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NUCLEAR REGULATORY COMMISSION

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[NRC–2025–0479]

RIN 3150–AL39

The Sunset Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date; partial withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of January 8, 2026, for the direct final rule that was published in the **Federal Register** on December 3, 2025, except for one provision that is being withdrawn. This direct final rule amended the NRC's regulations to insert a conditional sunset date into certain regulations in response to Executive Order 14270, "Zero-Based Regulatory Budgeting to Unleash American Energy." The NRC is withdrawing an amendment that would have established a conditional sunset date to the NRC's provisions for aircraft impact assessment.

DATES:

Partial Withdrawal: As of January 8, 2026, amendatory instruction 42 published on December 3, 2025, at 90 FR 55621, is withdrawn.

Effective Date: The effective date of January 8, 2026, for the direct final rule published December 3, 2025 (90 FR 55621), except for one amendment as described in this document, is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2025–0479 when contacting the NRC about the availability of information for this action. You may obtain publicly available information

related to this action by any of the following methods:

- **Federal Rulemaking Website:** Electronically at <https://www.regulations.gov>. Search for Docket ID NRC–2025–0479. Address questions about NRC dockets to Helen Chang; telephone: 301–415–3228; email: Helen.Chang@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. The **Federal Register** notice for the direct final rule is available in ADAMS under Accession No. ML25212A164.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Howard A. Benowitz, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–287–9112, email: Howard.Benowitz@nrc.gov.

SUPPLEMENTARY INFORMATION: On December 3, 2025 (90 FR 55621), the NRC published a direct final rule amending its regulations to insert a conditional sunset date into certain regulations in response to Executive Order 14270, "Zero-Based Regulatory Budgeting to Unleash American Energy." In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on January 8, 2026. The NRC received and docketed eleven comments on the companion proposed rule (90 FR 55699; December 3, 2025). An electronic copy of the comments can be obtained from the Federal Rulemaking website at

<https://www.regulations.gov> under Docket ID NRC–2025–0479.

The NRC evaluated the comments against the criteria described in the direct final rule and determined that some of the comments were significant and adverse. Specifically, certain comments concerning 10 CFR 50.150, "Aircraft impact assessment," were significant and adverse. For this reason, the NRC is removing instruction 42 to amend 10 CFR 50.150 from the direct final rule. The NRC will address comments on that proposed amendment in a final rule to be issued at a later time. Removing the change to 10 CFR 50.150 would not have any impact on the other changes in the direct final rule. No other comments on the rule raised a relevant issue that was not previously addressed or considered by the NRC. Therefore, the direct final rule, minus the amendment to 10 CFR 50.150, will become effective as scheduled.

Dated: January 6, 2026.

For the Nuclear Regulatory Commission.

Araceli Billoch Colon,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2026–00175 Filed 1–7–26; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 474

[EERE–2025–VT–0073]

RIN 1904–AG09

Petroleum-Equivalent Fuel Economy Calculation

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule, technical amendment.

SUMMARY: The U.S. Department of Energy (DOE) is amending its regulations in compliance with a United States Court of Appeals for the Eighth Circuit court decision vacating the March 29, 2024 rule revising procedures for calculating a value for the petroleum-equivalent fuel economy of electric vehicles (EVs) used by the Environmental Protection Agency (EPA)

in calculating light-duty vehicle manufacturers' compliance with the Department of Transportation's (DOT) Corporate Average Fuel Economy (CAFE) standards.

DATES: This action is effective on January 8, 2026. However, the opinion had legal effect on September 5, 2025.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Stork, U.S. Department of Energy, U.S. Department of Energy, Vehicle Technologies Office, EE-3V, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586-8306. Email: Kevin.Stork@ee.doe.gov.

SUPPLEMENTARY INFORMATION: The Energy Policy and Conservation Act

(EPCA) requires the Secretary of Transportation to set fuel economy standards for automobiles produced in, or imported into, the United States. 49 U.S.C. 32902. EPCA, as amended, requires the Secretary of Energy to determine the equivalent petroleum-based fuel economy values for various classes of electric vehicles for the purpose of determining compliance with these fuel economy standards. 49 U.S.C. 32904(a)(2)(B).

On March 29, 2024, DOE issued a final rule that revised the procedure for calculating a value for the petroleum-equivalent fuel economy for EVs and revised the value for the petroleum-

equivalency factor (PEF). 89 FR 22041 (Mar. 29, 2024) (2024 Final Rule). In the 2024 Final Rule, DOE calculated the petroleum-equivalency factor by multiplying four values: (1) a cumulative gasoline-equivalent energy content of electricity; (2) a fuel content factor (FCF); (3) an accessory factor (AF); and (4) a driving pattern factor (DPF). 89 FR 22041, 22053. DOE asserted that this methodology reflected the Secretary's consideration of each statutory factor. The 2024 Final Rule adopted the following PEF values for electric vehicles starting in Model Year 2027:¹

TABLE 1—REVISED PEF VALUES IN THE 2024 FINAL RULE FOR MY 2027–2030 EVs AND LATER

Model year	CE _g	FCF	AF	DPF	PEF
2027	28,996	1/0.3625	1.0	1.0	79,989
2028	28,996	1/0.575	1.0	1.0	50,427
2029	28,996	1/0.7875	1.0	1.0	36,820
2030 and later	28,996	1.0	1.0	1.0	28,996

On April 5, 2024, the states of Iowa, Arkansas, Florida, Idaho, Kansas, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, Texas, Utah, and the American Free Enterprise Chamber of Commerce filed a petition for review in the United States Court of Appeals for the Eighth Circuit. *Iowa, et al. v. Wright* (Case No. 24–1721 (8th Cir.)). In a September 5, 2025, opinion, the Eighth Circuit granted the petition for review, vacated the 2024 Final Rule, and remanded the proceedings to DOE. Specifically, the court ruled, among other things, that the fuel content factor was illegal or otherwise contrary to statute. Because the court vacated the 2024 Final Rule, the previous petroleum equivalency factor rule springs back into effect. *Menorah Med. Ctr. v. Heckler*, 768 F.2d 292, 297 (8th Cir. 1985) (“Unless special circumstances are present . . . prior regulations remain [in place] until replaced by a valid regulation or invalidated by a court.”).

In this final rule, DOE amends its regulations in compliance with the September 5, 2025, court decision. It removes the revisions adopted in the 2024 Final Rule and amends the regulatory text so that it reads as it appeared before the 2024 Final Rule went into effect.

This final rule is not subject to the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553(b)(B). DOE finds good cause to waive the

requirement to provide prior notice and an opportunity for public comment as such procedure is unnecessary. DOE is complying with the order of a Federal court and has no discretion to do otherwise. In implementation of that order, DOE is removing 2024 Final Rule. Comments suggesting any other course would serve no useful purpose.

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule; technical amendment.

List of Subjects in 10 CFR Part 474

Corporate average fuel economy, Electric (motor) vehicle, Electric power, Energy conservation, Fuel economy, Motor vehicles, Research.

Signing Authority

This document of the Department of Energy was signed on December 31, 2025, by Audrey Robertson, Assistant Secretary for Critical Minerals and Energy Innovation, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of

the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 6, 2026.

Treena V. Garrett,
Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends part 474 of Chapter II of Title 10 of the Code of Federal Regulations as set forth below:

PART 474—ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM; PETROLEUM-EQUIVALENT FUEL ECONOMY CALCULATION

■ 1. The authority citation for part 474 continues to read as follows:

Authority: 49 U.S.C. 32901 *et seq.*

■ 2. Amend § 474.2 by revising the definition for “Petroleum-equivalency factor” to read as follows:

§ 474.2 Definitions.

* * * * *

Petroleum equivalency factor means the value specified in § 474.3(b) of this part, which incorporates the parameters listed in 49 U.S.C. 32904(a)(2)(B) and is used to calculate petroleum-equivalent fuel economy.

* * * * *

■ 3. Amend § 474.3 by

¹ The 2024 Final Rule did not revise the methodology or the PEF value for MY 2024–2026

EVs, thus the PEF value for those model years remain 82,049 Wh/gal.

- a. Revising the introductory text of paragraph (b); and
- b. Removing paragraphs (c), (d), (e), and (f)

The revision reads as follows:

§ 474.3 Petroleum-equivalent fuel economy calculation.

* * * * *

(b) The petroleum-equivalency factors for electric vehicles are as follows:

* * * * *

- 4. Add § 474.5 to read as follows:

§ 474.5 Review and Update.

The Department will review part 474 five years after the date of publication as a final rule to determine whether any updates and/or revisions are necessary. DOE will publish a notice in the **Federal Register** soliciting stakeholder input in this review. The Department will publish the findings of the review and any resulting adjustments to part 474 in the **Federal Register**.

- 5. Revise appendix A to part 474 to read as follows:

Appendix to Part 474—Sample Petroleum-Equivalent Fuel Economy Calculations

Example 1: An electric vehicle is tested in accordance with Environmental Protection Agency procedures and is found to have an Urban Dynamometer Driving Schedule energy consumption value of 265 Watt-hours per mile and a Highway Fuel Economy Driving Schedule energy consumption value of 220 Watt-hours per mile. The vehicle is not equipped with any petroleum-powered accessories. The combined electrical energy consumption value is determined by averaging the Urban Dynamometer Driving Schedule energy consumption value and the Highway Fuel Economy Driving Schedule energy consumption value using weighting factors of 55 percent urban, and 45 percent highway:

combined electrical energy consumption value = (0.55 * urban) + (0.45 * highway)
= (0.55 * 265) + (0.45 * 220) = 244.75 Wh/mile

Since the vehicle does not have any petroleum-powered accessories installed, the value of the petroleum equivalency factor is 82,049 Watt-hours per gallon, and the petroleum-equivalent fuel economy is:

$$\frac{82,049 \frac{Wh}{gal}}{244.75 \frac{Wh}{mile}} = 335.24 mpg$$

Example 2: The vehicle from Example 1 is equipped with an optional diesel-fired cabin heater/defroster. For the purposes of this example, it is assumed that the electrical efficiency of the vehicle is unaffected.

Since the vehicle has a petroleum-powered accessory installed, the value of the petroleum equivalency factor is 73,844 Watt-

hours per gallon, and the petroleum-equivalent fuel economy is:

$$\frac{73,844 \frac{Wh}{gal}}{244.75 \frac{Wh}{mile}} = 301.71 mpg$$

[FR Doc. 2026–00154 Filed 1–7–26; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245–AI14

Small Business Investment Company (SBIC) Regulatory Amendments

AGENCY: U. S. Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: The U.S. Small Business Administration (“SBA” or “Agency”) is correcting a final rule that appeared in the **Federal Register** on January 2, 2026. The document revised regulations for the Small Business Investment Company (“SBIC”) program to modify or remove from the Code of Federal Regulations (“CFR”) regulations that are obsolete, inefficient, or otherwise unnecessarily impede the licensing of small business investment companies (“SBICs”) and to remove certain barriers to investments in critical mineral extraction and processing and designated critical technologies.

DATES: Effective February 2, 2026.

FOR FURTHER INFORMATION CONTACT: Paul Van Eyl, Director of Financial Policy, Office of Investment and Innovation, U.S. Small Business Administration, oii.policy@sba.gov, 202–257–5955. This phone number can also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission’s TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION: In FR 2025–24232 appearing on page 8 in the **Federal Register** of Monday, January 2, 2026, the following corrections are made:

§ 107.1700 [Corrected]

- 1. On page 9, in the first column, in part 30, instruction 30, “Amend § 107.1700 by revising the first to read as follows:” is corrected to read “Amend § 107.1700 by revising the first sentence to read as follows:”

§ 107.1820 [Corrected]

- 2. On page 9, in the second column, amendment 33 is corrected to read as “Amend § 107.1820 by revising paragraphs (a) and (d)(9) to read as follows:”

Paul Van Eyl,

Director of Financial Policy.

[FR Doc. 2026–00173 Filed 1–7–26; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2025–2265; Project Identifier MCAI–2024–00714–A; Amendment 39–23224; AD 2025–26–02]

RIN 2120–AA64

Airworthiness Directives; DAHER AEROSPACE (Type Certificate Previously Held by SOCATA) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2007–06–11 (AD 2007–06–11) for certain SOCATA (type certificate now held by DAHER AEROSPACE) Model TBM 700 airplanes. AD 2007–06–11 required repetitively inspecting the vertical stabilizer attachment fittings and bolts for cracks or corrosion, and, if necessary, repairing or replacing the damaged part and then applying a corrosion protection reinforcement. Since the FAA issued AD 2007–06–11, the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, superseded the previous Direction generale de l’aviation civile (DGAC) France AD to introduce new service information providing instructions for installing new vertical stabilizer attachment fittings having improved corrosion resistant material as an optional terminating action for the repetitive inspections. This AD retains the requirements of AD 2007–06–11 and includes a new optional terminating action for the repetitive inspections. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 12, 2026.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 12, 2026.

The Director of the Federal Register approved the incorporation by reference

of certain other publications listed in this AD as of April 20, 2007 (72 FR 12546, dated March 16, 2007).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2025–2265; 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 final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For DAHER AEROSPACE and EADS SOCATA material identified in this AD, contact DAHER AEROSPACE, Customer Support, Airplane Division, 65921 Tarbes Cedex 9, France; phone: 33 (0)5 62.41.73.00; email: *tbmcare@daher.com*; website: *daher.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2025–2265.

FOR FURTHER INFORMATION CONTACT: Hye Yoon Jang, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (206) 231–3758; email: *hye.yoon.jang@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2007–06–11, Amendment 39–14992 (AD 2007–06–11, March 16, 2007) (AD 2007–06–11). AD 2007–06–11 applied to certain serial-numbered SOCATA (type certificate now held by DAHER AEROSPACE) Model TBM 700 airplanes. AD 2007–06–11 required repetitively inspecting the vertical stabilizer attachment fittings and bolts for cracks or corrosion, and, if necessary, repairing or replacing the damaged part and then applying a corrosion protection reinforcement. The

FAA issued AD 2007–06–11 to detect and address cracks on the vertical stabilizer attachment fitting which, if not addressed, could result in reduced structural integrity of the vertical stabilizer.

The NPRM was published in the **Federal Register** on August 25, 2025 (90 FR 41350). The NPRM was prompted by EASA AD 2019–0070, dated March 28, 2019 (also referred to as the MCAI). The MCAI states that cracks were found on a vertical stabilizer attachment fitting on a Model TBM 700 airplane in service. Investigation results showed that these cracks were due to corrosion. This unsafe condition could result in reduced structural integrity of the vertical stabilizer.

In the NPRM, the FAA proposed to retain the requirements of AD 2007–06–11 and provide a new optional terminating action for the repetitive inspections by replacing each affected part with a new zero-time vertical stabilizer attachment fitting made from improved corrosion resistant material.

The NPRM stated the incorrect date of April 10, 2007, for the effective date of AD 2007–06–11. The correct effective date is April 20, 2007. The FAA has corrected the date in paragraph (h)(1) of this final rule.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2025–2265.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from eight anonymous commenters. The comments were unrelated to the subject matter of the NPRM.

Conclusion

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 reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe

condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EADS SOCATA TBM Aircraft Mandatory Service Bulletin No. SB 70–104, Amendment 3, dated December 2007. This material specifies procedures for inspecting the vertical stabilizer attachment fittings for crack(s) and corrosion, repairing or replacing any damaged part, and applying corrosion protection reinforcement on the attachment fittings.

The FAA also reviewed DAHER Aerospace TBM Aircraft Mandatory Service Bulletin No. SB 70–104, Revision 4, dated December 2018. This material specifies procedures for inspecting the vertical stabilizer attachment fittings for crack(s) and corrosion, repairing or replacing any damaged part, and applying corrosion protection on the attachment fittings.

In addition, the FAA reviewed DAHER AEROSPACE TBM Aircraft Recommended Service Bulletin SB 70–255, dated December 2018. This material specifies procedures for modifying the vertical stabilizer and fuselage by installing new front and rear fittings.

This AD also requires EADS SOCATA TBM Aircraft Mandatory Service Bulletin No. SB 70–104, Amendment 1, dated August 2004, and EADS SOCATA TBM Aircraft Mandatory Service Bulletin No. SB 70–104, Amendment 2, dated January 2007, which the Director of the Federal Register approved for incorporation by reference as of April 20, 2007 (72 FR 12546, dated March 16, 2007).

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.

Costs of Compliance

The FAA estimates that this AD affects 309 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect vertical stabilizer attachment fittings.	4 work-hours × \$85 per hour = \$340 (per inspection cycle).	\$0	\$340 (per inspection cycle)	\$105,060 (per inspection cycle).

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspections. The agency has no way of determining the number

of airplanes that might need these replacements.

Either the replacement of the vertical stabilizer attachment fittings or the installation of improved design vertical stabilizer attachment fittings, as

presented below, can be done if required based any inspection in this AD. If the improved design fittings are installed, then the repetitive inspections are terminated.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace vertical stabilizer attachment fittings	10 work-hours × \$85 per hour = \$850	\$5,000	\$5,850
Install (new) design vertical stabilizer attachment fittings (optional terminating action).	10 work-hours × \$85 per hour = \$850	5,000	5,850

The FAA has no way of determining the costs pertaining to necessary repairs that would be required in accordance with a method approved by the FAA, EASA, or Daher's EASA Designated Organization Approval.

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 has determined that this AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will 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 Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 AD 2007–06–11, Amendment 39–14992 (72 FR 12546, March 16, 2007); and
 - b. Adding the following new airworthiness directive:

2025–26–02 DAHER AEROSPACE (Type Certificate previously held by SOCATA): Amendment 39–23224; Docket No. FAA–2025–2265; Project Identifier MCAI–2024–00714–A.

(a) Effective Date

This airworthiness directive (AD) is effective February 12, 2026.

(b) Affected ADs

This AD replaces AD 2007–06–11, Amendment 39–14992 (72 FR 12546, March 16, 2007) (AD 2007–06–11).

(c) Applicability

This AD applies to DAHER AEROSPACE (type certificate previously held by SOCATA) Model TBM 700 airplanes, manufacturer serial numbers 001 through 308 and 310, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5530, Vertical Stabilizer Structure.

(e) Unsafe Condition

This AD was prompted by reports of cracks due to corrosion on a vertical stabilizer attachment fitting. The FAA is issuing this

AD to detect and address cracks on the vertical stabilizer attachment fitting. The unsafe condition, if not addressed, could result in reduced structural integrity of the vertical stabilizer.

(f) Definitions

For the purpose of this AD, the following definitions apply:

(1) *Affected Part:* Vertical stabilizer attachment fitting having part number (P/N) T700A5530072101, T700A5530073000, T700A5340023100, T700A5340052100, or T700A5530072100.

(2) *New Part:* A new zero-time vertical stabilizer attachment fitting having P/N T700A553007300151, T700A553007210251, T700A534009810000, or T700A534009910000.

(g) Compliance

Comply with this AD within the compliance times specified, unless already done.

(h) Retained Actions From AD 2007–06–11 With Reference to New Service Bulletins and Before Further Flight Compliance Time Added to Corrective Action

(1) Within the next 600 hours time-in-service (TIS) or the next 12 months, whichever occurs first after April 20, 2007 (the effective date of AD 2007–06–11), inspect the affected part as defined in paragraph (f)(1) of this AD, and the affected part bolts, for cracks or corrosion, and, if necessary, before further flight, repair or replace the damaged affected part and then apply a corrosion protection reinforcement, in accordance with EADS SOCATA TBM Aircraft Mandatory Service Bulletin No. SB 70–104, Amendment 1, dated August 2004; EADS SOCATA TBM Aircraft Mandatory Service Bulletin No. SB 70–104, Amendment 2, dated January 2007; EADS SOCATA TBM Aircraft Mandatory Service Bulletin No. SB 70–104, Amendment 3, dated December 2007; or DAHER Aerospace TBM Aircraft Mandatory Service Bulletin No. SB 70–104, Revision 4, dated December 2018. Where the material above states to send the damaged parts to Socata and send photos or drawings if exfoliation is detected, this AD does not require these actions.

(2) Repeat the actions required by paragraph (h)(1) of this AD at intervals not to exceed 1,200 hour TIS or 24 months, whichever occurs first, in accordance with EADS SOCATA Service Bulletin SB 70–104,

Amendment 1, dated August 2004; EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–104, Amendment 2, dated January 2007; EADS SOCATA TBM Aircraft Mandatory Service Bulletin No. SB 70–104, Amendment 3, dated December 2007; or DAHER Aerospace TBM Aircraft Mandatory Service Bulletin No. SB 70–104, Revision 4, dated December 2018.

(i) New Optional Terminating Action

Modification of an airplane by replacing each affected part as defined in paragraph (f)(1) of this AD with a new part as defined in paragraph (f)(2) of this AD, in accordance with paragraphs A. and B. of the Description of Accomplishment Instructions in DAHER AEROSPACE TBM Aircraft Recommended Service Bulletin SB 70–255, dated December 2018, constitutes terminating action for the repetitive detailed inspections required by paragraph (h)(2) of this AD for that airplane.

Note 1 to paragraph (i): European Union Aviation Safety Agency AD 2019–0070, dated March 28, 2019, refers to this new part as a serviceable part and DAHER AEROSPACE TBM Aircraft Recommended Service Bulletin SB 70–255, dated December 2018, refers to this part as a new fitting.

