and Systems Engineering, *Measuring the Effects of Drone Delivery in the United States* (2020), available at techworks.lib.vt.edu/items/ab84e0fb-a204-44e9-a51b-99e237d60293.

²²⁹ In communities with greater distances between commercial centers and residences, consumers may benefit more through time saved whereas in denser communities with high costs of living, consumers may benefit more from the value of time saved.

²³⁰ See *Measuring the Effects of Drone Delivery in the United States*, *supra* at n. 228 (2020) (Local business included restaurants, pharmacies, retail businesses that use traditional parcel delivery, and retailers of smaller items who currently do not offer delivery).

²³¹ The BVLOS ARC Report also references a study by Levitate Capital that provides estimates of the market for drones by use case and notes impacts of limitations on BVLOS, *see infra* n. 237.

²³² U.S. Department of Transportation, *Treatment of the Value of Preventing Fatalities and Injuries in Preparing Economic Analyses* (2021), <https://www.transportation.gov/resources/value-of-a-statistical-life-guidance>.

²³³ E.g., the value of the reduced emissions cited would be \$19.6 million annually based on a value of \$190 per metric ton in 2020 and a 2 percent discount rate; see EPA Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances, table ES-1, available at www.epa.gov/environmental-economics/scghg.

²³⁴ See www.regulations.gov/document/FAA-2024-1317-0004.

²³⁵ See www.regulations.gov/document/FAA-2024-1317-0004.

²³⁶ The role of SMS in reducing risks.

²³⁷ See Levitate Capital, *The Future of the Drone Economy* (Dec. 2020), available at levitatecap.com/levitate/wp-content/uploads/2020/12/Levitate-Capital-White-Paper.pdf.

²³⁸ While UA are powered by batteries, the batteries are rechargeable which occurs through the electric grid.

Finally, there is also uncertainty with respect to some of the less desirable impacts of drones, including noise, annoyance, and privacy impacts, and the effect of any increases in reducing the magnitude of benefits or realizing the economic gains. A variety of factors and the ultimate BVLOS deployment scenarios will influence the magnitude of these effects.

4. Costs

The proposed rule may result in incremental costs to comply with requirements for design and production, and operations compared to under the existing regulatory framework. The sections below discuss these considerations as well as the cost implications to become an automated data service provider.

i. Design and Production

The proposed rule would establish performance-based design, production, and airworthiness requirements for part 108-compliant UAS. Voluntary consensus standards bodies would then develop consensus standards for FAA acceptance or approval that they will propose as a MOC to meet regulatory requirements. Manufacturers can then design and produce UA in compliance with the consensus standards.

Manufacturers must also comply with requirements for: finding of compliance, DOC, quality assurance system, operational safety program, production acceptance testing, COS program, flight test data storage, developmental testing, function and reliability testing, cybersecurity protection, airworthiness acceptance application, inspections and audits, and documenting design changes.

FAA reviewed conditions placed on existing manufacturers of UAS for BVLOS to identify the extent to which the proposed requirements would represent incremental requirements.²³⁹ Since the consensus standards are not yet available, the extent of any design changes is uncertain. However, as reflected in current exemptions, manufacturers already update and revise designs for new technology and capabilities.²⁴⁰ The designs of UAS used by existing part 135 operators conducting package delivery also may not need any major design changes. For example, some proposed standards reflect existing requirements for those operators (e.g., anti-collision lights).

Many other proposed requirements also reflect existing processes and procedures, for example, quality assurance, production inspection and

testing, cybersecurity,²⁴¹ and manuals and instructions.^{242 243} Others likely involve only minimal expenditure. For example, submitting a DOC, required for each individual UA manufactured in accordance with a MOC, could be done in batches of up to 500 aircraft at a time in a few minutes of time.

Some requirements may result in incremental expenditures depending on the extent to which manufacturers are not already performing similar activities. Table 11 describes these proposed requirements and potential cost considerations. For example, FAA assumes that the incremental cost associated with data storage comes entirely from the cost of renting a server to hold the data. Because the data can be gathered automatically, FAA assumes that the cost of gathering the data will be minimal. However, with respect to airworthiness acceptance, existing processes have included type certification, special airworthiness certification, and obtaining FAA approval for any changes to the type of UA used.²⁴⁴ Therefore, the proposed process for airworthiness acceptance may not represent an incremental level of expenditure (and may represent a cost savings compared to existing processes).²⁴⁵

TABLE 11—POTENTIAL INCREMENTAL COSTS: MANUFACTURERS

Category	Description	Unit cost information
Airworthiness acceptance	Documentation of MOC with accepted or approved consensus standards.	Potential cost saving compared to type certification or special airworthiness certification; No data available.
COS program	Monitoring and resolution of in service safety issues and identified non-compliance.	Dependent on number of designs; No data available.
Data storage	Storage of model flight data for 2 years	\$6,000 per year. ¹

COS = continued operational safety.

MOC = means of compliance.

¹ Based on \$500 monthly costs. See, e.g.: www.liquidweb.com/products/dedicated/.

For example, data storage costs for the 30 manufacturers may cost in the range of \$180,000 annually (\$0.2 million annualized using discount rates of 3 and 7 percent over a 5-year period). FAA does not have data on COS program costs which may depend on the manufacturer's size. However, large manufacturers may already be implementing COS as standard practice.

FAA requests comments and data relevant to UA manufacturers.

ii. Operations

Operators must apply for an operating permit or operating certificate. Applications for an operating permit must include a description of the type and area of operations, company manual, recordkeeping plan, and

reporting procedures. Applications for an operating certificate must include a description of the type and area of operations, company manual, recordkeeping plan, reporting procedures, training program, communications and ground risk assessment, SMS, hazardous materials program, inoperable equipment plan, and rest and duty plan. Operating

²³⁹ See e.g., dockets FAA-2019-0573, FAA-2020-0499, and FAA-2022-0268.

²⁴⁰ See e.g., a December 2023 petition to amend exemption to enable operation of the operator's latest drone system in commercial package delivery operations, available at www.regulations.gov/document/FAA-2019-0573-0079.

²⁴¹ See, e.g., the security protocol DJI drones provide to prevent hijacking by third parties, available at enterprise.dji.com/data-security.

²⁴² See e.g., the previously referenced petition, available at <https://www.regulations.gov/document/FAA-2019-0573-0079>.

²⁴³ The Skydio production process includes inspection and flight testing of every UA, available at www.youtube.com/watch?v=NHuMG_QsFZO.

²⁴⁴ See e.g., www.regulations.gov/document/FAA-2019-0628-0052, www.regulations.gov/document/FAA-2023-1827-0012, and www.regulations.gov/document/FAA-2024-1317-0004.

²⁴⁵ There is significantly less FAA involvement in proposed process. From an airworthiness

perspective, the time and effort required to develop issue papers, negotiate airworthiness requirements, and approve and witness test plans and reports would be notably reduced. These steps are typically part of establishing the certification basis, which can take several years (and has for an existing manufacturer). In contrast, under the proposal, there would be no need for negotiated compliance, as manufacturers design their systems to meet accepted industry consensus standards. This approach results in cost savings for both FAA and the applicant.

permits must be renewed every two years while operating certificates will not need renewal. In addition, the proposed requirements include strategic deconfliction capability and conformance monitoring (for certain operations), alerting capability, validation testing (certificated operators), mandatory staff positions, STAs of covered persons, and security programs under 49 CFR part 1544.

FAA reviewed conditions placed on existing operators to conduct BVLOS operations to identify the extent to which the proposed requirements would represent incremental requirements. To large extent, the

proposed requirements reflect conditions in existing waivers and exemptions. For example, existing waivers require specific approved UA, UA performance standards (e.g., anti-collision lighting specifications), specific personnel (including qualifications and TSA vetting), operations manuals, tracking revisions to manuals, training of personnel involved in UAS operations, notifications of operations, and maintenance requirements and logs. Existing part 135 certificate holders conducting package delivery operations under exemptions have similar existing requirements, as well as hazardous

materials procedures and training.²⁴⁶ Similarly, part 135 certificate holders are already required to develop and implement an SMS under part 5.^{247 248} Other requirements may be different but not represent incremental expenditures (e.g., existing staff taking on a required position such as operations supervisor) or minimal (e.g., strategic deconfliction and conformance monitoring costs).

However, some requirements may result in one time and recurring expenditures, depending on the operator. Table 12 describes these proposed requirements and potential cost considerations.

TABLE 12—POTENTIAL INCREMENTAL COSTS: OPERATORS

Category	Description	Unit cost information
Operations manual updates	Updates would include the personnel required and their duties and responsibilities, and procedures for complying with the recordkeeping and reporting requirements.	Dependent on company size and operations; \$500 (8 hours) to \$1,850 (32 hours). ¹
SMS (certificated operations only).	Develop, implement, and keep current an SMS (14 CFR part 5) ¹ .	Scalable based on size and complexity; \$8,100–\$41,180 one-time, \$4,730–\$42,580 annual. ³
Limited TSA security program (package delivery operators).	Program to prevent or deter carriage of unauthorized packages and unauthorized access to operations.	Costs will vary depending on the specific security program. Components could include chain of custody and operational controls, security coordination, training, and reporting.
Vetting/STAs	Covered persons must undergo TSA STA, up to a Level 3 STA, prior to assuming certain security-sensitive duties.	There is an opportunity cost of time to undergo vetting (estimated at approximately 1.5 hours), and an estimated initial enrollment fee of \$87, in-person renewal fee of \$76, online renewal of \$51, and comparability determination fee of \$30. For a Level 2 STA (which is not proposed), the initial in-person enrollment and in-person renewal fee is \$66, the online renewal fee is \$41, and the comparable STA fee is \$30. ⁴

SMS = safety management system; STA = security threat assessment.

¹ Based on the extent of changes needed and an average wage rate increased to account for benefits (\$64/hour). Average wage based on the mean for Aerospace Engineering and Operations Technologists and Technicians (\$39.08; updated to \$39.74 for inflation using the Consumer Price Index for All Urban Consumers) divided by the percent of total employer costs of employee compensation represented by wages (62%) to account for benefits (38%). Wages and benefits information available at: <https://www.bls.gov/oes/2023/may/oes173021.htm> and https://www.bls.gov/news.release/eccec.t04.htm#ect_table4.f.1.

² Except the following 14 CFR part 5 requirements: §§ 5.21(a)(4), 5.21(a)(5), 5.21(c), 5.23(a)(2), 5.23(a)(3), 5.23(b), 5.25(b)(3), 5.25(c), 5.27(a), 5.27(b), 5.71(a)(7), 5.93, and 5.97(d).

³ Estimates reflect part 135 certificate holders with 1–9 crewed aircraft based on the regulatory impact analysis accompanying the SMS final rule (89 FR 33068 published 4/26/24; table 26). FAA does not have data specific to UA operations. One-time costs reflect gap analysis, SMS development, training, documentation, and other (e.g., safety promotion) activities; annual costs reflect data collection and analysis, SMS review and evaluation, software, training, documentation, and other (e.g., ongoing safety promotion) activities.

⁴ TSA estimates the time and fees based on the methodology and fees from the TSA Security Vetting of Certain Transportation Workers NPRM. See NPRM: Surface Vetting Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis, Document ID TSA–2023–0001–0004, p. 73 (May 25, 2023) available at <https://www.regulations.gov/document/TSA-2023-0001-0004>. For example, they estimate approximately 1.5 hours of time and an initial enrollment fee of \$87 for a Level 3 STA. These costs may change over time.

For example, if all 239 operators (nine exemption holders and 230 unique waiver holders) incur initial expenditures for manual updates equal to the high estimate in table 11 and annual expenditures equal to the low estimate, one-time costs would be

\$488,769 and annual costs would be \$122,192 (\$0.2 million annualized using discount rates of 3 and 7 percent over a 5-year period). Similarly, if the four exemption holders that are currently not part 135 certificate holders or otherwise have already implemented SMS become

certificated operators under part 108, one-time SMS costs could be in the range of \$66,160 and annual costs in the range of \$75,700 (\$0.1 million annualized using discount rates of 3 and 7 percent over a 5-year period) based on the midpoint of the cost ranges in table

²⁴⁶ For example, requirements include: personnel positions and qualifications, manuals, training, notifications, strategic deconfliction conformance monitoring, ground risk assessment, communications service monitoring and lost link procedures, UA maintenance requirements, and recordkeeping and reporting (see [www.regulations.gov/document/FAA-2019-0573-](https://www.regulations.gov/document/FAA-2019-0573-0078)

[0078](https://www.regulations.gov/document/FAA-2019-0573-0079) and www.regulations.gov/document/FAA-2019-0573-0079).

²⁴⁷ Proposed rule includes exceptions from the part 5 elements of: safety policy, including employee reporting of safety hazards or issues; safety accountability and authority; designation and responsibilities of required safety management personnel; coordination of emergency response

planning; safety performance monitoring and measurement, including a confidential employee reporting system; safety communication; and records.

²⁴⁸ FAA has also required SMS as condition for waiver (see https://www.faa.gov/sites/aa.gov/files/107W-2024-00828_Eric_Schwartz_CoW.pdf).

12. However, for any new certificated operators conducting package delivery, these costs would be offset by not incurring costs to obtain a part 135 certificate.²⁴⁹

In addition, operators must use part 108-compliant UA. The extent to which the proposed rule affects price levels of UA compared to under existing waivers and exemptions is unknown, but likely to change with industry growth over time. Operators must also use strategic deconfliction and conformance monitoring capabilities provided by an automatic data service provider in certain airspace and over certain populations. Therefore, in some cases, operators would need to either become certificated to provide services with those capabilities or obtain the service from some other certificated automated data service provider.

Finally, to obtain the benefits from scaling operations, operators would incur costs from business expansion and increased risks not mitigated by the proposed rule requirements (*e.g.*,

potential insurance cost increases, replacement parts, replacement UA). FAA does not have data to estimate these costs.

iii. Automated Data Service Provision

The proposed rule would not require that any entities become automated data service providers. However, because operators must obtain strategic deconfliction and conformance monitoring capability from an automated data service provider to operate in controlled airspace, or a capability for strategic deconfliction to operate over Category 3, 4, or 5 population densities, one or more automated data service providers will be needed for certain BVLOS operations under the proposed rule. Entities choosing to become an automated data service provider must: obtain a certificate for one of three service levels (Level 1, 2, or 3, depending on the complexity of the operation that the automated data service supports), including documentation how it meets

applicable proposed part 146 requirements, provide cyber and data security, develop and implement an SMS, have a change management process, have a training program, report incidences, retain records, meet data exchange requirements including non-repudiation, and meet software update requirements for versioning, testing, user notification, and FAA notification and approvals, depending on service levels.

Many of the proposed requirements represent standard business practices among data and software providers (*e.g.*, records of data exchanged with service users). However, some proposed requirements may result in one-time and recurring expenditures, depending on the entity. Table 13 describes these proposed requirements and potential cost considerations. FAA does not have data on the incremental costs of non-repudiation services and seeks comment on this issue.

TABLE 13—POTENTIAL INCREMENTAL COSTS: AUTOMATED DATA SERVICE PROVIDERS

Category	Description	Unit cost information
SMS	Develop, implement, and document an SMS (14 CFR part 5) ¹ .	Scalable based on size and complexity, \$8,100–\$28,140 one-time and \$540–\$10,940 annually. ²
Non-repudiation	Services must use a validation and verification method that provides assurance of the integrity and origin of the data exchanged with the user.	No data.
Training	Includes best practices in distributed software development; applicable regulations and ACs relating to automated data services, airspace classification, operating requirements, and flight restrictions; aviation safety culture concepts; and best practices in the provision of automated data services for aviation users.	Dependent on company size, \$1,400 per person annually. ³

AC = Advisory Circular.

¹ Except the following 14 CFR part 5 requirements: §§ 5.7, 5.9, 5.11, 5.13, 5.15, 5.27, and 5.71(c).

² Estimates reflect part 21 type and production certificate holders with 1–99 employees based on the regulatory impact analysis accompanying the SMS final rule (89 FR 33068 published 4/26/24; table 24). FAA does not have data specific to potential automated data service providers.

³ Estimated based on time (20 hours) valued at average loaded hourly wage rate (\$58) plus \$250 course cost based on typical training courses to obtain part 107 UA pilot license (*e.g.*, www.flyingmag.com/best-drone-pilot-course/). FAA does not have data specific to training for automated data service providers.

For example, entities choosing to become automated data service providers could incur costs to develop and implement an SMS if they have not already done so under FAA's SMS voluntary program or required under part 5 (part 135 certificate holders and aircraft design and manufacturers holding a type certificate and production certificate for the same product). SMS costs could be in the range of \$28,000 one-time and \$11,000 annually for a company of 99 employees

(\$0.02 million annualized using discount rates of 3 and 7 percent over a 5-year period). For the same size company, training costs could be in the range of \$138,600 annually (99 × \$1,400; \$0.1 million annualized using discount rates of 3 and 7 percent over a 5-year period). Total industry costs would depend on the mix of sizes and types of potential automated data service providers. For example, for an existing part 135 certificate holder (*e.g.*, conducting package delivery under an

exemption) to become an automated data service provider, incremental costs would not include SMS. Also, due to the airspace and population density around their typical operating environments, agricultural operators are not likely to require use of these services. FAA requests comments regarding the likely use and provision of automated data services.

²⁴⁹ As it stands today, operating under part 135 requires a lengthy exemption process for UAS operators because they cannot comply with the regulations as written. As a result, they must identify and document all exemptions that they

need, and FAA must issue the exemptions before they can issue an operating certificate. FAA and the few UAS operators currently operating under part 135 have spent substantial resources on this process. Because it is new and novel, these costs

may not be exemplary of those that future applicants would incur in the absence of the rule. However, the cost savings associated with the streamlined provisions contained in part 108 are likely significant.

iv. Uncertainties

The key uncertainty in the analysis of costs relates to the incremental nature of the proposed requirements (*i.e.*, compared to existing practices in a wide variety of industries and BVLOS operations via waivers and exemptions). This uncertainty affects who is likely to take advantage of BVLOS in the future (including, for operators, through a permit or certificate) affecting both benefits and costs. Also, impacts of the proposed rule that are dependent on consensus standards are uncertain because the standards are currently not available. In addition, changes in response to the proposed rule may lower unit costs through industry-developed solutions aimed at cost-effective compliance (similar to tools developed to assist with a part 5 compliant SMS). Entities with scaled operations (*i.e.*, certificated) may also be cost-effective service providers for individual operators (*i.e.*, compared to continuing under a permit).

Finally, there is uncertainty with respect to the impact on part 91 operators not equipped with ADS-B or EC equipment. These operators may incur costs to add equipment or as a result of loss of right-of-way. However, right-of-way impacts would be very site and situation specific and thus very difficult to estimate.

5. Comparison of Benefits and Costs

FAA is unable to quantify the benefits of the proposed rule. However, existing studies are indicative of the types and potential magnitude of benefits. When considered in the context of the myriad of potential applications and locations nationwide, FAA anticipates that the benefits from scaled BVLOS are significant. To the extent risks of scaled operations are successfully mitigated, and the scale or pace of scaling could not occur under the existing framework, benefits are attributable to the proposed rule. Given that the proposed rule includes requirements that mirror current BVLOS exemptions, while also proposing new requirements to mitigate risks inherent in expanded BVLOS operations, there are few incremental costs, and FAA anticipates that the benefits would likely exceed costs.

6. Alternatives

FAA does not have data to quantify the benefits and costs of the alternatives to the proposed rule. Table 14 provides qualitative evaluation of the potential impacts. For design and manufacturing, FAA considered requiring a special airworthiness certification rather than proposed airworthiness acceptance. Section X.A. describes the differences in these two approaches. FAA determined the alternative would not increase safety. As noted in table 14, the proposed approach may represent cost savings compared to obtaining special

airworthiness certification. For example, under the alternative, the applicant would need to host FAA airworthiness inspection and document review. The alternative would also increase Agency costs, including to inspect aircraft and review documentation.

For operations, FAA considered requiring package delivery operators to obtain a part 119 air carrier certificate and certificating each type of personnel involved in the control of a UA. Section VIII.A.1 describes the differences between obtaining an air carrier certificate and the proposed permits and certificates for UAS operators. Section VII.A.1 discusses the differences regarding personnel between manned aviation and UAS, and FAA’s rationale for selecting the proposed approach. FAA determined that these alternatives would have little impact on safety and would increase costs. The extra administrative process and structure in these alternatives is not optimized to UAS, necessitating a lot of waivers and exemptions. Waivers and exemptions lead to additional costs without affecting benefits.

For automated data service providers, FAA considered a traditional ATM model approach and different approaches discussed by the BVLOS ARC. FAA determined that these alternatives would potentially increase risks in the NAS and the ATM model would increase FAA costs.

TABLE 14—ALTERNATIVES

Alternative	Description	Impact on benefits and costs
Design and Production: Special airworthiness certification.	Resemble certification of light-sport category aircraft under part 21 using industry consensus standards, FAA inspection of every UAS.	Increase FAA costs and potentially manufacturers'; no change in safety (benefits).
Operations: Part 119 certification for package delivery. Personnel certification ..	Require package delivery operators to obtain a part 119 air carrier certificate. Certificating each type of personnel involved in the control of a UA.	Increase costs for new package delivery operators (no impact on existing); no change in safety (benefits). Increase operator costs; marginal safety assurances.
Automated Data Service Provision: Air traffic management	FAA manage separation of UAS and system-wide efficiency of part 108 operations.	Increase FAA costs; potentially increase risks to the NAS.
BVLOS ARC recommendations.	MOC and DOC for certification; requiring minimal information on provider; and recognizing specific UTM services.	Unclear impact on costs; potential increase in risks.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996), and the Small Business Jobs Act

of 2010 (Pub. L. 111–240, 124 Stat. 2504 Sept. 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

FAA and TSA are publishing this Initial Regulatory Flexibility Analysis (IRFA) to aid the public in commenting on the potential impacts to small entities from this proposal. FAA and

TSA invite interested parties to submit data and information regarding the potential economic impact that would result from the proposal. FAA and TSA will consider comments when making a determination or when completing a Final Rule.

C. Regulatory Flexibility Analysis

An IRFA must contain the following:

- (1) A description of the reasons why the action by the agency is being considered;
- (2) A succinct statement of the objective of, and legal basis for, the proposed rule;
- (3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- (4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- (5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

(6) A description of 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.

1. Reasons the Action Is Being Considered

As described elsewhere in this preamble, the proposed rule addresses the rapid advancement of UAS technology, and the lack of regulation which specifically addresses, allows, and ensures the safety of operations with said technology when operated BVLOS or at large scale. This is discussed in section IV.A of this preamble.

2. Objectives and Legal Basis of the Proposed Rule

As described elsewhere in this preamble, the objective of the proposed rule is to allow UAS to operate for commercial and recreational purposes beyond the VLOS of operators and at low altitudes in the NAS. This is done with the intent to enable a greater number and size of operations while still ensuring the safety of the NAS. Section I.A of this preamble discusses

this in greater detail. The legal authority for the proposed rule is described in section II of this preamble.

3. Description and Estimate of the Number of Small Entities

FAA used the definition of small entities in the RFA for this analysis. The RFA defines small entities as small businesses, small governmental jurisdictions, or small organizations. In 5 U.S.C. 601(3), the RFA defines “small business” to have the same meaning as “small business concern” under § 3 of the Small Business Act. The Small Business Act authorizes the Small Business Administration (SBA) to define “small business” by issuing regulations.

SBA has established size standards for various types of economic activities, or industries, under the North American Industry Classification System (NAICS). These size standards generally define small businesses based on the number of employees or annual receipts. Table 15 shows the SBA size standards for example industrial classification codes relevant for the proposed rule. Note that the SBA definition of a small business applies to the parent company and all affiliates as a single entity.

TABLE 15—SMALL BUSINESS SIZE STANDARDS: BVLOS OPERATIONS

NAICS code	Description	Size standard
Exemptions:		
336411	Aircraft Manufacturing	1,500 employees.
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.	1,350 employees.
481111	Scheduled Passenger Air Transportation	1,500 employees.
481211	Nonscheduled Chartered Passenger Air Transportation	1,500 employees.
482111	Line Haul Railroads	1,500 employees.
492110	Couriers and Express Delivery Services	1,500 employees.
459999	All Other Miscellaneous Retailers	\$11.5 million.
541370	Surveying and Mapping (except Geophysical) Services	\$19.0 million.
Waivers:¹		
221210	Natural Gas Distribution	1,150 employees.
236115	New Single-family Housing Construction (Except For-Sale Builders)	\$45.0 million.
327211	Flat Glass Manufacturing	1,100 employees.
333111	Farm Machinery and Equipment Manufacturing	1,250 employees.
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing.	1,350 employees.
334516	Analytical Laboratory Instrument Manufacturing	1,000 employees.
336411	Aircraft Manufacturing	1,500 employees.
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	100 employees.
481219	Other Nonscheduled Air Transportation	\$25.0 million.
512110	Motion Picture and Video Production	\$40.0 million.
513120	Periodical Publishers	1,000 employees.
541330	Engineering Services	\$25.5 million.
541370	Surveying and Mapping (except Geophysical) Services	\$19.0 million.
541519	Other Computer Related Services	\$34.0 million.
541990	All Other Professional, Scientific and Technical Services	\$19.5 million.
611310	Colleges, Universities and Professional Schools	\$34.5 million.
711219	Other Spectator Sports	\$16.5 million.

NAICS = North American Industrial Classification System.

¹ Based on a sample of 25 waivers.

Under exemptions, FAA identified three entities that may be small operators (one of which is also a manufacturer, and two of which also operate under a waiver). Under waivers, to estimate the number of small entities, FAA examined 51 randomly selected waivers to obtain a sample of 25 entities for which business data could be obtained.²⁵⁰ Of the 51 waivers examined, 12 represent individuals, 3 represent government entities, 11 represent entities under the SBA for

which no data could be obtained, and 25 represented entities under the SBA for which NAICS and information to compare to the size standard could be determined. Of the sample of 25, 72 percent (18 entities) represent small entities under the SBA. If this ratio holds for the whole population of 232 among waivers and exemptions, 166 would be small entities (72 percent × 229 waivers = 165 + 1 unique small entity under an exemption = 166). As described in section XIV.A, approximately 30 U.S.-based

manufacturers may be affected by proposed rule (table 16 shows the SBA size standards for the manufacturers). FAA used a similar process as for waivers (see footnote 30) to obtain data for a sample of 15. Five manufacturers are also operators under an exemption. Ten of the entities in the sample may be small businesses under the SBA. Thus, if this ratio holds for the population of manufacturers, a total of 20 manufacturers (10 × 2) may be small businesses.