(j) Installation Prohibition

After modification of an airplane as specified in paragraph (i) of this AD, do not install on that airplane an affected part or a vertical stabilizer equipped with an affected part.

(k) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD and email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local Flight Standards District Office/certificate holding district office.

(l) Additional Information

For more information about this AD, contact Hye Yoon Jang, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (206) 231–3758; email: hye.yoon.jang@faa.gov.

(m) 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.

(3) The following material was approved for IBR on February 12, 2026.

(i) EADS SOCATA TBM Aircraft Mandatory Service Bulletin No. SB 70–104, Amendment 3, dated December 2007.

(ii) DAHER AEROSPACE TBM Aircraft Mandatory Service Bulletin No. SB 70–104, Revision 4, dated December 2018.

(iii) DAHER AEROSPACE TBM Aircraft Recommended Service Bulletin SB 70–255, dated December 2018.

(4) The following material was approved for IBR on April 20, 2007 (72 FR 12546, dated March 16, 2007).

(i) EADS SOCATA TBM Aircraft Mandatory Service Bulletin No. SB 70–104, Amendment 1, dated August 2004.

(ii) EADS SOCATA TBM Aircraft Mandatory Service Bulletin No. SB 70–104, Amendment 2, dated January 2007.

(5) For DAHER AEROSPACE and EADS SOCATA material identified in this AD, contact DAHER AEROSPACE, Customer Support, Airplane Division, 65921 Tarbes Cedex 9, France; phone: 33 (0)5 62.41.73.00; email: tbmcare@daher.com; website: daher.com.

(6) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

(7) 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 January 6, 2026.

Paul R. Bernado,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2026–00162 Filed 1–7–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2025–2263; Project Identifier MCAI–2024–00729–A; Amendment 39–23204; AD 2025–24–07]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries GmbH Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Diamond Aircraft Industries GmbH (DAI) Model DA 42, DA 42 NG, and DA 42 M–NG airplanes. This AD was prompted by several reports of passenger door separation from the fuselage. This AD requires revising the existing airplane flight manual (AFM) for your airplane to provide the flight crew with revised operating limitations, emergency procedures, and normal operating procedures; modifying the

airplane; and repetitively inspecting the door latching and safety hooks for correct engagement, foreign objects, damage (including but not limited to corrosion and wear that exceeds specified limits), and proper function. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 12, 2026.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 12, 2026.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2025–2263; 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 final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Diamond Aircraft material identified in this AD, contact DAI, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria; phone: +43 2622 26700; email: office@diamond-air.at; website: diamondaircraft.com/.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at regulations.gov under Docket No. FAA–2025–2263.

FOR FURTHER INFORMATION CONTACT:

Evan Weaver, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 944–8910; email: evan.p.weaver@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all DAI Model DA 42, DA 42 NG, and DA 42 M–NG airplanes. The NPRM was published in the **Federal Register** on August 25, 2025 (90 FR 41346). The NPRM was prompted by EASA AD 2024–0235, dated December 6, 2024 (EASA AD 2024–0235) (also referred to as the MCAI), issued by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. The MCAI states that DAI

received several reports of passenger door separation. DAI attributed the root cause of certain instances to the passenger doors not being properly latched, but DAI was unable to find a definitive root cause of the remaining occurrences. Passenger door separation could damage the airplane, which could lead to loss of control of the airplane and injury to people on the ground. To address the unsafe condition, DAI issued an AFM temporary revision amending procedures and limitations and issued material with instructions to install placards in the cabin to prevent misuse of the passenger door, to inspect the passenger door latching and safety hook mechanisms, and to collect and report findings after each repetitive inspection to them.

In the NPRM, the FAA proposed to require revising the existing AFM for your airplane to provide the flight crew with revised operating limitations, emergency procedures, and normal operating procedures; modifying the airplane; and repetitively inspecting the door latching and safety hooks for correct engagement, foreign objects, damage (including but not limited to corrosion and wear that exceeds specified limits), and proper function. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2025-2263.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment from an individual commenter. The commenter supported the NPRM without change.

Conclusion

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 reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Diamond Aircraft Mandatory Service Bulletin MSB 42-149 and MSB 42NG-095, dated

December 2, 2024 (issued as one document), published with Diamond Aircraft Work Instruction WI-MSB 42-149 and WI-MSB 42NG-095, Revision 2, dated January 17, 2025 (issued as one document), attached. This material specifies procedures for installing passenger door placards and inspecting the passenger door system for Model DA 42, DA 42 M, DA 42 NG, and DA 42 M-NG airplanes.

The FAA also reviewed Diamond Aircraft Temporary Revision TR-MAM-42-1333, for the DA 42 Airplane Flight Manual (AFM), Doc. No. 7.01.05-E, dated November 28, 2024. This material specifies procedures for revising the operating limitations, emergency procedures, and normal operating procedures related to door latching and locking for Model DA 42 airplanes with Continental Aerospace Technologies engines installed.

In addition, the FAA reviewed Diamond Aircraft Temporary Revision TR-MAM-42-1333, for the DA 42 with OAM 42-102 Garmin GFC 700 AFM, Doc. No. 7.01.06-E, dated November 28, 2024. This material specifies procedures for amending the AFM for Model DA 42 airplanes with Continental Aerospace Technologies engines and Garmin GFC 700 Automatic Flight Control System installed.

The FAA also reviewed Diamond Aircraft Temporary Revision TR-MAM-42-1333, for the DA 42 NG AFM, Doc. No. 7.01.15-E, dated November 28, 2024. This material specifies procedures for revising the operating limitations, emergency procedures, and normal operating procedures of the AFM for Model DA 42 NG and DA 42 NG-M airplanes.

The FAA also reviewed Diamond Aircraft Temporary Revision TR-MAM-42-1333, for the DA 42 NG AFM, Doc. No. 7.01.16-E, dated November 28, 2024. This material specifies procedures for amending the AFM for Model DA 42 NG and DA 42 NG-M airplanes with MAM 42-600 Performance Enhancement.

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.

Differences Between This AD and the MCAI

The MCAI applies to DAI Model 42 M airplanes, but this AD does not include this model because it does not have an FAA type certificate.

The MCAI includes a requirement to inform all flight crews and, thereafter, operate the airplane. However, this AD

does not specifically require this action based on the following:

- *For the operating limitations:* 14 CFR 91.9 requires that no person may operate a civil aircraft without complying with the operating limitations specified in the AFM. Therefore, including a requirement in this AD to operate the airplane according to the revised AFM would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the airplane in such a manner would be unenforceable.

- *For the emergency procedures and normal operating procedures:* FAA regulations mandate compliance with only the operating limitations section of the flight manual. The flight manual changes required by this AD apply to the emergency procedures and normal procedures section of the existing AFM for your airplane. Furthermore, compliance with such requirements in an AD is impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the aircraft in such a manner is unenforceable. Nonetheless, the FAA recommends that flight crews of the airplanes listed in the applicability operate in accordance with the revised emergency procedures mandated by this AD.

The referenced material specifies to contact DAI for repair instructions, but this AD requires contacting the Manager, International Validation Branch, FAA; EASA; or DAI's EASA Design Organization Approval (DOA) instead.

The MCAI specifies where the temporary revisions provide instructions to contact the manufacturer, but this AD requires contacting the Manager, International Validation Branch, FAA; EASA; or DAI's EASA DOA instead.

The MCAI specifies reporting inspection results within 7 days after accomplishing any inspection, but this AD requires reporting inspection results within 30 days after accomplishing any inspection.

Interim Action

The FAA considers that this AD is an interim action. This unsafe condition is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action.

Costs of Compliance

The FAA estimates that this AD affects 222 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$18,870
Initial inspection	3 work-hours × \$85 per hour = \$255	0	\$255	\$56,610
Repetitive inspections	1 work-hour × \$85 per hour = \$85 (each inspection cycle).	0	\$85 (each inspection cycle).	\$18,870 (each inspection cycle)
Placard installation	1 work-hour × \$85 per hour = \$85	25	\$110	\$24,420
Inspection results reporting.	1 work-hour × \$85 per hour = \$85 (each cycle)	0	\$85 (each cycle)	\$18,870 (each cycle)

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the inspections. The agency has no way of determining the number

of airplanes that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Safety hook replacement	1 work-hour × \$85 per hour = \$85	\$306	\$391
Safety hook spring replacement	1 work-hour × \$85 per hour = \$85	8	93
Retaining bracket replacement	1 work-hour × \$85 per hour = \$85	185	270
Safety hook actuation pin replacement	1 work-hour × \$85 per hour = \$85	164	249
Latching mechanism spring replacement	1 work-hour × \$85 per hour = \$85	12	97
Latching bolts replacement	1 work-hour × \$85 per hour = \$85	109	194
Gas spring replacement	1 work-hour × \$85 per hour = \$85	312	397

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120-0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation

Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177-1524.

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

This AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will 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 Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:

2025–24–07 Diamond Aircraft Industries GmbH: Amendment 39–23204; Docket No. FAA–2025–2263; Project Identifier MCAI–2024–00729–A.

(a) Effective Date

This airworthiness directive (AD) is effective February 12, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Diamond Aircraft Industries GmbH (DAI) Model DA 42, DA 42 NG, and DA 42 M–NG airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5210, Passenger/Crew Doors.

(e) Unsafe Condition

This AD was prompted several reports of passenger door separation from the fuselage. The FAA is issuing this AD to address this unsafe condition. The unsafe condition, if not addressed, could result in damage to the aircraft, loss of control of the aircraft, injuries to persons, and damage to property on the ground.

(f) Definition

For the purposes of this AD, “the Diamond Aircraft work instruction” is defined as Diamond Aircraft Work Instruction WI–MSB 42–149 and WI–MSB 42NG–095, Revision 2, dated January 17, 2025 (issued as one document), attached to Diamond Aircraft Mandatory Service Bulletin MSB 42–149 and MSB 42NG–095, dated December 2, 2024 (issued as one document).

(g) Applicable AFM Temporary Revisions

(1) *For Model DA 42 airplanes without OAM 42–102:* Diamond Aircraft Temporary Revision TR–MAM–42–1333, for the DA 42 Airplane Flight Manual (AFM), Doc. No. 7.01.05–E, dated November 28, 2024.

(2) *For Model DA 42 airplanes with OAM 42–102, Garmin GFC 700:* Diamond Aircraft Temporary Revision TR–MAM–42–1333, for the DA 42 with OAM 42–102 Garmin GFC 700 AFM, Doc. No. 7.01.06–E, dated November 28, 2024.

(3) *For Model DA 42 NG and DA 42 NG–M airplanes without MAM 42–600 Performance Enhancement:* Diamond Aircraft Temporary Revision TR–MAM–42–1333, for the DA 42 NG AFM, Doc. No. 7.01.15–E, dated November 28, 2024.

(4) *For Model DA 42 NG and DA 42 NG–M airplanes with MAM 42–600 Performance Enhancement:* Diamond Aircraft Temporary Revision TR–MAM–42–1333, for the DA 42 NG AFM, Doc. No. 7.01.16–E, dated November 28, 2024.

(h) Compliance

Comply with this AD within the compliance times specified, unless already done.

(i) Required Actions

(1) Within 50 hours time-in-service (TIS) or 50 days, whichever occurs first after the effective date of this AD, revise the existing

AFM for your airplane to include the information specified in the applicable AFM temporary revision specified in paragraphs (g)(1) through (4) of this AD appropriate for your airplane model.

(i) The owner/operator (pilot) holding at least a private pilot certificate may revise the existing AFM for your airplane and must enter compliance with the applicable paragraph of this AD into the airplane maintenance records in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(ii) The AFM revision required by paragraph (i)(1) of this AD may be accomplished before the initial inspection and modification required by paragraph (i)(2) of this AD for that airplane.

(2) Within 50 hours TIS or 50 days, whichever occurs first after the effective date of this AD, accomplish the initial inspection of the safety hook, safety hook spring, retaining bracket, safety hook actuation pin, latching mechanism spring, latching bolts, and gas spring and the modification of the airplane with placards in accordance with the instructions of Section III, steps 2 through 4, 6, 7, 9 through 11, 13, 14, 16, 18, 19, 21 through 23, and 25 through 36 in the Diamond Aircraft work instruction specified in paragraph (f) of this AD.

(3) Within 200 hours TIS or 12 months, whichever occurs first after the initial inspection required by paragraph (i)(2) of this AD, and thereafter at intervals not to exceed 210 hours TIS or 13 months, whichever occurs first, accomplish the repetitive inspections of the airplane in accordance with the instructions of Section IV, steps 2 through 6, of the Diamond Aircraft work instruction specified in paragraph (f) of this AD.

(4) If, during any inspection as required by paragraph (i)(2) or (3) of this AD, any findings, as defined in Section III, steps 2 through 4, 6, 7, 9 through 11, 13, 14, 16, 18, 19, 21 through 23, and 25 through 36, and Section IV, steps 2 through 5, of the Diamond Aircraft work instruction is identified, before further flight, accomplish the applicable corrective action(s) in accordance with the instructions of Section III, steps 2 through 4, 6, 7, 9 through 11, 13, 14, 16, 18, 19, 21 through 23, and 25 through 36, and Section IV, steps 2 through 5, of the Diamond Aircraft work instruction specified in paragraph (f) of this AD. Where instructed to contact the manufacturer “in case of doubt” or for approved instructions, this AD requires before further flight using instructions approved by the Manager, International Validation Branch, FAA; the European Union Aviation Safety Agency (EASA); or DAI’s EASA Design Organization Approval (DOA) and within the compliance time specified therein, accomplishing those instructions. If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Reporting

(1) Within 30 days after performing the initial inspection required by paragraph (i)(2) of this AD or within 30 days after the effective date of this AD, whichever occurs later, report the results of the initial

inspection, including no findings, to DAI. The report must include the information specified in Appendix B of the Diamond Aircraft work instruction specified in paragraph (f) of this AD.

(2) Report the results of each repetitive inspection required by paragraph (i)(3) of this AD, including no findings, to DAI within 30 days after that inspection. The report must include the information specified in Appendix B of the Diamond Aircraft work instruction specified in paragraph (f) of this AD.

(k) Credit for Previous Actions

You may take credit for the actions required by paragraph (i) of this AD if you performed those actions before the effective date of this AD using Diamond Aircraft Mandatory Service Bulletin MSB 42–149 and MSB 42NG–095, dated December 2, 2024 (issued as one document), published with Diamond Aircraft Work Instructions WI–MSB 42–149 and WI–MSB 42NG–095, Revision 1, dated December 5, 2024 (issued as one document), attached.

(l) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (m)(1) of this AD and email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(m) Additional Information

(1) For more information about this AD, contact Evan Weaver, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 944–8910; email: evan.p.weaver@faa.gov.

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (n)(3) of this AD.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Diamond Aircraft Mandatory Service Bulletin MSB 42–149 and MSB 42NG–095, dated December 2, 2024 (issued as one document), published with Diamond Aircraft Work Instruction WI–MSB 42–149 and WI–MSB 42NG–095, Revision 2, dated January 17, 2025 (issued as one document), attached.

(ii) Diamond Aircraft Temporary Revision TR–MAM–42–1333, for the DA 42 Airplane Flight Manual (AFM), Doc. No. 7.01.05–E, dated November 28, 2024.

(iii) Diamond Aircraft Temporary Revision TR–MAM–42–1333, for the DA 42 with OAM 42–102 Garmin GFC 700 AFM, Doc. No. 7.01.06–E, dated November 28, 2024.

(iv) Diamond Aircraft Temporary Revision TR–MAM–42–1333, for the DA 42 NG AFM, Doc. No. 7.01.15–E, dated November 28, 2024.

(v) Diamond Aircraft Temporary Revision TR–MAM–42–1333, for the DA 42 NG AFM, Doc. No. 7.01.16–E, dated November 28, 2024.

(3) For Diamond Aircraft material identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria; phone: +43 2622 26700; email: office@diamond-air.at; website: diamondaircraft.com/.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. 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-locationsoremailfr.inspection@nara.gov.

Issued on January 6, 2026.

Paul R. Bernado,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2026–00163 Filed 1–7–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2019–0001]

RIN 1218–AC93

Hazard Communication Standard; Corrections

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

ACTION: Final rule; correction and technical amendment.

SUMMARY: OSHA is correcting several inadvertent errors in its Hazard Communication Standard (HCS). Most errors relate to the HCS final rule published in the **Federal Register** on May 20, 2024. On October 9, 2024, the agency issued a corrections notification and technical amendment to correct errors in that final rule which the agency believed could lead to confusion during the classification process or errors on labels and Safety Data Sheets (SDSs) if not expeditiously corrected. Following publication of the October 9, 2024 corrections notification and technical amendment, OSHA continued

its review of the regulatory text and identified additional minor and typographical errors in the regulatory text and appendices to the HCS. OSHA is issuing this correction document to address these additional minor errors. OSHA is also making one technical amendment to an appendix of the HCS unrelated to the May 20, 2024 final rule.

DATES: The corrections in this document are effective January 8, 2026. The incorporation by reference of certain material listed in this rule was approved by the Director of the Federal Register as of July 19, 2024.

FOR FURTHER INFORMATION CONTACT:

For Press Inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: meilinger.francis2@dol.gov.

For General and Technical Information: Tiffany DeFoe, Director, Office of Chemical Hazards, Metals, Directorate of Standards and Guidance, OSHA, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; email defoe.tiffany@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Overview

On May 20, 2024, OSHA published a final rule updating and revising its Hazard Communication Standard (HCS) (89 FR 44144). The final rule became effective on July 19, 2024. On October 9, 2024, the agency issued a corrections notification and technical amendment to correct errors in that final rule which the agency believed could lead to confusion during the classification process or errors on labels and Safety Data Sheets (SDSs) if not expeditiously corrected (89 FR 81829). Following publication of the October 9, 2024 corrections notification and technical amendment, OSHA continued its review of the final rule and identified additional minor and typographical errors in the regulatory text and appendices to the HCS. OSHA is issuing this correction document to address these additional minor errors which occur in paragraphs (c) and (d) of the regulatory text and in Appendices A, B, C, D, and F. These corrections reflect the agency's intent for the provisions of the final rule as explained in the preamble to the final rule. Some of these corrections are explained in the following discussion, and the table provided at the end of this section summarizes all the corrections included in this document.

Four of the corrections are to paragraph (c) of the regulatory text and one of the corrections is to paragraph (d)

of the regulatory text. These corrections add the heading “Definitions” to the beginning of paragraph (c), add “chemicals under pressure” to the definition of “Physical hazard,” correct the formatting of the text of “area” in the definition of “Work area” to match the formatting for other terms, and correct the definition for “Liquid”, which inadvertently did not include the conversion of 14.69 PSI for all references to vapor pressure. OSHA is also adding the heading “Hazard Classification” to paragraph (d), which was inadvertently omitted from the 2024 final rule.

The remainder of the errors corrected in this document are in the Appendices. For instance, in Appendix A, OSHA is correcting the reference within Figure A.1.1 which currently reads “apply formula in A.1.3.6.3” to “apply formula in A.1.3.6.4” to cross reference the correct paragraph. OSHA is also deleting elements that are in the GHS which were inadvertently included in the final rule but are not appropriate for OSHA's standard. These include statements such as “which can be used by those authorities requiring more than one designation for corrosivity” and “where sub-categorization is not required by a competent authority or” in paragraph A.2.2(a) and references to tables that do not appear in the HCS. OSHA is correcting figures A.6.1, A.7.1(a), A.7.1(b) and A.8.1, which were inadvertently altered in the final rule, and is replacing these figures with the versions of the figures included in the February 16, 2021 notice of proposed rulemaking (86 FR 9576). The agency received no comments on the proposed changes for Figure A.7.1(b) and intended to adopt them in the final rule. OSHA did not propose changes for the other figures.

In Appendix B, OSHA is correcting several errors in spelling and numbering in tables and text, as well as errors in the designations of several footnotes in Appendix B. In addition, OSHA is updating Note 2 for both Table B.3.1 and B.3.2 to follow the same format, to add “including their labeling elements” to be consistent with the GHS, and to correct cross references to other portions of Appendix B which were inadvertently omitted or numbered incorrectly. OSHA is also updating a footnote in each of Tables B.2.1, B.5.1, B.6.1 and B.7.1 by adding “chemicals under pressure.” This will align these footnotes with the text in Note 2 of Table B.3.2 regarding how chemicals under pressure should be classified.

In Appendix C, OSHA is correcting minor formatting errors in several places, such as italicizing, bolding, or

un-bolding font and removing slashes that were inadvertently included. Additionally, OSHA is adding “Chemicals Under Pressure” to Figure C.1. This was inadvertently omitted from the list of hazard classes associated with the Gas Cylinder hazard symbol. OSHA is also updating the text of C.2.4.6 to use the updated version of the example precautionary statement. OSHA is also making a number of corrections related to Table C.4.16, including adding the precautionary statement “In case of fire: Use . . . to extinguish” and its associated explanatory note to the “Response” column of Chemical Under Pressure (Hazard Category 1 and 2). The latter change will accomplish OSHA’s stated intention to align with the GHS Rev. 8 (89 FR 44324). In Table C.4.19, OSHA is removing the phrase “Chemical manufacturer, importer, or distributor to specify applicable ignition source(s),” which it inadvertently failed to delete in this table after updating the precautionary statement to include all ignition sources (see 89 FR 44336). The agency is also adding the words “and

large quantities” in C.4.30, which were inadvertently omitted from the Hazard Category 4 Response precautionary statement.

In Appendix D, OSHA is correcting typographical errors in Section 2 and Section 7. Also in Appendix D, OSHA is correcting the Section 2(a) cross-reference from (d)(1)(i) to (d)(1). This correction ensures that Appendix D clearly conveys the requirements for providing the hazard classification of a chemical in Section 2. As OSHA noted in the preamble to the 2024 final rule, the agency intended to require hazards associated with chemicals as shipped and hazards associated with a change in the chemical’s physical form to be presented in Section 2(a), and hazards created by a chemical reaction to be presented in Section 2(c) (89 FR 44344). Finally, OSHA is removing the phrases “methods specified under” and “and then listed on the SDS” from the note to Table D.1 to align that language with the footnote in Appendix B as OSHA stated it would in the HCS 2024 final rule (89 FR 44350).

OSHA is also making one technical amendment unrelated to the 2024 final rule. In Appendix F, the agency is revising the first sentence of the section titled “Responses Are in One Sex or Both Sexes” to use the term “sex-specific tumors” rather than “gender-specific tumors.” A complete list of changes can be found below.

The following standards appear in the amendatory text of this document and were previously approved for the locations in which they appear: ADR 2019, ASTM D 4359–90, ASTM D 240–02, ISO 13943, NFPA 30B.

Correction of Publication

The following table contains a complete list of the corrections being made in this corrections notification and technical amendment to the Hazard Communication Standard final rule as it appeared at 89 FR 44144, unless otherwise noted, and provides a summary of each correction. The changes are listed by the **Federal Register** page number on which they can be found.

Page No.	Standard	Correction or technical amendment
On p. 44356	§ 1910.1200, paragraph (c)	Add the paragraph (c) heading “Definitions.” before the definition for Article.
On p. 44357	§ 1910.1200, paragraph (c)	Update the definition of liquid to include the PSI conversion (14.69 PSI) with the first reference to the value 101.3 kPa.
On p. 44357	§ 1910.1200, paragraph (c)	Update the definition of “Physical hazard” to include “chemicals under pressure”.
On p. 44357	§ 1910.1200, paragraph (c)	Italicize the term “Work area”.
On p. 44357	§ 1910.1200, paragraph (d)	Add the heading “Hazard classification.” to paragraph (d).
On p. 44363	§ 1910.1200, Appendix A, Figure A.1.1.	Change “Apply formula in A.1.3.6.2.3” to “Apply formula in A.1.3.6.2.4”.
On p. 44364	§ 1910.1200, Appendix A, A.2.2(a).	Delete “which can be used by those authorities requiring more than one designation for corrosivity” in the first paragraph and “where sub-categorization is not required by a competent authority or” in the second paragraph.
On p. 44365	§ 1910.1200, Appendix A, A.2.2.3.3.1.	Delete “based on the criteria in Table A.2.6” at the end of the paragraph.
On p. 44365	§ 1910.1200, Appendix A, A.2.2.3.4.1.	Delete “based on the criteria in Table A.2.7” at the end of the paragraph.
On p. 44376	§ 1910.1200, Appendix A, Figure A.6.1.	Replace Figure A.6.1 with the version published in the February 16, 2021 NPRM (86 FR 9745–9746). ¹
On p. 44377	§ 1910.1200, Appendix A, Figure A.7.1(a).	Replace Figure A.7.1(a) with the version published in the February 16, 2021 NPRM (86 FR 9747).
On p. 44377–44378 ...	§ 1910.1200, Appendix A, Figure A.7.1(b).	Replace Figure A.7.1(b) with the version proposed in the February 16, 2021 NPRM (86 FR 9577).
On p. 44380	§ 1910.1200, Appendix A, Figure A.8.1.	Replace Figure A.8.1 with the version published in the February 16, 2021 NPRM (86 FR 9750).
On p. 44386	§ 1910.1200, Appendix A, Table A.10.1.	In the criteria section, change the unit on “≤20.5 mm ₂ /s” to “≤20.5 mm ² /s”.
On p. 44387	§ 1910.1200, Appendix B, Table B.2.1.	Change the Note 1 from “Aerosols should not be classified as flammable gases.” to “Aerosols and chemicals under pressure should not be classified as flammable gases.”
On p. 44388	§ 1910.1200, Appendix B, Table B.3.1.	Change Note 2 from “Aerosols do not fall additionally within the scope of flammable gases, gases under pressure, flammable liquids, or flammable solids. However, depending on their contents, aerosols may fall within the scope of other hazard classes.” to now read “Aerosols do not fall additionally within the scope of B.2 (flammable gases), B.3.2 (chemicals under pressure), B.5 (gases under pressure), B.6 (flammable liquids), or B.7 (flammable solids). However, depending on their contents, aerosols may fall within the scope of other hazard classes, including their labeling elements.”

Page No.	Standard	Correction or technical amendment
On p. 44388	§ 1910.1200, Appendix B, Table B.3.2.	Change Note 2 from “Chemicals under pressure do not fall additionally within the scope of section B.3.1 (aerosols), B.2.2 (flammable gases), B.2.5 (gases under pressure), B.2.6 (flammable liquids) and B.2.7 (flammable solids). Depending on their contents, chemicals under pressure may however fall within the scope of other hazard classes, including their labelling elements.” to now read “Chemicals under pressure do not fall additionally within the scope of B.2 (flammable gases), B.3.1 (aerosols), B.5 (gases under pressure), B.6 (flammable liquids) and B.7 (flammable solids). Depending on their contents, chemicals under pressure may however fall within the scope of other hazard classes, including their labeling elements.”. Change “see ASTM D240” to “see ASTM D240–02”.
On p. 44389	§ 1910.1200, Appendix B, B.3.3.3.	
On p. 44389	§ 1910.1200, Appendix B, Table B.5.1.	In the “Group” column, change “Liquedfied gas” to “Liquefied gas”. In the “Criteria” column, change “inder” to “under” in the first line. In the “Criteria” column, change “inder” to “under” in the third line. In the “Criteria” column, change “disinction” to “distinction” in the fourth line. In the “Criteria” column, change “termperatures” to “temperatures” in line 3 and “temperature” to “temperature” in line 6. Change the Note from “Aerosols should not be classified as gases under pressure. See Appendix B.3 of this section.” to “Aerosols and chemicals under pressure should not be classified as gases under pressure. See Appendix B.3 of this section.”
On p. 44389	§ 1910.1200, Appendix B, Table B.6.1.	Change the Note from “Aerosols should not be classified as flammable liquids. See Appendix B.3 of this section.” to “Aerosols and chemicals under pressure should not be classified as flammable liquids. See Appendix B.3 of this section.”
On p. 44390	§ 1910.1200, Appendix B, Table B.7.1.	Change Note 2 from “Aerosols should not be classified as flammable solids. See Appendix B.3.” to “Aerosols and chemicals under pressure should not be classified as flammable solids. See Appendix B.3 of this section.”
On p. 44390, 44394 ...	§ 1910.1200, Appendix B, Footnotes.	Redesignate Appendix B footnotes 9, 10, and 11 as footnotes 1, 2, and 3, respectively.
On p. 44395	§ 1910.1200, Appendix C, Figure C.1.	In column 2 row 4, add “Chemicals Under Pressure” to the list of hazard classes associated with the Gas Cylinder hazard symbol.
On p. 44396	§ 1910.1200, Appendix C, C.2.4.6.	Replace C.2.4.6 to now read “C.2.4.6 Precautionary statements may be combined or consolidated to save label space and improve readability. For example, “Keep cool” and “Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. No smoking.” can be combined to read “Keep cool and away from heat, hot surfaces, sparks, open flames and other ignition sources. No smoking.”
On p. 44415	§ 1910.1200, Appendix C, C.4.10.	Under the Prevention column for the no designated number hazard category (Effects on or Via Lactation), remove the slash “/” from “Avoid contact during pregnancy and/while nursing” in the fifth line.
On p. 44423	§ 1910.1200, Appendix C, C.4.14.	For Hazard category Divisions 1.1, 1.2, and 1.3, in the Prevention column, remove the “/” from “Ground and/bond container and receiving equipment.” in line eight.
On p. 44424	§ 1910.1200, Appendix C, C.4.14.	For Hazard category Division 1.4, in the Prevention column, remove the “/” from “Ground and/bond container and receiving equipment.” in line four.
On p. 44425	§ 1910.1200, Appendix C, C.4.14.	For Hazard category Division 1.5, in the Prevention column, remove the “/” from “Ground and/bond container and receiving equipment.” in line ten.
On p. 44425	§ 1910.1200, Appendix C, C.4.14.	For Hazard category Divisions 1.1, 1.2, and 1.3, in the Storage column remove the ellipsis from the middle of the precautionary statement “Store . . . in accordance with . . .” in line 1 so that it now reads “Store in accordance with . . .”.
On p. 44424	§ 1910.1200, Appendix C, C.4.14.	For Hazard category Division 1.4, in the Storage column remove the ellipsis from the middle of the precautionary statement “Store . . . in accordance with . . .” in line 1 so that it now reads “Store in accordance with . . .”.
On p. 44431–44433 ...	§ 1910.1200, Appendix C, C.4.16.	Under the Prevention column, remove “/” in all locations in all C.4.16 tables.
On p. 44433–44434 ...	§ 1910.1200, Appendix C, C.4.16.	Revise the tables for Chemical Under Pressure in C.4.16 to align with GHS Revision 8 hazard statements. For Category 1, revise hazard statement to read: “Extremely flammable chemical under pressure. May explode if heated.” For Category 2, revise hazard statement to read: “Flammable chemical under pressure. May explode if heated.” For Category 3, revise hazard statement to read: “Chemical under pressure: may explode if heated.”
On p. 44433	§ 1910.1200, Appendix C, C.4.16.	For Chemical Under Pressure Hazard Category 1 and Hazard Category 2, in the Response column, add: “In case of fire: Use . . . to extinguish. —if water increases risk. . . . Chemical manufacturer, importer, or distributor to specify appropriate media.” In the Response column, bold the font for “In case of leakage, eliminate all ignition sources.” and “Stop leak if safe to do so.”
On p. 44434	§ 1910.1200, Appendix C, C.4.16.	For Chemicals Under Pressure Hazard Category 3: In the Response column, bold the font for “Stop leak if safe to do so.”
On p. 44438	§ 1910.1200, Appendix C, C.4.19.	For Hazard category 1, 2 and 3: Under the Prevention column, delete “Chemical manufacturer, importer, or distributor to specify applicable ignition source(s).” in the third line. Under the Prevention column, remove the “/” from “Ground/and bond container and receiving equipment.”

Page No.	Standard	Correction or technical amendment
On p. 44440	§ 1910.1200, Appendix C, C.4.20.	Under the Prevention column, bold the font in the statement “ Use non-sparking tools. ” Under the Response column, remove the “/” from “[or shower]”. Under the Response column, remove the slash “/” from “/importer”.
On p. 44442	§ 1910.1200, Appendix C, C.4.21.	For Hazard category 1 and 2, under the Prevention column, remove the “/” from “Ground and/bond container and receiving equipment.” For Hazard category Type B, under the Storage column remove the bold font on “if temperature control is required” and italicize the font for “if temperature control is required (see Appendix B.2.3) or if otherwise deemed necessary”.
On p. 44442	§ 1910.1200, Appendix C, C.4.21.	For Hazard category Type B, in the Prevention column remove the “/” from “/sparks” and “/open flames”.
On p. 44443	§ 1910.1200, Appendix C, C.4.21.	For Hazard category Type C–F, in the Prevention column remove the “/” from “/sparks” and “/open flames”.
On p. 44446	§ 1910.1200, Appendix C, C.4.24.	In the Storage column, remove the “/” from “stacks/” in the first line.
On p. 44458	§ 1910.1200, Appendix C, C.4.30.	For Hazard category 4, under the response column add the phrase “ and large quantities ” after “ In case of major fire ”.
On p. 44459	§ 1910.1200, Appendix D, Table D.1, Section 2.	In the Subheadings Column: In paragraph (a) of section 2 (Hazard Identification), change “(a) Classification of the chemical in accordance with paragraph (d)(1)(i) of § 1910.1200;” to read as “(a) Classification of the chemical in accordance with paragraph (d)(1) of § 1910.1200, except for classification under paragraph (d)(1)(ii).” In paragraph (c) of section 2 (Hazard Identification), change “(c) Hazards classified under paragraph (d)(1)(ii) of § 1910.1200;” to read as “(c) Hazards classified under paragraph (d)(1)(ii) of § 1910.1200;”.
On p. 44460	§ 1910.1200, Appendix D, Table D.1, Section 7.	In the Headings column, add the “dagger” (†) symbol after “7. Handling and Storage” to correspond with the note at the end of Appendix D.
On p. 44461	§ 1910.1200, Appendix D, Table D.1, Note.	In the Note at the end of Table D.1, remove the phrases “methods specified under” and “and then listed on the SDS” from the first sentence.
77 FR 17886	§ 1910.1200, Appendix F, <i>Responses Are in One Sex or Both Sexes</i> .	Change “gender-specific tumors” to “sex-specific tumors” in “Any case of gender-specific tumors should be evaluated in light of the total tumorigenic response to the substance observed at other sites (multi-site responses or incidence above background) in determining the carcinogenic potential of the substance.”

¹ Note that OSHA is also correcting the formatting of figures A.6.1, A.7.1(a), A.7.1(b), and A.8.1 as they appeared in the 2021 NPRM.

II. Exemption From Notice-and-Comment Procedures

OSHA has determined that these corrections are not subject to the procedures for public notice and comment specified in Section 4 of the Administrative Procedures Act (5 U.S.C. 553) or Section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)). This rulemaking only corrects errors of a minor, mainly typographical nature and makes technical amendments that do not affect or change any existing rights or obligations, and no stakeholder is likely to object to these changes. Therefore, OSHA has determined that there is good cause that public notice and comment are unnecessary within the meaning of 5 U.S.C. 553(b)(4)(B), 29 U.S.C. 655(b), and 29 CFR 1911.5. For the same reasons, the Agency finds good cause under 5 U.S.C. 553(d)(3) to make the amendment effective upon publication.

III. Authority and Signature

David Keeling, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this document. It is issued under the authority of sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); 5 U.S.C.

553; Section 304, Clean Air Act Amendments of 1990 (Pub. L. 101–549, reprinted at 29 U.S.C.A. 655 Note); Section 41, Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 941); Section 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 3704); Section 1031, Housing and Community Development Act of 1992 (42 U.S.C. 4853); Section 126, Superfund Amendments and Reauthorization Act of 1986, as amended (reprinted at 29 U.S.C.A. 655 Note); Secretary of Labor’s Order No. 07–2025 (90 FR 27878); and 29 CFR part 1911.

List of Subjects in 29 CFR Part 1910

Chemicals, Diseases, Explosives, Flammable materials, Gases, Hazardous substances, Incorporation by reference, Labeling, Occupational safety and health, Safety, Signs and symbols.

Signed at Washington, DC, on January 5, 2026.

David Keeling,

Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, 29 CFR part 1910 is corrected by making the following correcting amendments:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

■ 1. The authority citation for part 1910 is revised to read as follows:

Authority: 33 U.S.C. 941; 29 U.S.C. 653, 655, 657; Secretary of Labor’s Order No. 12–71 (36 FR 8754); 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), 1–2012 (77 FR 3912), 08–2020 (85 FR 58393), or 07–2025 (90 FR 27878); 29 CFR part 1911; and 5 U.S.C. 553, as applicable.

■ 2. Amend § 1910.6 by revising paragraph (h) introductory text and paragraph (h)(27) to read as follows:

§ 1910.6 Incorporation by reference.

* * * * *

(h) ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: (610) 832–9585; email: service@astm.org; website: www.astm.org.

* * * * *

(27) ASTM D4359–90 (Reapproved 2019), Standard Test Method for Determining Whether a Material is a Liquid or a Solid, approved July 1, 2019, IBR approved for § 1910.1200.

* * * * *

■ 3. Amend § 1910.1200 as follows:

- a. In paragraph (c):
- i. Add a heading to the paragraph.
- ii. Revise the definitions of “Liquid,” “Physical hazard,” and “Work area”.
- b. Add a heading to paragraph (d).
- c. In appendix A:
 - i. Revise and republish Figure A.1.1.
 - ii. Revise paragraphs A.2.2, A.2.2.3.3.1, and A.2.2.3.4.1.
 - iii. Revise and republish Figures A.6.1, A.7.1(a), A.7.1(b), and A.8.1 and Table A.10.1.
- d. In appendix B:
 - i. Revise and republish Tables B.2.1, B.3.1, and B.3.2.
 - ii. Revise paragraph B.3.3.3.
 - iii. Revise and republish Tables B.5.1 and B.6.1.
 - iv. In section B.6.3, in the second paragraph, redesignate footnote 9 as footnote 1.
 - v. Revise and republish Table B.7.1.
 - vi. In section B.17.1, in the definition of “Desensitized explosives,” redesignate footnotes 10 and 11 as footnotes 2 and 3.
- e. In appendix C:
 - i. Revise and republish Figure C.1.
 - ii. Revise paragraph C.2.4.6.

- iii. Revise and republish Tables C.4.10, C.4.14, C.4.16, C.4.19, C.4.20, C.4.21, C.4.24, and C.4.30.
- f. Revise and republish appendix D.
- g. In appendix F, revise *Responses Are in One Sex or Both Sexes*.

The revisions read as follows:

§ 1910.1200 Hazard communication.

* * * * *

(c) *Definitions.* * * *

Liquid means a substance or mixture which at 122 °F (50 °C) has a vapor pressure of not more than 43.51 PSI (300 kPa (3 bar)), which is not completely gaseous at 68 °F (20 °C) and at a standard pressure of 14.69 PSI (101.3 kPa), and which has a melting point or initial melting point of 68 °F (20 °C) or less at a standard pressure of 14.69 PSI (101.3 kPa). Either ASTM D 4359–90 (R2019) (incorporated by reference, see § 1910.6); or the test for determining fluidity (penetrometer test) prescribed in section 2.3.4 of ADR 2019 (incorporated by reference, see § 1910.6) can establish whether a viscous substance or mixture is a liquid if a specific melting point cannot be determined.

* * * * *

Physical hazard means a chemical that is classified as posing one of the following hazardous effects: explosive; flammable (gases, liquids, or solids); aerosols; chemical under pressure; oxidizer (gases, liquids, or solids); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; in contact with water emits flammable gas; or desensitized explosive. The criteria for determining whether a chemical is classified as a physical hazard are detailed in appendix B to this section.

* * * * *

Work area means a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

* * * * *

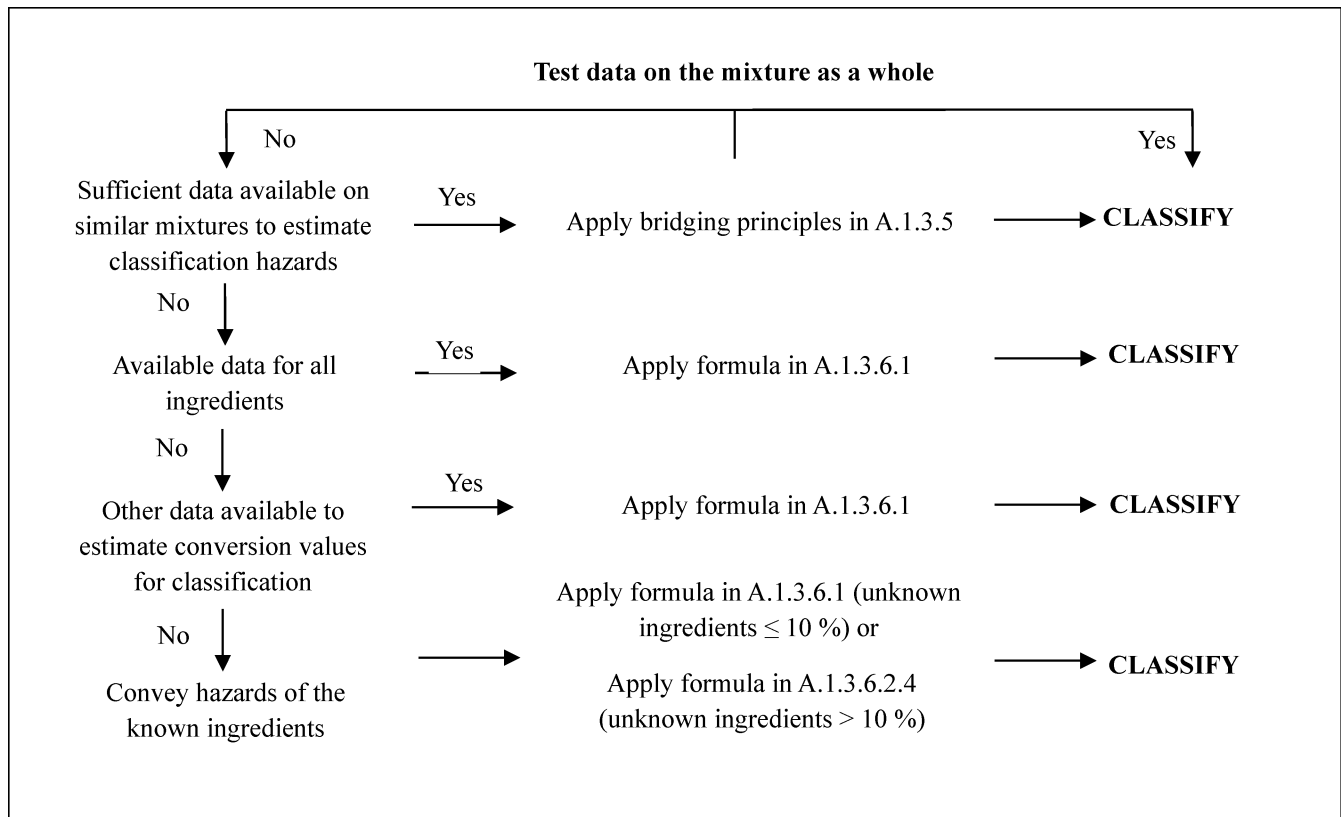
(d) *Hazard classification.* * * *

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Appendix A to § 1910.1200 Health Hazard Criteria (Mandatory)

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Figure A.1.1: Tiered Approach to Classification of Mixtures for Acute Toxicity



* * * * *

A.2.2 Classification Criteria for Substances

Substances shall be allocated to one of the following categories within this hazard class:

(a) Category 1 (Skin Corrosion)

This category may be further divided into up to three sub-categories (1A, 1B, and 1C).