TABLE 16—SMALL BUSINESS SIZE STANDARDS: MANUFACTURERS ¹

NAICS code	Description	Size standard
333310	Commercial and Service Industry Machinery Manufacturing	1,000 employees.
335311	Power, Distribution and Specialty Transformer Manufacturing	800 employees.
336411	Aircraft Manufacturing	1,500 employees.
459999	All Other Miscellaneous Retailers	\$11.5 million.
518210	Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services	\$40 million.
541370	Surveying and Mapping (except Geophysical) Services	\$19 million.
541512	Computer Systems Design Services	\$34 million.
541513	Computer Facilities Management Services	\$37 million.
541715	Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology) 11.	1,000 employees.

NAICS = North American Industrial Classification System.
¹ Based on a sample of 15 manufacturers.

No entities are currently operating as an automated data service provider, as the rules defining an automated data service provider do not currently exist.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements,

Section XIV.E, of this preamble details the recordkeeping and reporting requirements of proposed rule. Section XIV.A discusses other compliance requirements and costs. For this analysis, if FAA assumes that all entities are certificated, they will incur costs from updating their operator manual and from implementing SMS. FAA uses the highest costs for both these categories, as shown in table 17.

TABLE 17—SCREENING-LEVEL COMPLIANCE COSTS: OPERATORS

Requirement	Cost ¹
Operations manual updates	\$1,850
SMS	42,580
Total	44,430

¹ See table 12 for details.

Under these costs, only 12 percent of entities could face costs greater than 2 percent of estimated revenues. These are

²⁵⁰ FAA used the following process: first, it assigned each entry a random value using the RAND function in Excel and sorted by the random value. It then examined each entry in sequence and

all small entities. Extrapolating to the whole population, and including exemptions, FAA would estimate that 28 small entities could face costs greater than 2 percent of revenues. However, this method assumes all operators will be certificated. The intent of the rule is to allow smaller operations to conduct business under a permit, which does not involve SMS costs. These small entities are likely to qualify for a permit, and thus are unlikely to be required to meet the certificated requirements. Furthermore, it is unlikely that an entity would choose to obtain a certification if they would face significant adverse impacts. Thus, FAA relies on permitted costs.

Under the cost for a permit rather than a certificate, entities would face only the operations manual update cost. Under these costs, no entities would face costs greater than 2 percent of estimated annual revenue. Thus, FAA estimates that, among operators, small entities will not face significant adverse impacts under proposed rule.

Manufacturers face costs as described in section XIV.A.3. As described in table 10, the only cost which can be estimated is the data storage cost, which is estimated to be \$6,000 per year per manufacturer. Under this estimate, no

removed individuals and governmental entities. For remaining entries, a Google search of NAICS code, revenue and employee count data was performed. If any of these data could not be found, the entry

manufacturers would face costs greater than 2 percent of estimated annual revenue. This includes manufacturers that are also operators, which face the \$6,000 data storage cost as well as the \$44,430 certificated operator costs described in table 11.

There are not any currently operating automated data service providers. Because no entities are currently operating as automated data service providers, no extant entities would be required to comply with this rule. As such, any entity that opts to become an automated data service provider will have done so because it perceives the benefit to be greater than the cost. Nonetheless, entities will need the services of an automated data service provider to operate in certain locations and over certain population densities under proposed rule. However, the costs and potential impacts from use of third-party automated data service providers cannot be determined until a market for such services develops.

5. All Federal Rules That May Duplicate, Overlap, or Conflict

There are no relevant Federal rules that may duplicate, overlap, or conflict with proposed rule.

was discarded. If the data could be found, the entry was included in the sample. This process was repeated until 25 entries were added to the sample.

6. Significant Alternatives Considered

As described in section X.A, FAA considered an alternative for determining UA airworthiness based on existing part 21 procedures to enable BVLOS operations under part 108. Section X.A describes the alternative and rationale for the approach in proposed rule. Proposed rule approach may also lessen any adverse impacts on small manufacturers. As described in section XIV.A.5, FAA considered requiring package delivery operators to obtain an air carrier certificate under part 119, and as described in section VII.A, FAA considered requiring personnel certification. In comparison to these alternatives, proposed approach may lessen any adverse impacts on small operators. FAA also considered two alternatives to proposed requirements for automated data service providers. These alternatives, and the rationale for selecting proposed rule, are described in section XIII.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

FAA and TSA recognize that many other countries have adopted standards with regard to UAS manufacture, operation, and provisioning of automated data services in their respective airspace that may or may not align with this new framework. FAA will leverage Bilateral Aviation Safety Agreements, or equivalent agreements, to acknowledge commensurate standards that enable foreign commerce and reduce unnecessary obstacles. FAA and TSA invite comments on this approach and any additional information that would support future alignment.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or Tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. FAA determined that proposed rule will not result in the expenditure of \$187,000,000 or more (\$100,000,000 adjusted for inflation using the most current Implicit Price Deflator for the Gross Domestic Product) by State, local, or Tribal governments, in the aggregate, or the private sector, in any one year.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that agencies consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following proposed amendments to the existing information collection requirements previously approved under OMB Control Numbers 2120–0663, Service Difficulty Reports, and 2120–0705, Hazardous Materials Program Requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), FAA has submitted these proposed information collection amendments to OMB for its review.

This action contains the following new information collection requirements; (1) for part 108 MOC and DOC (OMB Control Number 2120–XXXX), (2) part 108 operators (OMB Control Number 2120–XXXX), and (3) for automated data service providers certificated under part 146 (OMB Control Number 2120–XXXX). As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), FAA has submitted these new proposed information collections to OMB for its review.

1. Part 108 Permitted and Certificated Operators

Summary: This collection includes application and ongoing burdens for both permitted and certificated operators. Unless otherwise specified,

burdens under subparts A, B, C, and F apply to both permitted and certificated operators. Burdens under subpart D apply only to permitted operators (or applicants thereof). Burdens under subpart E apply only to certificated operators (or applicants thereof). DOT requests that this information collection approval include all information that is either required to be reported, kept as record, or disclosed for any operator operating under part 108. This collection would also be used in instances where an operator is seeking authorization to deviate from certain regulations where available pursuant to the regulatory text.

Use: These collections will be used to permit or certificate operators safely and to provide adequate oversight to promote safety assurance.

Respondents (including number of): Permitted and certificated operators under part 108. FAA estimates there be over 200 operators within the first three years after part 108 goes into effect.

Frequency: Permit applications are to be submitted every 24 months.

Certificate applications are one-time collections that remain valid so long as the operator maintains currency. Ongoing recordkeeping, disclosing, and most reporting requirements are to be provided as needed. Reporting requirements under §§ 108.45(a) and (b) are to be provided to FAA once every 12 months. Information provided to obtain an authorization to deviate from any operating regulation which permits such a deviation would be provided on an ad hoc basis.

Annual Burden Estimate: FAA estimates that complying with the reporting, recordkeeping, and disclosing requirements to be imposed on permitted and certificated operators under proposed part 108 will cost annually, on average, \$1,013,479 in wages during each of the first three years of the rule's effectiveness.²⁵¹ In cases where authorization to deviate is sought, FAA estimates that such

²⁵¹ FAA estimated labor burdens as follows: for general recordkeeping and reporting tasks, FAA used Bureau of Labor Statistics (BLS) wage rate data for "Aircraft Mechanics and Service Technicians", job series 49–3011 (estimated nominal wage rate of \$36.66 per hour with a load factor of 1.51 to account for benefits) available at www.bls.gov/oes/current/oes_nat.htm; for tasks requiring legal expertise, FAA used BLS data on "Lawyers", job series 23–1011, in the Management of Companies and Enterprises industry (estimated nominal wage rate of \$114.12 per hour with a load factor of 1.51 to account for benefits) available at www.bls.gov/oes/current/oes231011.htm; for expertise on training programs, FAA used BLS data on commercial pilots, job series 53–2012 (estimated nominal wage rate of \$66.35 per hour with a load factor of 1.51 to account for benefits) available at www.bls.gov/oes/current/oes532012.htm.

application for authorization would take one (1) hour.

2. Part 108 Means of Compliance and Declaration of Compliance

Summary: This information collection includes collections that are required by FAA for voluntary consensus standards bodies proposing a means of compliance for UAS that can operate under part 108, as well as manufacturers of UAS that can operate under part 108 manufactured to standards set by an accepted or approved MOC and manufactured pursuant to a DOC. The purpose of this collection of information is to help FAA ensure that UAS operated under part 108 meet the minimum performance requirements of proposed rule. The MOC and DOC concepts are critical components of the framework of proposed rule to ensure UAS meet the performance-based requirements for BVLOS operations.

Use: This collection will be used to collect standards to be used as a MOC for part 108 UAS manufacturers, if accepted or approved by FAA. This collection will also be used to collect information and artifacts for DOC in accordance with a MOC that will be submitted by the UAS manufacturers. This collection will also be used for additional disclosing, recordkeeping, and reporting requirements that are imposed on manufacturers of the UAS that has received airworthiness acceptance.

Respondents (including number of): Respondents to this collection for the MOC will be voluntary consensus standards bodies. Respondents for DOC (and any additional paperwork burdens on manufacturers) will be manufacturers of UAS that are designed and built to operate under part 108. There are 35 elements that would require a MOC in subparts G and H of proposed rule. There will need to be at least one FAA-accepted (or FAA-approved) MOC for each of these 35 elements. Therefore, FAA estimates at least 35 MOC will be approved within the first three years upon part 108 going into effect. There will be ongoing burdens on manufacturers of the UAS that have received airworthiness acceptance; FAA anticipates that there will be approximately 30 manufacturers that produce at least one UAS manufactured under a DOC and thus charged with the associated ongoing paperwork reduction act burdens.

Frequency: Collections are required on an “as needed” basis. It is envisioned that submissions for MOC approval will occur as needed as voluntary consensus standards bodies develop adequate standards ready for approval by FAA.

Each individual UA manufactured in accordance with a MOC requires its own DOC, but submissions will be “one-time” for each DOC. To mitigate excess burden caused by repetitive submissions, submissions for DOCs can be made in batches of up to 500 aircraft at a time. Under § 108.760, all supporting documentation for the DOC must be retained by the manufacturer for two (2) years following the cessation of support for the COS of the UAS listed on the DOC. If the manufacturer makes any design changes, they must demonstrate that those design changes demonstrate compliance with the MOC under § 108.750(b). Flight data required to be kept as record under § 108.725 shall be kept by the manufacturer of the UAS that has received airworthiness acceptance for a minimum of two (2) years.

Annual Burden Estimate: 241 hours annually (on average), and \$226,591 annually from costs (including labor).²⁵²

3. Part 146 Automated Data Service Providers

Summary: Proposed part 146 provides a regulatory framework for appropriate government oversight of automated data services that support aircraft operations. DOT requests this information collection approval include all information that is either required to be reported, kept as record, or disclosed by any automated data service provider. This includes the information that a service provider must submit to FAA to become authorized and certificated. This also includes information that the service provider must provide to FAA on an ongoing or as-needed basis, and disclosures to their user base.

Use: These collections will be used to authorize and certify automated data service providers and provide adequate oversight of these services to promote safety assurance.

Respondents (including number of): Respondents for this collection are the automated data service providers. FAA cannot estimate without speculating the number of automated data service providers that will enter this market.

Frequency: Authorization and certification are one-time collections. Reporting requirements are as-needed.

²⁵² FAA estimated labor burdens using BLS statistics including rates for *Aerospace Engineering Operations Technologists and Technicians*, job series 17–3021 and 17–2011 (estimated wage rate of \$39.08 per hour with a load factor of 1.51 to account for benefits for an aeronautical technician for general tasks and estimated wage rate of \$64.74 per hour with a load factor of 1.51 for an aeronautical engineer for tasks requiring engineering subject matter expertise) available at www.bls.gov/oes/current/oes_nat.htm.

Annual Burden Estimate: FAA estimates the paperwork burden on service providers to be commensurate with the service level they are offering—service suppliers with offerings in higher service levels are required to provide more information to FAA as part of their applications, and therefore are estimated to have larger paperwork burdens.²⁵³ FAA estimates that Service Level 1 service providers will have a burden of (approximately) \$365 in their first year to obtain their certificate and first service authorization. FAA estimates that Service Level 2 service providers will have a burden of (approximately) \$800 in their first year to obtain their certificate and first service authorization. FAA estimates that Service Level 3 service providers will have a burden of (approximately) \$1,824 in their first year to obtain their certificate and first service authorization. These would be one-time expenses; obtaining additional authorizations to offer additional services would also have one-time costs that would be in line with the costs for the first authorization and would also be dependent on service level. However, for simplicity, the PRA analysis assumes 1 service authorization per entity. FAA estimates that data exchange and recordkeeping requirements for service providers of any service level will cost approximately \$6,000 per year to account for data storage.²⁵⁴ FAA estimates a *de minimis* net burden for required notifications to customers, such as alerting a service provider’s customer base of a software update, noting that these are already customary and usual business practices.

4. Hazardous Materials Program Requirements (OMB Control No. 2120–0705)

Summary: This current OMB Control Number accounts for the information collected from 14 CFR part 121, 135, and 145 operators associated with hazardous materials-specific regulatory requirements. This includes information collection from hazardous materials procedures and information, training programs, and notification requirements. Proposed part 108 includes similar requirements for part

²⁵³ FAA estimated labor burdens using BLS statistics including rates for Project Management Specialist within “Executive Secretaries and Executive Administrative Assistants”, job series 43–6011, in the Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services industry group (estimated nominal wage rate of \$55.74 per hour and a load factor of 1.51 to account for benefits) available at www.bls.gov/oes/current/oes436011.htm.

²⁵⁴ See, e.g., <https://www.liquidweb.com/products/dedicated/>.

108 permitted and certificated package delivery operators to be included in this collection.

Use: This collection is used to authorize, certify, and ensure compliance with hazardous materials-specific requirements associated with proposed part 108 operators and existing part 121, 135, and 145 operators.

Respondents (including number of): Respondents for this collection are proposed part 108 operators and existing part 121, 135, and 145 operators. FAA does not estimate an increase in total respondents. While FAA estimates an increase in part 108 certificated package delivery operator respondents, this increase is offset by a subsequent decrease in part 135 certificate holder respondents. In addition, FAA does not currently estimate any part 108 permitted package delivery operators but still accounts for these respondents to allow for an increase as new entrants emerge.

Frequency: Certificate applications are one-time collections that remain valid so long as the operator maintains currency but are submitted for additional review with any change. Training reporting and recordkeeping are created and updated initially and every 24 months following employee recurrent training.

Increase in Annual Burden Estimate: FAA estimates an overall increase of two (2) annual burden hours. The increase accounts for proposed requirement in § 108.570(l) for a part 108 certificated package delivery operator to develop and submit an SRA as a part of the will-carry § 108.570(a) authorizations. The other proposed increases in annual burden for part 108 certificated package delivery operators are offset by the subsequent decrease in annual burden for part 135 certificate holders. In addition, there is no annual burden estimated for part 108 permitted package delivery operators because FAA does not estimate any part 108 permitted package delivery operator respondents.²⁵⁵ However, FAA will account any annual burden for part 108 permitted package delivery operators as new entrants emerge.

²⁵⁵ FAA would estimate the increased burden using BLS data *Occupational Employment and Wages*, May 2023. Cargo and Freight Agents NAICS Code 43-5011 available at www.bls.gov/oes/current/oes435011.htm. Hourly wage rate is \$25.22. For private industry, BLS data shows that 34% of compensation is from benefits available at www.bls.gov/news.release/eccec.t04.htm#ectable4.f.1. Therefore, to account for benefits: \$25.22 * 1.34 = \$33.79.

5. Service Difficulty Reports (OMB Control No. 2120-0663)

Summary: This current OMB Control Number accounts for the information collected as part of a service difficulty report. Under proposed § 108.45(d), certificated operators would have to report to the unmanned aircraft manufacturer any failure, malfunction, or defect in an unmanned aircraft system that causes momentary or permanent loss of control or communication of the unmanned aircraft if it has endangered, or may endanger, the safe operation of the unmanned aircraft.

Use: Under the existing Information Collection Number 2120-0663, service difficulty report information is collected, collated by FAA, and used to determine service performance of aeronautical products. Regulations calling for the submission of Service Difficulty Reports enhance air safety by collecting additional and timelier data pertinent to critical aircraft or aeronautical components. Under proposed rule, this information would be directly reported to the manufacturer (and not FAA) so that the manufacturer can address this critical user feedback without delay and analyze the service performance of their own aeronautical products.

Respondents (including number of): Respondents for this collection are proposed part 108 certificated operators, in addition to those respondents already accounted for in OMB Information Collection Number 2120-0663.

Frequency: Service difficulty reports would be submitted on an as-needed basis.

Increase in Annual Burden Estimate: Information collection Number 2120-0663 estimates that each service difficulty report takes .667 hours to produce and submit. FAA believes that this a good estimate of the time that it would take for the service difficulty reports required under proposed § 108.45(d). This proposed regulation only applies to certificated operators, not permitted operators, and FAA does not have the information needed to estimate the number of certificated operators, nor the information to estimate the number of service difficulty reports that would be submitted by that pool of respondents each year for the first three years of the rule. For these reasons, FAA cannot yet estimate the total increase in burden.

FAA is soliciting comments to—

(1) Evaluate whether proposed information requirement is necessary for the proper performance of the functions

of FAA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FAA's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by *[INSERT DATE XX DAYS AFTER PUBLICATION IN THE Federal Register]*. Comments also should be submitted to the OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Office Building, Room 10202, 725 17th Street NW, Washington, DC 20053.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to ICAO SARPS to the maximum extent practicable. FAA has reviewed the corresponding ICAO SARPS and has identified no differences with these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6f for regulations and involves no extraordinary circumstances because it is in an NPRM. TSA has concluded that this action is covered by categorical exclusion number A3(a) and (d) in DHS Instruction Manual 023-01-001-01, Revision 01, Implementation of the National Environmental Policy Act (NEPA), which guides TSA compliance with NEPA.

H. Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying 14 CFR regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than

aviation, and to establish appropriate regulatory distinctions. Because this proposed rule would apply to UAS operations for various applications expected in Alaska (e.g., aerial surveying, civic interest, etc.), it could, if adopted, affect intrastate aviation in Alaska. FAA, therefore, specifically requests comments on whether there is justification for applying proposed rule differently in intrastate operations in Alaska.

XV. Executive Order Determinations

A. Executive Order 13132, Federalism

FAA and TSA have analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. FAA and TSA have determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

B. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,²⁵⁶ and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,²⁵⁷ FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to affect uniquely or significantly their respective Tribes. At this point, FAA has not identified any unique or significant effects, environmental or otherwise, on Tribes resulting from this proposed rule.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

FAA and TSA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. FAA and TSA have determined that it would not be a “significant energy action” under the Executive Order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. FAA and TSA have analyzed this action under the policies and agency responsibilities of Executive Order 13609 and have determined that this action would have no effect on international regulatory cooperation.

E. Executive Order 14192, Unleashing Prosperity Through Deregulation

This proposed rule, if finalized as proposed, is expected to be an E.O. 14192 deregulatory action as it is an enabling rule.

XVI. Incorporation by Reference

This NPRM proposes to incorporate by reference the final version of FAA Order JO 7400.[XX], currently available in draft form. A detailed discussion of the Order is located in section VI of this preamble. During the comment period of this NPRM, FAA Order JO 7400.XX, the draft of FAA Order JO 7400.[XX] will be posted in the public docket for this rulemaking at <https://www.regulations.gov/>.

In addition, ANSI/CTA-2063-A, which appears § 89.505 in the proposed amendatory text of this document, was previously approved for that section. No change is proposed to the incorporation by reference (IBR) material.

XVII. Privacy

With regard to the information persons may submit in accordance with this proposed rule’s requirements, FAA conducted a privacy impact assessment (PIA) under section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) and section 208 of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2889 (Dec. 17, 2002). The PIA found that proposed regulatory requirements that affect privacy include: Application information, training, and personnel information, UAS ownership data, and UAS location data.

As part of the PIA, FAA analyzed the effect this proposed rule might have on collecting, storing, and disseminating personally identifiable information of the public and UAS operators. FAA also examined and evaluated protections and alternative information-handling processes in developing proposed rule to mitigate potential privacy risks. A

copy of the draft PIA is posted in the docket for this rulemaking.²⁵⁸

Any vetting conducted by TSA and the security threat assessments proposed in this NPRM are covered by a current Department of Homeland Security system of records titled, “Department of Homeland Security/Transportation Security Administration—002 Transportation Security Threat Assessment System of Records.” This system of records allows TSA to collect and maintain records related to security threat assessments, employment investigations, and evaluations that TSA conducts on certain individuals for security purposes. For example, individuals who apply for a Transportation Worker Identification Credential or a Hazardous Materials Endorsement must undergo a security threat assessment, and records associated with the assessment are covered by this system.

XVIII. Additional Information

A. Comments Invited

FAA is managing the docket for this rulemaking. FAA and TSA invite interested persons to participate in this rulemaking by submitting written comments, data, or views. 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.

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, FAA and TSA will consider all comments they receive on or before the closing date for comments. FAA and TSA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. FAA and TSA 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

²⁵⁸ Upon finalization, PIAs are posted on the Department of Transportation’s Privacy Program page, available at [www.transportation.gov/individuals/privacy/privacy-impact-assessments#Federal%20Aviation%20Administration%20\(FAA\)](http://www.transportation.gov/individuals/privacy/privacy-impact-assessments#Federal%20Aviation%20Administration%20(FAA)).

²⁵⁶ 65 FR 67249 (Nov. 6, 2000).

²⁵⁷ FAA Order No. 1210.20 (Jan. 28, 2004), www.faa.gov/documentLibrary/media/1210.pdf.

information the commenter provides, to <https://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.dot.gov/privacy>.

B. Confidential Business Information and Sensitive Security Information (SSI)

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this preamble contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this preamble, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this preamble. Submissions containing CBI should be sent to the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary that FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Comments containing sensitive security information should be appropriately marked as containing such information and submitted by mail to the address listed in the **FOR FURTHER INFORMATION CONTACT** section. FAA will not place comments containing SSI in the public docket and will handle them with applicable safeguards and restrictions on access.

C. Electronic Access and Filing

A copy of this preamble, all comments received, any final rule, and all background material may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this proposed rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at <https://www.federalregister.gov> and the Government Publishing Office's website at <https://www.govinfo.gov>. A copy may also be found at FAA's Regulations and Policies website at https://www.faa.gov/regulations_policies.

Copies may also be obtained by sending a request to FAA, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA and TSA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. A small entity with questions for TSA may contact Craig Mosford, Industry Engagement Manager-Airports, Policy, Plans, and Engagement (PPE), Transportation Security Administration, at Craig.Mosford@tsa.dhs.gov. To find out more about SBREFA on the internet, visit https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects

14 CFR Part 36

Agriculture, Aircraft, Noise control.

14 CFR Part 43

Aircraft, Aviation safety, Maintenance, Preventive maintenance, Rebuilding, and Alteration, Reporting and recordkeeping requirements.

14 CFR Part 45

Aircraft, Exports, Signs and symbols.

14 CFR Part 48

Aircraft, Reporting and recordkeeping requirements, Signs and symbols.

14 CFR Part 89

Incorporation by reference, Remote identification of unmanned aircraft, Reporting and recordkeeping requirements.

14 CFR Part 91

Air traffic control, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 107

Aircraft, Airmen, Aviation safety, Incorporation by reference, Security measures.

14 CFR Part 108

Aircraft, Airmen, Aviation safety, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 133

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 137

Agriculture, Agricultural aircraft operations, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 146

Automated data service providers, Aviation safety, Computer technology, Data Exchange, Reporting and recordkeeping requirements.

49 CFR 1540

Air carriers, Airports, Aviation safety, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR 1544

Air carriers, Aircraft, Airmen, Airports, Arms and munitions, Aviation safety, Explosives, Freight forwarders, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

The Proposed Amendment

In consideration of the foregoing, FAA proposes to amend chapter I of title 14, Code of Federal Regulations, and TSA proposes to amend chapter XII of title 49, as follows:

Title 14—Aeronautics and Space

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715;

sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902.

■ 2. Add § 36.0 to read as follows:

§ 36.0 Applicability; aircraft that do not conform to a type certificate.

(a) *General applicability.* Except as provided in paragraph (e) of this section,

(1) For an aircraft described in § 21.190, § 21.191, § 21.193(h), or part 22 of this chapter, that does not conform to a type certificate, the requirements of this part apply at the time of application for a first airworthiness certificate, or when an aircraft previously issued an airworthiness certificate incorporates an alteration that would result in an acoustical change.

(2) For an aircraft described in part 108 of this chapter that does not conform to a type certificate, the requirements of this part apply at the time of application for an airworthiness acceptance.

(b) *Compliance requirements.* Compliance with this part requires—

(1) For an aircraft described in § 21.190, § 21.191, § 21.193(h), or part 22 of this chapter that does not conform to a type certificate,

(i) A determination that the applicable noise limits specified in this part are not exceeded for any configuration, flight profile, or reference condition required for an aircraft to demonstrate compliance; and,

(ii) When applicable, a determination that any test procedures and analyses contained in a related appendix to this part have been met for any configuration, flight profile, or reference condition required.

(2) For aircraft described in part 108 of this chapter, the applicant, prior to submitting the declaration of compliance required in § 108.715, must document that:

(i) The applicable noise limits required by this part are not exceeded for any configuration, flight profile, or reference condition required for an aircraft to demonstrate compliance; and,

(ii) When applicable, any test procedures and analyses contained in a related appendix to this part have been met for any configuration, flight profile, or reference condition required.

(c) *Use of a noise consensus standard.* An aircraft that does not conform to a type certificate may demonstrate compliance using a noise consensus standard that meets the following conditions:

(1) The noise consensus standard has been approved by FAA; and

(2) The noise consensus standard has been determined by FAA to be

appropriate for the aircraft and applicable to the aircraft's specific design.