Corrosive substances should be classified in Category 1 where data are not sufficient for sub-categorization.

When data are sufficient, substances may be classified in one of the three sub-categories 1A, 1B, or 1C.

(b) Category 2 (Skin Irritation)

* * * * *

A.2.2.3.3.1 Where tests have been undertaken in accordance with OECD Test Guidelines (TGs) 430, 431, or 435, a substance is classified for skin corrosion in category 1 (and, where possible and required into sub-categories 1A, 1B, or 1C).

* * * * *

A.2.2.3.4.1 Where a conclusion of corrosivity can be excluded and where tests have been undertaken in accordance with OECD Test Guideline 439, a substance is classified for skin irritation in category 2.

* * * * *

Figure A.6.1: Hazard Categories for Carcinogens

CATEGORY 1:

Known or presumed human carcinogens

The classification of a substance as a Category 1 carcinogen is done on the basis of epidemiological and/or animal data. This classification is further distinguished on the basis of whether the evidence for classification is largely from human data (Category 1A) or from animal data (Category 1B):

Category 1A:

Known to have carcinogenic potential for humans. Classification in this category is largely based on human evidence.

Category 1B:

Presumed to have carcinogenic potential for humans. Classification in this category is largely based on animal evidence.

The classification of a substance in Category 1A and 1B is based on strength of evidence together with weight of evidence considerations (See paragraph A.6.2.5). Such evidence may be derived from:

- human studies that establish a causal relationship between human exposure to a substance and the development of cancer (known human carcinogen); or
- animal experiments for which there is sufficient evidence to demonstrate animal carcinogenicity (presumed human carcinogen).

In addition, on a case by case basis, scientific judgment may warrant a decision of presumed human carcinogenicity derived from studies showing limited evidence of carcinogenicity in humans together with limited evidence of carcinogenicity in experimental animals.

CATEGORY 2:

Suspected human carcinogens

The classification of a substance in Category 2 is done on the basis of evidence obtained from human and/or animal studies, but which is not sufficiently convincing to place the substance in Category 1A or B. This classification is based on strength of evidence together with weight of evidence considerations (See paragraph A.6.2.5). Such evidence may be from either limited evidence of carcinogenicity in human studies or from limited evidence of carcinogenicity in animal studies.

Other considerations: Where the weight of evidence for the carcinogenicity of a substance does not meet the above criteria, any positive study conducted in accordance with established scientific principles, and which reports statistically significant findings regarding the carcinogenic potential of the substance, must be noted on the safety data sheet.

* * * * *

Figure A.7.1(a): Hazard Categories for Reproductive Toxicants

CATEGORY 1:	Known or presumed human reproductive toxicant Substance shall be classified in Category 1 for reproductive toxicity when they are known to have produced an adverse effect on sexual function and fertility or on development in humans or when there is evidence from animal studies, possibly supplemented with other information, to provide a strong presumption that the substance has the capacity to interfere with reproduction in humans. The classification of a substance is further distinguished on the basis of whether the evidence for classification is primarily from human data (Category 1A) or from animal data (Category 1B).
Category 1A:	Known human reproductive toxicant The classification of a substance in this category is largely based on evidence from humans.
Category 1B:	Presumed human reproductive toxicant The classification of a substance in this category is largely based on evidence from experimental animals. Data from animal studies shall provide sufficient evidence of an adverse effect on sexual function and fertility or on development in the absence of other toxic effects, or if occurring together with other toxic effects the adverse effect on reproduction is considered not to be a secondary non-specific consequence of other toxic effects. However, when there is mechanistic information that raises doubt about the relevance of the effect for humans, classification in Category 2 may be more appropriate.
CATEGORY 2:	Suspected human reproductive toxicant Substances shall be classified in Category 2 for reproductive toxicity when there is some evidence from humans or experimental animals, possibly supplemented with other information, of an adverse effect on sexual function and fertility, or on development, in the absence of other toxic effects, or if occurring together with other toxic effects the adverse effect on reproduction is considered not to be a secondary non-specific consequence of the other toxic effects, and where the evidence is not sufficiently convincing to place the substance in Category 1. For instance, deficiencies in the study may make the quality of evidence less convincing, and in view of this, Category 2 would be the more appropriate classification.

Figure A.7.1(b): Hazard Category for Effects On or Via Lactation

EFFECTS ON OR VIA LACTATION Effects on or via lactation shall be classified in a separate single category. Chemicals that are absorbed by women and have been shown to interfere with lactation or that may be present (including metabolites) in breast milk in amounts sufficient to cause concern for the health of a breastfed child, shall be classified to indicate this property. Classification for effects via lactation shall be assigned on the basis of: (a) Absorption, metabolism, distribution and excretion studies that indicate the likelihood the substance would be present in potentially toxic levels in breast milk; and/or (b) results of one or two generation studies in animals which provide clear evidence of adverse effect in the offspring due to transfer in the milk or adverse effect on the quality of the milk; and/or (c) human evidence indicating a hazard to babies during the lactation period.

Figure A.8.1: Hazard Categories for Specific Target Organ Toxicity Following Single Exposure

<u>CATEGORY 1:</u> Substances that have produced significant toxicity in humans, or that, on the basis of evidence from studies in experimental animals can be presumed to have the potential to produce significant toxicity in humans following single exposure Substances are classified in Category 1 for STOT-SE on the basis of: (a) Reliable and good quality evidence from human cases or epidemiological studies; or (b) observations from appropriate studies in experimental animals in which significant and/or severe toxic effects of relevance to human health were produced at generally low exposure concentrations. Guidance dose/concentration values are provided below (<i>See</i> A.8.2.1.9) to be used as part of weight-of-evidence evaluation.	
<u>CATEGORY 2:</u> Substances that, on the basis of evidence from studies in experimental animals, can be presumed to have the potential to be harmful to human health following single exposure Substances are classified in Category 2 for STOT-SE on the basis of observations from appropriate studies in experimental animals in which significant toxic effects, of relevance to human health, were produced at generally moderate exposure concentrations. Guidance dose/concentration values are provided below (<i>See</i> A.8.2.1.9) in order to help in classification. In exceptional cases, human evidence can also be used to place a substance in Category 2 (<i>See</i> A.8.2.1.6).	
<u>CATEGORY 3:</u> Transient target organ effects There are target organ effects for which a substance does not meet the criteria to be classified in Categories 1 or 2 indicated above. These are effects which adversely alter human function for a short duration after exposure and from which humans may recover in a reasonable period without leaving significant alteration of structure or function. This category only includes narcotic effects and respiratory tract irritation. Substances are classified specifically for these effects as discussed in A.8.2.2. <i>Note: The primary target organ/system shall be identified where possible, and where this is not possible, the substance shall be identified as a general toxicant. The data shall be evaluated and, where possible, shall not include secondary effects (e.g., a hepatotoxicant can produce secondary effects in the nervous or gastro-intestinal systems).</i>	

Table A.10.1: Criteria for Aspiration Toxicity

Category	Criteria
Category 1: Chemicals known to cause human aspiration toxicity hazards or to be regarded as if they cause human aspiration toxicity hazard	A substance shall be classified in Category 1: (a) If reliable and good quality human evidence indicates that it causes aspiration toxicity (<i>See</i> note); or (b) If it is a hydrocarbon and has a kinematic viscosity ≤ 20.5 mm²/s, measured at 40° C.

Note: Examples of substances included in Category 1 are certain hydrocarbons, turpentine and pine oil.

* * * *

Appendix B to § 1910.1200—Physical Hazard Criteria (Mandatory)

Table B.2.1: Criteria for Flammable Gases

* * * * *

Category		Criteria
1A	Flammable gas	Gases, which at 20 °C (68 °F) and a standard pressure of 101.3 kPa (14.7 psi): (a) are ignitable when in a mixture of 13% or less by volume in air; or (b) have a flammable range with air of at least 12 percentage points regardless of the lower flammability limit, unless data show they meet the criteria for Category 1B.
	Pyrophoric gas	Flammable gases that ignite spontaneously in air at a temperature of 54 °C (130 °F) or below.
	Chemically unstable gas	A Flammable gases which are chemically unstable at 20 °C (68 °F) and a standard pressure of 101.3 kPa (14.7 psi).
		B Flammable gases which are chemically unstable at a temperature greater than 20 °C (68 °F) and/or a pressure greater than 101.3 kPa (14.7 psi).
1B	Flammable gas	Gases which meet the flammability criteria for Category 1A, but which are not pyrophoric, nor chemically unstable, and which have at least either: (a) a lower flammability limit of more than 6% by volume in air; or (b) a fundamental burning velocity of less than 10 cm/s.
2	Flammable gas	Gases, other than those of Category 1A or 1B, which, at 20 °C (68 °F) and a standard pressure of 101.3 kPa (14.7 psi), have a flammable range while mixed in air.

NOTE 1: Aerosols and chemicals under pressure should not be classified as flammable gases. See B.3.

NOTE 2: In the absence of data allowing classification into Category 1B, a flammable gas that meets the criteria for Category 1A shall be classified by default in Category 1A.

NOTE 3: Spontaneous ignition for pyrophoric gases is not always immediate, and there may be a delay.

NOTE 4: In the absence of data on its pyrophoricity, a flammable gas mixture shall be classified as a pyrophoric gas if it contains more than 1% (by volume) of pyrophoric component(s).

* * * * *

Table B.3.1: Criteria for Aerosols

Category	Criteria
1	Contains $\geq 85\%$ flammable components and the chemical heat of combustion is ≥ 30 kJ/g; or For spray aerosols, in the ignition distance test, ignition occurs at a distance ≥ 75 cm (29.5 in), or For foam aerosols, in the aerosol foam flammability test The flame height is ≥ 20 cm (7.87 in) and the flame duration ≥ 2 s; or The flame height is ≥ 4 cm (1.57 in) and the flame duration ≥ 7 s
2	Contains $> 1\%$ flammable components, or the heat of combustion is ≥ 20 kJ/g; and for spray aerosols, in the ignition distance test, ignition occurs at a distance ≥ 15 cm (5.9 in), or in the enclosed space ignition test, the Time equivalent is ≤ 300 s/m ³ ; or Deflagration density is ≤ 300 g/m ³ For foam aerosols, in the aerosol foam flammability test, the flame height is ≥ 4 cm and the flame duration is ≥ 2 s and it does not meet the criteria for Category 1
3	The chemical does not meet the criteria for Categories 1 and 2; or The chemical contains $\leq 1\%$ flammable components (by mass) and has a heat of combustion < 20 kJ/g.

NOTE 1: Flammable components do not include pyrophoric, self-heating or water-reactive chemicals.

NOTE 2: Aerosols do not fall additionally within the scope of B.2 (flammable gases), B.3.2 (chemicals under pressure), B.5 (gases under pressure), B.6 (flammable liquids), or B.7 (flammable solids). However, depending on their contents, aerosols may fall within the scope of other hazard classes, including their labeling elements.

NOTE 3: Aerosols containing more than 1% flammable components or with a heat of combustion of at least 20 kJ/g, which are not submitted to the flammability classification procedures in this Appendix shall be classified as Category 1.

* * * * *

Table B.3.2: Criteria for Chemicals Under Pressure

Category	Criteria
1	Any chemical under pressure that: (a) contains ≥ 85 % flammable components (by mass); and (b) has a heat of combustion of ≥ 20 kJ/g.
2	Any chemical under pressure that: (a) contains > 1 % flammable components (by mass); and (b) has a heat of combustion < 20 kJ/g; or that: (a) contains < 85 % flammable components (by mass); and (b) has a heat of combustion ≥ 20 kJ/g.
3	Any chemical under pressure that: (a) contains ≤ 1% flammable components (by mass); and (b) has a heat of combustion of < 20 kJ/g.

Note 1: The flammable components in a chemical under pressure do not include pyrophoric, self-heating or water-reactive, substances and mixtures because such components are not allowed in chemicals under pressure in accordance with the UN Model Regulations.

Note 2: Chemicals under pressure do not fall additionally within the scope of B.2 (flammable gases), B.3.1 (aerosols), B.5 (gases under pressure), B.6 (flammable liquids) and B.7 (flammable solids). Depending on their contents, chemicals under pressure may however fall within the scope of other hazard classes, including their labeling elements.

* * * * *

B.3.3.3 The chemical heats of combustion shall be found in literature, calculated or determined by tests: (see ASTM D 240–02;

Sections 86.1 to 86.3 of ISO 13943; and NFPA 30B (incorporated by reference, see § 1910.6)).

Table B.5.1: Criteria for Gases Under Pressure

* * * * *

Group	Criteria
Compressed gas	A gas which when under pressure is entirely gaseous at -50°C (-58°F), including all gases with a critical temperature ¹ ≤ -50°C (-58°F).
Liquefied gas	A gas which when under pressure, is partially liquid at temperatures above -50°C (-58°F). A distinction is made between: (a) High pressure liquefied gas: a gas with a critical temperature ¹ between -50°C (-58°F) and +65°C (149°F); and (b) Low pressure liquefied gas: a gas with a critical temperature ¹ above +65°C (149°F).
Refrigerated liquefied gas	A gas which is made partially liquid because of its low temperature.
Dissolved gas	A gas which when under pressure is dissolved in a liquid phase solvent.

* * * * *

Table B.6.1: Criteria for Flammable Liquids

Category	Criteria
1	Flash point < 23°C (73.4°F) and initial boiling point ≤ 35°C (95°F)
2	Flash point < 23°C (73.4°F) and initial boiling point > 35°C (95°F)
3	Flash point ≥ 23°C (73.4°F) and ≤ 60°C (140°F)
4	Flash point > 60°C (140°F) and ≤ 93°C (199.4°F)

NOTE: Aerosols and chemicals under pressure should not be classified as flammable liquids. See Appendix B.3 of this section.

Table B.7.1: Criteria for Flammable Solids

Category	Criteria
1	Burning rate test: Chemicals other than metal powders: a) Wetted zone does not stop fire; and b) Burning time < 45 s or burning rate > 2.2 mm/s Metal powders: burning time ≤ 5 min
2	Burning rate test: Chemicals other than metal powders: a) Wetted zone stops the fire for at least 4 min; and b) Burning time < 45 s or burning rate > 2.2 mm/s Metal powders: burning time > 5 min and ≤ 10 min

NOTE 1: Classification of solid chemicals shall be based on tests performed on the chemical as presented. If, for example, for the purposes of supply or transport, the same chemical is to be presented in a physical form different from that which was tested and which is considered likely to materially alter its performance in a classification test, classification must be based on testing of the chemical in the new form.

NOTE 2: Aerosols and chemicals under pressure should not be classified as flammable solids. See Appendix B.3.

Appendix C to § 1910.1200—Allocation of Label Elements (Mandatory)

Figure C.1—Hazard Symbols and Classes

* * * * *

Flame	Flame Over Circle	Exclamation Mark	Exploding Bomb
 Flammables Self Reactives Pyrophorics Self-heating Emits Flammable Gas Organic Peroxides Desensitized Explosives	 Oxidizers	 Irritant Dermal Sensitizer Acute Toxicity(harmful) Narcotic Effects Respiratory Tract Irritation HNOX (non-mandatory)	 Explosives Self Reactives Organic Peroxides
Corrosion	Gas Cylinder	Health Hazard	Skull and Crossbones
 Corrosives	 Gases Under Pressure Chemicals Under Pressure	 Carcinogen Respiratory Sensitizer Reproductive Toxicity Target Organ Toxicity Mutagenicity Aspiration Toxicity	 Acute Toxicity (severe)

* * * * *

C.2.4.6 Precautionary statements may be combined or consolidated to save label space and improve readability. For example, “Keep cool” and “Keep away from heat, hot surfaces, sparks, open flames and other

ignition sources. No smoking.” can be combined to read “Keep cool and away from heat, hot surfaces, sparks, open flames and other ignition sources. No smoking.”

* * * * *

C.4.10 REPRODUCTIVE TOXICITY
(Classified in Accordance with Appendix A.7 of this section)

**C.4.10 REPRODUCTIVE TOXICITY
(CONTINUED)**
(Classified in Accordance with Appendix
A.7 of this section)
(EFFECTS ON OR VIA LACTATION)

Pictogram
No Pictogram

Hazard category
No designated number
(See Table A.7.1 in Appendix A.7)

Signal word
No signal word

Hazard statement
May cause harm to breast-fed children

Precautionary statements			
Prevention	Response	Storage	Disposal
Obtain special instructions before use. Do not breathe dusts or mists. - if inhalable particles of dusts or mists may occur during use. Avoid contact during pregnancy and while nursing. Wash ... thoroughly after handling. ...Chemical manufacturer, importer, or distributor to specify parts of the body to be washed after handling. Do not eat, drink or smoke when using this product.	If exposed or concerned: Get medical advice/attention. Chemical manufacturer, importer, or distributor to select medical advice or attention as appropriate.		

* * * * *

C.4.14 EXPLOSIVES
(Classified in Accordance with Appendix B.1 of this section)

Pictogram
Exploding bomb



Hazard statement
Unstable explosive

Signal word
Danger

Hazard category
Unstable explosive

Precautionary statements			
Prevention	Response	Storage	Disposal
Obtain special instructions before use. Do not subject to grinding/shock/friction/... — <i>if the explosive is mechanically sensitive.</i> ... Chemical manufacturer, importer, or distributor to specify applicable rough handling. Wear protective gloves/protective clothing/eye protection/face protection/hearing protection/... Chemical manufacturer, importer, or distributor to specify the appropriate personal protective equipment.	In case of fire: Explosion risk. Evacuate area. DO NOT fight fire when fire reaches explosives.	Store in accordance with... ... Chemical manufacturer, importer, or distributor to specify local/regional/ national/international regulations as applicable.	Refer to manufacturer, importer, or distributor... for information on disposal, recovery, or recycling. ... Manufacturer, importer, or distributor to specify appropriate source of information, in accordance with local/regional/national/ international regulations as applicable.

C.4.14 EXPLOSIVES (CONTINUED)

(Classified in Accordance with Appendix B.1 of this section)

Pictogram
Exploding bomb



Hazard category Signal word Hazard statement

Division 1.1 Danger Explosive; mass explosion hazard

Division 1.2 Danger Explosive; severe projection hazard

Division 1.3 Danger Explosive; fire, blast or projection

Precautionary statements			
Prevention	Response	Storage	Disposal
Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. No smoking. Keep wetted with... <i>for substances and mixtures which are wetted, diluted, dissolved or suspended with a phlegmatizer in order to reduce or suppress their explosive properties (desensitized explosives).</i> Keep only in original packaging. Ground and bond container and receiving equipment. <i>if the explosive is electrostatically sensitive.</i> Do not subject to grinding/shock/.../friction. <i>if the explosive is mechanically sensitive.</i> ... Chemical manufacturer, importer, or distributor to specify applicable rough handling.	In case of fire: Explosion risk. Evacuate area. DO NOT fight fire when fire reaches explosives.	Store in accordance with... ... Chemical manufacturer, importer, or distributor to specify local/regional/national/international regulations as applicable.	Refer to manufacturer, importer, or distributor... for information on disposal, recovery, or recycling. ... Manufacturer, importer, or distributor to specify appropriate source of information, in accordance with local/regional/national/international regulations as applicable.
Wear protective gloves/protective clothing/eye protection/face protection/hearing protection/.... Chemical manufacturer, importer, or distributor to specify the appropriate personal protective equipment.			

Note: Unpackaged explosives or explosives repacked in packagings other than the original or similar packaging shall have the label elements assigned to Division 1.1 unless the hazard is shown to correspond to one of the hazard categories in Appendix B.1 of this section, in which case the corresponding symbol, signal word and/or the hazard statement shall be assigned.

C.4.14 EXPLOSIVES (CONTINUED)

(Classified in Accordance with Appendix B.1 of this section)

Pictogram
Exploding bomb¹



Hazard statement

Fire or projection hazard

Signal word

Warning

Hazard category

Division 1.4

Precautionary statements ¹			
Prevention	Response	Storage	Disposal
Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. No smoking. Keep only in original packaging. Ground and bond container and receiving equipment. <i>- if the explosive is electrostatically sensitive.</i> Do not subject to grinding/shock/.../friction. <i>- if the explosive is mechanically sensitive.</i> ... Chemical manufacturer, importer, or distributor to specify applicable rough handling. Wear protective gloves/protective clothing/eye protection/face protection/hearing protection/... Chemical manufacturer, importer, or distributor to specify the appropriate personal protective equipment.	In case of fire: Explosion risk. Evacuate area. Do NOT fight fire when fire reaches explosives. <i>- except for explosives of division 1.4 (compatibility group S) in transport packaging.</i> In case of fire: Evacuate area. Fight fire remotely due to the risk of explosion. <i>- for explosives of division 1.4 (compatibility group S) in transport packaging.</i>	Store in accordance with... ... Chemical manufacturer, importer, or distributor to specify local/regional/national/international regulations as applicable.	Refer to manufacturer, importer, or distributor... for information on disposal, recovery, or recycling. ... Manufacturer, importer, or distributor to specify appropriate source of information, in accordance with local/regional/national/international regulations as applicable.

Note: Unpackaged explosives or explosives repacked in packagings other than the original or similar packaging shall have the label elements assigned to Division 1.1 unless the hazard is shown to correspond to one of the hazard categories in Appendix B.1 of this section, in which case the corresponding symbol, signal word and/or the hazard statement shall be assigned.¹

¹ Except no pictogram is required for explosives that are 1.4S small arms ammunition and components thereof. Labels for 1.4S small arms ammunition and components shall include appropriate precautionary statements.

C.4.14 EXPLOSIVES (CONTINUED)

(Classified in Accordance with Appendix B.1 of this section)

Pictogram
No Pictogram

Hazard statement

May mass explode in fire

Signal word

Danger

Hazard category

Division 1.5

Precautionary statements

Prevention	Response	Storage	Disposal
Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. - No smoking. Keep wetted with... <i>-for substances and mixtures which are wetted, diluted, dissolved or suspended with a phlegmatizer in order to reduce or suppress their explosive properties (desensitized explosives).</i> ... Chemical manufacturer, importer, or distributor to specify appropriate material. Keep only in original packaging. Ground and bond container and receiving equipment. <i>if the explosive is electrostatically sensitive.</i> Do not subject to grinding/shock/.../friction. <i>-if the explosive is mechanically sensitive.</i> ... Chemical manufacturer, importer, or distributor to specify applicable rough handling. Wear protective gloves/protective clothing/eye protection/face protection/hearing protection/... Chemical manufacturer, importer, or distributor to specify the appropriate personal protective equipment.	In case of fire: Explosion risk. Evacuate area. DO NOT fight fire when fire reaches explosives.	Store in accordance with... ... Chemical manufacturer, importer, or distributor to specify local/regional/national/international regulations as applicable.	Refer to manufacturer, importer, or distributor... for information on disposal, recovery, or recycling. ... Manufacturer, distributor, or importer to specify appropriate source of information, in accordance with local/regional/national/international regulations as applicable

Note: Unpackaged explosives or explosives repacked in packagings other than the original or similar packaging shall have the label elements assigned to Division 1.1 unless the hazard is shown to correspond to one of the hazard categories in Appendix B.1 of this section, in which case the corresponding symbol, signal word and/or the hazard statement shall be assigned.

C.4.14 EXPLOSIVES (CONTINUED)

(Classified in Accordance with Appendix B.1 of this section)

* * * * *

C.4.16 AEROSOLS
(Classified in Accordance with Appendix B.3
of this section)

Pictogram
No Pictogram

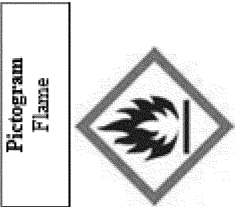
Hazard category
Division 1.6

Signal word
No signal word

Hazard statement
No hazard statement

Precautionary statements			
Prevention	Response	Storage	Disposal
None assigned	None assigned	None assigned	None assigned

Note: Unpackaged explosives or explosives repacked in packagings other than the original or similar packaging shall have the label elements assigned to Division 1.1 unless the hazard is shown to correspond to one of the hazard categories in Appendix B.1 of this section, in which case the corresponding symbol, signal word and/or the hazard statement shall be assigned.



Hazard category	Signal word	Hazard statement
1	Danger	Extremely flammable aerosol Pressurized container: may burst if heated.
2	Warning	Flammable aerosol Pressurized container: may burst if heated.

Precautionary statements			
Prevention	Response	Storage	Disposal
Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. No smoking. Do not spray on an open flame or other ignition source. Do not pierce or burn, even after use.		Protect from sunlight. Do not expose to temperatures exceeding 122 °F (50 °C).	

C.4.16 AEROSOLS
(Classified in Accordance with Appendix B.3.1 of this section)

Hazard category **Signal word** **Hazard statement** **Pictogram**
 3 Warning Pressurized container: may burst if heated. No symbol

Precautionary statements		
Prevention	Response	Storage
Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. No smoking. Do not pierce or burn, even after use.		Protect from sunlight. Do not expose to temperatures exceeding 122°F (50 °C).
Disposal		

C.4.16 CHEMICAL UNDER PRESSURE
 (Classified in Accordance with Appendix
 B.3.2 of this section)

Pictogram Gas cylinder Flame			
Hazard category	Signal word	Hazard statement	
1	Danger	Extremely flammable chemical under pressure May explode if heated.	
2	Warning	Flammable chemical under pressure May explode if heated.	
Precautionary statements			
Prevention		Response	Storage
Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. No smoking.		In case of leakage, eliminate all ignition sources.	Protect from sunlight. Store in a well-ventilated place.
Do not spray on an open flame or other ignition source.		Stop leak if safe to do so.	
		In case of fire: Use ... to extinguish.” -if water increases risk.	
		... Chemical manufacturer, importer, or distributor to specify appropriate media.	
			Disposal

Pictogram
Gas cylinder



Hazard category	Signal word	Hazard statement
3	Warning	Chemical under pressure: may explode if heated.

Precautionary statements			
Prevention	Response	Storage	Disposal
Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. No smoking.	Stop leak if safe to do so.	Protect from sunlight. Store in a well-ventilated place.	

* * * * *

C.4.19 FLAMMABLE LIQUIDS
(Classified in Accordance with Appendix B.6 of this section)

Hazard category	Signal word	Hazard statement	Pictogram
1	Danger	Extremely flammable liquid and vapor	
2	Danger	Highly flammable liquid and vapor	
3	Warning	Flammable liquid and vapor	

Precautionary statements			
Prevention	Response	Storage	Disposal
Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. No smoking. Keep container tightly closed. – if the liquid is volatile and may generate an explosive atmosphere. Ground and bond container and receiving equipment. – if the liquid is volatile and may generate an explosive atmosphere. Use explosion-proof [electrical/ventilating/lighting/...] equipment. – if the liquid is volatile and may generate an explosive atmosphere – text in square brackets may be used to specify specific electrical, ventilating, lighting, or other equipment if necessary and as appropriate. Chemical manufacturer, importer, or distributor to specify other equipment. Use non-sparking tools. – if the liquid is volatile and may generate an explosive atmosphere and if the minimum ignition energy is very low. (This applies to substances and mixtures where the minimum ignition energy is <0.1 mJ, e.g., carbon disulfide). Take action to prevent static discharge. – if the liquid is volatile and may generate an explosive atmosphere. Wear protective gloves/protective clothing/eye protection/face protection/hearing protection/... Chemical manufacturer, importer, or distributor to specify the appropriate personal protective equipment.	If on skin (or hair): Takeoff immediately all contaminated clothing. Rinse skin with water [or shower]. – text in square brackets to be included where the chemical manufacturer, importer, or distributor considers it appropriate for the specific chemical. In case of fire: Use ... to extinguish. – if water increases risk. ... Chemical manufacturer, importer, or distributor to specify appropriate media.	Store in a well-ventilated place. Keep cool. – for flammable liquids Category 1 and other flammable liquids that are volatile and may generate an explosive atmosphere.	Dispose of contents/container to... ... in accordance with local/regional/national/international regulations (to be specified). Chemical manufacturer, importer, or distributor to specify whether disposal requirements apply to contents, container, or both.

**C.4.19 FLAMMABLE LIQUIDS
(CONTINUED)**

(Classified in Accordance with Appendix B.6 of this section)

Pictogram
No Pictogram

Hazard category **Signal word** **Hazard statement**

4 Warning Combustible liquid

Precautionary statements			
Prevention	Response	Storage	Disposal
Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. –No smoking. Wear protective gloves/protective clothing/eye protection/face protection/hearing protection/... Chemical manufacturer, importer, or distributor to specify the appropriate personal protective equipment.	In case of fire: Use ... to extinguish. – <i>if water increases risk.</i> ... Chemical manufacturer, importer, or distributor to specify appropriate media.	Store in a well-ventilated place. – <i>for flammable liquids Category 1 and other flammable liquids that are volatile and may generate an explosive atmosphere.</i>	Dispose of contents/container to... in accordance with local/regional/national/international regulations (to be specified). Chemical manufacturer, importer, or distributor to specify whether disposal requirements apply to contents, container or both.

C.4.20 FLAMMABLE SOLIDS

(Classified in Accordance with Appendix B.7 of this section)

Hazard category		Signal word	Hazard statement	
1		Danger	Flammable solid	
2		Warning	Flammable solid	
				
Precautionary statements				
Prevention		Response	Storage	Disposal
Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. –No smoking.		In case of fire: Use ... to extinguish –if water increases risk. ... Chemical manufacturer, importer, or distributor to specify appropriate media.		
Ground and bond container and receiving equipment. – if the solid is electrostatically sensitive.				
Use explosion-proof [electrical/ventilating/ lighting/...] equipment. if dust clouds can occur. – text in square brackets may be used to specify specific electrical, ventilating, lighting or other equipment if necessary and as appropriate.				
Wear protective gloves/protective clothing/eye protection/face protection/hearing protection/...				
Chemical manufacturer, importer, or distributor to specify the appropriate personal protective equipment.				

C.4.21 SELF-REACTIVE SUBSTANCES
AND MIXTURES

(Classified in Accordance with Appendix B.8
of this section)

Pictogram
Exploding bomb



Hazard statement
Heating may cause an explosion

Hazard category
Type A

Signal word
Danger

Precautionary statements			
Prevention	Response	Storage	Disposal
Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. -No smoking. Keep only in original packaging. Keep cool. - <i>may be omitted if storage temperatures are listed on the label.</i> Ground and bond container and receiving equipment. - <i>if electrostatically sensitive and able to generate an explosive atmosphere.</i> Wear protective gloves/protective clothing/eye protection/face protection/hearing protection/... Chemical manufacturer, importer, or distributor to specify the appropriate personal protective equipment.	In case of fire: Explosion risk. Evacuate area. DO NOT fight fire when fire reaches explosives.	Store in a well-ventilated place. - <i>except for temperature controlled self-reactive substances and mixtures or organic peroxides because condensation and consequent freezing may take place.</i> Store at temperatures not exceeding ...°F (°C). ... Chemical manufacturer, importer, or distributor to specify temperature using applicable temperature scale. - <i>if temperature control is required (see Appendix B.2.3) or if otherwise deemed necessary.</i> Store separately.	Dispose of contents/container to... ... in accordance with local/regional/national/international regulations (to be specified). Chemical manufacturer, importer, or distributor to specify whether disposal requirements apply to contents, container, or both.

C.4.21 SELF-REACTIVE SUBSTANCES AND MIXTURES (CONTINUED)

(Classified in Accordance with Appendix B.8 of this section)

Hazard category		Signal word	Hazard statement	Pictogram Exploding bomb and flame	
Type B		Danger	Heating may cause a fire or explosion		
Precautionary statements					
Prevention		Response		Storage	Disposal
Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. No smoking. Keep only in original packaging. Keep cool. <i>... may be omitted if storage temperatures are listed on the label.</i> Ground and bond container and receiving equipment. <i>... if electrostatically sensitive and able to generate an explosive atmosphere.</i> Wear protective gloves/protective clothing/eye protection/face protection/hearing protection/... Chemical manufacturer, importer, or distributor to specify the appropriate personal protective equipment.		In case of fire: Evacuate area. Fight fire remotely due to the risk of explosion. [Use ... to extinguish]. <i>text in square brackets to be included if water increases risk.</i> ... Chemical manufacturer, importer, or distributor to specify appropriate media.		Store in a well-ventilated place. <i>... except for temperature controlled self-reactive substances and mixtures or organic peroxides because condensation and consequent freezing may take place.</i> Store at temperatures not exceeding ...°F (°C). <i>... if temperature control is required (see Appendix B.2.3) or if otherwise deemed necessary.</i> ... Chemical manufacturer, importer, or distributor to specify temperature using applicable temperature scale. Store separately.	Dispose of contents/container to... <i>... in accordance with local/regional/national/international regulations (to be specified).</i> Chemical manufacturer, importer, or distributor to specify whether disposal requirements apply to contents, container, or both.

C.4.21 SELF-REACTIVE SUBSTANCES AND MIXTURES (CONTINUED)

(Classified in Accordance with Appendix B.8 of this section)

Pictogram
Flame

Hazard category	Signal word	Hazard statement
Type C	Danger	Heating may cause a fire
Type D	Danger	Heating may cause a fire
Type E	Warning	Heating may cause a fire
Type F	Warning	Heating may cause a fire

Precautionary statements			
Prevention	Response	Storage	Disposal
Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. - No smoking. Keep only in original packaging. Keep cool. <i>- may be omitted if storage temperatures are listed on the label.</i> Ground and bond container and receiving equipment. <i>- if electrostatically sensitive and able to generate an explosive atmosphere.</i> Wear protective gloves/protective clothing/eye protection/face protection/hearing protection/... Chemical manufacturer, importer, or distributor to specify the appropriate personal protective equipment.	In case of fire: Use ... to extinguish <i>- if water increases risk.</i> ... Chemical manufacturer, importer, or distributor to specify appropriate media.	Store in a well-ventilated place. <i>except for temperature controlled self-reactive substances and mixtures or organic peroxides because condensation and consequent freezing may take place.</i> Store at temperatures not exceeding ...°F (°C). <i>- if temperature control is required (see Appendix B 2.3) or if otherwise deemed necessary.</i> ... Chemical manufacturer, importer, or distributor to specify temperature using applicable temperature scale. Store separately.	Dispose of contents/container to... ... in accordance with local/regional/national/international regulations (to be specified). Chemical manufacturer, importer, or distributor to specify whether disposal requirements apply to contents, container or both.

C.4.24 SELF-HEATING SUBSTANCES AND MIXTURES

(Classified in Accordance with Appendix B.11 of this section)

* * * * *

Hazard category		Signal word	Hazard statement	Pictogram Flame	
1		Danger	Self-heating; may catch fire		
2		Warning	Self-heating in large quantities; may catch fire		

Precautionary statements			
Prevention	Response	Storage	Disposal
Keep cool. <i>- may be omitted if storage temperatures are listed on the label.</i> Wear protective gloves/protective clothing/eye protection/face protection/hearing protection/... Chemical manufacturer, importer, or distributor to specify the appropriate personal protective equipment.		Maintain air gap between stacks or pallets. Protect from sunlight. Store bulk masses greater than ... kg/... lbs at temperatures not exceeding ... °F (°C). ... Chemical manufacturer, importer, or distributor to specify mass and temperature using applicable scale. Store separately.	

C.4.30 DESENSITIZED EXPLOSIVES
(Classified in Accordance with Appendix B.17 of this section)

Hazard category		Signal word	Hazard statement	Pictogram Flame
1	Danger	Danger	Fire, blast or projection hazard; increased risk of explosion if desensitizing agent is reduced.	
2	Danger	Danger	Fire or projection hazard; increased risk of explosion if desensitizing agent is reduced.	
3	Warning	Warning	Fire or projection hazard; increased risk of explosion if desensitizing agent is reduced.	

Precautionary statements			
Prevention	Response	Storage	Disposal
Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. No smoking. Avoid heating under confinement or reduction of the desensitizing agent. Keep wetted with... ...Chemical manufacturer, importer or distributor to specify appropriate material. Keep container tightly closed. Wear protective gloves/protective clothing/eye protection/face protection/hearing protection/... Chemical manufacturer, importer or distributor to specify the appropriate personal protective equipment.	In case of fire: Evacuate area. Fight fire remotely due to the risk of explosion.	Store in accordance with... ... Chemical manufacturer, importer, or distributor to specify local/regional/national/ international regulations as applicable.	Dispose of contents/container to... ...in accordance with local/regional/national/ international regulations (to be specified). Chemical manufacturer, importer, or distributor to specify whether disposal requirements apply to contents, container or both.

C.4.30 DESENSITIZED EXPLOSIVES

(Classified in Accordance with Appendix B.17 of this section)

* * * * *

A safety data sheet (SDS) shall include the information specified in Table D.1 under the

no relevant information is found for any given subheading within a section, the SDS shall clearly indicate that no applicable information is available. Sections 12–15 may be included in the SDS, but are not mandatory.

Table D.1. Minimum Information for an SDS

	Headings	Subheadings
1.	Identification	(a) Product identifier used on the label; (b) Other means of identification; (c) Recommended use of the chemical and restrictions on use; (d) Name, U.S. address, and U.S. telephone number of the chemical manufacturer, importer, or other responsible party; (e) Emergency phone number.
2.	Hazard identification	(a) Classification of the chemical in accordance with paragraph (d)(1) of §1910.1200, except for classification under paragraph (d)(1)(ii). (b) Signal word, hazard statement(s), symbol(s) and precautionary statement(s) in accordance with paragraph (f) of §1910.1200. (Hazard symbols may be provided as graphical reproductions in black and white or the name of the symbol, <i>e.g.</i> , flame, skull and crossbones); (c) Hazards classified under paragraph (d)(1)(ii) of § 1910.1200. (d) Describe any hazards not otherwise classified that have been identified during the classification process; (e) Where an ingredient with unknown acute toxicity is used in a mixture at a concentration $\geq 1\%$ and the mixture is not classified based on testing of the mixture as a whole, a statement that X% of the mixture consists of ingredient(s) of unknown acute toxicity is required.
3.	Composition/ information on ingredients	Except as provided for in paragraph (i) of §1910.1200 on trade secrets: For Substances (a) Chemical name; (b) Common name and synonyms; (c) CAS number and other unique identifiers; (d) Impurities and stabilizing additives (constituents) which are themselves classified and which contribute to the classification of the substance. For Mixtures In addition to the information required for substances: (a) The chemical name, CAS number or other unique identifier, and concentration (exact percentage) or concentration ranges of all ingredients which are classified as health hazards in accordance with paragraph (d) of §1910.1200 and (1) are present above their cut-off/concentration limits; or (2) present a health risk below the cut-off/concentration limits. <i>Note: When CAS number is not available or claimed as a trade secret, the preparer must indicate the source of unique identifier.</i> (b) The concentration (exact percentage) shall be specified unless a trade secret claim is made in accordance with paragraph (i) of §1910.1200, when there is batch-to-batch variability in the production of a mixture, or for a group of substantially similar mixtures (See A.0.5.1.2) with similar chemical composition. In these cases,

		concentration ranges may be used. For All Chemicals Where a Trade Secret is Claimed Where a trade secret is claimed in accordance with paragraph (i) of §1910.1200, a statement that the specific chemical identity, and/or concentration (exact or range) of the composition has been withheld as a trade secret is required. When the concentration or concentration range is withheld as a trade secret, the prescribed concentration ranges used in §1910.1200(i)(1)(iv) – (vi) must be used.
4.	First-aid measures	(a) Description of necessary measures, subdivided according to the different routes of exposure, <i>i.e.</i>, inhalation, skin and eye contact, and ingestion; (b) Most important symptoms/effects, acute and delayed. (c) Indication of immediate medical attention and special treatment needed, if necessary.
5.	Fire-fighting measures	(a) Suitable (and unsuitable) extinguishing media. (b) Specific hazards arising from the chemical (<i>e.g.</i>, nature of any hazardous combustion products). (c) Special protective equipment and precautions for fire-fighters.
6.	Accidental release measures	(a) Personal precautions, protective equipment, and emergency procedures. (b) Methods and materials for containment and cleaning up.
7.	Handling and storage†	(a) Precautions for safe handling. (b) Conditions for safe storage, including any incompatibilities.
8.	Exposure controls/personal protection	(a) For all ingredients or constituents listed in Section 3, the OSHA permissible exposure limit (PEL), American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value (TLV), and any other exposure limit or range used or recommended by the chemical manufacturer, importer, or employer preparing the safety data sheet, where available. (b) Appropriate engineering controls. (c) Individual protection measures, such as personal protective equipment.