(d) *No noise consensus standard available.* For an aircraft that does not conform to a type certificate, and for which no noise consensus standard has been approved or determined by FAA to be appropriate for the aircraft, the following apply:

(1) *Aircraft similar to a type-certificated aircraft.* An aircraft that is determined by FAA for noise purposes to be the same as or sufficiently similar in design to a type-certificated aircraft described in § 36.1 may demonstrate compliance with this part by—

(i) Using the same requirements as the type-certificated aircraft that is the same or sufficiently similar in design to the aircraft; or

(ii) Adopting the noise levels for the type-certificated aircraft that is the same or sufficiently similar in design to the aircraft when the aircraft has not been altered to result in an acoustical change.

(2) *Aircraft with no similar type-certificated aircraft.* If FAA determines that for noise purposes, there is no type-certificated aircraft of the same or sufficiently similar design described in § 36.1, an applicant may demonstrate compliance with this part using the noise requirements determined by FAA to be appropriate for the aircraft.

(e) *Exceptions.* The following aircraft that do not conform to a type certificate are excepted from demonstrating compliance with the requirements of this part:

(1) Aircraft issued an experimental airworthiness certificate in accordance with § 21.191(a) through (h) or (k) of this chapter;

(2) Aircraft which, if type-certificated, would not be required to demonstrate compliance with this part;

(3) Aircraft issued an experimental airworthiness certificate in accordance with § 21.191(i)(1) of this chapter on or before January 31, 2008, for the purpose of operating a light-sport aircraft; and

(4) Aircraft designed for agricultural unmanned aircraft operations under part 108 of this chapter that are issued an airworthiness acceptance for the purpose and exclusive use of agricultural aircraft operations.

■ 3. Amend § 36.1 by adding reserved paragraph (a)(6) and paragraph (a)(7) to read as follows:

§ 36.1 Applicability and definitions.

(a) * * *

(6) [Reserved]

(7) Aircraft that do not conform to a type certificate, in accordance with § 36.0.

* * * * *

■ 4. Revise § 36.3 to read as follows:

§ 36.3 Compatibility with airworthiness requirements.

(a) Each applicant for certification under this part must demonstrate that:

(1) For type certificated aircraft, that the aircraft complies with the airworthiness regulations in this chapter that constitute the type certification basis of the aircraft under all conditions in which compliance with this part is shown; or

(2) For aircraft without a type certificate, that the aircraft complies with all airworthiness requirements in this chapter applicable to the design of the aircraft under all conditions in which compliance with this part is shown.

(b) Each applicant for certification under this part must show that any procedure used to demonstrate compliance with this part, and any procedure and information for the flight crew developed under this part, are consistent with the requirements of paragraph (a)(1) or (2) of this section.

(c) Each applicant for airworthiness acceptance under part 108 of this chapter must:

(1) demonstrate that the aircraft complies with all airworthiness regulations in this chapter applicable to the design of the aircraft under all conditions in which compliance with this part is shown.

(2) show that any procedure used to demonstrate compliance with this part, and any procedure and information for the operator developed under this part, are consistent with the requirements of paragraph (c)(1) of this section.

■ 5. Amend § 36.1501 by revising paragraph (a) to read as follows:

§ 36.1501 Procedures, noise levels and other information.

(a) All procedures, weights, configurations, and other information or data employed for obtaining the certified noise levels prescribed by this part, including equivalent procedures used for flight, testing, and analysis, must be developed by the applicant and approved by FAA. For type certificated aircraft, noise levels achieved during type certification must be included in the aircraft's approved flight manual. For aircraft without a type certificate, noise levels achieved during airworthiness certification must be included in the Pilot's Operating Handbook. For aircraft subject to part 108 of this chapter, the noise levels declared during airworthiness acceptance must be included in the operating instructions.

* * * * *

- 6. Amend § 36.1581 by adding paragraph (h) to read as follows:

§ 36.1581 Manuals, markings, and placards.

* * * * *

(h) For aircraft subject to § 36.0, no noise operating limitations are prescribed under this part, and this part does not affect any operating limitations for these aircraft described elsewhere in this chapter. Noise compliance with this part must be documented as specified in § 21.190(e), § 21.191, or § 108.720 of this chapter, as applicable. The noise information must:

- (1) State that the aircraft has demonstrated compliance with this part;
- (2) Include the demonstrated noise levels of the aircraft; and
- (3) Include the following statement: No determination has been made by FAA whether the noise levels of this aircraft are or should be acceptable for operation in any location.

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

- 7. The authority citation for part 43 continues to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 106(g), 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

- 8. Amend § 43.1 by adding paragraph (b)(4) to read as follows:

§ 43.1 Applicability.

* * * * *

(b) * * *

(4) Any aircraft that is operated under part 108 of this chapter.

* * * * *

PART 45—IDENTIFICATION AND REGISTRATION MARKING

- 9. The authority citation for part 45 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113–40114, 44101–44105, 44107–44111, 44504, 44701, 44708–44709, 44711–44713, 44725, 45302–45303, 46104, 46304, 46306, 47122.

- 10. Amend § 45.1 by adding paragraph (a)(4) to read as follows:

§ 45.1 Applicability.

* * * * *

(a) * * *

(4) a part 108 airworthiness acceptance.

* * * * *

- 11. Amend § 45.10 by revising paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

§ 45.10 Marking.

* * * * *

(a) * * *

(2) For export to the United States under the provisions of an agreement between the United States and another country or jurisdiction for the acceptance of products and articles; or

(3) Under part 108, subpart G and H of this chapter; and

* * * * *

- 12. Amend § 45.11 by adding paragraph (i) to read as follows:

§ 45.11 Marking of products.

* * * * *

(i) Unmanned aircraft. A manufacturer of an unmanned aircraft complying with subparts G and H of part 108 of this chapter must mark each aircraft by attaching a fireproof identification plate that—

(1) Includes the information specified in § 45.13 using an approved method of fireproof marking;

(2) Must be secured in such a manner that it will not likely be defaced or removed during normal service, or lost or destroyed by accident; and

(3) Must be secured to the aircraft fuselage exterior so that it is legible and readable from the ground when the unmanned aircraft is not being operated.

- 13. Amend § 45.13 by:

■ a. Revising paragraph (a) introductory text;

■ b. Redesignating paragraph (a)(8) as paragraph (a)(9), and

■ c. Adding a new paragraph (a)(8). The revision and addition read as follows:

§ 45.13 Identification data.

(a) The identification required by § 45.11 (a) through (c) and (i) must include the following information:

* * *

(8) Part 108 designation, if any.

* * * * *

- 14. Amend § 45.29 by revising paragraph (b) introductory text and adding paragraph (b)(4) to read as follows:

§ 45.29 Size of marks.

* * * * *

(b) *Height.* Except as provided in paragraph (h) of this section, the nationality and registration marks must be of equal height and on—

* * *

(4) Part 108 aircraft must be at least 12 inches high except that:

(i) If the external surface is not large enough for 12-inch markings, marks must be at least 3 inches in height.

(ii) If the size of an unmanned aircraft does not allow for 3-inch markings, marks as large as practicable shall be placed on the largest external surface.

* * * * *

PART 48—REGISTRATION AND MARKING REQUIREMENTS FOR SMALL UNMANNED AIRCRAFT

- 15. The authority citation for part 48 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40113–40114, 41703, 44101–44103, 44105–44106, 44110–44113, 44809(f), 45302, 45305, 46104, 46301, 46306.

- 16. Amend § 48.1 by revising paragraph (c) to read as follows:

§ 48.1 Applicability.

* * * * *

(c) Small unmanned aircraft intended to be operated under part 108 of this chapter, issued an airworthiness certificate, operated outside of the territorial airspace of the United States, or registered through a trust or voting trust, must be registered in accordance with subparts A and B of part 47 of this chapter and satisfy the identification and registration marking requirements of subparts A and C of part 45 of this chapter.

- 17. Amend § 48.110 by revising paragraph (a)(7) to read as follows:

§ 48.110 Application.

* * * * *

(a)(7) For any unmanned aircraft equipped with a remote identification broadcast module, the serial number issued by the manufacturer of the remote identification broadcast module in accordance with the design and production requirements of part 89 of this chapter. An applicant may submit the serial number of more than one remote identification broadcast module as part of the application for aircraft registration under § 48.105. The serial number of a remote identification broadcast module provided in this application must not be listed on more than one Certificate of Aircraft Registration at the same time unless the applicant information in paragraphs (a)(1) through (a)(4) of this section is the same.

* * * * *

PART 89—REMOTE IDENTIFICATION OF UNMANNED AIRCRAFT

- 18. The authority citation for part 89 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101(d), 40103(b), 44701, 44805, 44809(f); Section 2202 of Pub. L. 114–190, 130 Stat. 629.

- 19. Amend § 89.305 by amending the introductory paragraph as follows:

§ 89.305 Minimum message elements broadcast by standard remote identification unmanned aircraft.

Except as provided in § 108.200 for operations conducted under part 108 of this chapter, a standard remote identification unmanned aircraft must be capable of broadcasting the following remote identification message elements:

* * * *

- 20. Revise § 89.505 to read as follows:

§ 89.505 Serial Numbers.

Serial number required. No person may produce a standard remote identification unmanned aircraft under § 89.510, § 89.511, or § 89.515 or a remote identification broadcast module under § 89.520, unless the producer assigns to the unmanned aircraft or remote identification broadcast module a serial number that complies with ANSI/CTA-2063-A. ANSI/CTA-2063-A, *Small Unmanned Aerial Systems Serial Numbers* (September 2019) is incorporated by reference into this section with the approval of the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at FAA's Office of Rulemaking (ARM-1), 800 Independence Avenue SW, Washington, DC 20590 (telephone 202-267-9677) and is available from Consumer Technology Association (CTA), 1919 South Eads Street, Arlington, VA 22202, CTA@CTA.tech, 703-907-7600 or at <https://www.cta.tech>. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/Federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

- 21. Add § 89.511 to read as follows:

§ 89.511 Production requirements for unmanned aircraft produced under an airworthiness acceptance issued under part 108 of this chapter.

No person may produce an unmanned aircraft for operation in the airspace of the United States under an airworthiness acceptance issued under part 108 of this chapter unless:

- (a) All applicable requirements of part 108 of this chapter are met; and
- (b) The unmanned aircraft is designed and produced to meet the minimum performance requirements for standard remote identification of unmanned aircraft established in § 89.310 in accordance with an FAA-accepted means of compliance.

- 22. Amend § 89.515 by amending the section heading and the lead-in paragraph as follows:

§ 89.515 Production requirements for unmanned aircraft without design approval or production approval issued under part 21 of this chapter or airworthiness acceptance under part 108 of this chapter.

Except as provided in § 89.510 and § 89.511, after September 16, 2022, no person may produce an unmanned aircraft for operation in the airspace of the United States unless—

* * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

- 23. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534; Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); Sec. 828 of Pub. L. 118–63, 138 Stat. 1330 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

- 24. Amend § 91.1 by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 91.1 Applicability.

(a) Except as provided in paragraphs (b), (c), (e), (f), and (g) of this section and §§ 91.701 and 91.703, this part prescribes rules governing the operation of aircraft within the United States, including the waters within 3 nautical miles of the U.S. coast.

* * * *

(g) Except as provided in § 108.180 of this chapter, this part does not apply to any aircraft governed by part 108 of this chapter.

- 25. Amend § 91.113 by adding paragraph (h) to read as follows:

§ 91.113 Right-of-way rules: Except water operations.

* * * *

(h) *Unmanned aircraft.* An unmanned aircraft conducting operations under part 108 of this chapter has the right-of-way over other aircraft in flight unless—

- (1) That aircraft is operating in a Category 5 population density area as described in § 108.185 of this chapter;
- (2) That aircraft is operating in Class B or C airspace as described in § 108.180(b) of this chapter;
- (3) That aircraft is departing from or arriving at an airport or heliport; or
- (4) That aircraft is equipped and broadcasting their aircraft's location using—

- (i) ADS-B Out equipment that meets the requirements of § 91.227; or
- (ii) electronic conspicuity equipment that meets the performance

requirements of § 108.195(a)(2)(ii) of this chapter.

- 26. Amend § 91.225 by revising paragraph (f) to read as follows:

§ 91.225 Automatic Dependent Surveillance-Broadcast (ADS-B) Out equipment and use.

* * * *

(f) Except as prohibited in paragraph (h)(2) of this section, each person operating an aircraft equipped with ADS-B Out must operate this equipment in the transmit mode at all times unless—

(1) Otherwise authorized by FAA when the aircraft is performing a sensitive government mission for national defense, homeland security, intelligence or law enforcement purposes and transmitting would compromise the operations security of the mission or pose a safety risk to the aircraft, crew, or people and property in the air or on the ground; or

(2) Otherwise directed by ATC when transmitting would jeopardize the safe execution of air traffic control functions; or

(3) The equipment is operated in accordance with § 108.195 of this chapter and operated solely to meet the conspicuity requirements in § 91.113(h)(2).

PART 107—SMALL UNMANNED AIRCRAFT SYSTEMS

- 27. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40101 note, 40103(b), 44701(a)(5), 46105(c), 46110, 44807.

- 28. Amend § 107.1 by revising paragraphs (b)(3) and (4) and adding paragraphs (b)(5) and (6) to read as follows:

§ 107.1 Applicability.

* * * *

(b) * * *

(3) Any operation that the holder of an exemption issued in conjunction with a determination under 49 U.S.C. 44807 elects to conduct pursuant to the exemption, unless otherwise specified in the exemption;

(4) Any operation that a person elects to conduct under part 91 of this chapter with a small unmanned aircraft system;

(5) Operation of unmanned aircraft systems beyond the visual line of sight of the operator; or

(6) Carriage of property or packages by aircraft for compensation or hire.

- 29. Add § 107.8 to read as follows:

§ 107.8 Aviation Safety Reporting Program: Prohibition against use of reports for enforcement purposes.

The Administrator of FAA will not use reports submitted to the National Aeronautics and Space Administration under the Aviation Safety Reporting Program (or information derived therefrom) in any enforcement action except information concerning accidents or criminal offenses which are wholly excluded from the Program.

■ 30. Add § 107.10 to read as follows:

§ 107.10 Prohibition on interference with a remote pilot in command or visual observer.

No person may assault, threaten, intimidate, or interfere with a remote pilot in command or visual observer in the performance of their duties regarding unmanned aircraft operations.

■ 31. Revise § 107.41 to read as follows:

§ 107.41 Operations in certain airspace.

(a) No person may operate an unmanned aircraft under this part in Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport unless all the following conditions are met:

(1) The unmanned aircraft is operated 400 feet above ground level or below;

(2) The unmanned aircraft is operated in compliance with this part.

(b) No person may conduct operations under this section in any airspace designated by the Administrator as requiring prior authorization, except in accordance with that authorization.

(c) An operator may deviate from any provision of this section under the terms of an authorization issued by the Administrator.

(d)(1) A list of airspace designated by the Administrator as requiring prior authorization prior to operating under this section can be found in FAA Order JO 7400.[XX], Unmanned Aircraft System Airspace Designations, dated [TBD]. FAA Order JO 7400.[XX] is incorporated by reference with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order JO 7400.XX is effective [Month, XX, 202X], through [Month, XX, 202X+1]. This IBR material is available for inspection at FAA and at the National Archives and Records Administration (NARA). Contact FAA at: Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, (202) 267-8783. An electronic version of FAA Order JO 7400.[XX] is available on FAA's website at www.faa.gov/air_

traffic/publications. For information on the availability of this material at NARA, visit www.archives.gov/federalregister/cfr/ibr-locations or email fr.inspection@nara.gov.

(2) Before updating FAA Order JO 7400.[XX], FAA will publish any proposed changes to designated airspace, in full text, as proposals in the **Federal Register**, unless there is good cause to forgo notice and comment rulemaking, followed by publication of associated final rules in the **Federal Register**. FAA will then integrate these updates into the next edition of FAA Order JO 7400.[XX]. FAA will request that the Director of the Federal Register approve the IBR of the next edition of the order as of [MM/DD/YYYY+1].

(e) Unmanned aircraft systems operations are prohibited from flying in Security Sensitive Airspace, unless authorized.

§ 107.205 [Amended]

■ 32. Amend § 107.205 by removing the last sentence in paragraph (a) and removing and reserving paragraphs (c) and (h).

■ 33. Add part 108 to subchapter F to read as follows:

PART 108—OPERATIONS OF UNMANNED AIRCRAFT SYSTEMS BEYOND VISUAL LINE OF SIGHT

Subpart A—General

Sec.

- 108.1 Applicability.
- 108.5 Definitions.
- 108.10 Reproduction or alteration.
- 108.15 Prohibition in interference with unmanned aircraft operations personnel.
- 108.20 Inspection, testing, and demonstration of compliance.
- 108.25 Aviation safety reporting program: prohibition against use of reports for enforcement purposes.
- 108.30 Base of operations.
- 108.35 Operator identification.
- 108.40 Operator recordkeeping requirements.
- 108.45 Operator reporting requirements.

Subpart B—Operating Rules

Sec.

- 108.100 General.
- 108.105 Unmanned aircraft.
- 108.110 Unmanned aircraft lighting.
- 108.115 Registration.
- 108.120 General operating requirements.
- 108.125 Careless or reckless operation.
- 108.130 Manuals and instructions.
- 108.135 Company operations manual.
- 108.140 Aircraft performance.
- 108.145 Weather conditions.
- 108.150 Operating location.
- 108.155 Unmanned aircraft tracking.
- 108.160 ADS-B and transponder use.
- 108.165 Area of operations.
- 108.170 Preflight requirements.
- 108.175 Operating restrictions.
- 108.180 Operations in controlled airspace.

- 108.185 Operation over people.
- 108.190 Use of strategic deconfliction and conformance monitoring.
- 108.195 Operation near aircraft; low altitude right-of-way rules.
- 108.200 Operational status broadcast.
- 108.205 Operation in shielded areas.
- 108.210 Operation of multiple unmanned aircraft.
- 108.215 Emergency conditions.
- 108.220 Unmanned aircraft flight restriction.

Subpart C—Operations Personnel

Sec.

- 108.300 General.
- 108.305 Operations supervisor.
- 108.310 Flight coordinator.
- 108.315 Personnel knowledge and training.
- 108.320 Medical condition.
- 108.325 Alcohol or drugs.
- 108.330 Duty and rest requirements.
- 108.335 Security threat assessment for certain personnel.

Subpart D—Permitted Operations

Sec.

- 108.400 Operations under a permit.
- 108.405 Applications for operating permits.
- 108.410 Duration of permits.
- 108.415 Issuance of an operating permit.
- 108.420 Denial, suspension, or revocation of operating permits.
- 108.425 Amendment of permits.
- 108.430 Display of permit.
- 108.435 Cybersecurity.
- 108.440 Package delivery operations.
- 108.445 Agricultural operations.
- 108.450 Aerial surveying operations.
- 108.455 Civic interest operations.
- 108.460 Unmanned aircraft operations training.
- 108.465 Demonstration operations.
- 108.470 Flight test operations.
- 108.475 Recreational permit operations.

Subpart E—Certificated Operations

Sec.

- 108.500 Operations under a certificate.
- 108.505 Applications for operating certificates.
- 108.510 Duration of certificates.
- 108.515 Issuance of an operating certificate.
- 108.520 Denial, suspension, or revocation of operating certificates.
- 108.525 Amendment of certificates.
- 108.530 Recency of operations.
- 108.535 Cybersecurity.
- 108.540 Training program.
- 108.545 Validation tests.
- 108.550 Communication and ground risk assessments.
- 108.555 Inoperative equipment.
- 108.560 Safety management system.
- 108.565 Package delivery operations.
- 108.570 Hazardous materials.
- 108.575 Agricultural operations.
- 108.580 Aerial surveying operations.
- 108.585 Civic interest operations.

Subpart F—Maintenance and Alterations

Sec.

- 108.600 General.
- 108.605 Persons performing maintenance and alterations.
- 108.610 Unmanned aircraft maintenance.
- 108.615 Life-limited parts.

- 108.620 Unmanned aircraft batteries.
 108.625 Repairs and alterations.
 108.630 Operation after maintenance or alterations.

Subpart G—Procedures for Unmanned Aircraft System Airworthiness Acceptance

Sec.

- 108.700 Airworthiness acceptance generally.
 108.705 Means of compliance.
 108.710 Compliance with design, test, production, noise, and airworthiness requirements.
 108.715 Declaration of compliance.
 108.720 Documents.
 108.725 Flight data.
 108.730 Quality assurance system.
 108.735 Production.
 108.740 Continued operational safety program.
 108.745 Inspections and audits.
 108.750 Design changes.
 108.755 Repairs and alterations.
 108.760 Record retention.
 108.765 Rescission.

Subpart H—Design and Testing Requirements for Airworthiness Acceptance

Sec.

- 108.800 General.
 108.805 Size, weight, and speed.
 108.810 Simplified user interaction.
 108.815 Signal monitoring and transmission.
 108.820 Position, navigation, and timing.
 108.825 Collision avoidance.
 108.830 Anti-collision lighting.
 108.835 Position lighting.
 108.840 Power generation, storage, and distribution system.
 108.845 Propulsion system.
 108.850 Fuel system.
 108.855 Fire protection.
 108.860 Software.
 108.865 Electronic hardware.
 108.870 Systems and equipment.
 108.875 Cybersecurity.
 108.880 Associated elements design and performance requirements.
 108.885 Suitability and durability of materials.
 108.890 Operating environment conditions.
 108.895 Lightning protection.
 108.900 Flight data recorder.
 108.905 Flight data analysis.
 108.910 Noise.
 108.915 Placards.
 108.920 Identification and marking.
 108.925 Additional design and performance requirements for specific operational purposes.
 108.930 Developmental testing.
 108.935 Function and reliability testing.

Authority: 49 U.S.C. 106(f), 40101 note, 40103(b), 44701(a)(5), 46105(c), 46110, 44807.

Subpart A—General

§ 108.1 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to any person who—

(1) Conducts, or intends to conduct, unmanned aircraft system beyond visual line of sight operations in the U.S. airspace;

(2) Requests FAA issuance of an operating permit or certificate to operate an unmanned aircraft system in accordance with this part;

(3) Performs maintenance on an unmanned aircraft system that has received an airworthiness acceptance issued in accordance with this part;

(4) Designs, manufactures, or produces an unmanned aircraft system for operation under this part;

(5) Holds or applies for airworthiness acceptance of an unmanned aircraft system in accordance with subparts G and H of this part; or

(6) Submits a voluntary consensus standard for acceptance or approval by the Administrator as a means of compliance for any provision of this part.

(b) This part does not apply to any of the following:

(1) Unmanned aircraft operation conducted in accordance with part 107 of this chapter.

(2) Unmanned aircraft operation conducted in accordance with part 91 of this chapter.

(3) Unmanned aircraft systems operation conducted under the provisions of 49 U.S.C. 44809.

(4) An aircraft with any person on board during operations.

§ 108.5 Definitions.

The following definitions apply to this part. If there is a conflict between the definitions of this part and the definitions specified in § 1.1 of this chapter, the definitions in this part control for the purposes of this part:

Associated Elements means those elements that are not directly affixed to an unmanned aircraft and are necessary to interact with the unmanned aircraft for safe flight during all normal, abnormal, or emergency flight operations.

Command and Control Link means the command and control data link which connects the unmanned aircraft and the ground control station for the purposes of managing the flight.

Conformance monitoring means the real-time ability to determine whether an unmanned aircraft is flying in accordance with its operational intent, and to share situational awareness data with relevant airspace users when off-nominal or contingent situations occur.

Detect and avoid means the ability for an unmanned aircraft system to see, sense, or detect aircraft or other hazards and to make a flight adjustment to avoid a collision hazard.

Flight coordinator means an individual who monitors an unmanned aircraft system operating under this part and that can control, initiate emergency actions, or issue commands to the unmanned aircraft during flight.

Ground control station means the associated element that communicates with and controls the unmanned aircraft.

Hazardous material means a material as defined in 49 U.S.C. 5102(2) and 49 CFR 171.8.

Life-limited part means any part for which a mandatory replacement limit is specified by the manufacturer of the unmanned aircraft and is documented in the maintenance instructions.

Operational intent means a volume-based representation of airspace encapsulating the intended flight path for an unmanned aircraft operation, comprising one or more overlapping or contiguous 3-dimensional volumes of airspace combined with a beginning and ending time for each volume.

Operations personnel means a person who is performing a safety function employed by, or used by, an operator under this part.

Operator means a person that conducts operations under this part.

Package delivery means the delivery of goods, materials, or supplies from a business or commercial location to a residential or business end user.

Safe distance means the minimum distance that is necessary to avoid a collision hazard with another aircraft.

Strategic deconfliction means the use of an interoperable strategic conflict detection and resolution capability to mitigate the risk of collision between participating unmanned aircraft.

Strategic conflict detection means the process of identifying overlapping operational intents among unmanned aircraft.

Strategic conflict resolution means the process of resolving overlapping operational intents among unmanned aircraft.

Target average conformance means the process of monitoring an operator's ability to fly in accordance with its operational intents over a defined period of time.

§ 108.10 Reproduction or alteration.

(a) No person may make or cause to be made—

(1) Any fraudulent or intentionally false record or report that is required to be made, kept, or used to show compliance with any requirement under this part.

(2) Any reproduction or alteration, for fraudulent purpose, of any permit, certificate, authorization, record, or

report required or issued under this part.

(b) The commission by any person of an act prohibited under paragraph (a) of this section is a basis for any of the following:

- (1) Denial of an application for an operating permit or certificate.
- (2) Denial of a waiver.
- (3) Denial of a declaration of compliance.
- (4) Suspension or revocation of any permit, certificate, waiver, airworthiness acceptance, declaration of compliance issued, or similar held by that person.
- (5) A civil penalty.

§ 108.15 Prohibition on interference with unmanned aircraft operations personnel.

No person may assault, threaten, intimidate, or interfere with the operations personnel of an unmanned aircraft in the performance of their duties related to unmanned aircraft operations.

§ 108.20 Inspection, testing, and demonstration of compliance.

(a) An operator of an unmanned aircraft system must—

- (1) Have the authorization to operate and identification readily accessible when operating.
- (2) Present the operating authorization and identification for inspection upon a request from any of the following:
 - (i) The Administrator.
 - (ii) An authorized representative of the National Transportation Safety Board.
 - (iii) Any Federal, State, or local law enforcement officer.
- (3) Make available, upon request, to the Administrator or any authorized representative of the National Transportation Safety Board any document, record, or report required to be kept under the regulations of this chapter.