9.	Physical and chemical properties †	(a) Physical state (b) Color (c) Odor (includes odor threshold) (d) Melting point/freezing point (e) Boiling point (or initial boiling point or boiling range) (f) Flammability (g) Lower and upper explosion limit/flammability limit (h) Flash point (i) Auto-ignition temperature (j) Decomposition temperature (k) pH (l) Kinematic viscosity (m) Solubility (n) Partition coefficient n-octanol/water (log value) (o) Vapor pressure (includes evaporation rate) (p) Density and/or relative density (q) Relative vapor density (r) Particle characteristics
10.	Stability and reactivity	(a) Reactivity; (b) Chemical stability; (c) Possibility of hazardous reactions, including those associated with foreseeable emergencies; (d) Conditions to avoid (<i>e.g.</i>, static discharge, shock, or vibration); (e) Incompatible materials; (f) Hazardous decomposition products.
11.	Toxicological information	Description of the various toxicological (health) effects and the available data used to identify those effects, including: (a) Information on the likely routes of exposure (inhalation, ingestion, skin, and eye contact); (b) Symptoms related to the physical, chemical, and toxicological characteristics; (c) Delayed and immediate effects and also chronic effects from short- and long-term exposure; (d) Numerical measures of toxicity (such as acute toxicity estimates); (e) Interactive effects; information on interactions should be included if relevant and readily available; (f) Whether the hazardous chemical is listed in the National Toxicology Program (NTP) Report on Carcinogens (latest edition) or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC) Monographs (latest edition), or by OSHA. (g) When specific chemical data or information is not available, the preparer must indicate if alternative information is used and the method used to derive the information (<i>e.g.</i>, where the preparer is using information from a class of chemicals rather than the exact chemical in question and using SAR to derive the toxicological information)

12.	Ecological information (Non-mandatory)	(a) Ecotoxicity (aquatic and terrestrial, where available); (b) Persistence and degradability; (c) Bioaccumulative potential; (d) Mobility in soil; (e) Other adverse effects (such as hazardous to the ozone layer).
13.	Disposal considerations (Non-mandatory)	Description of waste residues and information on their safe handling and methods of disposal, including the disposal of any contaminated packaging.
14.	Transport information (Non-mandatory)	(a) UN number; (b) UN proper shipping name; (c) Transport hazard class(es); (d) Packing group, if applicable; (e) Environmental hazards (e.g., Marine pollutant (Yes/No)); (f) Transport in bulk (according to IMO instruments); (g) Special precautions which a user needs to be aware of, or needs to comply with, in connection with transport or conveyance either within or outside their premises.
15.	Regulatory information (Non-mandatory)	Safety, health and environmental regulations specific for the product in question.
16.	Other information, including date of preparation or last revision	The date of preparation of the SDS or the last change to it.

†Note: To determine the appropriate flammable liquid storage container size and type, the boiling point shall be determined by § 1910.106 (a)(5). In addition, the manufacturer, importer, and distributor shall clearly note in sections 7 and 9 of the SDS if an alternate calculation was used for storage purposes and the classification for storage differs from the classification listed in section 2 of the SDS.

* * * * *

Appendix F to § 1910.1200—Guidance for Hazard Classifications Re: Carcinogenicity (Non-Mandatory)

* * * * *

Responses Are in One Sex or Both Sexes

Any case of sex-specific tumors should be evaluated in light of the total tumorigenic response to the substance observed at other sites (multi-site responses or incidence above background) in determining the carcinogenic potential of the substance.

If tumors are seen only in one sex of an animal species, the mode of action should be carefully evaluated to see if the response is consistent with the postulated mode of action. Effects seen only in one sex in a test species may be less convincing than effects seen in both sexes, unless there is a clear patho-physiological difference consistent with the mode of action to explain the single sex response.

* * * * *

[FR Doc. 2026-00147 Filed 1-7-26; 8:45 am]

BILLING CODE 4510-26-C

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG-2025-0143]

2025 Quarterly Listings: First Quarter; Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notification of expired temporary rules issued.

SUMMARY: This document provides notification of substantive rules issued by the Coast Guard that were made temporarily effective but expired before they could be published in the **Federal Register**. This document lists temporary safety zones, security zones, and special local regulations, all of limited duration and for which timely publication in the **Federal Register** was not possible. This document also announces notifications of enforcement for existing reoccurring regulations that we issued but were unable to be published before the enforcement period ended.

DATES: This document lists temporary Coast Guard rules and notifications of

enforcement that became effective, primarily between January 2025 and March 2025, and expired before they could be published in the **Federal Register**.

ADDRESSES: Temporary rules listed in this document may be viewed online, under their respective docket numbers, at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For questions on this document contact Ambar Ali, Office of Regulations and Administrative Law, email HQS-SMB-CG-LRA-Admin@uscg.mil, telephone (202) 372-3862.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities. *Special local regulations* are issued to

enhance the safety of participants and spectators at regattas and other marine events.

Timely publication of these rules in the **Federal Register** may be precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, often informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Timely publication of notifications of enforcement of reoccurring regulations may be precluded when the event occurs with short notice or other agency procedural restraints.

Because **Federal Register** publication was not possible before the end of the effective period, mariners would have been notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas or drawbridge operation regulations by Coast Guard officials prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations. Permanent rules are not included in this list because they

are published in their entirety in the **Federal Register**. Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. In some of our reoccurring regulations, we say we will publish a notice of enforcement as one of the means of notifying the public. We use this notification to announce those notifications of enforcement that we issued and will post them to their dockets.

The following unpublished rules were placed in effect temporarily during the period between January 2025 and March 2025. To view copies of these rules, visit www.regulations.gov and search by the docket number indicated in the following table.

Docket No.	Type	Location	Effective date
USCG–2024–1076	Security Zones (Part 165)	St. Croix, USVI	1/2/2025
USCG–2025–0008	Security Zones (Part 165)	New Orleans, LA	1/6/2025
USCG–2024–1101	Safety Zones (Parts 147 and 165)	Boca Chica Beach, TX	1/13/2025
USCG–2025–0062	Security Zones (Part 165)	Charleston, SC	1/19/2025
USCG–2024–1047	Safety Zones (Parts 147 and 165)	Savannah, GA	1/24/2025
USCG–2025–0001	Safety Zones (Parts 147 and 165)	St. Clair River, MI	1/25/2025
USCG–2025–0057	Security Zones (Part 165)	Corpus Christi, TX	1/28/2025
USCG–2025–0054	Safety Zones (Parts 147 and 165)	Charleston County, SC	1/29/2025
USCG–2025–0090	Safety Zones (Parts 147 and 165)	Corpus Christi, TX	2/8/2025
USCG–2025–0126	Security Zones (Part 165)	New Orleans, LA	2/9/2025
USCG–2025–0119	Security Zones (Part 165)	New Orleans, LA	2/9/2025
USCG–2025–0084	Security Zones (Part 165)	New Orleans, LA	2/10/2025
USCG–2025–0141	Safety Zones (Parts 147 and 165)	San Diego, CA	2/13/2025
USCG–2025–0007	Safety Zones (Parts 147 and 165)	Corpus Christi, TX	2/14/2025
USCG–2025–0136	Safety Zones (Parts 147 and 165)	Corpus Christi, TX	2/14/2025
USCG–2025–0118	Safety Zones (Parts 147 and 165)	Philadelphia, PA	2/14/2025
USCG–2025–0168	Safety Zones (Parts 147 and 165)	San Diego, CA	2/18/2025
USCG–2025–0155	Safety Zones (Parts 147 and 165)	South Padre Island, TX	2/21/2025
USCG–2024–1077	Special Local Regulations (Part 100)	Lake Havasu, Arizona	2/22/2025
USCG–2025–0069	Special Local Regulations (Part 100)	Sector St. Petersburg, FL	2/22/2025
USCG–2025–0083	Safety Zones (Parts 147 and 165)	St. Petersburg, Florida	2/27/2025
USCG–2025–0134	Safety Zones (Parts 147 and 165)	Washington, D.C	3/1/2025
USCG–2024–1096	Special Local Regulations (Part 100)	Houston, TX	3/1/2025
USCG–2025–0202	Safety Zones (Parts 147 and 165)	Corpus Christi, TX	3/3/2025
USCG–2025–0158	Safety Zones (Parts 147 and 165)	Captain of the Port Sector New Orleans	3/3/2025
USCG–2025–0157	Safety Zones (Parts 147 and 165)	Boca Chica Beach, TX	3/7/2025
USCG–2025–0224	Security Zones (Part 165)	Cincinnati, OH	3/7/2025
USCG–2025–0167	Safety Zones (Parts 147 and 165)	Tampa, Florida	3/15/2025
USCG–2025–0237	Safety Zones (Parts 147 and 165)	Corpus Christi, TX	3/15/2025
USCG–2025–0131	Special Local Regulations (Part 100)	San Pedro, CA	3/16/2025
USCG–2025–0241	Safety Zones (Parts 147 and 165)	Concord, CA	3/17/2025
USCG–2025–0209	Special Local Regulation	San Francisco, CA	3/21/2025
USCG–2025–0133	Safety Zones (Parts 147 and 165)	Santa Cruz, CA	3/25/2025
USCG–2025–0240	Special Local Regulations (Part 100)	Jersey Bay, St. Thomas, USVI	3/27/2025
USCG–2025–0177	Safety Zones (Parts 147 and 165)	Boca Chica, FL	3/28/2025
USCG–2025–0140	Safety Zones (Parts 147 and 165)	Wharf, Washington, D.C	3/29/2025
USCG–2023–0164	Safety Zones (Parts 147 and 165)	Potomac River, Washington, D.C	3/29/2025
USCG–2025–0132	Safety Zones (Parts 147 and 165)	Troy Locks to Tarrytown, NY	3/31/2025

Michael Cunningham,

*Chief, Office of Regulations and
Administrative Law, United States Coast
Guard.*

[FR Doc. 2026–00149 Filed 1–7–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2025–1122]

RIN 1625–AA00

Fixed and Moving Safety Zone; Vicinity of the M/V SUOMIGRACHT; Houston Ship Channel and Seabrook, TX

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a moving safety zone and a fixed safety zone around the M/V SUOMIGRACHT in the navigable waters of the Houston Ship Channel and its vicinity. The safety zones are needed to protect personnel, vessels, and the marine environment from potential hazards associated with the transfer of rubber tire gantry cranes. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port Houston-Galveston or a designated representative.

DATES: This rule is effective without actual notice from January 8, 2026 through January 23, 2026. For purposes of enforcement, actual notice will be used from January 6, 2026, through January 8, 2026. This rule will be enforced from 5 a.m. until 4 p.m. each day it is effective.

ADDRESSES: To view available documents go to <https://www.regulations.gov> and search for USCG–2025–1122.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, contact MSTC Anthony Booth, Sector Houston-Galveston Waterways Management Division, U.S. Coast Guard; telephone 713–398–5823, or email HoustonWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background and Authority

The Coast Guard received notification that M/V SUOMIGRACHT will be transporting rubber tire gantry cranes to Seabrook, TX. The Captain of the Port Houston-Galveston (COTP) has

determined that potential hazards associated with the transfer of rubber tire gantry cranes starting January 6, 2026, will be a safety concern for anyone within a 100-yard radius while the M/V SUOMIGRACHT is in transit and for anyone within 25-yard radius while the M/V SUOMIGRACHT is moored. This rule is needed to protect persons, property, and the marine environment within the navigable waters of the safety zones while the M/V SUOMIGRACHT transits to, and unloads in Seabrook, Texas. Therefore, the COTP is issuing this rule under the authority in 46 U.S.C. 70034, which is needed to protect personnel, vessels, and the marine environment in the navigable waters around the safety zones.

The Coast Guard is issuing this rule without prior notice and comment. As is authorized by 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. The Coast Guard received all relevant information for the transfer of the rubber tire gantry cranes and the need for the safety zone on December 12, 2025, but we must establish this safety zone by January 6, 2026, to protect personnel, vessels, and the marine environment. Therefore, we do not have enough time to solicit and respond to comments.

For the same reasons, the Coast Guard finds that under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Discussion of the Rule

This rule establishes two temporary safety zones from 5 a.m. on January 6, 2026 until 4 p.m. on January 23, 2026. The safety zones include a moving safety zone, covering all navigable waters within 100 yards of the M/V SUOMIGRACHT general cargo ship, and a fixed safety zone, covering all navigable waters within 25 yards of M/V SUOMIGRACHT. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or their designated representative.

Moving Safety Zone: This area includes all waters within 100 yards of the M/V SUOMIGRACHT as the vessel transits from the Gulf of Mexico through the Houston Ship Channel. The approximate start position is 29°19′01.21″ N, 094°38′38.1″ W, located in the Gulf of America off the coast of Galveston, Texas.

Fixed Safety Zone: This area includes all waters within 25 yards of the M/V

SUOMIGRACHT once the M/V SUOMIGRACHT is moored at Bayport Terminal in Seabrook, Texas, at approximate position 29°36′18.61″ N, 095°0′25.12″ W. The COTP may terminate enforcement of this safety zone prior to January 23, 2026, depending on the progress of the crane offloading operation.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Impact on Small Entities

The regulatory flexibility analysis provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to rules that are not subject to notice and comment. Because the Coast Guard has, for good cause, waived the notice and comment requirement that would otherwise apply to this rulemaking, the Regulatory Flexibility Act's flexibility analysis provisions do not apply here.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), if this rule will affect your small business, organization, or governmental jurisdiction and you have questions, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards by calling 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

B. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

C. Federalism and Indian Tribal Governments

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in that Order.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian

tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

D. Unfunded Mandates Reform Act

As required by The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Coast Guard certifies that this rule will not result in an annual expenditure of \$100,000,000 or more (adjusted for inflation) by a State, local, or tribal government, in the aggregate, or by the private sector.

E. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

This rule is a safety zone. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.4.

- 2. Add § 165.T08–1122 to read as follows:

§ 165.T08–1122 Fixed and Moving Safety Zone; Vicinity of the M/V SUOMIGRACHT, Houston Ship Channel and Seabrook, TX.

(a) *Location.* The following areas are safety zones:

(1) *Moving Safety Zone:* All waters within a 100-yard radius of the M/V SUOMIGRACHT, as the vessel transits

from the approximate coordinates 29°19′01.21″ N, 094°38′38.1″ W, off the coast of Galveston, TX, and proceeds through the Houston Ship Channel to the assigned docking station.

(2) *Fixed Safety Zone:* All waters within a 25-yard radius of the M/V SUOMIGRACHT, while moored, at the Bayport Terminal in Seabrook, Texas at approximate position 29°36′18.61″ N, 095°0′25.12″ W.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Houston-Galveston (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative on VHF-FM channel 16 or by telephone at (866) 539–8114. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* This section will be enforced from 5 a.m. on January 6, 2026, until 4 p.m. on January 23, 2026, unless cancelled earlier by the COTP. This rule will be enforced from 5 a.m. until 4 p.m. each day it is effective, unless cancelled earlier by the COTP.

Nicole D. Rodriguez,

Captain, U.S. Coast Guard, Captain of the Port Sector Houston-Galveston.

[FR Doc. 2026–00176 Filed 1–7–26; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 20

International Competitive Services Product and Price Changes

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM®), and Notice 123, *Price List*, to reflect prices, product features, and classification changes to Competitive Services and other changes, as established by the Governors of the Postal Service.

DATES: *Effective:* January 18, 2026.

FOR FURTHER INFORMATION CONTACT: Michelle Lassiter at 202–268–2914.

SUPPLEMENTARY INFORMATION: This final action describes new prices and classification changes established by the Governors of the United States Postal Service and submitted for review by the Postal Regulatory Commission (PRC) in Docket Number CP2026–2. On December 19, 2025, in Order No. 9405, the PRC found that the price adjustments and classification changes and may go into effect on January 18, 2026. The order can be viewed on the Postal Regulatory Commission's website at <https://prc.gov>.

Also, by notice filed on November 14, 2025, in PRC Docket No. MC2026–99, and approved on December 12, 2025, by the PRC in Order No. 9395, the Postal Service is changing the country group assignments for certain French overseas regions and departments, French Guiana, Guadeloupe, Martinique, and Reunion. In addition, the Postal Service is changing the Foreign Office of Exchange Code for International Priority Airmail for items destined to these locations.

This final rule describes the international price changes and minor classification changes for the following International Competitive Services:

- Priority Mail Express International® (PMEI).
- Priority Mail International® (PMI).
- First-Class Package International Service® (FCPIS®)
- International Priority Airmail® (IPA®)
- Direct Sacks of Printed Matter to One Addressee (Airmail M-bag®)
- The following competitive international extra services and fees:
 - International Insurance.
 - Certificate of Mailing.
 - Customs Clearance and Delivery Fee.

- USPS Delivered Duty Paid (DDP).

For pricing, see the Postal Explorer® website at <https://pe.usps.com>.

Priority Mail Express International¹

Priority Mail Express International (PMEI) service provides fast service to approximately 180 countries in 3–5 business days for many major markets, although the actual number of days may vary based upon origin, destination, and customs delays. PMEI with Money-Back Guarantee service is available for certain destinations. Due to airline travel restrictions and cancellations, PMEI

¹ Global Express Guaranteed (GXG) service was suspended as of September 29, 2024, and thus specific information concerning GXG pricing is not included with this Notice.

with Money-Back Guarantee service has been suspended for several destinations until further notice. For more information, see the USPS® Service Alerts page on <https://about.usps.com/newsroom/service-alerts/international/welcome.htm>. The price increase for PMEI service averages 5.9 percent. The Commercial Base price provides a discount below the published retail prices for customers who prepare and pay for PMEI shipments via permit imprint, online at [USPS.com](https://usps.com)®, or as registered end-users using an authorized PC Postage® vendor (except for Click-N-Ship® service). Customers who prepare PMEI shipments via Click-N-Ship service pay retail prices. Commercial Plus will be equivalent to Commercial Base; however, deeper discounting may still be available to customers through negotiated service agreements.

The Postal Service will continue to include PMEI service in customized contracts.

PMEI flat rate pricing continues to be available for Flat Rate Envelopes.

Priority Mail International

Priority Mail International (PMI) is an economical way to send merchandise and documents to approximately 180 countries in 6–10 business days for many major markets, although the actual number of days may vary based upon origin, destination, and customs delays. The price increase for PMI service averages 5.9 percent. The Commercial Base price provides a discount below the published retail prices for customers who prepare and pay for PMI items via permit imprint, online at [USPS.com](https://usps.com), or as registered end-users using an authorized PC Postage vendor (except for Click-N-Ship). Customers who prepare PMI shipments via Click-N-Ship pay retail prices. Commercial Plus prices will be equivalent to Commercial Base; however, deeper discounting may still be available to customers through negotiated service agreements.

The Postal Service will continue to include PMI service in customized contracts.

PMI flat rate pricing continues to be available for Flat Rate Envelopes, Small Flat Rate Boxes, and Medium and Large Flat Rate Boxes.

First-Class Package International Service

First-Class Package International Service (FCPIS) is an economical international service for small packages not exceeding 4 pounds in weight and \$400 in value. The price increase for FCPIS averages 5.9 percent. The Commercial Base price provides a discount below the published retail prices for customers who prepare and pay for FCPIS items via permit imprint or by USPS-approved online payment methods. Customers who prepare FCPIS shipments via Click-N-Ship service pay retail prices. Commercial Plus prices will be equivalent to Commercial Base; however, deeper discounting may be made available to customers through negotiated service agreements.

The Postal Service will continue to include FCPIS in customized contracts.

Electronic USPS Delivery Confirmation International service (E-USPS DELCON INTL®) is a tracking service available at no charge for FCPIS items to select destination countries.

International Priority Airmail

International Priority Airmail (IPA) service, including IPA M-bags, is a commercial service designed for volume mailings of all First-Class Mail International postcards, letters, and large envelopes (flats), and for volume mailings of FCPIS packages (small packets) weighing up to a maximum of 4.4 pounds. IPA shipments are typically flown to foreign destinations (exceptions apply to Canada) and are then entered into that country's air or surface priority mail system for delivery. The price increase for IPA is 5.9 percent.

Direct Sacks of Printed Matter to One Addressee (Airmail M-bags)

An Airmail M-bag is a direct sack of printed matter sent to a single foreign addressee at a single address. As

described in the article titled “IMM Revision: Direct Sacks of Printed Matter to One Addressee (M-bags)” in *Postal Bulletin* 22669 (2–6–2025), effective January 1, 2025, the Universal Postal Union (UPU) modified the definition of M-bags to make it a supplemental (optional) service; postal operators may further restrict the content. The Postal Service has provided the UPU with written notification that it will continue to offer M-bag service and opted to restrict the service solely to printed matter. The price increase for M-bags is 44.0 percent.