(b) The operator of an unmanned aircraft system must, upon request, allow the Administrator to witness any test or make inspection of the unmanned aircraft system, including—

- (1) Any aspect of the operation of an unmanned aircraft system;
- (2) Access to the operations area for the unmanned aircraft; and
- (3) If applicable, the automated data services utilized to determine compliance with this part.

(c) Each employee of, or person used by, the operator who is responsible for maintaining the operator's records must make those records available to the Administrator.

(d) Failure by any operator to make available to the Administrator upon request any required record, document,

or report is grounds for suspension of all or any part of the operator's permit or certificate.

§ 108.25 Aviation safety reporting program: prohibition against use of reports for enforcement purposes.

The Administrator will not use reports submitted to the National Aeronautics and Space Administration under the Aviation Safety Reporting Program (or information derived therefrom) in any enforcement action, except information concerning accidents or criminal offenses, which are wholly excluded from the program.

§ 108.30 Base of operations.

(a) Each operator must maintain a principal base of operations in the United States and submit that information in accordance with § 108.405 or § 108.505, as appropriate.

(b) If different from the principal base of operations, the operator shall provide a U.S. physical address that shall serve as the primary point of contact for correspondence with FAA.

(c) At least 30 days before changing the location of its principal base of operations, an operator must provide written notification to the Administrator.

(d) An operator may perform operations at locations other than the principal base of operations, as authorized by the Administrator.

§ 108.35 Operator identification.

(a) Unless otherwise authorized by the Administrator, an operator may not operate or advertise services of an unmanned aircraft under this part using a business name other than a business name listed on the operating permit or certificate.

(b) No operator may operate an unmanned aircraft under this part unless the identity of the unmanned aircraft operator is displayed on the exterior of the unmanned aircraft in a manner acceptable to the Administrator.

§ 108.40 Operator recordkeeping requirements.

Each operator shall keep records of the items listed in paragraphs (a) through (e) of this section per the timelines specified in paragraph (f) of this section and must provide access or copies to the Administrator upon request in a manner acceptable to the Administrator.

(a) *Unmanned Aircraft.* Each operator must maintain records on each unmanned aircraft used in operations under this part, including:

- (1) The total time in service of each unmanned aircraft.
- (2) The status of any life-limited parts.

(3) Records of each flight performed under this part which includes—

- (i) The time, date, and duration of the flight;
- (ii) The unmanned aircraft registration number;
- (iii) The type of operation;
- (iv) The individual flight paths of each flight including origin, destination, and altitude(s);
- (v) The name of the designated operations personnel assigned to each flight;
- (vi) Landing locations (if different from takeoff origin or destination locations);
- (vii) For package delivery operations, the pickup points and delivery locations for the flight; and
- (viii) For agricultural operations, the name and address of each person for whom agricultural unmanned aircraft services were provided, the date of the service, and the name and quantity of the material dispensed.

(b) *Personnel.* Each operator shall maintain records on each operations personnel required by the company operations manual and used in operations under this part, including—

- (1) The full name of the individual;
- (2) The individual's qualifications in sufficient detail to determine their ability to participate in operations under this part;
- (3) The individual's current duties and the date of assignment to those duties;
- (4) Any information concerning the individual's release from employment for cause; and
- (5) For operators holding an operating certificate pursuant to subpart E of this part—

- (i) The dates and times of operations personnel assigned work shifts,
- (ii) The length of the rest period prior to each duty period for each of the required operations personnel, and
- (iii) Total hours on duty per calendar day for each of the required operations personnel.

(c) *Mechanical Irregularities.* Each operator shall provide a log for operations personnel to record mechanical irregularities for the unmanned aircraft and its associated elements.

(1) Each operations person shall enter, or cause to be entered, each mechanical irregularity in the log for the unmanned aircraft and its associated elements that comes to the person's attention.

(2) Each operations personnel who takes corrective action concerning a reported or observed failure or malfunction for the unmanned aircraft or its associated elements shall enter, or have entered, the action taken in the log.

(d) *Maintenance.* Each operator shall ensure that it maintains records of the unmanned aircraft inspection status and for each maintenance or alteration activity to the unmanned aircraft or its associated elements.

(1) The records must include the current inspection status of the unmanned aircraft and, for each maintenance or alteration activity performed by operations personnel on the unmanned aircraft or its associated elements, a record that includes—

(i) A general description of the work performed;

(ii) The completion date of the work;

(iii) The identification of the person performing, or who performed, the work; and

(iv) The approval for return to service.

(2) An operator need not comply with the requirements of paragraph (d)(1) of this section for the removal and replacement of unmanned aircraft batteries designed for frequent, toolless swapping if the operator has other means of tracking battery use, life, and performance.

(3) An operator need not comply with the requirements of paragraph (d)(1) of this section for the removal and replacement of unmanned aircraft components that are designed for toolless removal and reinstallation if the operator has procedures for ensuring that any part that is removed is inspected for serviceability prior to being reinstalled and—

(i) The parts are reinstalled on the same unmanned aircraft; or

(ii) The parts are not subject to time limits; or

(iii) The operator has other means of tracking installation and use.

(e) *Training.* Each operator must maintain a record of all initial and recurrent training taken by each person required to receive training under this part.

(1) The record shall contain, at a minimum:

(i) The person's name and assigned job function,

(ii) The date of hire or start of a related job function,

(iii) The most recent training completion date,

(iv) A description, copy, or reference to training materials used to meet the training requirement,

(v) The name and address of the organization providing the training, and

(vi) A copy of the certification issued when the individual was trained, which shows that a test has been completed satisfactorily.

(2) Training records required to be kept under this section include:

(i) Records of the initial and recurrent training required under § 108.315.

(ii) Records of the initial and recurrent training for the recognition of hazardous materials required under § 108.440.

(iii) Records of the initial and recurrent hazardous materials training taken by each person who performs or directly supervises a job function specified in § 108.570(b).

(iv) Records of the training received for agricultural operations in accordance with the training required under §§ 108.445(i) and 108.575(g).

(f) *Timeframes.* Records required under this paragraph shall be kept per the following timeframes.

(1) *Unmanned Aircraft.* Records required under paragraphs (a)(1) and (2) of this section must be maintained for the life of the unmanned aircraft. Data required under paragraph (a)(3) of this section must be maintained for a minimum of 24 months.

(2) *Personnel.* Records required under paragraphs (b)(1) through (3) of this section must be maintained for the length of employment of that individual plus 12 months after separation. Data required under paragraph (b)(4) of this section must be maintained for 12 months after the separation from employment of that individual. Records required under paragraph (b)(5) of this section must be maintained for three (3) months.

(3) *Mechanical Irregularities.* Records required under paragraph (c) of this section must be maintained for a minimum of 24 months.

(4) *Maintenance.* Records required under paragraph (d) of this section must be maintained for a minimum of 24 months.

(5) *Training.* Records required under paragraph (e) of this section must be maintained for the length of employment of that individual plus 12 months after separation.

§ 108.45 Operator reporting requirements.

(a) *Flight Data.* The operator must maintain a flight data collection system that collects data related to the usage and reliability of the unmanned aircraft.

(1) The operator must report to FAA aggregate flight data consisting of the total number of flight hours operated for each unmanned aircraft, including the make/model/series and registration number, used in operations under this part, in a form and manner acceptable to the Administrator.

(2) The operator must share, or allow the aircraft manufacturer to collect, data related to the unmanned aircraft reliability for each aircraft operated by the operator. At a minimum, that data must consist of:

(i) Make, model, series, and serial number,

(ii) Flight duration,

(iii) Altitude,

(iv) Speed,

(v) Location, and

(vi) Any incidents or anomalies encountered during flight operations.

(b) *Unmanned Aircraft.* Each operator must report to FAA the registration and serial numbers of each unmanned aircraft used in operations under this part, in a form and manner acceptable to the Administrator. Compliance with this requirement can be combined with the reporting of flight data under paragraph (a) of this section, as applicable.

(c) *Interruption reports.* Each operator shall provide FAA a summary of occurrences, in a form and manner acceptable to the Administrator, that resulted in—

(1) An unplanned or precautionary landing away from the normally designated landing location; or

(2) A change or diversion in the unmanned aircraft's planned route caused by a known or suspected mechanical difficulty or malfunction.

(d) *Service difficulty reports.* (1) Each operator certificated under subpart E of this part shall report to the unmanned aircraft manufacturer any failure, malfunction, or defect in an unmanned aircraft system that causes momentary or permanent loss of control or communication of the unmanned aircraft if it has endangered, or may endanger, the safe operation of the unmanned aircraft. The information must contain:

(i) The date.

(ii) The affected unmanned aircraft, including the type and manufacturer's serial number.

(iii) The nature of the failure, malfunction, or defect.

(iv) Identification of the part and system involved, including available information pertaining to designation of the major component.

(v) Apparent cause of the failure, malfunction, or defect (e.g., wear, crack, design deficiency, or personnel error).

(vi) The corrective actions taken.

(2) Each operator who uses an authorized service approved under part 146 of this chapter shall report to the automated data service provider any failure, malfunction, or defect in an authorized service if it has endangered or may endanger the safe operation of the unmanned aircraft. The information must contain:

(i) The date and time.

(ii) The affected unmanned aircraft, including the type and identification number.

(iii) The nature of the failure, malfunction, or defect.

(iv) Identification of the authorized service involved, including its version.

(v) Apparent cause of the failure, malfunction, or defect (e.g., contingent State, interface issue, data issue, time delay/latency issue, operational response).

(vi) The corrective actions taken.

(3) Operators must also provide the reports, information, and data associated with paragraphs (d)(1) and (2) to FAA upon request.

(e) *Security Occurrences.* Each operator shall report to FAA the following security incidents in a form and manner acceptable to the Administrator:

(1) A security breach that results in loss of control of the unmanned aircraft;

(2) A security breach that results in unauthorized access to the operator's facilities, aircraft, loading areas, hazardous materials, or goods to be transported; and

(3) A security breach that results in unauthorized access to the operator's networks, devices, and or data irrespective of whether it affects the integrity, accuracy, or reliability of unmanned aircraft operations.

(4) The information must contain:

(i) The date and time of the incident.

(ii) The nature and scope of the incident.

(iii) Identification of any vulnerabilities that led to loss of control or unauthorized access.

(iv) The corrective actions taken.

(5) Operators must also provide other pertinent information and data associated with the security breach to FAA upon request.

(f) *Emergency conditions.* Each operator who, under the provisions of § 108.215, deviates from a rule of this part shall, within 10 days after the deviation, excluding Saturdays, Sundays, and Federal holidays, provide a report of the aircraft operation and a description of the deviation and reasons for it, in a manner acceptable to the Administrator.

(g) *Event reporting.* Operators must report to the Administrator, in a form and manner acceptable to the Administrator, any operation of an unmanned aircraft involving damage to any property, other than the unmanned aircraft, that exceeds \$500, and any malfunction or failure of any system that leads to operations into an unauthorized area. The report shall contain, at a minimum—

(1) The date, time, and location of the event;

(2) Description of the event, including operational and environmental factors,

including whether use, failure, malfunction, or defect of an automated data service provider was a factor; and

(3) Description of the known contributing factors for the event.

(h) *Timeframes.* Each report required under this section must be provided as follows:

(1) *Flight Data.* Aggregate flight data must be provided to FAA, and unmanned aircraft reliability data must be provided to the manufacturer, or allow the manufacturer to access the data, at a minimum of once each calendar month.

(2) *Unmanned Aircraft.* A list of unmanned aircraft registration and serial numbers used in operations must be provided to FAA a minimum of at least once each 12 calendar months.

(3) *Interruption reports.* A summary of occurrences must be provided no later than the end of the 10th day of the following month in which the occurrence took place.

(4) *Service difficulty reports.* Reports of failures, malfunctions, or defects must be submitted to the manufacturer not later than seven (7) days after the occurrence. When additional information becomes available, including information from other persons, operators must submit it as a supplement to the first report.

(5) *Security Occurrences.* Reports of security-related occurrences must be submitted to FAA not later than 96 hours after the occurrence. When additional information becomes available, including information from other persons, operators must submit it as a supplement to the first report within a reasonable timeframe.

(6) *Emergency Conditions.* Reports of deviations from the regulations due to emergency conditions must be submitted to FAA within 10 days of the deviation.

(7) *Event reporting.* Reports of events required under paragraph (g) of this section must be submitted to FAA not later than 10 days after the event.

Subpart B—Operating Rules

§ 108.100 General.

(a) Operations under this part require:

(1) Applying for and operating under the provisions of an operating permit issued by the Administrator under the provisions of subpart D of this part; or

(2) Applying for and operating under the provisions of an operating certificate issued by the Administrator under the provisions of subpart E of this part.

(b) No operator may advertise or otherwise offer to perform an operation subject to this part unless that operator holds the appropriate operating

certificate or permit under this part to conduct that operation.

§ 108.105 Unmanned aircraft.

(a) The unmanned aircraft and its associated elements must be in condition for safe operation.

(b) Unmanned aircraft used under this part must have received an airworthiness acceptance in accordance with subparts G and H of this part, except for operations under a flight test permit pursuant to § 108.470.

(c) Unmanned aircraft used under this part must meet the equipment requirements of subpart H of this part.

§ 108.110 Unmanned aircraft lighting.

(a) Unmanned aircraft must be equipped with an anti-collision lighting system that meets the requirements of § 108.830. Except as provided in paragraph (c) of this section, the anti-collision lights must be used during all flight operations.

(b) If an unmanned aircraft is equipped with position lights per the requirements of § 108.835, the operator must use the lighted position lights during any night operations.

(c) The flight coordinator may reduce the intensity of, or turn off the unmanned aircraft lighting, if the flight coordinator determines that, because of operating conditions, it would be in the interest of safety to do so.

§ 108.115 Registration.

No operator may operate a civil unmanned aircraft under this part unless the unmanned aircraft has an effective U.S. registration certificate issued to its owner as required pursuant to part 47 of this chapter.

§ 108.120 General operating requirements.

(a) Operations must be conducted with an unmanned aircraft, and associated elements, that are in a condition for safe operation. If the operator knows or has reason to know that the unmanned aircraft, or associated elements, are no longer in a condition for safe operation, the operator may not initiate or continue the flight.

(b) Operations must be conducted in accordance with the manufacturer's operating instructions or other procedures acceptable to the Administrator.

(c) Except for operations conducted under a flight test permit under § 108.470 or in accordance with § 108.555, operations must be conducted with properly installed and operational instruments and equipment that are identified as being required by the manufacturer's operating instructions.

(d) The operations supervisor, as required under § 108.305, is directly responsible for, and is the final authority as to, the safe and secure operation of all unmanned aircraft under their purview and ensuring that the operator complies with all applicable regulatory requirements and the company operations manual, as required under § 108.135.

§ 108.125 Careless or reckless operation.

(a) No person may operate an unmanned aircraft in a careless or reckless manner that endangers the life or property of another.

(b) No person may allow an object to be dropped from an unmanned aircraft in a manner that creates an undue hazard to persons or property of another.

(c) No person may operate an unmanned aircraft in a manner that creates a collision hazard with persons, an aircraft with one or more persons on board, vehicles, structures, other unmanned aircraft, or the property of another.

§ 108.130 Manuals and instructions.

(a) Operators shall ensure that the following documents are available and readily accessible during relevant operations:

(1) The manufacturer's operating instructions as provided in § 108.720(a)(1).

(2) The manufacturer's maintenance instructions as provided in § 108.720(a)(2).

(3) The manufacturer's configuration and control document as provided in § 108.720(a)(3).

(4) The company operations manual.

(b) The operator must ensure that all operations personnel have access to the documents that pertain to their duties and responsibilities during the performance of their duties.

§ 108.135 Company operations manual.

(a) Each operator shall prepare and keep current a company operations manual that sets forth the operator's procedures and policies acceptable to the Administrator.

(b) The company operations manual may be in the form of one or more documents.

(c) The manual must be made available to the Administrator upon request.

(d) The manual must not be contrary to any applicable Federal regulations, the operator's operating certificate or permit, or any authorizations held.

(e) The information and instructions contained in the manual must be displayed clearly and be retrievable in the English language.

(f) The revision status must be controlled in such a way a person can immediately ascertain the information is the most current.

(g) The manual must address the following—

(1) The operations personnel required under § 108.300 and their assigned area of responsibility, duties, responsibilities, and authority;

(2) The number and positions of operations personnel required for safe operations under § 108.300 and their responsibilities;

(3) Preflight procedures;

(4) Unmanned aircraft weight and balance procedures;

(5) Accident notification procedures;

(6) Procedures for determining and communicating unmanned aircraft condition to appropriate operations personnel;

(7) Procedures for complying with the recordkeeping and reporting requirements as required under §§ 108.40 and 108.45;

(8) Access to and use of unmanned aircraft maintenance procedures and inspection criteria;

(9) Procedures for developing and implementing emergency procedures;

(10) Procedures for the retrieval of unmanned aircraft that fail to return to their intended landing location;

(11) Unmanned aircraft loading procedures, as applicable; and

(12) Procedures for the identification and disposition of hazardous materials.

§ 108.140 Aircraft performance.

(a) Operations must be conducted at a speed equal to or less than those prescribed in the manufacturer's operating instructions, unless operating conditions exist that require a higher minimum safe speed.

(b) Operations must be conducted at a weight equal to or less than specified for the type of permit or certificate operated in accordance with this part.

§ 108.145 Weather conditions.

Operations must not be conducted in weather conditions, or with frost, ice, or snow adhering to the unmanned aircraft prior to takeoff, other than as provided in the manufacturer's operating instructions.

§ 108.150 Operating location.

(a) Operations must be conducted from locations that are pre-designated and access-controlled and ensure any persons who are not directly participating in the operation are safely segregated from flight operations.

(b) All operations of unmanned aircraft under this part must be monitored and controlled from a

location that is physically located within the United States.

(c) Each operator must develop and implement physical security policies and processes, including, but not limited to, processes for preventing unauthorized access to the operation's facilities as described in paragraph (a), and protecting other controlled access areas, as applicable.

§ 108.155 Unmanned aircraft tracking.

The operator must be able to determine the geographic location and altitude of each unmanned aircraft at all times during flight operations.

§ 108.160 ADS-B and transponder use.

Unless otherwise authorized by the Administrator, operations must not be conducted—

(a) With Automatic Dependent Surveillance-Broadcast Out equipment in transmit mode; or

(b) With a transponder in transmit mode.

§ 108.165 Area of operations.

For each operating area, the operator is responsible for all of the following:

(a) Obtaining approval from FAA, in a manner acceptable to the Administrator, for the area of intended operations prior to beginning initial operations in the area.

(b) Designating safe alternate landing areas that the unmanned aircraft can reach if it is unable to complete its intended flight operation. The alternate landing areas must meet all of the following conditions:

(1) Avoid areas where overflight is not permitted.

(2) Provide for a landing without undue hazard to persons or property on the ground.

(c) Designating appropriate takeoff, landing, and loading areas that are—

(1) Access-restricted to only persons participating in the operation;

(2) Free of any obstructions that could pose a hazard; and

(3) Adequate for the operation, considering such items as size, surface, obstructions, and lighting.

(d) Ensuring adequate communications coverage and availability, and appropriate lost link procedures.

(e) Ensuring that the planned operations minimize risk to persons and property on the ground as appropriate and consider terrain and obstacles that the operator intends to overfly.

§ 108.170 Preflight requirements.

Prior to operating an unmanned aircraft under this part, the operator must—

(a) Ensure weather conditions are appropriate for the intended operation, are determined in a manner acceptable to the Administrator, and are in accordance with the unmanned aircraft limitations specified by the manufacturer;

(b) Be familiar with any airspace and flight restrictions along the entire route of flight;

(c) Ensure the population density to be overflown complies with § 108.185;

(d) Identify the locations of ground obstacles and hazards;

(e) Ensure the unmanned aircraft system is in a condition for safe operation;

(f) Ensure there are sufficient personnel for the operation;

(g) If required by § 108.180 or § 108.185, ensure that a strategically deconflicted operational intent is accepted by the automated data service provider prior to takeoff;

(h) Ensure the reserve power recommended by the manufacturer is satisfied, and that there is enough available power or fuel, considering wind and forecast weather conditions, for the unmanned aircraft system to operate for the intended operational time with sufficient reserves such that the unmanned aircraft can land without posing an undue risk to unmanned aircraft or people and property on the ground;

(i) Ensure that operations will be conducted within the weight and balance limitations defined by the unmanned aircraft manufacturer;

(j) Ensure that any object attached to, or carried by, the unmanned aircraft is secure and does not adversely affect the flight characteristics or controllability of the unmanned aircraft; and

(k) Ensure the unmanned aircraft navigation and communication systems are working properly.

§ 108.175 Operating restrictions.

(a) No operator may operate an unmanned aircraft under this part higher than 400 feet above the ground level unless the operator is operating in class G airspace and—

(1) Is temporarily transiting steeply changing terrain;

(2) Is operating an unmanned aircraft within a 400-foot radius of a structure and does not fly higher than 400 feet above the structure's immediate uppermost limit; or

(3) Is temporarily maneuvering up to 450 feet above the ground level to avoid a collision.

(b) An operator operating under this part must comply with the provisions of §§ 91.133, 91.137 through 91.145, and 99.7 of this chapter.

(c) Operators should notify the controlling agency for any operations planned within a military operating area (MOA) or on a military training route (MTR). Operators must always exercise extreme caution and remain vigilant of all MTRs and or non-regulatory SUAs.

(d) No operator may operate an unmanned aircraft under this part in a manner that interferes with operations or traffic patterns at any airports, heliports, seaplane bases, space launch facilities, or any facilities used for VTOL aircraft landing and takeoffs.

§ 108.180 Operation in controlled airspace.

(a) *Requirements.* Unless otherwise authorized by the Administrator, no operator may operate an unmanned aircraft under this part in Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport unless all the following conditions are met:

(1) The operation is conducted at 400 feet above ground level or below.

(2) The operation is conducted using an approved method for strategic deconfliction and conformance monitoring in accordance with the requirements of § 108.190.

(b) *Detect and avoid.* Unless otherwise authorized by the Administrator, no operator may operate an unmanned aircraft under this part in Class B or C airspace unless the unmanned aircraft system is able to detect and avoid an aircraft not broadcasting its location in accordance with the requirements of § 108.195(a)(2) or § 91.225 of this chapter.

(c) *Prohibition.* No operator may conduct operations under this section in any airspace designated in paragraph (d) of this section without an authorization issued by the Administrator.

(d) *Airspace Designations.*

(1) Any operator operating under this part must obtain authorization from the Administrator prior to accessing airspace designated in FAA Order JO 7400.[XX], Unmanned Aircraft System Airspace Designations.

(2) To maintain operational safety or security, the Administrator may prohibit, on a temporary basis, any operator from conducting operations under this section in certain airspace without an authorization issued by the Administrator.

(e) *Incorporation by reference.*

(1) The incorporation by reference of FAA Order JO 7400.[XX], Unmanned Aircraft System Airspace Designations, dated [TBD] was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to

incorporate by reference FAA Order JO 7400.XX is effective [Month, XX, 202X] through [Month, XX, 202X+1]. This incorporation by reference material is available for inspection at FAA and NARA. Contact FAA at: Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, (202) 267–8783. An electronic version of FAA Order JO 7400.XX is available on FAA's website at www.faa.gov/air_traffic/publications. For information on the availability of this material at NARA, visit www.archives.gov/federalregister/cfr/ibr-locations or email fr.inspection@nara.gov.

(2) Before updating FAA Order JO 7400.[XX], FAA will publish any proposed changes to designated airspace, in full text, as proposals in the **Federal Register**, unless there is good cause to forgo notice and comment rulemaking, followed by publication of associated final rules in the **Federal Register**. FAA will then integrate these updates into the next edition of FAA Order JO 7400.[XX]. FAA will request that the Director of the Federal Register approve the IBR of the next edition of the order as of [MM/DD/YYYY+1].

§ 108.185 Operation over people.

(a) *Prohibition.* No operator may operate an unmanned aircraft under this part over people except in accordance with the requirements of this section, unless otherwise authorized by the Administrator.

(b) *Open-Air Assemblies.* Unless otherwise authorized by the Administrator, no operator may operate an unmanned aircraft under this part over open-air assemblies of persons.

(c) *Operating categories.* The requirements under this section depend on the highest category of population density over which an operation is taking place. Categories 1 through 5 are calculated using the appropriate day or night data from Oak Ridge National Laboratory's LandScan USA population distribution data as of August 1st of each year determined as follows:

(1) Category 1: Farther than 1 statute mile from any cell of 10 people or higher.

(2) Category 2: Within 1 statute mile of a cell of 10 people or higher, and not within a Category 3, 4, or 5 area.

(3) Category 3: Within 1 statute mile of a cell of 25 people or higher, and not within a Category 4 or 5 area.

(4) Category 4: Within 0.5 statute miles of a cell of 100 people or higher, and not within a Category 5 area.

(5) Category 5: Within 0.5 statute miles of a cell of 2,500 people or higher.

(d) *Operating requirements.* All operations over people must avoid operating where such operations may cause undue hazard to people on the ground. In addition, the following requirements apply:

(1) Category 1: Operations must be conducted at least 50 feet away from any exposed, non-participating persons, unless otherwise authorized by the Administrator.

(2) Category 2: Operations must not be conducted using a command and control link that utilizes radio frequency devices operating in accordance with 47 CFR part 15.

(3) Category 3: Operators must:

(i) Meet the requirements of Category 2 operations; and

(ii) Conduct the operation using an approved method for strategic deconfliction in accordance with the requirements of § 108.190.

(4) Category 4: Operators must:

(i) Meet the requirements of Category 3 operations; and

(ii) Hold an operating certificate in accordance with subpart E.

(5) Category 5: Operators must:

(i) Meet the requirements of Category 4 operations; and

(ii) Ensure that the unmanned aircraft system is able to detect and avoid an aircraft not broadcasting its location in accordance with the requirements of § 108.195(a)(2).

§ 108.190 Use of strategic deconfliction and conformance monitoring.

(a) Unless otherwise authorized by the Administrator, the following operations must be conducted with strategic deconfliction:

(1) Operations in controlled airspace pursuant to § 108.180(a)(2).

(2) Operations in a Category 3 or higher operating category pursuant to § 108.185.

(b) Unless otherwise authorized by the Administrator, operations in controlled airspace pursuant to § 108.180(a)(2) must be conducted with conformance monitoring.

(c) A strategic deconfliction capability must meet the following requirements:

(1) Perform strategic conflict detection and resolution prior to takeoff, and in relation to other unmanned aircraft operations that are discoverable at that time; and

(2) Maintain a target average conformance to all activated operational intents.

(d) A conformance monitoring capability must meet the following requirements:

(1) Provide immediate alerts to operations personnel when the unmanned aircraft exits its operational

intent, consistent with criteria or parameters established prior to takeoff; and

(2) Communicate information to other airspace users and FAA about the alert in paragraph (d)(1) of this section via a means acceptable to the Administrator.

(e) Unless otherwise authorized by the Administrator, the requirements in paragraphs (a) and (b) must be achieved through operational use of an authorized service provided by an appropriately certificated automated data service provider under part 146 of this chapter.

§ 108.195 Operation near aircraft; low altitude right-of-way rules.

(a) Unless operating in a shielded area as specified in § 108.205, each operator of an unmanned aircraft must yield the right-of-way to all aircraft—

(1) departing from or arriving at an airport or heliport; or

(2) equipped and broadcasting their aircraft's location using—

(i) ADS-B Out equipment that meets the design and performance requirements of § 91.227 of this chapter; or

(ii) Electronic conspicuity equipment that broadcasts a signal on Universal Access Transceiver Operating on the Radio Frequency 978 Megahertz, containing the following information, in a message format that meets the requirements of § 91.227 of this chapter. For the purposes of this paragraph, the definitions from § 91.227 are used:

(A) An indication of the aircraft's latitude and longitude

(B) An indication of the aircraft's geometric altitude

(C) An indication of the aircraft's velocity

(D) An indication of the aircraft assigned ICAO 24-bit address, except when the pilot has not filed a flight plan, has not requested ATC services, and is using a TSO-C154c or TSO-C154d self-assigned temporary 24-bit address

(E) A Navigation Integrity Category value of less than 0.5 nm

(F) A System Design Assurance value of $<1 \times 10^{-3}$ per flight hour

(G) A Source Integrity Level (SIL) value of $<1 \times 10^{-3}$ per flight hour or sample

(b) When yielding right-of-way, the unmanned aircraft may not pass over, under, or ahead of the aircraft being yielded to unless at a safe distance. Safe distance must be determined in accordance with a method acceptable to the Administrator.

§ 108.200 Operational status broadcast.

(a) *Remote Identification.* Unless otherwise authorized by the

Administrator, no operator may operate an unmanned aircraft under this part unless all the following requirements are met:

(1) *Standard remote identification.* The unmanned aircraft must meet the requirements for a standard remote identification unmanned aircraft under part 89 of this chapter.

(2) *Message Elements.* The unmanned aircraft must be capable of broadcasting the message elements required under § 89.305 of this chapter except that the control station location as required under § 89.305(b) and (c) is not required if the unmanned aircraft is being operated without a flight coordinator in accordance with § 108.310.

(3) *Additional operational message elements.* In addition to the message elements required under paragraph (a)(2) of this section, the unmanned aircraft remote identification message must include the following message elements:

(i) A status which indicates whether the unmanned aircraft is being operated beyond visual line of sight.

(ii) A status which indicates that the unmanned aircraft is being operated without a flight coordinator in accordance with § 108.310, if applicable.

(iii) The takeoff location of the unmanned aircraft.

(4) *Range of broadcast.* The remote identification message including the operational status must be broadcast from the unmanned aircraft at a range sufficient to provide situational awareness to others in the vicinity of the unmanned aircraft.

(b) *Means of compliance.* A standard remote identification unmanned aircraft used for operations under this part must meet the requirements of an FAA-accepted means of compliance for standard remote identification that includes the operational status message element described in this section.

§ 108.205 Operation in shielded areas.

No operator may operate an unmanned aircraft as a shielded operation except in areas where no manned aircraft are expected to operate. Shielded areas include—

(a) Areas within 50 feet of powerlines and substations, railroad tracks, bridges, and pipelines, when permission from the infrastructure owner is obtained; or

(b) Any other area designated by the Administrator.

§ 108.210 Operation of multiple unmanned aircraft.

(a) An operator may only conduct operations at an unmanned aircraft-to-flight coordinator ratio of 1:1, except in

accordance with a method acceptable to the Administrator.

(b) When operations are conducted at an unmanned aircraft-to-flight coordinator ratio greater than 1:1 in accordance with paragraph (a) of this section, an operator may not allow a flight coordinator to operate, monitor, or otherwise be responsible for the operations of more unmanned aircraft than the flight coordinator is capable of handling during normal, abnormal, and emergency conditions, determined in a method acceptable to the Administrator.

(c) Pursuant to paragraph (a) of this section, an operator may only conduct operations at an unmanned aircraft-to-flight coordinator ratio equal to or less than what the manufacturer has specified in the operating instructions.

§ 108.215 Emergency conditions.

(a) An operator may request deviation authority from FAA from any current authorizations or limitations for the protection of life or property if those conditions necessitate the expeditious conduct of those operations.

(b) In an in-flight emergency requiring immediate action, the flight coordinator may deviate from any rule of this part to the extent required to meet that emergency.

(c) The operator must comply with the reporting requirements in § 108.45(f) of this part following any emergency deviation.

§ 108.220 Unmanned aircraft flight restriction.

No operator may operate an unmanned aircraft under this part within an unmanned aircraft flight restriction established in accordance with part 74 of this chapter, unless allowed pursuant to part 74, as appropriate.

SUBPART C—Operations Personnel

§ 108.300 General.

(a) Operations personnel includes persons identified by the operator in the company operations manual as persons required for the safe operation of the unmanned aircraft and its associated elements, including, but not limited to, performing the following roles or tasks—

- (1) Operations supervisor;
- (2) Flight coordinator;
- (3) Unmanned aircraft maintenance or alterations;
- (4) Ground handling;
- (5) Loading and unloading of the unmanned aircraft;
- (6) Servicing or upkeep of systems, including associated elements, or

(7) Establishing flight paths, emergency procedures, and operational parameters.

(b) No operator may allow a person to perform multiple roles concurrently if doing so could affect the safety of the operation.

§ 108.305 Operations supervisor.

(a) Each operator must have one or more persons serving in the role of an operations supervisor who is qualified through training, experience, or expertise.

(b) The operator must notify FAA within 10 days of any change in personnel assigned to the operations supervisor position.

(c) The person who serves as the operations supervisor must—

- (1) Be knowledgeable of the company policies and procedures; and
- (2) To the extent of their responsibilities, have a full understanding of the following material with respect to the operation—
 - (i) Aviation safety standards and safe operating practices;
 - (ii) Practices for maintaining a secure facility and operations area; and
 - (iii) The regulatory requirements of this part.

§ 108.310 Flight coordinator.

(a) If the manufacturer's operating instructions require a flight coordinator, the operator must designate a flight coordinator prior to each flight.

(b) No operator may allow a person to direct an unmanned aircraft during flight unless that person is appropriately qualified and authorized by the operator as a flight coordinator, except as provided in paragraph (e) of this section for the purpose of obtaining operating experience.

(c) The operator may transfer control from one flight coordinator to another flight coordinator during flight if the operator has appropriate handoff procedures in its company operations manual.

(d) Operations personnel assigned as flight coordinator must—

- (1) Take appropriate actions to prevent the unmanned aircraft from posing undue hazard to people, aircraft, or property, within their control; and
- (2) Maintain situational awareness of the unmanned aircraft and direct the unmanned aircraft to maintain compliance with the applicable provisions of this chapter.

(e) No operator may allow a person to serve as a flight coordinator of any unmanned aircraft under this part unless that person has at least 5 hours of operating experience in the specific make and model of unmanned aircraft

to be operated. The operating experience must be acquired under the direct supervision of—

- (1) A fully qualified flight coordinator;
 - (2) An operations supervisor; or
 - (3) A person qualified and designated by the operator to ensure operations personnel are appropriately trained.
- (f) No operator may allow a person to continue to serve as a flight coordinator of any unmanned aircraft unless, within the preceding 12 calendar months, that person has served as the flight coordinator for at least 5 hours of operating experience of an unmanned aircraft of the same make and model in which that person is to serve.
- (g) If a flight coordinator's recency of experience lapses, they must be requalified by the operator prior to performing the duties of a flight coordinator for that make and model of unmanned aircraft.

§ 108.315 Personnel knowledge and training.

(a) Each operator must ensure that all operations personnel have completed the applicable training required under this part and that they possess the knowledge and skills required to conduct their duties specific to their areas of responsibility safely.

(b) All operations personnel must have general knowledge and skills training relevant to their areas of responsibility that covers the following subject areas, as applicable:

- (1) Regulations relating to flight operations under this part.
- (2) Airspace classification, operating requirements, and flight restrictions affecting unmanned aircraft operations.
- (3) Aviation weather sources and effects of weather on unmanned aircraft performance.
- (4) Crew resource management.
- (5) Communication procedures.
- (6) Safe distance criteria.
- (7) Principles of strategic deconfliction and conformance monitoring.
- (8) Determining the performance of unmanned aircraft.
- (9) Physiological effects of drugs and alcohol.
- (10) Aeronautical decision-making and judgment.
- (11) Airport and heliport operations.
- (12) Operations at night.
- (13) Assignment and transfer of control.
- (14) Beyond visual line of sight operation strategic and tactical risk mitigation strategies and approaches.
- (15) Multi-aircraft operations.
- (16) Command and control system characteristics, functionality, and spectrum considerations.

(17) Contingency management and UA recovery procedures.

(18) Population density considerations.

(19) Air traffic control procedures.

(c) All operations personnel must have knowledge and skills training specific to the make and model of unmanned aircraft to be operated relevant to their areas of responsibility that covers the following subject areas, as applicable:

(1) Unmanned aircraft general and operating limitations.

(2) System configuration and setup.

(3) Normal and abnormal procedures.

(4) Emergency procedures.

(5) Ground handling.

(6) Loading.

(7) Maintenance and inspection procedures.

(8) Preflight procedures.

(9) Navigation systems appropriate to the operation.

(10) Detect and avoid procedures.

(11) Lost link procedures.

(12) Operations of multiple unmanned aircraft.

(d) The training required under paragraphs (b) and (c) of this section must have been accomplished within the previous 24 calendar months for any operations personnel to conduct the assigned responsibilities in the listed subject areas. If such training is completed in the calendar month before or after the month in which that training is required, the person is considered to have completed it in the calendar month in which it was required.

§ 108.320 Medical condition.

No person may serve or attempt to serve, and no operator may allow or continue to allow a person to serve, in an operations personnel position if the person or the operator knows or has reason to know the person has a physical or mental condition that would interfere with the safe operation of the unmanned aircraft or make the person unable to perform the duties required of their position safely.

§ 108.325 Alcohol or drugs.

(a) No person may serve or attempt to serve in an operations personnel position—

(1) Within 8 hours after the consumption of any alcoholic beverage;

(2) While under the influence of alcohol;

(3) While using any drug that affects the person's faculties in any way contrary to safety; or

(4) While having an alcohol concentration of 0.04 or greater in a blood or breath specimen. Alcohol concentration means grams of alcohol

per deciliter of blood or grams of alcohol per 210 liters of breath.

(b) During any period in which a person is serving, ready to serve, or immediately available to serve in an operations personnel position, the person must, on request of a law enforcement officer, submit to a test to indicate the alcohol concentration in the blood or breath, or the presence of any drugs in the body, when—

(1) The law enforcement officer is authorized under State or local law to conduct the test or to have the test conducted; and

(2) The law enforcement officer is requesting submission to the test to investigate a suspected violation of State or local law governing the same or substantially similar conduct prohibited by paragraph (a) of this section.

(c) Whenever FAA has a reasonable basis to believe that a person may have violated paragraph (a) of this section and on request of the Administrator, that person must furnish to FAA the results of any alcohol or drug test in their possession taken within 4 hours after serving or attempting to serve in an operations personnel position, or authorize any clinic, hospital, or doctor, or other person or entity to release the results to FAA.

(d) No operator may allow or continue to allow a person to serve in an operations personnel position when—

(1) The operator has actual knowledge that the person is in violation of paragraph (a);

(2) The person refuses to test in accordance with paragraph (b) of this section; or

(3) The person refuses to furnish or authorize the release of test results requested by the Administrator in accordance with paragraph (c) of this section.

§ 108.330 Duty and rest requirements.

(a) Operations personnel are limited to a maximum 14-hour duty day, and to a maximum 50-hour duty week.

(b) Operations personnel must take a minimum 10-hour continuous rest period within the 24 hours prior to reporting for duty.

(c) Operations personnel must receive a minimum of one day of continuous rest, free of all responsibility for work or duty on behalf of the operator, per week, each week in which the operator schedules them for duty.

§ 108.335 Security threat assessment for certain personnel.

(a) Except as provided in paragraph (c) of this section, a covered person described in paragraph (b) of this section must undergo a Transportation

Security Administration (TSA) security threat assessment (STA) consistent with the standards set forth in 49 CFR 1572.103 through 1572.107 and the procedures in 49 CFR 1572.9 through 1572.11, before conducting the described functions or allowed the specified access. A covered person is excepted from completing a new STA if they hold an STA or security clearance TSA deems comparable to the STA required in this paragraph.

(b) For purposes of this section, a covered person is an individual:

(1) Who performs the functions of an operations supervisor described in § 108.305;

(2) Who performs the functions of a flight coordinator described in § 108.310;

(3) With unescorted access to the aircraft;

(4) With unescorted access to the cargo loaded for transport on the aircraft; or

(5) Who has access to the control, or the flightpath, of the aircraft.

(c) Applicants for operating permits or certificates must make a positive declaration in their application that covered persons have successfully completed the STA required in paragraph (a)(1) or (b) of this section and provide documentation substantiating such declaration.

(d) The covered person must renew their TSA STA according to the renewal life cycle of their selected mode of vetting.

(e) If the covered person does not renew the STA, or if TSA revokes the covered person's STA, the applicant must remove that person from the position and update their application accordingly.

(f) Failure to remove a covered person who does not hold a valid TSA STA consistent with this section may result in revocation of the operating permit or operating certificate, as applicable.

(g) A covered person may seek redress for an adverse STA using the procedures

Subpart D—Permitted Operations

§ 108.400 Operations under a permit.

(a) Operators may conduct the following operations using an FAA-issued operating permit in accordance with this subpart:

(1) Package delivery.

(2) Agriculture.

(3) Aerial surveying.

(4) Civic interest.

(5) Unmanned aircraft operations training.

(6) Demonstration.

(7) Recreational.

(8) Flight test.

(b) Operators must conduct operations under an operating permit in compliance with the requirements of this part and in accordance with any authorizations and limitations associated with that permit.

(c) The Administrator may authorize any other type of operation that does not fall under one of the categories listed in paragraph (a) of this section.

(d) Operators are prohibited from transporting hazardous materials as defined in 49 CFR 171.8 with an operating permit unless operating in accordance with 49 CFR 175.9(b).

(e) Except for flight test permits, an operator may only hold one permit per type of operation listed in paragraph (a) of this section.

(f) Operators are limited to the types of operations that are prescribed by the manufacturer in the operating instructions in accordance with § 108.720.

§ 108.405 Applications for operating permits.

(a) An applicant for an operating permit must provide an application for an operating permit to FAA in a form and manner acceptable to the Administrator.

(b) The applicant must describe the operation it seeks to conduct under this part. The application includes questions, data, and documentation requests that verify the applicant's ability to operate in compliance with the applicable requirements of this part. The application must include the following:

(1) The applicant's name and contact information (physical address, email address, telephone number, and name of individual who serves as the point of contact).

(2) Address of the principal base of operations, if different from the address provided for contact information, in accordance with § 108.30.

(3) Name of the individual(s) who serve(s) as operations supervisor, in accordance with § 108.305, unless operating under a recreational permit in accordance with § 108.475.

(4) The intended type of UAS operation(s), in accordance with § 108.400(a).

(5) The intended area(s) of operations, in accordance with § 108.165.

(6) Company manual(s), as required under § 108.135.

(7) A recordkeeping process as required under § 108.40.

(8) Operator reporting procedures, as required under § 108.45.

(9) The type(s) of unmanned aircraft to be used in operations, that comply with the requirements of § 108.105.

(10) Additional information the Administrator may determine is necessary to evaluate the application.

§ 108.410 Duration of permits.

(a) Unless surrendered, suspended, or revoked earlier, a permit issued under this part expires at the end of the 24 months from the month in which it is issued.

(b) Applications for new permits must be made in a form and manner acceptable to the Administrator and submitted sufficiently in advance to allow adequate processing times to prevent lapses of approval.

(c) Application for new permits may be made up to 120 days in advance of the expiration date of the existing permit. New permits issued during this time period will be valid for a period of 2 years beyond the expiration date of the existing permit.

(d) Permits issued under this part are non-transferrable.

§ 108.415 Issuance of an operating permit.

(a) The Administrator will evaluate an application for an operating permit and may request additional information, documentation, or demonstration as needed, to supplement the application.

(b) FAA will issue the operating permit if the Administrator finds the applicant has demonstrated its ability to comply with the applicable requirements of this part through the application process.

(c) An FAA-issued operating permit includes the following information:

(1) The operator's name.

(2) The location of the operator's principal base of operations.

(3) The permit number.

(4) The effective date of the permit.

(5) The expiration date of the permit.

(6) Type of operation.

§ 108.420 Denial, suspension, or revocation of operating permits.

An application for an operating permit may be denied, or an operating permit may be suspended or revoked, if the Administrator finds that—

(a) The applicant or operator does not meet the requirements of this part;

(b) The applicant or operator is not properly or adequately equipped or is not able to conduct safe operations under this part;

(c) The applicant or operator previously held an operating permit, operating certificate, or any other FAA certificate which was revoked;

(d) The applicant or operator intends to fill or fills a key management position listed in § 108.300 with an individual who exercised control over or who held the same or similar position with an

operator whose permit or certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation of the certificate or permit or causing the revocation process of the certificate or permit;

(e) An individual who will have control over or have a substantial ownership interest in the operator had the same or similar control or interest in an operator whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process; or

(f) The applicant or operator engaged in any violation of this part.

§ 108.425 Amendment of permits.

(a) The Administrator may amend any permit or any FAA authorizations and limitations issued under this part if—

(1) The Administrator determines that, under 49 U.S.C. 44709 and part 13 of this chapter, safety and public interest requires the amendment; or

(2) The operator applies for the amendment and the Administrator determines that safety and public interest allows the amendment.

(b) When the Administrator proposes to issue an order amending, suspending, or revoking all or part of any certificate, the procedure in § 13.19 of this chapter applies.

(c) The operator may request to amend an operating permit issued under this part by revising an application submitted in accordance with § 108.405.

(d) Within 30 days of receiving an amendment initiated by the Administrator, or a denial of an operator's application for amendment, the operator may petition the Administrator to reconsider the amendment or denial.

§ 108.430 Display of permit.

No operator may operate an unmanned aircraft under this subpart unless evidence of having a valid permit under which the operation is conducted is available at the point of unmanned aircraft operations control and presented upon the request of the Administrator or any Federal, State, or local law enforcement officer.

§ 108.435 Cybersecurity.

(a) Each operator must develop and implement cybersecurity policies and processes, in order to protect networks, devices, and data from unauthorized access and to ensure integrity, accuracy, and reliability of the operations.

(b) The cybersecurity policy required under this section must include, at a minimum, processes for—

(1) Protecting software, hardware, and network computing infrastructure necessary to protect operations from unauthorized access;

(2) Ensuring the operator's employee network access privileges are limited to those necessary to fulfill normal job duties;

(3) Preparing for, responding to, and mitigating the impact of cyber-attacks; and

(4) Ensuring access privileges are turned off and removed for former employees.

(c) The operator must review the cybersecurity policies at least annually and revise or update as necessary to reflect changing circumstances.

§ 108.440 Package delivery operations.

(a) Except as provided in subpart E, no operator may conduct package delivery operations with an unmanned aircraft under this part without, or in violation of, a package delivery permit issued in accordance with this subpart.

(b) Operators performing package delivery under this subpart must ensure any person performing or directly supervising any of the following job functions involving any item for transport on board an unmanned aircraft: acceptance, rejection, handling, storage incidental to transport, packaging of company materials, or loading—

(1) Has initial and recurrent training in the recognition of hazardous materials acceptable to the administrator; and

(2) Completes hazardous materials recognition training every 24 calendar months.

(c) Operators must ensure that the payload in, on, or suspended from the unmanned aircraft is properly secured and does not adversely affect the flight characteristics or controllability of the unmanned aircraft.

(d) The operator must provide information about the delivery method to each customer and provide the customer instructions to remain clear of the unmanned aircraft during delivery by a distance sufficient to minimize the risk of injury.

(e) The operator must ensure proposed delivery areas are free of any obstructions that could pose a hazard.

(f) Package delivery operations must be conducted with fewer than 100 active unmanned aircraft, including those directly under the control of the operator, or conducted through lease agreements with other persons, subcontractors, or subsidiaries.

(g) The unmanned aircraft, and anything attached to or carried by the unmanned aircraft, must not have a

combined total weight greater than 55 pounds.

(h) Operations are limited to Category 3 population density areas or lower, in accordance with § 108.185.

(i) Operators must request and obtain a limited security program from the Transportation Security Administration under 49 CFR 1544.101(g) before conducting unmanned aircraft system operations.

§ 108.445 Agricultural operations.

(a) Except as provided in subpart E in this part, no operator may conduct agricultural operations involving aerial seeding, dusting, spraying, fertilizing, crop improvement, or pest control with an unmanned aircraft under this part without, or in violation of, an agriculture permit issued in accordance with this subpart.

(b) Operations must be conducted with fewer than 10 active unmanned aircraft either directly under the control of the operator, through lease agreements with other persons, subcontractors, or subsidiaries.

(c) Unmanned aircraft and anything attached to or carried by the unmanned aircraft must not have a combined total weight greater than 1,320 pounds.

(d) Dispensing operations must not be conducted directly over people, unless otherwise authorized by the Administrator.

(e) Operations are limited to Category 1 population density areas, in accordance with § 108.185, unless otherwise authorized by the Administrator.

(f) No operator may dispense, or cause to be dispensed, from an unmanned aircraft, any material or substance in a manner that creates a hazard to persons or property on the surface.

(g) No operator may dispense, or cause to be dispensed, from an unmanned aircraft, any economic poison that is registered with the U.S. Department of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135–135k)—

(1) For a use other than that for which it is registered;

(2) Contrary to any safety instructions or use limitations on its label; or

(3) In violation of any Federal, State, or local law or regulation.

(h) Paragraph (g) of this section does not apply to any person dispensing economic poisons for experimental purposes under—

(1) The supervision of a Federal or State agency authorized by law to conduct research in the field of economic poisons; or

(2) A permit from the U.S. Department of Agriculture issued pursuant to the

Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 and 135k).

(i) Operators conducting agricultural operations under this subpart must have and keep current a comprehensive training program that is tailored for their proposed operation and contains, at a minimum:

(1) Steps to be taken before starting operations, including survey of the area to be worked.

(2) Safe handling and storage of economic poisons and the proper disposal of used containers for those poisons.

(3) The general effects of economic poisons and agricultural chemicals on plants, animals, and persons, with emphasis on those normally used in the areas of intended operations; and the precautions to be observed in using poisons and chemicals.

(4) Primary symptoms of poisoning of persons from economic poisons, the appropriate emergency measures to be taken, and the location of poison control centers.

(5) Performance capabilities and operating limitations of the unmanned aircraft to be used.

(6) Safe flight and application procedures.

(j) Operators must ensure that all operations personnel supervising or participating in an agricultural unmanned aircraft operation have satisfactorily completed the operators training program required pursuant to paragraph (i) of this section.

§ 108.450 Aerial surveying operations.

(a) Except as provided in subpart E, no operator may conduct photography, videography, mapping, inspecting, or patrolling operations with an unmanned aircraft under this part without, or in violation of, an aerial surveying permit issued in accordance with this subpart.

(b) Operations must be conducted with fewer than 25 active unmanned aircraft either directly under the control of the operator, through lease agreements with other persons, subcontractors, or subsidiaries.

(c) Unmanned aircraft and anything attached to or carried by the unmanned aircraft must not have a combined total weight greater than 110 pounds.

(d) Operations are limited to Category 3 population density areas or lower, in accordance with § 108.185.

§ 108.455 Civic interest operations.

(a) Except as provided in subpart E of this part, no operator may conduct operations in support of civic interest with an unmanned aircraft under this part without, or in violation of, a civic

interest permit issued in accordance with this subpart. Civic interest operations consist of—

(1) Forest and wildlife conservation, including wildfire recovery, wildlife conservation, and tracking climate change; and

(2) Operations in support of public safety, including fire, accident, and disaster response where the operator has coordinated and deconflicted operations with the law enforcement or government emergency management agency responsible for the incident response in advance and throughout the duration of the operation.

(b) Operations must be conducted with fewer than 25 active unmanned aircraft either directly under the control of the operator, through lease agreements with other persons, subcontractors, or subsidiaries.

(c) Unmanned aircraft and anything attached to or carried by the unmanned aircraft must not have a combined total weight greater than 110 pounds.

(d) Operations must be conducted by an entity contracted to a Federal, State, local, Tribal, or territorial government for the performance of the civic interest operation.

(e) Operations are limited to Category 3 population density areas or lower, in accordance with § 108.185, unless otherwise authorized by the Administrator.

(f) Notwithstanding the restrictions in paragraphs (e) of this section and § 108.185, operations may be conducted over any population density to the extent necessary to safeguard lives in imminent threat.

§ 108.460 Unmanned aircraft operations training.

(a) No operator may conduct unmanned aircraft operations training with an unmanned aircraft under this part without, or in violation of, an unmanned aircraft operations training permit issued in accordance with this subpart except that an unmanned aircraft operations training related to another permit type may be conducted under that permit. If unmanned aircraft operations training is conducted under a permit for another type of operation, the requirements of that permit apply to the unmanned aircraft operations training in the same manner and to the same extent as they apply to the operation itself.

(b) Unmanned aircraft and anything attached to or carried by the unmanned aircraft must not have a combined total weight greater than 1,320 pounds, unless otherwise authorized by the Administrator.

(c) Operations must be conducted with fewer than 10 active unmanned aircraft either directly under the control of the operator, through lease agreements with other persons, subcontractors, or subsidiaries, unless otherwise authorized by the Administrator.