International Extra Services and Fees

Depending on country destination and mail type, customers may add a variety of extra services to their outbound shipments and pay a variety of fees. The Postal Service proposes to increase fees for certain international competitive extra services as follows:

- **PMEI and PMI merchandise insurance:** There is no charge for PMEI and PMI merchandise insurance coverage up to \$200. The starting fee for additional insurance over \$200 will be increased to \$13.85. For each additional \$100 or fraction over \$300 up to a maximum indemnity limit of \$5000 (the maximum indemnity varies by country), the incremental fee will be as set forth in the table below:

Indemnity limit not over	Fee
Up to \$200	\$0.00
\$200.01–\$300.00	13.85
\$300.01–\$400.00	17.55
\$400.01–\$500.00	21.25
\$500.01–\$600.00	24.90
\$600.01–\$700.00	28.55
\$700.01–\$800.00	32.30
\$800.01–\$900.00	35.95

\$35.95 plus \$3.70 per \$100 or fraction thereof over \$900 in declared value. Maximum insurance \$5,000 (varies by country).

- **Certificate of Mailing service:** Prices for international competitive Certificate of Mailing service will be as follows:

Individual pieces	Fee
Certificate of Mailing	
Individual article (PS Form 3817)	\$2.40
Duplicate copy of PS Form 3817 or PS Form 3665 (per page)	2.40
Firm mailing sheet (PS Form 3665), per piece (minimum 3); All other qualifying classes of mail	0.70
Bulk quantities	
For first 1,000 pieces (or fraction thereof)	13.50
Each additional 1,000 pieces (or fraction thereof)	1.70
Duplicate copy of PS Form 3606	2.40

• *Customs clearance and delivery fee:* The competitive customs clearance and delivery fee per dutiable item will increase to \$9.35.

• *USPS Delivered Duty Paid (DDP):* The USPS is introducing USPS Delivered Duty Paid (DDP), which provides the mailer with the option to prepay any applicable import duties, taxes, and fees on certain items mailed to select international destinations. The fee that the USPS will establish for facilitating payment does not include any applicable taxes, duties, and non-USPS fees, which are collected separately and passed through to a third party. The competitive USPS DDP fee will initially be set to \$0.00. However, as customs requirements are likely to evolve, the Postal Service requires flexibility and may increase the fee, for a number of reasons, including to cover any costs that are required to implement new payment solutions.

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM), which is incorporated by reference into the *Code of Federal Regulations*. We will publish an appropriate amendment to 39 CFR part 20 to reflect these changes.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, the Postal Service amends *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM), incorporated by reference in the Code of Federal Regulations, as follows (see 39 CFR 20.1)

PART 20—[AMENDED]

- 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

- 2. Revise the following sections of the IMM as follows:

* * * * *

Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

* * * * *

2 Conditions for Mailing

* * * * *

220 Priority Mail Express International

* * * * *

222 Eligibility

* * * * *

222.7 Extra Services

* * * * *

[Add a new entry after 222.72, to read as follows:]

222.73 USPS Delivered Duty Paid (DDP)

Customers who want to prepay any applicable import duties, taxes and fees may purchase USPS Delivered Duty Paid (DDP) for certain pieces, when available, at a retail service counter, online using Click-N-Ship, through USPS APIs or using USPS-produced Global Shipping Software (GSS). See Exhibit 362 and Individual Country Listings for availability.

* * * * *

230 Priority Mail International

* * * * *

232 Eligibility

* * * * *

232.9 Extra Services

* * * * *

[Add a new entry after 232.92, to read as follows:]

232.93 USPS Delivered Duty Paid (DDP)

Customers who want to prepay any applicable import duties, taxes and fees may purchase USPS Delivered Duty Paid (DDP) for certain pieces, when available, at a retail service counter, online using Click-N-Ship, through USPS APIs or using USPS-produced Global Shipping Software (GSS). See Exhibit 362 and Individual Country Listings for availability.

* * * * *

250 First-Class Package International Service

* * * * *

252 Eligibility

* * * * *

252.5 Extra Services

* * * * *

[Add a new entry after 252.53, to read as follows:]

252.54 USPS Delivered Duty Paid (DDP)

Customers who want to prepay any applicable import duties, taxes and fees may purchase USPS Delivered Duty Paid (DDP) for certain pieces, when available, at a retail service counter, online using Click-N-Ship, through USPS APIs or using USPS-produced Global Shipping Software (GSS). See

Exhibit 362 and Individual Country Listings for availability.

* * * * *

290 Commercial Services

* * * * *

292 International Priority Airmail (IPA) Service

* * * * *

292.4 Mail Preparation

* * * * *

292.45 IPA Foreign Office of Exchange Codes and Price Groups

* * * * *

Exhibit 292.45a

IPA Foreign Office of Exchange Codes and Price Groups

[Revise the entries for French Guiana, Guadeloupe, Martinique, and Reunion to read as follows:]

Country labeling name	Foreign office of exchange code	Price group
* * *	* * *	* * *
French Guiana ...	ROI	15
* * *	* * *	* * *
Guadeloupe	ROI	15
* * *	* * *	* * *
Martinique	ROI	15
* * *	* * *	* * *
Reunion	ROI	15
* * *	* * *	* * *

* * * * *

3 Extra Services

* * * * *

[Revise the title and text of 360 to read as follows:]

360 USPS Delivered Duty Paid (DDP)

361 Description

USPS Delivered Duty Paid (DDP) allows the sender to prepay applicable import duties, taxes, and fees at the time of mailing. USPS DDP is intended to ensure delivery of merchandise to the recipient without any additional charges related to import duties, taxes, and fees due upon delivery under normal circumstances.

361.1 Definitions

361.11 De Minimis

The term “de minimis” refers to a value threshold below which imported goods are exempt from import duties or taxes. This threshold varies significantly across countries.

361.12 Import Duties

Import duties are charges collected by the destination country on imported goods. The duty amount is calculated based on the value, country of origin, and classification of the goods. Import duties can also vary depending on free trade agreements, and the de minimis value set by the importing country.

361.13 Import Fees

Import fees may be applied by brokers, government agencies, customs, and other service providers. These fees can change based on many different factors and may apply even when duties and taxes are not applicable.

361.14 Import Taxes

Import taxes are taxes placed on international purchases and can vary by country, region, HS code, and de minimis value. Some countries apply a general consumption tax referred to as a value-added tax (VAT) or a goods and services tax (GST). The way these taxes are calculated varies by country.

361.15 Low-Value Goods

Low-value goods are imported goods for which the seller is required by the destination country to register for VAT/GST and collect and remit taxes. Only certain countries impose this requirement and the value threshold required to qualify as “low-value” varies across countries.

361.16 Service Provider

A third-party service provider used by USPS to facilitate payment of any applicable import duties, import taxes, and import fees in accordance with the Service Provider Terms of Service.

361.17 Service Provider Terms of Service

An agreement between the sender and the Service Provider that the sender must agree to during the USPS postage payment process when opting to use USPS Delivered Duty Paid (DDP). The Service Provider Terms of Service establish the sender's rights and responsibilities vis-à-vis the Service Provider with respect to the sender's use of USPS DDP. The current version of the Service Provider Terms of Service is available at <https://zonos.com/docs/legal/usps-terms-of-service>.

361.18 Total Import Amount Quote

The estimated amount of all import duties, import taxes, and import fees, as applicable, for a mailpiece being shipped through the USPS to an international destination that is quoted to the sender at the time of mailing.

362 Availability

USPS Delivered Duty Paid (DDP) can be obtained only at the time of mailing at a Post Office retail service counter, online using Click-N-Ship, through USPS APIs or using USPS-produced Global Shipping Software (GSS). USPS DDP is not available with First-Class Mail International, International Priority Airmail, or any type of M-bag service. USPS DDP is available for the following types of mail:

- a. Priority Mail Express International.
- b. Priority Mail International.
- c. First-Class Package International Service.

USPS DDP is available only to select foreign countries. See Individual Country Listings for additional country-specific prohibitions and restrictions.

Exhibit 362 USPS Delivered Duty Paid Availability

Canada
Germany
United Kingdom

363 Fees

See *Notice 123, Price List*, for the applicable fee for USPS Delivered Duty Paid (DDP). The fee that the Postal Service will charge for facilitating payment does not include any applicable duties, taxes, and non-USPS fees, which are calculated and collected separately and passed through to the Service Provider. This fee must be paid in addition to postage and other applicable charges (e.g., charges for additional extra services).

364 Processing Requests**364.1 General Use**

USPS has integrated the USPS DDP into the international transaction when the mailer uses Click-N-Ship, Global Shipping Software (GSS), USPS International APIs or when the mailer takes their package to a Post Office retail service counter. The Service Provider will use customs form information provided by the mailer to calculate the Total Import Amount Quote.

364.2 Sender's Responsibilities**364.21 Sender's Agreement With Service Provider Terms of Service**

For each USPS Delivered Duty Paid (DDP) transaction, the sender must consent to and comply with the Service Provider Terms of Service, as it may be updated by the Service Provider from time to time. Any USPS customer who offers USPS DDP to third-party senders, such as through a marketplace or shipping platform, consents to and must comply with the Service Provider Terms of Service, and must require each third-

party sender who opts to use USPS DDP to review and consent to be bound by the Service Provider Terms of Service in advance of using USPS DDP.

364.22 Use of Customs Declaration Information

The mailer must provide all mandatory and, where appropriate, any conditional customs form data as described in 123.711 a. and b. The accuracy of the Total Import Amount Quote is dependent upon the destination country-specific harmonized code, country of origin, and value of goods. Various tools are available, including but not limited to:

a. *Harmonized Code*: USPS requires the mailer to provide an HS code with a minimum of 6-digits. However, this is typically not enough information to determine the applicable duty rate. Mailers may use the Harmonized System (HS) Code Lookup tool to determine the destination country-specific HS code. For more information, see <https://tools.usps.com/hscode/?msockid=0d2d26cad1ee6ef70f723046d0786f1e>.

b. *Country of origin*. The country of origin is generally determined based on where the goods are wholly grown, produced, or manufactured in a particular country, or the last country in which the item has been substantially transformed into a new and different article. More information about customs rules of origin can be found at <https://www.cbp.gov/document/publications/rules-origin>.

c. *Value*. The primary basis for customs value is the transaction value, which is the price actually paid or payable for the goods when sold for export. More information about customs valuation can be found at <https://www.trade.gov/trade-guide-customs-valuation>.

364.23 Mailer Certification for VAT/GST Remittance on Low-Value Goods

Some countries require remote sellers of low-value goods to register, collect and remit Value Added Tax (VAT) or Goods and Services Tax (GST) on sales to consumers within their customs territory. When USPS Delivered Duty Paid (DDP) is used to ship low-value goods to such countries, as determined by the Service Provider, the sender must certify that the mailpiece is being sent pursuant to a Business-to-Consumer (B2C) transaction. Any USPS customer who offers USPS DDP to third-party senders, such as through a marketplace or shipping platform, must inform each third-party who opts to use USPS DDP to ship a low-value good, as determined by the Service Provider, that the sender

must certify that the mailpiece is being sent pursuant to a B2C transaction.

364.24 Sender's Responsibility To Pay Balance Due

In the event the actual import duties, import taxes, and import fees charged during customs clearance are more than the Total Import Amount Quote, and the amount owed is not covered by the Landed Cost Guarantee, as described in 364.32, the mailer agrees to pay the Service Provider any balance owed in accordance with the Service Provider Terms of Service.

364.3 Service Provider Actions

364.31 Modifications to Customs Declaration Information

The Service Provider may make changes, as necessary, to the shipping and customs information the mailer supplies to USPS (e.g., replacement of the U.S. Harmonized Tariff Schedule code with the destination country-specific Harmonized System (HS) code), for purposes of accuracy and/or compliance with applicable laws and regulations. This authorization does not release the mailer from their responsibility to provide complete and accurate information.

364.32 Landed Cost Guarantee

When a mailer opts to use USPS Delivered Duty Paid (DDP), the Service

Provider guarantees the accuracy of the Total Import Amount Quote subject to the terms and limitations set forth in the Service Provider Terms of Service (Landed Cost Guarantee). Limitations may include, but may not be limited to, additional amounts charged by customs due to the mailer's failure to provide complete and accurate customs information (e.g., product description, accurate HS codes, accurate country of origin, etc.). See Service Provider Terms of Service for more information.

364.33 Differences in Monies Paid and Monies Owed for Import Duties, Taxes, and Fees

The actual import duties, import taxes, and import fees charged during customs clearance for an order which is covered by the Landed Cost Guarantee may be more or less than the Total Import Amount Quote. Except as provided in 364.24, in the event of a difference between the actual import duties, import taxes, and import fees, and the Total Import Amount Quote, the mailer will not be asked to pay more money, nor will the mailer receive a refund. Any excess shall be deemed fully earned and payable to the Service Provider. However, in the event additional amounts are owed and not covered by the Landed Cost Guarantee, the mailer agrees to pay the Service Provider any balance owed in

accordance with the Service Provider Terms of Service, as provided in 364.32.

365 Inquiries and Refunds

365.1 Inquiries

Mailers may make inquiries directly through the Service Provider at <https://zonos.com/contact-support> or by email at support@zonos.com.

365.2 Refunds

a. *USPS DDP Fee:* Prior to acceptance, USPS DDP shipping labels can be cancelled with a full refund of postage and the USPS DDP fee, if applicable. The USPS DDP fee is non-refundable after the package has been accepted by USPS.

b. *Service Provider Charges:* Import duties, taxes, and fees are ineligible for refund unless otherwise specified in the Service Provider's Terms of Service.

* * * * *

Country Price Groups and Weight Limits

* * * * *

[Add "(Suspended)" to the title of the Global Express Guaranteed column and remove the information within the GXG Price Group and Max Weight columns for all the entries. Also, revise the entries for French Guiana, Guadeloupe, Martinique, and Reunion to read as follows:]

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Country	Global Express Guaranteed (Suspended)		Priority Mail Express International			Priority Mail International		First-Class Mail International and First-Class Package International Service		
	Price Group	Max. Wt. (lbs.)	Price Group	Max. Wt. (lbs.)	PMEI Flat Rate Envelopes Price Group ¹	Price Group	Max. Wt. (lbs.)	PMI Flat Rate Envelopes and Boxes Price Group ²	FCMI Price Group ³	FCPIS Price Group ⁴
* * * * *										
French Guiana			15	66	4	15	66	4	5	15
* * * * *										
Guadeloupe			15	66	4	15	66	4	5	15
* * * * *										
Martinique			15	66	4	15	66	4	5	15
* * * * *										
Reunion			n/a	n/a	n/a	15	66	4	5	15
* * * * *										

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Individual Country Listings

* * * * *

[For every country, except Canada, Germany, and United Kingdom of Great Britain and Northern Ireland, add a new entry for USPS Delivered Duty Paid (DDP) within the Extra Services section between Restricted Delivery (350) and International Postal Money Order (371), to read as follows:]

Extra Services

* * * * *

USPS Delivered Duty Paid (DDP) (360)

NOT Available

* * * * *

Canada

* * * * *

Extra Services

* * * * *

[Add a new entry for USPS Delivered Duty Paid (DDP) within the Extra Services section between Restricted Delivery (350) and International Postal Money Order (371), to read as follows:]

USPS Delivered Duty Paid (360)

Available only for dutiable items sent as Priority Mail Express International, Priority Mail International, or First-Class Package International Service.

* * * * *

French Guiana

* * * * *

[Revise the heading for the Priority Mail Express International section to read as follows (changing the price group to 15):]

Priority Mail Express International (220) Price Group 15

* * * * *

[Revise the heading for the Priority Mail International section to read as follows (changing the price group to 15):]

Priority Mail International (230) Price Group 15

* * * * *

[Revise the heading for the First-Class Mail International section to read as follows (changing the price group to 5):]

First-Class Mail International (240) Price Group 5

* * * * *

Germany

* * * * *

Extra Services

* * * * *

[Add a new entry for USPS Delivered Duty Paid (DDP) within the Extra Services section between Restricted Delivery (350) and International Postal Money Order (371), to read as follows:]

USPS Delivered Duty Paid (DDP) (360)

Available only for dutiable items sent as Priority Mail Express International, Priority Mail International, or First-Class Package International Service.

Service is NOT available for items:

- Destined to Helgoland and Büsingen (customs enclaves).
- Declared as gifts.

* * * * *

Guadeloupe

* * * * *

[Revise the heading for the Priority Mail Express International section to

read as follows (changing the price group to 15):]

Priority Mail Express International (220) Price Group 15

* * * * *

[Revise the heading for the Priority Mail International section to read as follows (changing the price group to 15):]

Priority Mail International (230) Price Group 15

* * * * *

[Revise the heading for the First-Class Mail International section to read as follows (changing the price group to 5):]

First-Class Mail International (240) Price Group 5

* * * * *

Martinique

* * * * *

[Revise the heading for the Priority Mail Express International section to read as follows (changing the price group to 15):]

Priority Mail Express International (220) Price Group 15

* * * * *

[Revise the heading for the Priority Mail International section to read as follows (changing the price group to 15):]

Priority Mail International (230) Price Group 15

* * * * *

[Revise the heading for the First-Class Mail International section to read as follows (changing the price group to 5):]

First-Class Mail International (240) Price Group 5

* * * * *

Reunion

* * * * *

[Revise the heading for the Priority Mail International section to read as follows (changing the price group to 15):]

Priority Mail International (230) Price Group 15

* * * * *

[Revise the heading for the First-Class Mail International section to read as follows (changing the price group to 5):]

First-Class Mail International (240) Price Group 5

* * * * *

United Kingdom of Great Britain and Northern Ireland (Includes England, Scotland, Wales, Northern Ireland, Guernsey, Jersey, Alderney, Sark, and the Isle of Man)

* * * * *

Extra Services

* * * * *

[Add a new entry for USPS Delivered Duty Paid (DDP) within the Extra Services section between Restricted Delivery (350) and International Postal Money Order (371), to read as follows:]

USPS Delivered Duty Paid (DDP) (360)

Available only for dutiable items valued between 135–900 GBP sent via Priority Mail Express International or Priority Mail International.

Service is NOT available for items:

- Destined to Guernsey, Isle of Man, and Jersey.
- Not declared as Sales of Goods.
- Valued below 135 GBP, such threshold may be updated from time to time.
- Valued above 900 GBP, such threshold may be updated from time to time.

* * * * *

Colleen Hibbert-Kapler,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2026–00164 Filed 1–7–26; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2022–0858; FRL–10563–02–R9]

Air Plan Approval; California; Mojave Desert Air Quality Management District; Definition of Terms

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). The revision concerns definitions that are necessary to implement and enforce local rules that regulate air pollution under the Clean Air Act (CAA or the

“Act”). We are also approving the rescission of earlier versions of this rule from the California SIP as they are no longer needed under the CAA.

DATES: This rule is effective February 9, 2026.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2022–0858. 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. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Allison Kawasaki, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; telephone number: (415) 972–3922; email address: kawasaki.allison@epa.gov.

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

Table of Contents

- Proposed Action
- Public Comments and EPA Responses
- EPA Action
- Incorporation by Reference
- Statutory and Executive Order Reviews

I. Proposed Action

As listed in table 1, on July 10, 2025 (90 FR 30611), the EPA proposed to approve MDAQMD Rule 102, “Definition of Terms,” amended on September 28, 2020 (“Rule 102”), into the Mojave Desert portion of the California SIP. Additionally, as listed in table 2, we proposed to approve the rescission of other outdated definition rules from the Mojave Desert portion of the California SIP.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
MDAQMD	102	Definition of Terms	9/28/2020	3/12/2021

TABLE 2—RULES REQUESTED TO BE RESCINDED

Local agency	Rule No.	Rule title	Adopted	SIP approval date and FR citation
San Bernadino County Air Pollution Control District.	102	Definition of Terms	July 5, 1977	43 FR 59489; December 21, 1978.
Riverside County Air Pollution Control District.	102	Definition of Terms	Not Available	43 FR 59489; December 21, 1978.

We proposed to approve these SIP revisions because we determined that they comply with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received one comment. The commenter suggests recognizing emerging pollutants and climate-related terminology and aligning definitions across all SIPs. The comment specifically suggests that "carbon dioxide equivalent," "greenhouse gases," and "net-zero emissions" be defined in the rule. We thank the commenter for their comment, but the comment submitted did not change our assessment of the rule as described in our proposed action. Under title I of the CAA, the EPA establishes the national ambient air quality standards (NAAQS) for six air pollutants, or criteria pollutants, known to be harmful to human health and the environment.¹ Section 110(a) of the CAA requires states to submit SIPs that provide for implementation, maintenance, and enforcement of each NAAQS. Since SIP actions must pertain to the NAAQS, and the EPA has not established a NAAQS for carbon dioxide or other greenhouse gases, the suggested revisions are not required under the CAA; thus, this comment is outside the scope of the EPA's authority in this action. Therefore, because this submittal complies with the requirements of the CAA, the EPA is finalizing approval, as proposed, under CAA section 110(k).

III. EPA Action

No comments were submitted that change our assessment of the rule as

described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is approving Rule 102 into the Mojave Desert portion of the California SIP and rescinding the definition rules listed in table 2 for the San Bernadino County Air Pollution Control District and Riverside County Air Pollution Control District. The September 28, 2020, version of Rule 102 will replace the previously approved version of this rule in the SIP. Our final action includes regulatory text in 40 CFR 52.220 that incorporates by reference Rule 102 and rescinds the previously approved rules listed in table 2.

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 MDAQMD, Rule 102, "Definition of Terms," amended on September 28, 2020, which states the definition of terms used in MDAQMD rules. The EPA has made, and will continue to make, these documents available through <https://www.regulations.gov> and at the EPA Region IX 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 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, 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).