(d) Operations are limited to Category 1 population density areas, in accordance with § 108.185, unless otherwise authorized by the Administrator.

§ 108.465 Demonstration operations.

(a) No operator may conduct aerial performances such as air races, air shows, sales demonstrations, and exhibitions or the practice and preparations for related events, with an unmanned aircraft under this part without, or in violation of, a demonstration permit issued in accordance with this subpart.

(b) Operations must be conducted with fewer than 50 active unmanned aircraft, unless otherwise authorized by the Administrator.

(c) Unmanned aircraft and anything attached to or carried by the unmanned aircraft must not have a combined total weight greater than 110 pounds, unless otherwise authorized by the Administrator.

(d) Operations are limited to Category 2 population density areas or lower, in accordance with § 108.185, unless otherwise authorized by the Administrator.

(e) Operations must be conducted at least 500 feet away from any non-participating persons, unless otherwise authorized by the Administrator.

§ 108.470 Flight test operations.

(a) No operator may conduct operations involving flight tests of new unmanned aircraft designs, modifications, or other development-related operations with an unmanned aircraft under this part without, or in violation of, a flight test permit issued in accordance with this subpart.

(b) Flight test operations may only be conducted by unmanned aircraft manufacturers qualified under subpart G of this part or accredited educational institutions.

(c) Operations are limited to Category 1 population density areas, in accordance with § 108.185, unless otherwise authorized by the Administrator.

(d) Unmanned aircraft and anything attached to or carried by the unmanned aircraft must not have a combined total weight greater than 1,320 pounds, unless otherwise authorized by the Administrator.

(e) Section 108.105(a) does not apply to operations conducted under a flight test permit.

§ 108.475 Recreational permit operations.

(a) No person may conduct non-commercial or recreational operations with an unmanned aircraft under this part without, or in violation of, a recreational permit issued in accordance with this subpart.

(b) Operations are limited to Category 3 population density areas or lower, in accordance with § 108.185.

(c) Unmanned aircraft and anything attached to or carried by the unmanned aircraft must not have a combined total weight greater than 55 pounds, unless otherwise authorized by the Administrator.

(d) Flights must not exceed 10 nautical miles from the flight coordinator.

(e) Operations must be conducted with only one active unmanned aircraft.

(f) Operations under a recreational permit do not have to comply with the following provisions of this part—

(1) The requirement to hold a company operations manual pursuant to §§ 108.130(a)(4) and 108.135;

(2) The experience requirements specified in § 108.310(e) and (f);

(3) The requirement to have a principal base of operations pursuant to § 108.30, except that the operator shall provide a permanent mailing address (including ZIP code), or if the permanent mailing address includes a post office box number, then the person's current residential address;

(4) The requirement to designate an operations supervisor pursuant to § 108.305;

(5) The requirement to develop and implement cybersecurity policies pursuant to § 108.435; and

(6) The duty and rest requirements of § 108.330.

Subpart E—Certificated Operations

§ 108.500 Operations under a certificate.

(a) Operators can conduct the following operations using an FAA-issued operating certificate in accordance with this subpart:

(1) Package delivery.

(2) Agriculture.

(3) Aerial surveying.

(4) Civic interest.

(b) Operators must conduct operations with an operating certificate in compliance with the requirements of this part and in accordance with any authorizations and limitations associated with that certificate.

(c) Any type of operation that does not fall under one of the categories

listed in paragraph (a) of this section can be authorized by the Administrator, subject to any limitations issued by the Administrator in conjunction with the certificate.

(d) Operators may only conduct operations for the types of operations that are prescribed by the manufacturer in the operating instructions in accordance with § 108.720.

§ 108.505 Applications for operating certificates.

(a) An applicant for an operating certificate must provide an application for an operating certificate to FAA in a form and manner acceptable to the Administrator.

(b) The applicant must describe the operation it seeks to conduct under this part. The application includes any questions, data, demonstration, and documentation requests from FAA that verify the applicant's ability to operate in compliance with the applicable requirements of this part. The application must address the following:

(1) The applicant's name and contact information (physical address, email address, and telephone number).

(2) Address of the principal base of operations, if different from the address provided for contact information, in accordance with § 108.30.

(3) Name of the individual who serves as operations supervisor, in accordance with § 108.305.

(4) The intended type of UAS operations, in accordance with § 108.500(a).

(5) The intended area(s) of operation, in accordance with § 108.165.

(6) Company manual(s), as required under § 108.135.

(7) A recordkeeping plan as required under § 108.40.

(8) Operator reporting procedures, as required under § 108.45.

(9) The type(s) of unmanned aircraft to be used in operations that comply with the requirements of § 108.105.

(10) A training program, as required under §§ 108.540 and 108.315.

(11) Communication and ground risk assessments, as required under § 108.550.

(12) Safety management systems, as required under § 108.560.

(13) Hazardous materials procedures, information, and training program, as required under § 108.570.

(14) Procedures permitting the use of inoperative equipment, pursuant to § 108.555.

(15) Plan for complying with duty and rest requirements, pursuant to § 108.330.

(16) For those operators proposing to engage in package delivery,

documentation of their citizenship status.

(17) Additional information the Administrator may determine is necessary to evaluate the application.

§ 108.510 Duration of certificates.

(a) Unless suspended or revoked, an operating certificate issued under this part is effective until the operator surrenders it to FAA, or the operator fails to meet the requirements of § 108.530.

(b) Operating certificates issued under this part are non-transferrable.

§ 108.515 Issuance of an operating certificate.

(a) The Administrator will evaluate each application for an operating certificate and may request additional information, documentation, or demonstration as needed, to supplement the application.

(b) An applicant may be issued an operating certificate if the Administrator—

(1) Finds that the applicant has demonstrated their ability to comply with the applicable requirements of this part; and

(2) Determines the applicant is properly and adequately equipped and can conduct safe operations.

(c) An FAA-issued operating certificate includes all the following information:

(1) The operator's name.

(2) The location of the operator's principal base of operations.

(3) The certificate number.

(4) The effective date of the certificate.

(5) Type(s) of operations.

(d) An operator may be authorized to conduct multiple types of operations under a single operating certificate issued under this subpart.

§ 108.520 Denial, suspension, or revocation of operating certificates.

An application for an operating certificate may be denied, or an operating certificate may be suspended or revoked, if the Administrator finds that—

(a) The applicant or operator does not meet the requirements of this part;

(b) The applicant or operator is not properly or adequately equipped or is not able to conduct safe operations under this part;

(c) The applicant or operator previously held an operating permit, operating certificate, or any other FAA certificate which was revoked;

(d) The applicant or operator intends to or fills a key management position listed in § 108.300 with an individual who exercised control over or who held

the same or similar position with an operator whose permit or certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation of the certificate or permit or causing the revocation process of the certificate or permit;

(e) An individual who will have control over or have a substantial ownership interest in the operator had the same or similar control or interest in an operator whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process; or

(f) The applicant or operator engaged in any violation of this part.

§ 108.525 Amendment of certificates.

(a) The Administrator may amend any certificate or any FAA authorizations and limitations issued under this part if—

(1) the Administrator determines that, under 49 U.S.C. 44709 and part 13 of this chapter, safety in air commerce and the public interest requires the amendment; or

(2) the operator applies for the amendment and the Administrator determines that safety in the public interest allows the amendment.

(b) When the Administrator proposes to issue an order amending, suspending, or revoking all or part of any certificate, the procedure in § 13.19 of this chapter applies.

(c) The operator may request to amend an operating certificate issued under this part by revising an application submitted in accordance with § 108.505.

(d) Within 30 calendar days of receiving an amendment initiated by the Administrator, or a denial of an operator's application for amendment, the operator may petition the Administrator to reconsider the amendment or denial.

§ 108.530 Recency of operation.

(a) Unless otherwise authorized by the Administrator, no operator may conduct an operation for which it is authorized to perform under their certificate unless the operator has conducted that operation within the preceding 12 calendar months.

(b) If an operator does not conduct an operation for which it is authorized within 12 calendar months, the operator must receive authorization from FAA to resume operations. In providing authorization to resume operations, FAA may require inspections or reexaminations to determine whether

the operator remains properly and adequately equipped and able to conduct a safe operation.

§ 108.535 Cybersecurity.

(a) Each operator must develop and implement cybersecurity policies and processes, in order to protect networks, devices, and data from unauthorized access and to ensure integrity, accuracy, and reliability of the operations.

(b) The cybersecurity policy required under this section must include, at a minimum, processes for—

(1) Protecting software, hardware, and network computing infrastructure necessary to protect operations from unauthorized access;

(2) Ensuring the operator's employee network access privileges are limited to those necessary to fulfill normal job duties;

(3) Preparing for, responding to, and mitigating the impact of cyber attacks;

(4) Ensuring access privileges are turned off and removed for former employees.

(c) The operator must review the cybersecurity policies at least annually and revise or update as necessary to reflect changing circumstances.

§ 108.540 Training program.

(a) Each operator must establish and implement a training program, acceptable to the Administrator, that satisfies the requirements of subpart C of this part and submitted in accordance with § 108.505(b)(10). The training program must include initial and recurrent training in accordance with § 108.315 that ensures operations personnel remain proficient in each unmanned aircraft, position, and type of operation in which they serve.

(b) The operator must ensure the training facilities, personnel, training material, forms, instructions, and procedures used to conduct the training required by this part are appropriate and current.

(c) The training facilities, personnel, training material, forms, and instructions required under this section may be satisfied using contracted personnel or services.

(d) The operator must designate a person or persons who are responsible for ensuring, and qualified to determine, operations personnel are appropriately trained. The designated person must certify as to the proficiency and knowledge of the operations personnel being trained or evaluated and that certification be made a part of the operations person's record in accordance with § 108.45.

(e) If the Administrator finds that revisions are necessary for the

continued adequacy of a training program that has been accepted, the operator must, after notification by the Administrator, make any changes in the program deemed necessary by the Administrator.

(f) Within 30 calendar days after the operator receives a notice pursuant to paragraph (e) of this section, the operator may file a petition to reconsider the notice with the Administrator. The filing of a petition to reconsider stays the notice pending a decision by the Administrator. If the Administrator finds that there is an emergency that requires immediate action in the interest of safety, the Administrator may, upon a statement of the reasons, require a change effective without stay.

§ 108.545 Validation tests.

(a) Each operator must show they can conduct operations safely and in compliance with applicable regulatory standards. Unless otherwise authorized by the Administrator, validation tests are required—

(1) During the application process for authority to conduct operations for an operating certificate under this subpart;

(2) For the addition of a new make or model of an unmanned aircraft if an unmanned aircraft of the same make and model or similar design has not been previously validated in operations under this part;

(3) For special performance or unique operational authorizations as determined by the Administrator; and

(4) For demonstrations of operations of unmanned aircraft-to-flight coordinator ratio greater than 1:1, in accordance with § 108.210.

(b) All validation tests must be conducted under the appropriate operating and maintenance requirements of this part that would apply if the applicant were fully certificated.

(c) Validation tests may be performed under a temporary authorization issued by the Administrator for the purposes of conducting validation testing.

§ 108.550 Communication and ground risk assessments.

(a) Operations under this subpart must be conducted in accordance with a communication assessment acceptable to the Administrator that includes a command and control analysis for the area of operations, to include coverage and availability, a monitoring plan, and lost link procedures. This communication assessment must be submitted in accordance with § 108.505(b)(11).

(b) Operations under this subpart must be conducted in accordance with

a ground risk assessment acceptable to the Administrator that includes pedestrian and moving vehicle analysis and consider terrain and human-made obstacles that the operator intends to overfly. This ground risk assessment must be submitted in accordance with § 108.505(b)(11).

§ 108.555 Inoperative equipment.

(a) No operator may conduct an operation under this part with an unmanned aircraft system with inoperative equipment or equipment that has failed its initial performance checks unless all the following requirements are met:

(1) The inoperative equipment is not—

(i) Indicated as necessary by the manufacturer of the unmanned aircraft pursuant to the manufacturer's operating instructions;

(ii) Required by subpart H of this part; or

(iii) Required for specific operations under this part.

(2) The inoperative equipment is removed from the unmanned aircraft, deactivated, or otherwise determined not to interfere with the safe operation of the unmanned aircraft.

(3) A determination is made by a person who is authorized by the operator to perform maintenance on the unmanned aircraft that the inoperative equipment does not constitute a hazard to the unmanned aircraft.

(4) Information identifying the inoperable equipment is made available to the appropriate operations personnel.

(b) The operator's procedures permitting the use of inoperative equipment must be submitted in accordance with § 108.505(b)(14).

§ 108.560 Safety management system.

(a) *General.* Operators authorized to conduct operations as a certificated operator under this subpart must develop, implement, and keep current a safety management system that meets the requirements of part 5 of this chapter. This safety management system must be submitted in accordance with § 108.505(b)(12).

(b) *Exceptions.* Organizations with a sole individual performing all necessary operations functions in the conduct and execution related to the safe operation of the unmanned aircraft are not required to comply with the following provisions: §§ 5.21(a)(4) and (5), 5.21(c), 5.23(a)(2) and (3) and (b), 5.25(b)(3) and (c), 5.27(a) and (b), 5.71(a)(7), 5.93, and 5.97(d) of this chapter.

(c) *Availability.* An operator must make available to the Administrator, upon request, all necessary information

and data that demonstrates that the operator has a safety management system that meets the requirements set forth in part 5 of this chapter.

§ 108.565 Package delivery operations.

(a) Except as provided in subpart D of this part, no operator may conduct package delivery operations with an unmanned aircraft under this part without, or in violation of, a package delivery certificate issued in accordance with this subpart.

(b) Operators must ensure that the payload in, on, or suspended from the unmanned aircraft is properly secured and does not adversely affect the flight characteristics or controllability of the unmanned aircraft.

(c) The unmanned aircraft, and anything attached to or carried by the unmanned aircraft, must not have a combined total weight greater than 110 pounds.

(d) The operator must ensure proposed delivery areas are free of any obstructions that could pose a hazard.

(e) The operator must provide information about the delivery method to each customer and provide the customer instructions to remain clear of the unmanned aircraft during delivery by a distance sufficient to minimize the risk of injury.

(f) Operators must request and obtain a limited security program from the Transportation Security Administration under 49 CFR 1544.101(g) before conducting UAS operations.

§ 108.570 Hazardous materials.

(a) Each operator conducting package delivery operations under this subpart must receive from the Administrator—

(1) An authorization permitting, or prohibiting, the acceptance, handling, and transporting of hazardous materials; and

(2) An authorization to unload hazardous materials by releasing or dropping such materials above ground level if the operator wishes to conduct this type of operation.

(b) Each operator conducting package delivery operations under this subpart must have procedures and information to assist each person performing or directly supervising any of the following job functions involving any item for transport on board an unmanned aircraft:

- (1) Acceptance of an item for transport.
- (2) Rejection of an item for transport.
- (3) Handling of an item for transport.
- (4) Storage incidental to transport.
- (5) Packaging of an item for transport.
- (6) Loading of an item for transport.

(c) The procedures and information required in paragraph (b) of this section must include—

(1) Procedures for identifying packages that are marked or labeled as containing hazardous materials or that show signs of containing undeclared hazardous materials;

(2) Procedures for rejecting packages that do not conform to the Hazardous Materials Regulations in 49 CFR parts 171 through 180 or that appear to contain undeclared hazardous materials;

(3) Procedures for complying with the hazardous materials incident reporting requirements of 49 CFR 171.15 and 171.16, and discrepancy reporting requirements of 49 CFR 175.31;

(4) Procedures for complying with paragraph (d) of this section; and

(5) For an operator with an authorization in paragraph (a)(1) of this section to permit the acceptance, handling, and transportation of hazardous materials, the procedures and information must also include—

(i) Procedures to ensure that packages containing hazardous materials are properly offered and accepted in compliance with 49 CFR parts 171 through 180;

(ii) Procedures to properly handle, store, package, load, and carry packages containing hazardous materials on board an unmanned aircraft in compliance with 49 CFR parts 171 through 180;

(iii) Procedures to properly handle, package, and transport aircraft replacement parts, consumable materials, or other items regulated by 49 CFR parts 171 through 180; and—

(iv) Procedures for compliance with the notice requirements of 49 CFR 175.33.

(d) The operator must ensure each person authorized in subpart F of this part to maintain, repair, and alter the unmanned aircraft is notified of whether any materials they handle are hazardous materials.

(e) Each operator conducting package delivery operations under this subpart must establish and implement a hazardous materials training program approved by the Administrator. The training program must be designed to ensure that each person performing or directly supervising any of the job functions listed in paragraph (b) of this section is trained to comply with all applicable requirements of this subpart, including hazardous materials package recognition, and 49 CFR parts 171 through 180.

(f) Each operator conducting package delivery operations under this subpart must provide initial hazardous materials training and recurrent hazardous

materials training to each person performing or directly supervising any of the job functions specified in paragraph (b) of this section.

(g) No person, including independent contractors, subcontractors, and direct employees of the operator, may perform or directly supervise the job functions listed in paragraph (b) of this section on behalf of the operator unless that person has satisfactorily completed the initial operator's hazardous materials training program within 30 days from the date of hire or start of a related job function, and recurrent training every 24 calendar months thereafter.

(h) A person who has not yet satisfactorily completed the required initial operator's hazardous materials training program within 30 days from the date of hire or start of a related job function listed in paragraph (b) of this section, may perform those job functions for not more than 30 days from the date of hire or start of a related job function, if the person is under the direct visual supervision of a person who is authorized by the operator to supervise that person and who has successfully completed the operator's FAA-approved initial or recurrent training program within the past 24 months.

(i) Each operator using a person under the exception in paragraph (h) of this section must maintain a record for that person. The records must be available upon request at the location where the trained person performs or directly supervises the job function specified in paragraph (b) of this section. The record must include—

(1) A signed statement from an authorized representative of the operator authorizing the use of the person in accordance with the exception;

(2) The date of hire or change in job function;

(3) The person's name and assigned job function;

(4) The name of the supervisor of the job function; and

(5) The date the person is to complete hazardous materials training in accordance with the operator's approved hazardous materials training program.

(j) An operator that uses or assigns a person to perform or directly supervise a job function specified in paragraph (b) of this section, when that person also performs or directly supervises the same job function for another package delivery operator under this subpart, part 121 certificate holder, or part 135 certificate holder, need only train that person in its own policies and

procedures regarding those job functions, if all of the following are met:

(1) The operator using this exception receives written verification from the person designated to hold the training records representing the other package delivery operator, part 121 certificate holder, or part 135 certificate holder that the person has satisfactorily completed hazardous materials training for the specific job function under the other package delivery operator, part 121 certificate holder, or part 135 certificate holder's FAA approved hazardous material training program.

(2) The package delivery operator, part 121 certificate holder, or part 135 certificate holder who trained the person has the same part 108 authorization in paragraph (a) of this section, equivalent part 121 operations specification, or equivalent part 135 operations specifications regarding the acceptance, handling, and transport of hazardous materials as the operator using this exception.

(k) A person who satisfactorily completes recurrent hazardous materials training in the calendar month before, or the calendar month after, the month in which the recurrent training is due, the subsequent calendar renewal month will remain the same. If the person completes this training earlier than the month before it is due, the month of the completion date becomes their new anniversary month.

(l) Each operator must develop and maintain processes to conduct safety risk assessments, as outlined in § 5.55 of this chapter, in support of an authorization or amendments thereto, permitting the acceptance, handling, and transportation of hazardous materials in paragraph (a)(1) of this section and, when appropriate, the authorization in paragraph (a)(2) of this section. Safety risk assessments must be submitted to FAA and be acceptable to the Administrator. Safety risk assessments must also be inclusive of risks to people and property on the ground resulting from the carriage of hazardous materials.

§ 108.575 Agricultural operations.

(a) Except as provided in subpart D of this part, no operator may conduct agricultural operations with an unmanned aircraft under this part without, or in violation of, a certificate issued in accordance with this subpart. Agricultural operation means the operation of an aircraft for the purpose of—

- (1) Dispensing any economic poison;
- (2) Dispensing any other substance intended for plant nourishment, soil

treatment, propagation of plant line, or pest control; or

(3) Engaging in dispensing activities directly affecting agriculture, horticulture, or forest preservation, but not including the dispensing of live insects.

(b) Dispensing operations must not be conducted directly over people, unless otherwise authorized by the Administrator.

(c) Operations are limited to Category 3 population density areas or lower, in accordance with § 108.185, unless otherwise authorized by the Administrator.

(d) No operator may dispense, or cause to be dispensed, from an unmanned aircraft, any material or substance in a manner that creates a hazard to persons or property on the surface.

(e) No operator may dispense, or cause to be dispensed, from an unmanned aircraft, any economic poison that is registered with the U.S. Department of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 and 135k)—

(1) For a use other than that for which it is registered;

(2) Contrary to any safety instructions or use limitations on its label; or

(3) In violation of any Federal, State, or local law or regulation.

(f) Paragraph (e) of this section does not apply to any operator dispensing economic poisons for experimental purposes under—

(1) The supervision of a Federal or State agency authorized by law to conduct research in the field of economic poisons; or

(2) A permit from the U.S. Department of Agriculture issued pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 and 135k).

(g) Operators conducting agricultural operations under this subpart must have and keep current a comprehensive training program that is tailored for their proposed operation and contains, at a minimum—

(1) Steps to be taken before starting operations, including survey of the area to be worked;

(2) Safe handling and storage of economic poisons and the proper disposal of used containers for those poisons;

(3) The general effects of economic poisons and agricultural chemicals on plants, animals, and persons, with emphasis on those normally used in the areas of intended operations; and the precautions to be observed in using poisons and chemicals;

(4) Primary symptoms of poisoning of persons from economic poisons, the appropriate emergency measures to be taken, and the location of poison control centers;

(5) Performance capabilities and operating limitations of the unmanned aircraft to be used; and

(6) Safe flight and application procedures.

(h) Operators must ensure that all operations personnel supervising or participating in an agricultural unmanned aircraft operation have completed the operator's training program required pursuant to paragraph (g) of this section.

§ 108.580 Aerial surveying operations.

(a) Except as provided in subpart D of this part, no operator may conduct photography, videography, mapping, inspecting, or patrolling operations with an unmanned aircraft under this part without, or in violation of, an aerial surveying certificate issued in accordance with this subpart.

(b) Operations at a gross weight of more than 110 pounds are limited to Category 4 population density areas or lower, in accordance with § 108.185, unless otherwise authorized by the Administrator.

§ 108.585 Civic interest operations.

(a) Except as provided in subpart D of this part, no operator may conduct operations in support of civic interest with an unmanned aircraft under this part without, or in violation of, a civic interest certificate issued in accordance with this subpart. Operations in the civic interest operations consists of—

(1) Forest and wildlife conservation, including wildfire recovery, wildlife conservation, and tracking climate change; and

(2) Operations in support of public safety, including fire, accident, and disaster response where the operator has coordinated and deconflicted operations with the law enforcement or government emergency management agency responsible for the incident response in advance and throughout the duration of the operation.

(b) Operations must be conducted by an entity contracted to a Federal, State, local, Tribal, or territorial government for the performance of the civic interest operation.

(c) Operations at a gross weight of more than 110 pounds are limited to Category 4 population density areas or lower, in accordance with § 108.185, unless otherwise authorized by the Administrator.

(d) Notwithstanding the restrictions in paragraph (c) of this section and

§ 108.185, operations may be conducted over any population density to the extent necessary to safeguard lives in imminent threat.

Subpart F—Maintenance and Alterations

§ 108.600 General.

(a) This subpart prescribes rules for the maintenance and alterations of unmanned aircraft systems operating under this part.

(b) This subpart does not apply to—

(1) The maintenance or alterations of automated data service provider equipment approved under part 146 of this chapter;

(2) The maintenance or alteration of an unmanned aircraft and its associated elements that is operated and maintained in accordance with parts 43 and 91 of this chapter; or

(3) The maintenance or alterations of associated elements not under the direct control of the operator.

§ 108.605 Persons performing maintenance and alterations.

No person may perform maintenance or alteration to an unmanned aircraft system with an airworthiness acceptance until the operator has—

(a) Determined the person is qualified, through basic skills and knowledge obtained in accordance with § 108.315 to perform the maintenance or alteration; and

(b) Authorized the person to perform the maintenance or alteration.

§ 108.610 Unmanned aircraft maintenance.

(a) Each operator authorizing or performing maintenance on unmanned aircraft system must ensure the methods, techniques, and practices prescribed in the unmanned aircraft manufacturer's maintenance instructions, as provided in § 108.720(a)(2), are used and ensure the unmanned aircraft system remains in a condition for safe operation.

(b) Each operator of an unmanned aircraft must have the unmanned aircraft system inspected in accordance with the methods, and at the intervals, prescribed in the unmanned aircraft manufacturer's inspection criteria in the maintenance instructions.

(c) Except as provided in § 108.555, prior to operating the unmanned aircraft system each operator of an unmanned aircraft system must have any inoperative equipment and any items not in a condition for safe operation repaired as prescribed in the manufacturer's maintenance instructions.

§ 108.615 Life-limited parts.

(a) No person may operate an unmanned aircraft with parts installed that have exceeded the life limits specified in the manufacturer's maintenance instructions.

(b) The operator must track the status of life-limited parts using a system that uniquely identifies the part and tracks the associated life-limiting factor of the part, through removals and reinstallations.

(c) When a life-limited part is removed that has reached its life limit or is not intended to be re-installed, the operator must disposition the part in a manner that clearly identifies the part's life-limited status or prevents its reinstallation. This includes, but is not limited to the following:

(1) Any method that uniquely identifies the part and its status, such as a tag, record, document, or other marking, that is made or attached to the life-limited part.

(2) Segregation of the life-limited part by physically storing it separately from other parts that are eligible for installation.

(3) Mutilation of the life-limited part that renders the part beyond economical repair and incapable of being reworked to appear to be in a condition for safe operation.

(d) An operator who removes a life-limited part and later sells or otherwise transfers that part must transfer the part with the tag, record, document, or other marking that clearly identifies the life-limited status of the part, unless the part is mutilated before it is sold or transferred.

§ 108.620 Unmanned aircraft batteries.

(a) Each operator using batteries as a required in-flight power source must have a battery monitoring program.

(b) Operators must remove from service any batteries that indicate significant degradation or inadequate levels of performance.

§ 108.625 Repairs and alterations.

(a) The operator must accomplish repairs or alterations to unmanned aircraft systems under this part in accordance with procedures authorized by the manufacturer as provided in § 108.755.

(b) The replacement of parts or assemblies with identical or alternative parts or assemblies specified by the manufacturer is not considered a repair or alteration for the purposes of this section.

§ 108.630 Operation after maintenance or alterations.

(a) No person may operate any unmanned aircraft system that has

undergone maintenance or alteration unless—

(1) The unmanned aircraft system has been approved for return to service by a person authorized by the operator; and

(2) The operator ensures the maintenance record entry required by 108.40(d) is completed.

(b) No person may operate an unmanned aircraft system that has been maintained or altered in a manner that may have appreciably changed the flight characteristics or substantially affected the operation of the unmanned aircraft system until an operational check of the unmanned aircraft has been performed and it is found to be in a condition for safe operation.

(c) Flights performed as part of an operational check under paragraph (b) may be conducted under the operator's existing permit or certificate but must not be conducted over people or moving vehicles.

Subpart G—Procedures for Unmanned Aircraft System Airworthiness Acceptance

§ 108.700 Airworthiness acceptance generally.

(a) *Purpose.* This subpart prescribes procedures and standards for airworthiness acceptance of unmanned aircraft systems under this part.

(b) *Eligibility.* To be eligible to apply for airworthiness acceptance, the manufacturer—

(1) Must be a manufacturer of an unmanned aircraft system in—

(i) The United States; or

(ii) A country with which the United States has a Bilateral Airworthiness Agreement addressing unmanned aircraft systems or Bilateral Aviation Safety Agreement with associated Implementation Procedures for Airworthiness addressing unmanned aircraft systems, or an equivalent airworthiness agreement; and

(2) The manufacturer's authorized representative or agent must be trained and certified on the requirements associated with the declaration of compliance by an organization that certifies and trains quality assurance staff in accordance with an FAA-accepted consensus standard.

§ 108.705 Means of compliance.

(a) *Means of compliance generally.*

(1) A voluntary consensus standards body may submit a voluntary consensus standard to FAA for acceptance as a means of compliance for satisfying a requirement of this subpart or subpart H of this part other than requirements pertaining to noise.

(2) If the Administrator determines the voluntary consensus standards

body's proposed means of compliance satisfies the requirements of this subpart and subpart H of this part for which it has been submitted, the Administrator will notify the voluntary consensus standards body that the means of compliance has been accepted.

(3) The Administrator will publish a document in the **Federal Register** announcing the acceptance of the means of compliance, as proposed or with modification, to the public.

(b) *Means of compliance for noise.*

(1) A voluntary consensus standards body may submit a voluntary consensus standard to FAA for approval as a means of compliance for satisfying the applicable noise requirements of this part and part 36 of this chapter.

(2) If the Administrator determines the voluntary consensus standards body's means of compliance satisfies the requirements of part 36 of this chapter, the Administrator will notify the voluntary consensus standards body that the means of compliance for noise is approved.

(3) The Administrator will publish a document in the **Federal Register** announcing approval of the noise means of compliance to the public.

§ 108.710 Compliance with design, test, production, noise, and airworthiness requirements.

(a) To seek airworthiness acceptance for an unmanned aircraft system, a manufacturer must comply with this subpart and subpart H of this part and must submit a declaration of compliance to the Administrator that meets the requirements of § 108.715.

(b) To receive airworthiness acceptance, an unmanned aircraft system must meet the following requirements:

(1) Except as otherwise provided in this section, the requirements of this subpart and subpart H of this part must be met through the use of an FAA-accepted means of compliance.

(2) The noise requirements of part 36 of this chapter and this part may be met by either the use of an FAA-approved means of compliance or other applicable methods specified in part 36.

(3) The cybersecurity requirements of § 108.875 may be met either by the use of an FAA-accepted means of compliance or by any other standard acceptable to the Administrator for purposes of meeting the requirements of that section.

(c) The individual who determines compliance with the applicable consensus standards must be trained to determine whether a manufacturer's unmanned aircraft system demonstrates compliance with the provisions of any

applicable FAA-accepted or approved consensus standards.

§ 108.715 Declaration of compliance.

(a) To apply for airworthiness acceptance, a manufacturer must submit a declaration of compliance for FAA acceptance in a form or manner acceptable to the Administrator.

(b) A declaration of compliance must include the following:

(1) The manufacturer's name, physical address, telephone number, and email address.

(2) The unmanned aircraft make, model, series, serial number, and date of manufacture.

(3) The operations the manufacturer has specified may be safely conducted using the unmanned aircraft system.

(4) The means of compliance used to determine the unmanned aircraft system's compliance with design, test, production, and airworthiness requirements of this subpart and subpart H of this part.

(5) The means of compliance for noise or other method of compliance specified in part 36 of this chapter used for compliance used to determine the unmanned aircraft system's compliance with noise requirements.

(6) The standard used, if another standard acceptable to the Administrator is used to meet the cybersecurity requirements of § 108.875.

(7) A declaration that the unmanned aircraft system meets the requirements of § 108.710.

(8) A declaration that the determination required by paragraph (b)(7) of this section was made by an individual who meets the requirements of § 108.710(c).

(9) A declaration that the unmanned aircraft system conforms to the manufacturer's design data and that the manufacturer used a quality assurance system that meets the requirements of § 108.730.

(10) A declaration that the manufacturer will make available to any registered owner, the National Transportation Safety Board, or the Administrator the documents specified in § 108.720 upon request.

(11) A declaration that the manufacturer will support the unmanned aircraft systems after airworthiness acceptance by implementing and maintaining a documented continued operational safety program as required in § 108.740.

(12) A declaration that the manufacturer will monitor and correct safety-of-flight issues through the issuance of safety bulletins following airworthiness acceptance.

(13) A declaration that the manufacturer has inspected the

unmanned aircraft system in accordance with § 108.735.

(14) A declaration that at the request of the Administrator, the manufacturer will provide unrestricted access to its facilities and to all data and documentation and allow the Administrator to witness any tests necessary to determine compliance with this section or other applicable requirements of this chapter, or other information as requested by the Administrator.

(15) A declaration that the manufacturer has established and will maintain a quality assurance system that meets the requirements of § 108.730.

(16) A declaration that the unmanned aircraft system complies with subpart F of part 89 of this chapter.

(c) The declaration of compliance must be signed by the manufacturer's authorized representative or agent who is trained and certified on the requirements associated with the declaration of compliance by an organization that certifies and trains quality assurance staff in accordance with an FAA-accepted means of compliance.

(d) If the manufacturer has successfully met the applicable requirements of this subpart and subpart H of this part, the Administrator will accept the declaration of compliance and notify the manufacturer of the acceptance.

§ 108.720 Documents.

(a) The manufacturer of an unmanned aircraft system with, or seeking, an airworthiness acceptance must prepare and retain the following documents.

(1) Operating instructions that include but are not limited to:

(i) Procedures and limitations to accommodate environmental conditions likely to be encountered in the unmanned aircraft system's intended operations, including normal, abnormal, and emergency procedures.

(ii) A listing of the manufacturer-designated operations, as defined in §§ 108.400 and 108.500, that may be safely conducted using the unmanned aircraft system.

(iii) The manufacturer-designated ratio of unmanned aircraft to flight coordinator.

(iv) A statement that the aircraft has demonstrated compliance with part 36 of this chapter, the demonstrated noise levels of the aircraft, and the following statement: "No determination has been made by the Federal Aviation Administration whether the noise levels of this aircraft are or should be acceptable for operation in any location."

(v) A list of parts and installed equipment necessary for the safe operation of the aircraft, or a list of equipment that is allowed to be inoperative.

(2) Maintenance instructions that include procedures necessary to ensure continued safe operation, including but not limited to inspection criteria, repairs, and life limits, of the unmanned aircraft and its associated elements.

(3) A configuration control document that defines all acceptable configurations of both the unmanned aircraft and associated elements.

(b) The manufacturer of an unmanned aircraft system with an airworthiness acceptance must make these documents readily available to any registered owner, the National Transportation Safety Board, or the Administrator upon request.

§ 108.725 Flight data.

Each manufacturer of an unmanned aircraft system with an airworthiness acceptance must:

(a) Establish and maintain a flight data collection system for all unmanned aircraft system models produced subject to the requirements of this part. This system must include the capture and storage of flight data provided by the aircraft operator per § 108.45(a)(2).

(b) Retain flight data records for a minimum of 2 years after the collection of the data.

(c) Implement adequate security measures to protect the confidentiality and integrity of collected flight data.

(d) Upon request from the Administrator, provide access to the collected flight data in a manner acceptable to the Administrator.

§ 108.730 Quality assurance system.

The unmanned aircraft system must be designed, produced, and tested under a manufacturer-established and documented quality assurance system that demonstrates each unmanned aircraft system produced conforms to its design and is in a condition for safe operation.

§ 108.735 Production.

Each manufacturer must inspect and test each unmanned aircraft system under manufacturer-established and documented production procedures to demonstrate that—

(a) The unmanned aircraft system has no hazardous operating characteristics or design features;

(b) The unmanned aircraft system is in a condition for safe operation; and

(c) The unmanned aircraft can safely conduct any permitted or certificated operations in §§ 108.400 and 108.500 for

which the unmanned aircraft is intended, as designated by the manufacturer.

§ 108.740 Continued operational safety program.

(a) Each manufacturer of an unmanned aircraft system that has received airworthiness acceptance must implement and maintain a documented continued operational safety program.

(b) The continued operational safety program must include—

(1) Requirements monitoring for, identifying, and resolving in-service safety issues or noncompliance with this subpart and subpart H of this part, including implementing any airworthiness directives pertaining to type-certificated products or appliances, if installed;

(2) Provisions for the issuance of safety bulletins;

(3) A process for notifying the Administrator and all owners of the unmanned aircraft system of all safety issues, including their planned resolution; and

(4) A process for providing advance notice to the Administrator and all owners of unmanned aircraft system of a continued operational safety program discontinuance or provider change.

(c) A manufacturer of an unmanned aircraft system that has received airworthiness acceptance must report any identified hazard involving its unmanned aircraft system models to the Administrator within 10 calendar days, accompanied by the relevant flight data.

§ 108.745 Inspections and audits.

Each manufacturer, with a valid flight test permit or who submits a declaration of compliance, of an unmanned aircraft system for airworthiness acceptance must:

(a) Upon request, allow the Administrator to inspect its facilities, technical data, reports, any manufactured unmanned aircraft system in its possession, and any other necessary information to determine compliance with this part.

(b) Upon request, allow the Administrator to witness any tests to determine compliance with this part.

(c) Submit to independent inspections or audits conducted by the voluntary consensus standards body, or its delegate, that submitted a means of compliance the manufacturer used to meet the requirements of this subpart and subpart H of this part.

(d) Upon request, make available to the Administrator results from independent inspections and audits completed under paragraph (c) of this section.

§ 108.750 Design changes.

(a) Only the manufacturer of the unmanned aircraft system that has received airworthiness acceptance may make design changes to the unmanned aircraft.

(b) The manufacturer must demonstrate compliance with the requirements of this subpart and subpart H of this part for any design change to an unmanned aircraft system that has received airworthiness acceptance.

(c) Each manufacturer of the unmanned aircraft system that has received airworthiness acceptance must update all documentation affected by the design change, including the operating instructions, maintenance instructions, and configuration control document required by § 108.720.

§ 108.755 Repairs and alterations.

Each manufacturer of an unmanned aircraft system with an airworthiness acceptance must do the following:

(a) Authorize any repair or alteration under § 108.625.

(b) Ensure the repaired or altered unmanned aircraft system continues to comply with the requirements of this subpart and subpart H of this part.

(c) Conduct testing required by §§ 108.930 and 108.935 for any repair or alteration that affects the flight characteristics or demonstrated reliability.

§ 108.760 Record retention.

(a) *Retention requirement.* Each manufacturer of an unmanned aircraft system that has received airworthiness acceptance must retain and make available to the Administrator, upon request, all supporting information used to demonstrate compliance with the requirements of this subpart and subpart H of this part.

(b) *Duration.* Each manufacturer who submits a declaration of compliance for an unmanned aircraft system must retain the information described in paragraph (a) of this section for as long as it supports the continued operational safety of the unmanned aircraft system listed on the declaration of compliance and for 2 years following any cessation of support for the continued operational safety program.

§ 108.765 Rescission.

(a) *Rescission of Means of Compliance.* The Administrator may rescind its acceptance of a means of compliance if the Administrator determines that a means of compliance does not meet any of the requirements of this subpart and subpart H of this part.

(b) *Rescission of Airworthiness Acceptance.* The Administrator may

rescind airworthiness acceptance for an unmanned aircraft system if the Administrator determines the unmanned aircraft system presents safety concerns related to design or performance, or if the manufacturer of the unmanned aircraft system that has received airworthiness acceptance has not complied with the requirements of this subpart and subpart H of this part.

(c) *Notification of Rescission of Airworthiness Acceptance.* The Administrator will notify the manufacturer of the unmanned aircraft system that has received airworthiness acceptance of proposed rescission in the following manner:

(1) The Administrator will issue notice setting forth the Agency's basis for proposed rescission.

(2) The manufacturer of the unmanned aircraft system that has received airworthiness acceptance will have 30 calendar days to submit evidentiary information to refute proposed rescission.

(3) The Administrator will consider the manufacturer's response to proposed rescission, and may request any necessary additional information, stay rescission, or issue a notice rescinding the declaration of compliance.

(4) If the Administrator does not receive the response from the manufacturer of the unmanned aircraft system that has received airworthiness acceptance within 30 calendar days from the date of the issuance of proposed notice, the Administrator may issue a notice rescinding the declaration of compliance.

(d) *Emergency rescission of airworthiness acceptance.* (1) If the Administrator determines an emergency exists and public safety requires an immediate rescission of airworthiness acceptance, the Administrator may issue an order rescinding a declaration of compliance without initiating the process in paragraph (c) of this section.

(2) The rescission would remain in effect until the basis for issuing the rescission no longer exists.

Subpart H—Design and Testing Requirements for Airworthiness Acceptance

§ 108.800 General.

(a) *Purpose.* This subpart prescribes design and performance standards for airworthiness acceptance of unmanned aircraft systems under this part.

(b) *Eligibility.* To be eligible for airworthiness acceptance, an unmanned aircraft system must—

(1) Meet the requirements of subpart G and this subpart,

(2) Not be an airship; and

(3) Not be designed to allow for any person on board during operations.

§ 108.805 Size, weight, and speed.

The unmanned aircraft must, unless otherwise authorized by the Administrator—

(a) Have a wingspan or lateral span not to exceed 25 feet (7 meters);

(b) Not have a combined total weight greater than 1,320 pounds (600 kilograms), including anything attached to or carried by the aircraft; and

(c) Be limited not to exceed 87 knots ground speed.

§ 108.810 Simplified user interaction.

The unmanned aircraft system must possess simplified user interaction design features during all phases of flight that meet the following:

(a) The unmanned aircraft must be consistently and predictably controllable, stable, and maneuverable with automated flight controls, without manual flight control being necessary or available, at all flight and ground loading configurations within the unmanned aircraft's prescribed weight limits.

(b) The unmanned aircraft must be resistant to operation outside of the flight design envelope.

(c) The unmanned aircraft must not lose control due to the degradation or nonavailability of external services, systems, operator input, or signals.

(d) The unmanned aircraft system must have the ability to discontinue the flight as soon as practicable and in a manner that does not create a safety hazard.

§ 108.815 Signal monitoring and transmission.

(a) The unmanned aircraft must be designed to receive from and transmit to the associated elements all information required for safe flight and operation.

(b) The unmanned aircraft must be designed to execute a safe predetermined action when reaching the link timeout.

§ 108.820 Position, navigation, and timing.

The unmanned aircraft system must be capable of sustaining position, navigation, and timing with accuracy to maintain safe distance in the airspace in which the unmanned aircraft operates.

§ 108.825 Collision avoidance.

The unmanned aircraft system must be designed with the capability to avoid aircraft as required in accordance with § 108.195.

§ 108.830 Anti-collision lighting.

(a) Anti-collision lights must—

(1) Be installed on the aircraft.

(2) Have intensities that, when operating at night, are visible for at least 3 statute miles; and

(3) Have flash rate, colors, and fields of coverage to enhance visibility.

(b) Consistent with operating requirements in § 108.110, the design may allow for the deactivation or reduction of intensity of the anti-collision lights.

§ 108.835 Position lighting.

If the unmanned aircraft has a wingspan or lateral span equal to or greater than 96 inches, the unmanned aircraft must—

(a) Be equipped with position lights that include a red light on the left side of the aircraft, a green light on the right side of the aircraft, spaced laterally as far apart as practicable, and a white light facing aft, located on an aft portion of the aircraft or on the wing tips; or

(b) Have operating instructions that include a limitation prohibiting night operations.

§ 108.840 Power generation, storage, and distribution system.

(a) The unmanned aircraft system must be designed to provide power for all connected electrical loads.

(b) No single failure or malfunction of the unmanned aircraft power generation, storage, and distribution system shall result in a loss of flight or loss of control.

§ 108.845 Propulsion system.

(a) The propulsion system must possess the necessary reliability, durability, and endurance for safe flight without failure, malfunction, or excessive wear, throughout the expected life cycle of the propulsion system.

(b) The propulsion system must be designed not to exceed safe operating limits under normal operating conditions.

(c) The propulsion system must be designed so that a loss of power or a power failure does not lead to loss of control of the unmanned aircraft.

§ 108.850 Fuel system.

If equipped, the unmanned aircraft fuel system must:

(a) Provide a means to remove or isolate the fuel stored in the system from the rest of the aircraft safely.

(b) Be designed to retain fuel under all likely operating conditions.

(c) Have ventilation and drainage where flammable fluid or vapor may exist.

§ 108.855 Fire protection.

The unmanned aircraft must be designed to sustain static and dynamic deceleration loads without causing

structural damage to the fuel or electrical system components or their attachments.

§ 108.860 Software.

(a) All software that may affect the safe operation of the unmanned aircraft system must function properly and have dependability.

(b) All software changes made throughout the life cycle of the unmanned aircraft system must be tracked, controlled, and documented through a configuration management system.

(c) All software defects and modifications must be captured and recorded through a problem reporting system.

§ 108.865 Electronic hardware.

(a) Unmanned aircraft system electronic hardware must perform its intended function throughout the intended operating and environmental limitations.

(b) Unmanned aircraft system electronic hardware must be designed and installed so their operation does not have an adverse effect on the safe operation of the unmanned aircraft.

§ 108.870 Systems and equipment.

(a) The unmanned aircraft system must have all systems and equipment necessary for safe flight, taking into account any systems or equipment necessary to operate the unmanned aircraft in the intended airspace class or that are required for the operation.

(b) Installed systems and equipment must perform their intended function within the intended operating and environmental limitations.

(c) No probable failure shall result in a hazard.

§ 108.875 Cybersecurity.

The unmanned aircraft system equipment, systems, and networks, addressed separately and in relation to other systems, must be protected from unauthorized electronic interactions.

§ 108.880 Associated elements design and performance requirements.

(a) Each associated element, addressed separately and in relation to the unmanned aircraft and any other associated elements, must be designed to perform its intended function under all operating conditions specified in the unmanned aircraft system operating instructions.

(b) Any probable failure or malfunction of an associated element or component thereof must not result in a hazard.

(c) The associated element must be designed to continuously monitor,

display, and transmit information required for safe flight and operation.

§ 108.885 Suitability and durability of materials.

The suitability and durability of materials used in the unmanned aircraft system must account for the effects of all operational and environmental conditions expected in service.

§ 108.890 Operating environment conditions.

(a) The unmanned aircraft must have design characteristics to accommodate environmental conditions likely to be encountered during its intended operations; or

(b) The unmanned aircraft system must have the capability to identify and avoid or exit those environmental conditions in which the unmanned aircraft is not designed to operate.

§ 108.895 Lightning protection.

(a) The unmanned aircraft system must be capable of maintaining continued flight and control in the event of a lightning strike; or

(b) The operating instructions must include an operating limitation explicitly prohibiting flight operations in weather conditions that are conducive to lightning activity.

§ 108.900 Flight data recorder.

(a) The unmanned aircraft system must be equipped with a flight data recorder system that captures and records onboard systems and flight data from initial power up through shutdown.

(b) The recorded data must be in a standardized format and readily accessible to the Administrator or National Transportation Safety Board, and readable without requiring proprietary software.

§ 108.905 Flight data analysis.

The unmanned aircraft system must be designed to provide the manufacturer of the unmanned aircraft system that has received airworthiness acceptance with captured and recorded data from flight operations in order to conduct trend analysis, failure identification, and root cause analysis.

§ 108.910 Noise.

The unmanned aircraft must meet the applicable noise requirements of part 36 of this chapter.

§ 108.915 Placards.

The unmanned aircraft system must display all placards necessary for safe handling and operation.

§ 108.920 Identification and marking.

The unmanned aircraft identification and registration marking must comply with the requirements of part 45 of this chapter.

§ 108.925 Additional design and performance requirements for specific operational purposes.

(a) The unmanned aircraft system must be designed to account for any operational and environmental conditions and hazards, for any manufacturer-designated permitted or certificated operations as defined in §§ 108.400 and 108.500.

(b) For unmanned aircraft designed for the carriage of hazardous materials, the unmanned aircraft or transport container must have sufficient structural integrity to contain the hazardous material without allowing leakage or release of the material in the event of a hard landing or crash.

§ 108.930 Developmental testing.

(a) Each manufacturer must conduct flight tests of the unmanned aircraft system to achieve or validate the design and performance requirements of this subpart in an operationally representative environment and throughout the flight envelope.

(b) Analysis may be used in combination with flight testing to validate compliance with this subpart. Any simulations used for testing must be validated using an FAA accepted means of compliance.

(c) Before proceeding with function and reliability testing under § 108.935, the manufacturer must ensure the unmanned aircraft system's configuration has no hazardous operating characteristics or design features and is safe for the intended operation.

(d) Testing must validate that a probable failure of the unmanned aircraft system will not result in a loss of flight or control of the unmanned aircraft.

§ 108.935 Function and reliability testing.

(a) Each manufacturer must perform function and reliability testing for each unmanned aircraft system make, model and configuration.

(b) The make, model, and configuration of each unmanned aircraft system must perform at least 150 flight hours without experiencing any failure leading to—

- (1) Loss of flight,
- (2) Loss of control,
- (3) Non-conformance with unmanned aircraft system traffic management,
- (4) Loss of safe distance; or
- (5) Results in an unplanned landing.

(c) Testing must be conducted in an operationally representative environment, of §§ 108.400 and 108.500, as designated by the manufacturer.

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 34. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105; sec. 215, Pub. L. 111–216, 124 Stat. 2348.

■ 35. Amend § 119.1 by adding paragraph (e)(12) to read as follows:

§ 119.1 Applicability.

* * * * *

(e) * * *

(12) Unmanned aircraft system operations conducted under part 108 of this chapter.

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

■ 36. The authority citation for part 133 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702.

§ 133.1 [Amended]

■ 37. Amend § 133.1 by adding the words “or 108” after the words “part 107” in the introductory text.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 38. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 41706, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 44730, 45101–45105; Pub. L. 112–95, 126 Stat. 58 (49 U.S.C. 44730)

§ 135.1 [Amended]

■ 39. Remove the period at end of paragraphs (a)(1) and (a)(7) and in its place add the phrase “, except when those operations are conducted under the provisions of part 108 of this chapter.”

PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

■ 40. The authority citation for part 137 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 44701–44702.

§ 137.1 [Amended]

■ 41. Amend § 137.1 by adding the phrase “Except for aircraft subject to part 108 of this chapter,” at the beginning of the introductory text of paragraph (a).

■ 42. Add part 146 to subchapter H of chapter I to read as follows:

PART 146—AUTOMATED DATA SERVICE PROVIDERS

Subpart A—General

Sec.

146.1 Applicability.

146.5 Definitions.

146.10 General requirements.

146.15 Falsification, reproduction, alteration, or omission.

Subpart B—Certificate

Sec.

146.100 Application.

146.105 Applicant information.

146.110 Service levels.

146.115 Certification requirements.

146.120 Evaluation of application.

146.125 Obligation to update.

146.130 Terms.

Subpart C—Service Authorizations

Sec.

146.200 Request for authorization.

146.205 Authorization requirements.

146.210 Evaluation of request.

Subpart D—Certificated Service Providers

Sec.

146.300 Minimum requirements.

146.305 Cyber and data security.

146.310 Quality management system.

146.315 Change management.

146.320 Training program.

146.325 Reportable occurrences.

146.330 Record retention.

Subpart E—Authorized Service Requirements

Sec.

146.400 Authorized service data exchange requirements.

146.405 Software updates.

146.500 Revocations and suspension.

146.505 Petition to reconsider.

Subpart F—Due Process

Sec.

146.500 Revocations, Emergency Suspensions, and Requests for Reconsideration.

146.505 Petition to reconsider.

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103(b), 44701(a)(5), 44702, 44707, 46105(c), 46110, 44802. Pub. L. 115–254 sec. 342, sec. 360, sec. 376. Pub. L. 118–63 sec. 932.

Subpart A—General

§ 146.1 Applicability.

(a) *General.* This part applies to anyone who seeks a certificate to provide automated data services that support aircraft operations using a distributed computational system for

the purpose of showing compliance with requirements in this chapter.

(b) *Exceptions.* This part does not apply to—

(1) Services used to comply with requirements in part 21 of this chapter;

(2) Services used to comply with requirements in subchapter J of this chapter;

(3) Services that are provided through the Low Altitude Authorization and Notification Capability (LAANC); and

(4) Services provided to aircraft with an onboard pilot in command.

§ 146.5 Definitions.

The following definitions apply to this part. If there is a conflict between the definitions of this part and the definitions specified in § 1.1 of this chapter, the definitions in this part control for purposes of this part:

Authorized services means those services a certificated automated data service provider is authorized to provide under this part.

Automated data service provider means a person using a distributed computational system to provide automated data services that support aircraft operations.

Distributed computational system means a system that relies on one or multiple piece(s) of software, running simultaneously on one or multiple computer(s), to provide a set of functions.

Major update means a change to the software version that includes substantial changes to the application programming interface (API), or the features and functionality, such that the new version is not backward compatible with previous versions.

Minor update means a change to the software version that changes the application programming interface (API), may include new features or functionality, and remains backward compatible.

Patch update means a change to the software version that does not change the application programming interface (API) and is used for backward-compatible bug fixes and performance improvements.

Third-party vendor means a person that provides a distributed software capability that is necessary for a certificated service provider to meet the requirements of this part but for which the certificated service provider does not have direct control over the personnel, software code, or organizational processes.

§ 146.10 General requirements.

A person may obtain a certificate to provide automated data services using a

distributed computational system for the purpose of showing compliance with the requirements under this chapter. Only those automated data services authorized in accordance with subpart C of this part may be used to show compliance with requirements under this chapter.

§ 146.15 Falsification, reproduction, alteration, or omission.

(a) *Prohibited acts.* No person may make or cause to be made any fraudulent or intentionally false entry in—

(1) Any application under this part (including in any document used in support of that application);

(2) Any record or report that is made, kept, or used to show compliance with any requirement under this part;

(3) Any reproduction, for fraudulent purpose, of any application (including any document used in support of that application), record, or report under this part; or

(4) Any alteration, for fraudulent purpose, of any application (including any document used in support of that application), record, or report under this part.

(b) *Prohibited omissions.* No person may, by omission, knowingly conceal or cause to be concealed, a material fact in—

(1) Any application made under this part (including in any document used in support of that application); or

(2) Any record or report that is made, kept, or used to show compliance with any requirement under this part.

(c) *Penalties.* The commission by any person of an act prohibited under paragraphs (a) or (b) of this section is a basis for any one or any combination of the following:

(1) Suspending or revoking any certificate, approval, or authorization issued by FAA and held by that person.

(2) A civil penalty.

(3) The denial of a certificate, approval, or authorization.

Subpart B—Certificate

§ 146.100 Application.

Any person seeking to obtain a certificate to provide automated data services using a distributed computational system to comply with requirements under this chapter must submit the information identified in this subpart in a form and manner acceptable to the Administrator.

§ 146.105 Applicant information.

(a) *Contact information.* The applicant must provide the name, address of principal place of business, telephone

number, and email address for the person seeking a certificate.

(b) *Ownership structure.*

(1) Corporate applicants must submit documentation identifying the name and address of each stockholder who owns 5 percent or more of the total voting stock of the corporation, and if that stockholder is not the sole beneficial owner of the stock, the name and address of each beneficial owner. An individual is considered to own the stock owned, directly or indirectly, by or for a spouse, children, grandchildren, or parents.

(2) Non-corporate applicants must submit documentation identifying the name and address of each person having a financial interest in the entity.

(c) *Accountable executive.* The applicant must provide a name, address, telephone number, and email address for the accountable executive, as defined in part 5 of this chapter.

(d) *Authorization to do business.* The applicant must provide documentation demonstrating its authority to conduct business in the United States.

(e) *Other.* The applicant must provide any other relevant documentation the Administrator deems necessary to verify the entity's identity, corporate ownership, and authority to conduct business in the United States.

§ 146.110 Service levels.

(a) *General.* An applicant may be certificated at a service level described in this section.

(b) *Service levels.*

(1) Level 1: Services that support operations conducted under part 108 of this chapter and does not rely on regulatory relief to operate under that part.

(2) Level 2: Services that support operations conducted under part 108 of this chapter but rely on regulatory relief to operate under that part.

(3) Level 3: Services that are neither Service Level 1 nor Service Level 2, supporting operations that are not conducted under part 108 of this chapter.

§ 146.115 Certification requirements.

(a) *Service Level 1.* An applicant seeking a Service Level 1 certificate must provide, in a form and manner acceptable to the Administrator—

(1) A declaration of compliance that the applicant meets all applicable requirements in subpart D of this part; and

(2) A declaration of compliance that the applicant meets the requirements to provide at least one authorized level 1 service in accordance with subpart E of this part.

(b) *Service Level 2.* An applicant seeking a Service Level 2 certificate must provide, in a form and manner acceptable to the Administrator—

(1) A declaration of compliance and documentation describing how the applicant meets all applicant requirements in subpart D of this part; and

(2) A declaration of compliance and documentation describing how the applicant meets the requirements to provide at least one authorized level 2 service in accordance with subpart E of this part.

(c) *Service Level 3.* An applicant seeking a Service Level 3 certificate must provide, in a form and manner acceptable to the Administrator—

(1) A declaration of compliance, documentation, and supporting data demonstrating that the applicant meets all applicable requirements in subpart D of this part;

(2) A declaration of compliance, documentation, and supporting data demonstrating that the applicant meets the requirements to provide at least one authorized level 3 service in accordance with subpart E of this part; and

(3) Documentation and supporting data demonstrating that the applicant's service meets the reliability, availability, latency, or other quality of service metrics necessary to provide the service.

(d) *Initial applicants.* An applicant seeking an initial certificate must also submit an application for authorization to provide at least one service, in accordance with subpart C of this part. The Administrator will issue a certificate to provide services only to applicants that can obtain approval to provide at least one authorized service.

(e) *Foreign-qualified applicants.* An applicant submitting proof of an active authorization to provide data services from a country that the United States has a bilateral aviation safety agreement covering automated data services comparable to those in this part, may be deemed to meet the application requirements in this section.

§ 146.120 Evaluation of application.

(a) *Evaluation.* The Administrator will evaluate the information the applicant submits and any other relevant information to determine whether the applicant meets the minimum qualifications of this part. The Administrator may request that the applicant provide supplemental information at any time during the application process.

(b) *Issuance.* Except as provided in paragraph (c) of this section, the Administrator may issue a person who meets the requirements of this part a

certificate to use a distributed computational system to provide automated data services that the applicant demonstrated it was qualified to provide, as described in § 146.115. The Administrator may place limits or conditions on the certificate as are necessary in the interest of safety.

(c) *Denial.* FAA may deny an application for a certificate under this part if FAA finds that—

(1) The applicant does not meet the requirements of this part;

(2) The applicant holds a certificate under this part that is under suspension or is in the process of being revoked or suspended;

(3) The applicant previously held a certificate under this part that was revoked;

(4) The applicant fills or intends to fill a management position with an individual who exercised control over or who held the same or a similar position with a certificated service provider under this part whose certificate was revoked or suspended, or is in the process of being revoked or suspended, and that individual materially contributed to the circumstances resulting in the revocation or suspension;

(5) An individual who will have control over or substantial ownership interest in the applicant had the same or similar control or interest in a certificated service provider whose certificate was revoked or suspended, or is in the process of being revoked or suspended, and that individual materially contributed to the circumstances resulting in the revocation or suspension; or

(6) For failure to comply with other applicable legal requirements.

§ 146.125 Obligation to update.

A person seeking an initial or amended certificate under this part has an ongoing obligation to update information submitted during the application process until the Administrator either grants or denies the application. The applicant must report this updated information to the Administrator within 10 days of becoming aware of the change in a form and manner acceptable to the Administrator.

§ 146.130 Terms.

(a) *Duration.* A certificate issued under this section remains valid until surrendered by the holder, or until revoked or suspended by FAA.

(b) *Application to provide additional services.* A certificated service provider seeking to provide services for additional service levels must apply in

accordance with the provisions of this subpart, except that the applicant need only submit information relevant to the new or amended service level.

(c) *Non-transferable.* No certificate issued under this section may be transferred to another organization without the Administrator's express approval. For the purposes of this section, a change in ownership structure in § 146.105(b) constitutes a transfer that requires the Administrator's express approval.

Subpart C—Service Authorizations

§ 146.200 Request for authorization.

(a) *General.* Any person seeking authorization to provide an automated data service using a distributed computational system under this part, must submit the information identified in this subpart in a form and manner acceptable to the Administrator.

(b) *Certificate required.* No person may obtain authorization to provide services under this part without being in compliance with a certificate issued under subpart B of this part.

§ 146.205 Authorization requirements.

(a) *Requirements.* An applicant seeking to provide an authorized service under this part must—

(1) Establish the minimum performance requirements for the service, in accordance with paragraph (b) of this section;

(2) Demonstrate that the applicant is capable of meeting the minimum performance requirements, in accordance with paragraph (c) of this section;

(3) Demonstrate that the service meets the requirements of subpart E of this part, in accordance with paragraph (d) of this section;

(4) Demonstrate that the service supports an aircraft operator's ability to comply with requirements in this chapter; and

(5) Demonstrate that the service is designed in accordance with an industry consensus standard or consensus standards.

(b) *Establishing minimum performance requirements.* An applicant establishes the minimum performance requirements for the service by submitting data and documentation in a form and manner acceptable to the Administrator that includes—

(1) An overview describing the service and its intended use;

(2) All representations to service users regarding the capabilities, quality-of-service, limitations, and responsibilities of the service provider and service user related to the authorized service; and

(3) Technical specifications describing the service's system architecture and functionality.

(c) *Demonstrating applicant's capability.* In a form and manner acceptable to the Administrator, the applicant must demonstrate that they are capable of meeting the minimum performance requirements as follows:

(1) An applicant seeking authorization to provide a level 1 service must provide, in a form and manner acceptable to the Administrator, a declaration of compliance that the applicant meets all applicable requirements of paragraph (b) of this section.

(2) An applicant seeking authorization to provide a level 2 service must provide, in a form and manner acceptable to the Administrator, a declaration of compliance and documentation describing how the applicant meets all applicable requirements of paragraph (b) of this section.

(3) An applicant seeking authorization to provide a level 3 service must provide, in a form and manner acceptable to the Administrator, a declaration of compliance, documentation, and supporting data demonstrating that the applicant meets all applicable requirements of paragraph (b) of this section.

(d) *Demonstrate that the service meets the requirements of subpart E of this part.* In a form and manner acceptable to the Administrator, the applicant must demonstrate that their automated data service meets the software updates and data exchange requirements of subpart E of this part as follows:

(1) An applicant seeking authorization to provide a level 1 service must provide, in a form and manner acceptable to the Administrator, a declaration of compliance that the service meets the requirements in subpart E of this part.

(2) An applicant seeking authorization to provide a level 2 service must provide, in a form and manner acceptable to the Administrator, a declaration of compliance and documentation describing how the service meets the requirements in subpart E of this part.

(3) An applicant seeking authorization to provide a level 3 service must provide, in a form and manner acceptable to the Administrator, a declaration of compliance, documentation, and supporting data demonstrating that the service meets the requirements in subpart E of this part.

§ 146.210 Evaluation of request.

(a) *Evaluation.* The Administrator will evaluate the information the applicant submits and any other relevant information to determine whether the applicant meets the requirements of § 146.205. The Administrator may request that the applicant provide supplemental information at any time during the evaluation process.

(b) *Authorization.* Except as provided in paragraph (c) of this section, the Administrator may authorize the applicant to provide a requested service if the applicant meets the requirements of § 146.205. The Administrator may place limits or conditions on the authorization as are necessary in the interest of safety.

(c) *Denial.* FAA may deny a request for authorization for a service under this part if FAA finds that—

- (1) The applicant does not hold a valid certificate under this part; or
- (2) Does not meet all requirements of § 146.205.

(d) *Non-transferable.* No authorization to provide services issued under this section may be transferred to another organization without the Administrator's express approval.

Subpart D—Certificated Service Providers**§ 146.300 Minimum requirements.**

(a) *Certificate.* Unless otherwise authorized by the Administrator, a certificated service provider providing services under this part must comply with the terms of the certificate issued under subpart B of this part.

(b) *Authorized services.* Unless otherwise authorized by the Administrator, a certificated service provider providing services under this part must comply with the terms of the authorization issued under subpart C of this part.

(c) *Facilities, equipment, software, and data.* A certificated service provider must maintain the facilities, equipment, software, and data necessary to meet the minimum requirements required to comply with the terms of the certificate and service authorizations in this part, except as provided in paragraph (d) of this section. Those requirements include the following:

- (1) Cyber and data security requirements in accordance with § 146.305.
- (2) Quality management system requirements in accordance with § 146.310.
- (3) Change management requirements in accordance with § 146.315.
- (4) Training requirements in accordance with § 146.320.

(5) Reporting requirements in accordance with § 146.325.

(6) Record retention requirements in accordance with § 146.330.

(7) Automated service data exchange requirements in accordance with § 146.400.

(8) Software update requirements in accordance with § 146.405.

(d) *Third-party vendor.* A certificated service provider may rely on services provided by a third party to meet the requirements of this part if:

- (1) The service is not specific to an aviation safety function; or
- (2) The third party holds a certificate and service authorization under this part.

(e) *Impartiality.* A certificated service provider under this part must provide their service to users in a reasonable and non-discriminatory manner, as applicable.

(f) *Compliance with applicable laws.* A certificated service provider providing services under this part must be authorized to conduct business in the United States and otherwise be in compliance with applicable law, including but not limited to those relating to data privacy and security.

§ 146.305 Cybersecurity.

(a) *Cybersecurity policy required.* A certificated service provider must develop and implement cybersecurity policies and processes to protect networks, devices, and data from unauthorized access and to ensure integrity, accuracy, and reliability of the services provided to the customer.

(b) *Contents of policy.* The cybersecurity policy required under this section must include processes for—

- (1) Protecting software, hardware, and network computing infrastructure necessary to protect the authorized service from unauthorized access;
- (2) Ensuring the certificated service provider's employee access privileges are limited to those necessary to fulfill normal job duties;
- (3) Preparing for, responding to, and mitigating the impact of cyber attacks;
- (4) Collecting and analyzing data to measure the effectiveness of the cybersecurity policy and processes; and
- (5) Revising the cybersecurity policy.

§ 146.310 Quality management system.

(a) *General.* A certificated service provider must develop, implement, and document a quality management system acceptable to the Administrator to ensure that the services provided by the certificated service provider, or any third-party vendor's services that the certificated service provider relies on, meet the minimum requirements of this part.

(b) *Safety management system.* The quality management system must meet the requirements of part 5 of this chapter; except the certificated service provider is not required to comply with the following provisions: §§ 5.7, 5.9, 5.11, 5.13, 5.15, 5.27, and 5.71(c) of this chapter.

(c) *Software update procedures.* A certificated service provider's quality management system must include a process for managing software updates that reduces the risk of introducing a hazard into the services authorized under this part, including but not limited to the requirements in § 146.405.

(d) *Third-party vendor requirements.* A certificated service provider must develop, implement, and document a process to monitor services provided by third parties, to detect failures or other performance issues that would adversely impact the certificated service provider's ability to meet the requirements of this part.

(e) *Testing and verification.*

(1) A certificated service provider must develop, implement, and document procedures to test and verify that the authorized services continue to meet the requirements of this subpart. The procedures must include the frequency of testing and the criteria the certificated service provider will apply to determine whether those services comply with this part.

(2) A certificated service provider must make all documentation of its testing and verification procedures available to the Administrator upon request.

(f) *Service difficulty reports.* A certificated service provider must—

(1) Have a readily available means to accept reports about the failure, malfunction, or defect in an authorized service that has endangered or may endanger the safe operation of an aircraft;

(2) Notify their users of that means to submit these reports; and

(3) Upon request, provide to the Administrator these reports, related data, and documentation of any corrective actions taken by the certificated service provider.

§ 146.315 Change management.

(a) *General.* A certificated service provider must develop, implement, and document a change management policy to ensure updates, amendments, or other changes to its software and technology do not adversely affect the performance level of the authorized services it provides under this part.

(b) *Notice.* A certificated service provider must notify FAA in writing of any change to its software or technology

that may affect the certificated service provider's ability to meet the authorized service requirements of this part, except as provided in § 146.405.

(c) *Review.* The Administrator may review the change management documentation supporting any change to a service authorized under this part.

§ 146.320 Training program.

(a) *General.* A certificated service provider must establish a training program to ensure anyone who performs, either directly or under contract, functions related to the development or performance of authorized services has the knowledge and skills necessary to ensure the organization's compliance with this part.

(b) *Topics.* The training program must cover, at a minimum—

(1) Best practices in distributed software development;

(2) Applicable regulations and Advisory Circulars relating to automated data services, airspace classification, operating requirements, and flight restrictions;

(3) Aviation safety culture concepts; and

(4) Best practices in the provision of automated data services for aviation users.

(c) *Recurrence.* The training program must include recurrent training elements that are provided not less than once per calendar year.

§ 146.325 Reportable occurrences.

A certificated service provider must report the following incidents in a form and manner acceptable to the Administrator—

(a) An unscheduled service outage;

(b) A security breach that results in unauthorized access to the certificated service provider's networks, devices, or data irrespective of whether it affects the integrity, accuracy, or reliability of the services provided to the service recipient; and

(c) Any other occurrence specifically identified in a certificate or authorization issued under subparts B or C of this part.

§ 146.330 Record retention.

(a) *Certificate.* A certificated service provider must retain data and documentation submitted to the Administrator in support of their application for certification for the duration of their certificate plus an additional 24 months.

(b) *Authorized Service.* A certificated service provider must retain the following for the duration of their service authorization plus an additional 24 months:

(1) Documentation and data submitted to the Administrator in support of service authorization.

(2) Records of testing required under subpart E of this part.

(3) Service difficulty reports and supplemental reports submitted to the certificated service provider about the failure, malfunction, or defect in an authorized service.

(c) *Additional Information.* The Administrator may request that the certificated service provider retain certain additional information, as necessary, in the interest of safety, efficiency, and fair access.

(d) *Authorized service data exchange.* The certificated service provider must preserve and maintain all data exchanged with customers or other airspace users as a part of providing an authorized service under this part for a minimum of 6 months from the time of the data exchange.

(e) *Training.*

(1) The certificated service provider must retain records of training given to its personnel for a minimum of 2 years following completion of training.

(2) In the event of a personnel-employer separation, the certificated service provider must retain records of the individual's training for 12 months after the separation from employment.

(f) *Audits and Inspection.* The certificated service provider must provide records kept under this part to the Administrator within a reasonable time after a request.

Subpart E—Authorized Service Requirements

§ 146.400 Authorized service data exchange requirements.

(a) *Interoperability.* Services authorized under this part must be able to exchange data automatically and securely with both the user and other authorized service providers when necessary for provision of the service, irrespective of the user's or other provider's digital platform.

(b) *Safeguards.* Services authorized under this part must contain safeguards and other measures to ensure the integrity, accuracy, and reliability of the data exchanged with the user including, but not limited to, those required in this section.

(c) *Authentication.* Services authorized under this part must use an access and authentication method that prevents unauthorized access to or interference with data exchanged with the user.

(d) *Non-repudiation.* Services authorized under this part must use a validation and verification method that

provides assurance of the integrity and origin of the data exchanged with the user.

(e) *Equitability.* A certificated service provider under this part must provide their service to users in a reasonable and non-discriminatory manner, as applicable.

§ 146.405 Software updates.

(a) *General.* Prior to releasing changes to an authorized service's software, a certificated service provider must verify that the change does not adversely affect a person's ability to operate safely in the airspace. For the purposes of this section, a person includes the certificated service provider's customer as well as other airspace users or services that rely on data exchanges with the authorized service.

(b) *Versioning.* The certificated service provider must use a generally accepted industry standard for assigning version numbers to software changes.

(c) *Testing required.*

(1) Prior to releasing any software change, the certificated service provider must conduct testing to verify that the change does not adversely affect the authorized service's ability to meet the requirements of this part.

(2) A certificated service provider must make all documentation of the testing and verification under this section available to the Administrator as soon as possible, but in no case later than 24 hours, after receiving a written request from the Administrator.

(3) The Administrator may request that a certificated service provider conduct additional testing or verification to demonstrate that authorized services meet the performance requirements of this part. A certificated service provider must conduct the testing or verification as soon as practicable after receiving a written request from the Administrator.

(d) *User notification.*

(1) The certificated service provider must provide reasonable notice to all users prior to any anticipated downtime, including the date, time, and expected duration of the downtime.

(2) Prior to releasing changes to an authorized service's software, including patch updates, the certificated service provider must provide reasonable notice to enable the user to evaluate potential effects on operations and make necessary operational adjustments.

(3) User notice must provide a description of the change, including—

(i) Providing the new version identifier;

(ii) Explaining the nature of the change;

(iii) Identifying differences in features, functionality, or user experience; and

(iv) Explaining any actions the user must take to ensure the authorized service meets the required performance levels following the change.

(4) The certificated service provider must keep a record of each update under this section for not less than two years from the date the update was released, including the information required by paragraph (d)(2) of this section.

(e) *FAA notification.* The certificated service provider must provide notice of minor and major updates to software used to deliver an authorized service in a form and manner acceptable to the Administrator as follows:

(1) Minor update:

(i) Service Level 1: the certificated service provider must notify the Administrator at least one business day prior to release;

(ii) Service Level 2: the certificated service provider must notify the Administrator at least 3 business days prior to release;

(iii) Service Level 3: the certificated service provider must notify the Administrator at least 5 business days prior to release.

(2) Major update: Service Level 1: the certificated service provider must notify the Administrator at least 5 business days prior to release.

(f) *FAA approval required.* The certificated service provider must obtain approval in a form and manner acceptable to the Administrator prior to releasing the major updates to software used to deliver an authorized service at Service Levels 2 and 3.

(g) *Discontinuing superseded software versions.* Unless otherwise authorized by the Administrator, when releasing a major update to an authorized service, the certificated service provider must—

(1) Maintain the most recent previous version of the authorized service with full functionality for a minimum of 60 days from the release date; and (2) Notify customers a minimum of 7 calendar days prior to removing full functionality of the prior version of the authorized service.

(h) *Exceptions.* Paragraph (g)(1) of this section does not apply if a set of authorized services provisioned by more than one automated data service provider must be updated in a coordinated, planned, or simultaneous manner in order to maintain interoperability.

Subpart F—Due Process

§ 146.500 Revocations, Emergency Suspensions, and Requests for Reconsideration.

(a) *Revocation.* The Administrator may revoke a service authorization issued under this part to preserve the safety in air commerce and the public interest.

(b) *Process.* Except as provided in paragraph (c) of this section, the Administrator will follow the following procedure to revoke a service authorization:

(1) The responsible FAA office notifies the authorization holder in writing of the proposed revocation.

(2) The written notification sets a reasonable period (but not less than 7 days) within which the authorization holder may submit written information, views, and arguments on the revocation.

(3) After considering all material presented, the responsible FAA office notifies the certificate holder of the revocation decision or withdrawal of the proposed revocation.

(4) If the responsible FAA office decides to revoke the service authorization, it becomes effective within 15 days after the authorization holder receives notice of the decision unless the FAA issues an emergency suspension under paragraph (c) of this section or the certificate holder petitions for reconsideration under § 146.505.

(c) *Emergency suspension of a service authorization.* The FAA may immediately suspend a service authorization if it finds that an emergency exists requiring immediate action to ensure safety in air commerce or transportation that makes the procedures set out in this section impracticable or contrary to the public interest, notifying the authorization holder:

(1) Of the immediate suspension of the service authorization effective on the date the notification is sent.

(2) Of the basis for the FAA's finding that an emergency exists requiring immediate action with respect to safety in air transportation or air commerce or that makes it impracticable or contrary to the public interest to stay the effectiveness of the emergency suspension.

§ 146.505 Petition to reconsider.

(a) *General.*

(1) Any applicant for service authorization or the holder of a service authorization provider may submit a petition in a form and manner acceptable to the Administrator within 60 calendar days of an application denial, revocation, or emergency

suspension of an authorization issued under this part.

(2) Any applicant or certificated service provider may submit a petition in a form and manner acceptable to the Administrator within 60 calendar days of a denial of a certificate issued under this part.

(b) *Error.* The petition must demonstrate that the Administrator issued their decision in error, resulting in the denial of an application for a certificate or authorization, or the revocation, or suspension of an authorization, by showing one of the following:

(1) A material fact exists that was not previously presented to the Administrator.

(2) The Administrator relied on a material error of fact.

(3) The Administrator did not correctly interpret a law, regulation, or precedent.

(c) *Decision.* The Administrator will consider the information submitted under this section and determine whether to withdraw the denial, revocation, or suspension, as applicable.

Title 49—Transportation

Chapter XII—Transportation Security Administration, Department of Homeland Security

Subchapter C—Civil Aviation Security

PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

■ 43. The authority citation for part 1540 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44925, 44935–44936, 44942, 46105.

■ 44. Amend § 1540.5 by adding, in alphabetical order, the terms “unmanned aircraft” and “unmanned aircraft system”, to read as follows:

§ 1540.5 Terms used in this subchapter.

* * * * *

Unmanned aircraft means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

Unmanned aircraft system (UAS) means an unmanned aircraft and associated elements (including communication links and the components that control the unmanned aircraft) that are required for the operator to operate safely and efficiently in the national airspace system.

PART 1544—AIRCRAFT OPERATOR SECURITY: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 45. The authority citation for part 1544 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, 46105.

■ 46. Amend § 1544.1 by revising paragraph (a)(1) to read as follows:

§ 1544.1 Applicability of this part.

(a) This part prescribes aviation security rules governing the following:

(1) The operations of aircraft operators holding operating certificates under 14 CFR part 119 for scheduled passenger operations, public charter passenger operations, private charter passenger operations; the operations of aircraft operators holding operating certificates under 14 CFR part 119 operating aircraft with a maximum certificated takeoff weight of 12,500 pounds or more; UAS operators permitted or certificated

under 14 CFR part 108; and other aircraft operators adopting and obtaining approval of an aircraft operator security program.

* * * * *

■ 47. Amend § 1544.101 by revising paragraph (g) to read as follows:

§ 1544.101 Adoption and implementation.

* * * * *

(g) *Limited program:* In addition to paragraph (d) of this section, if applicable, TSA may approve a security program after receiving a request by an aircraft operator holding a certificate under 14 CFR part 119, other than one identified in paragraph (a), (b), (d), or (f) of this section, or a UAS package delivery operator permitted or

certificated under 14 CFR part 108. The aircraft operator must—

* * * * *

Proposed amendments to title 14 CFR chapter I issued under authority provided by 49 U.S.C. 106(f), 40103(b), 44701(a)(5), 44807, 44808, 44811, and Sec. 932 of Pub. L. 118–63 in Washington, DC.

Bryan Bedford,

Administrator, Federal Aviation Administration.

Proposed amendments to 49 CFR chapter XII issued under authority provided by 49 U.S.C. 114, 44901, and 44903.

Ha Nguyen McNeill,

Acting Administrator, Transportation Security Administration.

[FR Doc. 2025–14992 Filed 8–6–25; 8:45 am]

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