¹ The EPA maintains a table of the current NAAQS here: <https://www.epa.gov/criteria-air-pollutants/naaqs-table>.

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

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 March 9, 2026. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 22, 2025.

Michael Martucci,

Acting Regional Administrator, Region IX.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

- 2. Section 52.220 is amended by adding paragraphs (c)(42)(xiii)(G), (c)(42)(xiv)(E), (c)(542)(i)(A)(2), and (c)(587)(i)(B) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

(c) * * *
(42) * * *
(xiii) * * *

(G) Previously approved on December 21, 1978, in paragraph (c)(42)(xiii)(A) of this section and now deleted with replacement in paragraph (c)(179)(i)(B)(1) of this section: Rule 102.

* * * * *

(xiv) * * *

(E) Previously approved on December 21, 1978, in paragraph (c)(42)(xiv)(A) of

this section and now deleted with replacement in paragraph (c)(44)(v)(A) of this section: Rule 102.

* * * * *

(542) * * *

(i) * * *

(A) * * *

(2) Previously approved on November 12, 2020 in paragraph (c)(542)(i)(A)(1) of this section and now deleted with replacement in (c)(587)(i)(B)(1) of this section: Rule 102, “Definition of Terms,” amended on January 28, 2019.

* * * * *

(587) * * *

(i) * * *

(B) Mojave Desert Air Quality Management District.

(1) Rule 102, “Definition of Terms,” amended on September 28, 2020.

(2) [Reserved]

* * * * *

[FR Doc. 2026–00194 Filed 1–7–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2025–0023; FRL–12899–02–R4]

Air Plan Approval; Kentucky; Emissions Inventory and Nonattainment New Source Review for the Henderson-Webster Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Kentucky (Commonwealth), through the Energy and Environment Cabinet, Division of Air Quality (DAQ) on January 26, 2024, and February 15, 2024, to certify two requirements under the Clean Air Act (CAA or Act). These revisions establish that the Kentucky SIP satisfies the nonattainment new source review (NNSR) and base year emissions inventory requirements for the 2010 1-hour sulfur dioxide (SO₂) national ambient air quality standard (NAAQS) for the Henderson-Webster SO₂ nonattainment area (hereinafter “Henderson-Webster SO₂ Nonattainment Area” or “Area”). EPA is approving these revisions pursuant to the CAA.

DATES: This rule is effective February 9, 2026.

ADDRESSES: EPA has established a docket for this action under Docket

Identification No. EPA–R04–OAR–2025–0023. All documents in the docket are listed on the [regulations.gov](https://www.regulations.gov) website. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information 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 either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person 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:

Pearlene Williams-Miles, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9144. Ms. Williams-Miles can also be reached via electronic mail at williamsmls.pearlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 2, 2010, EPA revised the primary SO₂ NAAQS. Specifically, EPA established a 1-hour SO₂ standard at a level of 75 parts per billion (ppb), based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.¹ See 75 FR 35520 (June 22, 2010). The 1-hour standard is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. See 75 FR 35520, codified at 40 CFR 50.17(a)–(b).

Upon promulgation of a new or revised SO₂ NAAQS, section 107(d) of the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS (or that contributes to ambient air quality in a nearby area that

¹ This rule became effective on August 23, 2010, and also revoked the 24-hour and annual primary SO₂ standards.

is violating the NAAQS). As part of the designation process for the 2010 1-hour SO₂ NAAQS, the Henderson-Webster SO₂ Nonattainment Area was designated as a nonattainment area in the fourth round of designations on December 21, 2020.^{2,3} These area designations became effective on April 30, 2021. *See* 86 FR 16055 (March 26, 2021). States with nonattainment areas for the SO₂ NAAQS must provide nonattainment SIP revisions meeting the applicable requirements of CAA sections 110(a), 172, 191, and 192⁴ for the SO₂ NAAQS. EPA's regulations governing nonattainment SIPs are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively.

For EPA to fully approve a SIP revision as meeting the requirements of CAA sections 110, 172, 191, and 192 and EPA's regulations at 40 CFR part 51, the SIP for the affected area must demonstrate to EPA's satisfaction that each of the requirements have been met. State air agencies with nonattainment areas for the 2010 1-hour primary SO₂ NAAQS are required to submit a SIP revision that addresses these requirements within 18 months after an area is designated nonattainment (no later than October 30, 2022, for the Henderson-Webster SO₂ Nonattainment Area).⁵ Kentucky's January 26, 2024, and February 15, 2024, SIP revisions address the air agency's NNSR permitting and emissions inventory obligations pursuant to section 172(c)(5) and 172(c)(3) of the Act, respectively.

Specifically, Kentucky's January 26, 2024, SIP revision addresses NNSR

permitting requirements for the 2010 1-hour SO₂ NAAQS for the Henderson-Webster SO₂ Nonattainment Area by certifying that the version of 401 KAR 51:052 in the SIP satisfies the federal NNSR requirements for the Henderson-Webster SO₂ Nonattainment Area at CAA sections 172(c)(5) and 173 and 40 CFR 51.165, and thus, a modification to the Commonwealth's SIP-approved regulations at 401 KAR 51:052 is not necessary.

Additionally, Kentucky's February 15, 2024, SIP revision addresses the base year emissions inventory requirements for the Henderson-Webster SO₂ Nonattainment Area at section 172(c)(3) of the CAA by providing the required accounting of actual SO₂ emissions for the Henderson-Webster SO₂ Nonattainment Area.

On September 5, 2025, EPA published a notice of proposed rulemaking (NPRM) proposing to approve the January 26, 2024, and February 15, 2024, SIP revisions regarding the 2010 1-hour SO₂ NNSR permit program requirements and the emissions inventory for Kentucky for the Henderson-Webster SO₂ Nonattainment Area. *See* 90 FR 42889. The September 5, 2025, NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the September 5, 2025, NPRM were due on or before October 6, 2025. EPA received one set of adverse comments on the NPRM from a commenter. The comments are posted to the docket for this action. EPA summarizes and responds to the adverse comments below.

II. Response to Comments

Comment 1: The commenter asserts that Kentucky's 2018 point source emissions inventory for the Area is a "non-representative" inventory because it does not account for the conversion from coal to natural gas at the Big Rivers Electric Corporation (BREC)—Robert D. Green Station power plant (BREC-Green Station) that occurred since 2018, and thus, violates the requirement to have a comprehensive, accurate, and current inventory pursuant to section 172(c)(3) of the CAA. Specifically, the commenter claims that the operational changes at BREC Green Station mean the 2018 data does not represent the actual emissions baseline of the Area. Further, the commenter states that because the emissions inventory is the platform for "all future modeling and control strategy development," using this emissions data guarantees that subsequent SIP elements will be flawed from the outset. The commenter asserts that EPA failed its duty to ensure the

SIP is "built on a technically sound foundation" by proposing to approve an inventory based on what the commenter describes as "obsolete" emission data for a major source.

Response 1: EPA disagrees with this comment. Section 172(c)(3) of the CAA states that nonattainment SIPs shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the Area. As noted in the September 5, 2025, NPRM, the Commonwealth stated in its February 15, 2024, SIP submission that it selected a 2018 base year emission inventory for the Henderson-Webster SO₂ Nonattainment Area point sources because: (1) 2018 was one of three years (2017, 2018 and 2019) used to designate the Area as nonattainment, and (2) the Commonwealth's 2018 point source emission data set was more current than the most recent comprehensive triennial inventory in this period, EPA's 2017 national emissions inventory (NEI) point source data.

The commenter's claims are unsubstantiated and indicate a misunderstanding of the section 172(c)(3) emissions inventory. Kentucky's 2018 base year emissions inventory represents emissions in the Henderson-Webster Area at the time it did not meet the 2010 1-hour SO₂ NAAQS. Emission inventories provide emissions data that inform a variety of air quality planning tasks, including establishing baseline emission levels, calculating emission reduction triggers necessary to attain the NAAQS, determining emission inputs for SO₂ air quality modeling analyses, and tracking emissions over time to determine progress toward achieving air quality and emission reduction goal. As noted in EPA's NPRM, Kentucky has met this requirement to provide a comprehensive, accurate, and current inventory for the Area.

To demonstrate attainment of the NAAQS, the Commonwealth will have to provide an updated emissions inventory that is representative of the emissions in the Area at a time the air quality is attaining the NAAQS. Furthermore, to be redesignated to "attainment," the Commonwealth would also have to provide a maintenance demonstration. The Commonwealth would be required to either provide a projected inventory that shows emissions will not increase during a 10-year period in a way that endangers the continued maintenance of the NAAQS or modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS. These base year attainment

² *See* Round 4 SO₂ Designations at <https://www.epa.gov/sulfur-dioxide-designations/epa-completes-fourth-round-sulfur-dioxide-designations>.

³ The Henderson-Webster SO₂ Nonattainment Area is comprised of a portion of Henderson County and a portion of Webster County. EPA designated the Henderson-Webster SO₂ Nonattainment Area in 2020 based on a violating ambient air monitor—the Sebree data requirements rule (DRR) monitor (Air Quality System ID: 21–101–1011)—sited to characterize the maximum 1-hour SO₂ concentrations in the Area. (The DRR may be found at 40 CFR 51.1205). The extent of the partial county Henderson-Webster SO₂ Nonattainment Area was defined based on air dispersion modeling during round 4 SO₂ designations in 2020. *See* 40 CFR 81.318.

⁴ Section 191(a) of the CAA directs states to submit SIPs for areas designated as nonattainment for the SO₂ NAAQS to EPA within 18 months of the effective date of the designation. Under CAA section 192(a) these SIPs are required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation. In addition, sections 110(a) and 172(c), as well as EPA regulations at 40 CFR part 51, set forth substantive elements each SIP must contain to be approved by EPA.

⁵ *See* CAA section 191(a).

and maintenance inventories serve a different fundamental purpose than the nonattainment base year inventory provided in the February 2024 SIP submittal.

EPA has determined that Kentucky's emission inventory for the Henderson-Webster SO₂ Nonattainment Area, including the 2018 base year inventory for all four point sources, is consistent with the requirements established at section 172(c)(3) of the CAA for a comprehensive, accurate, and current inventory of actual emissions. As such, Kentucky's February 2024 SIP revision satisfies the emissions inventory requirements for nonattainment plans at section 172(c)(3) of the CAA. In addition, pursuant to CAA section 110(k)(3), EPA shall approve a SIP submittal if it meets all the applicable requirements. For these reasons, EPA has not failed its statutory duty.

Comment 2: The commenter asserts that EPA must consider the interdependency of SIP elements and states that approving the NNSR certification based on a flawed emission inventory creates regulatory uncertainty. The commenter goes on to state that the NNSR program applicability and stringency are tied to the accuracy of the emissions inventory data because they determine major source thresholds and significance levels for modifications. The commenter concludes that EPA cannot reasonably determine that the NNSR program is adequate for the 2010 SO₂ NAAQS when the emissions inventory used to calibrate the program is not representative. The commenter alleges that approving a component that is critically dependent on another, unresolved component is an arbitrary segmentation of the SIP process.

Response 2: EPA disagrees with this comment. As discussed in Response 1, nonattainment SIPs must contain an emissions inventory that meets the requirements of CAA section 172(c)(3), and EPA has determined that the Commonwealth's SIP revision satisfies those requirements. Separately, section 172(c)(5) of the CAA requires that SIPs require permits for the construction and operation of new or modified major stationary source anywhere in a nonattainment area in accordance with section 173 of the CAA. EPA's implementing regulations at 40 CFR 51.165 and Appendix S to part 51 set forth detailed requirements for NNSR programs and define a major stationary source as any stationary source that emits, or has the potential to emit, 100 tons per year (tpy) or more of SO₂. A major modification of an existing major stationary source of SO₂ is defined as a significant emissions increase and

significant net emissions increase of SO₂ of 40 tpy. Because these regulations prescribe NNSR requirements, including applicability thresholds, the section 172(c)(3) inventories do not "determine major source thresholds and significance levels for modifications," do not impact the applicability or stringency of NNSR, and are not used to "calibrate" NNSR.

EPA's proposed certification of Kentucky's NNSR program at 401 KAR 51.052 is based on the fact that the SIP is required to contain the permitting criteria established at sections 172(c)(5) and 173 of the CAA and EPA's implementing regulations at 40 CFR 51.165. The NNSR program requirements are not dependent on the base year emission inventory SIP requirements. Both SIP requirements are critical planning elements of the collective nonattainment SIP pursuant to part D of the CAA. Each is independent of the other and serves a unique purpose in addressing air quality that does not attain the NAAQS. Neither the CAA nor its implementing regulations require EPA to deem either a nonattainment plan's NNSR or emissions inventory elements adequate in order to approve the other. Furthermore, the commenter fails to explain how these two elements are interrelated.

Comment 3: The commenter states that the emissions inventory EPA evaluated is outdated and creates a "flawed regulatory framework" that introduces unnecessary risk and uncertainty for Century Aluminum's operations and potential modernization plans. The commenter states that EPA must consider the "extraordinary circumstance" of approving a plan that governs a facility of "strategic national importance." The commenter then claims that the Century Aluminum facility in the Henderson-Webster SO₂ Nonattainment Area produces material that is critical to national defense and infrastructure, and thus, EPA has a responsibility to ensure its actions do not undermine national economic and strategic interests by inadvertently creating a legally unstable and technically unsound permitting environment. The commenter further states that a SIP subject to legal challenges creates regulatory unpredictability that harms investments in critical industries.

Response 3: EPA disagrees with this comment. For the reasons explained in Response 1, EPA disagrees that Kentucky's selection of 2018 for its inventory of point sources in the nonattainment area is outdated. Furthermore, the commenter's assertion

that EPA's action approving Kentucky's use of the 2018 base year for point sources as a part of the inventory for the Area somehow undermines the economic viability of an industry the commenter believes produces critical materials is unsupported as is the claim that EPA must consider the "extraordinary circumstance" of approving a plan that governs a facility of "strategic national importance." As discussed in Responses 1 and 2, EPA has evaluated the SIP revisions and determined that they meet the requirements of CAA section 172(c)(3) for the emissions inventory and section 172(c)(5) for NNSR. Pursuant to CAA section 110(k)(3), EPA shall approve a SIP submittal if it meets all the applicable requirements. Therefore, EPA's actions to approve these SIP submittals are consistent with the CAA, and it is therefore unclear how these actions could create regulatory unpredictability that harms investments in critical industries.

Comment 4: The commenter states that "the proposal exhibits significant flaws that require a more rigorous evaluation before a finding of approval can be legally sustained" as summarized in Comments 1 through 3. The commenter concludes that EPA must withdraw the proposal based on the comments summarized above, thoroughly analyze the emission inventory to meet the "current" requirement of CAA 172(c)(3) and require Kentucky to submit a revised inventory, and evaluate the NNSR certification in the context of a "valid" emissions inventory.

Response 4: EPA disagrees with this comment for the reasons discussed in Responses 1 through 3. Therefore, EPA is finalizing approval of these nonattainment planning elements pursuant to CAA sections 172(c)(3), 172(c)(5), and 173 and 40 CFR part 51.

III. Final Actions

For the reasons discussed above, EPA is approving Kentucky's January 26, 2024, and February 15, 2024, SIP revisions containing a certification that its existing SIP-approved NNSR program meets the NNSR requirements for the 2010 SO₂ NAAQS and an emissions inventory, respectively, for the Henderson-Webster SO₂ Nonattainment Area.

IV. 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. See 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, these actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993);
- Are not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because they approve a state program;

- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
 - Are 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).
- These actions are 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. These actions are not a “major rule” as defined by 5 U.S.C. 804(2).
- Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by March 9, 2026. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions 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. These actions 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, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

Dated: December 29, 2025.

Kevin McOmber,
Regional Administrator, Region 4.

For the reasons stated in the preamble, EPA amends 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 S—Kentucky

- 2. In § 52.920(e), amend the table by adding new entries for “2010 1-hour SO₂ NAAQS Nonattainment New Source Review Requirements” and “Emissions Inventory for the 2010 1-hour SO₂ NAAQS” at the end of the table, to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
* * *	* * *	* * *	* * *	*
2010 1-hour SO ₂ NAAQS Non-attainment New Source Review Requirements.	Portions of Henderson and Webster Counties in Kentucky.	1/26/2024	1/8/2026, 90 FR [Insert citation of publication].	
Emissions Inventory for the 2010 1-hour SO ₂ NAAQS.	Portions of Henderson and Webster Counties in Kentucky.	2/15/2024	1/8/2026, 90 FR [Insert citation of publication].	

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[EPA–R09–OAR–2024–0210; FRL–11949–02–R9]****Air Plan Approval; California; Mojave Desert Air Quality Management District; Replacing Outdated Requirements****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD or “District”) portion of the California State Implementation Plan (SIP). These revisions concern certain amended or rescinded prohibitory and administrative rules. We are approving action on amended or rescinded rules that regulate the pollutants under the Clean Air Act (CAA or “Act”).

DATES: This rule is effective February 9, 2026.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2024–0210. 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. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; telephone number: (415) 972–3245; email address: evanshopper.lakenya@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us,” and “our” refer to the EPA.

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- I. Proposed Action
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I. Proposed Action

On September 11, 2025 (90 FR 43971), the EPA proposed to approve several rules and rule rescissions for the California SIP. Table 1 lists the rules submitted for approval as part of the MDAQMD portion of the SIP that are covered by this final action with the dates they were adopted by the MDAQMD and submitted to the EPA by CARB. Table 2 lists the rules (excluding Regulation VII rules) submitted for rescission from the MDAQMD portion of the SIP that are covered by this final action with the dates that they were adopted by the MDAQMD, the dates they were submitted by the California Air Resources Board (CARB), and the dates (and associated **Federal Register** (FR) citations) that the rules were previously approved by the EPA. Table 3 lists the rules from Regulation VII submitted for rescission that are associated with the applicable SIP for the San Bernardino County portion of the MDAQMD portion of the California SIP, and Table 4 lists the rules from Regulation VII submitted for rescission that are associated with the applicable SIP for the Riverside County portion of the MDAQMD portion of the California SIP.

TABLE 1—SUBMITTED RULES USED TO REPLACE SIP APPROVED RULES

Local agency	Rule No.	Rule title	Adopted/amended date	Submittal date
MDAQMD	^a 464	Oil Water Separators	June 23, 2014	January 10, 2024.
MDAQMD	701	Air Pollution Emergency Contingency Actions	September 26, 2022	May 11, 2023.
MDAQMD	^a 1102	Fugitive Emissions of VOCs from Components at Pipeline Transfer Stations.	October 26, 1994	January 10, 2024.
MDAQMD	^a 1114	Wood Products Coating Operations	August 24, 2020	January 10, 2024.

^a The January 10, 2024 SIP submission requests re-approval of existing SIP MDAQMD Rules 464, 1102 and 1114 to extend the applicability of the SIP rule throughout the District. See CARB Executive Order S–23–018, dated December 27, 2023, Attachment A.

TABLE 2—SUBMITTED RULE RESCISSIONS

[Excluding Regulation VII rules]

Local agency and rule No.	Title	Adopted/amended date	SIP approval date and FR citation	Date of rescission by MDAQMD	Submittal date
South Coast Air Quality Management District (SCAQMD) Rule 405 ^a .	Solid Particulate Matter—Weight.	May 7, 1976	September 28, 1981, 46 FR 47451.	February 28, 2022	May 11, 2023.
SCAQMD Rule 409	Combustion Contaminants.	August 7, 1981	July 6, 1982, 47 FR 29231.	April 25, 2022	May 11, 2023.
Southern California Air Pollution Control District (SoCalAPCD) Rule 432 ^a .	Gasoline Specifications.	May 7, 1976	June 14, 1978, 43 FR 25684.	April 25, 2022	September 23, 2022.
San Bernardino County Air Pollution Control District (SBCAPCD) Rule 432.	Gasoline Specifications.	February 1, 1977	September 8, 1978, 43 FR 40011.	April 25, 2022	September 23, 2022.
SCAQMD Rule 464 ^a	Wastewater Separators.	April 4, 1980	January 21, 1981, 46 FR 5965.	August 28, 2023 ..	January 10, 2024.
SoCalAPCD Rule 464	Oil and Water Separators.	May 7, 1976	June 14, 1978, 43 FR 25684.	August 28, 2023 ..	January 10, 2024.
SCAQMD Rule 466	Pumps and Compressors.	October 7, 1983 ...	January 15, 1987, 52 FR 1627.	June 26, 2023	January 10, 2024.

TABLE 2—SUBMITTED RULE RESCISSIONS—Continued
[Excluding Regulation VII rules]

Local agency and rule No.	Title	Adopted/amended date	SIP approval date and FR citation	Date of rescission by MDAQMD	Submittal date
SBCAPCD Rule 466	Pumps and Compressors.	February 1, 1977	September 8, 1978, 43 FR 40011.	June 26, 2023	January 10, 2024.
SCAQMD Rule 466.1	Valves and Flanges.	May 2, 1980	July 8, 1982, 47 FR 29668.	June 26, 2023	January 10, 2024.
SCAQMD Rule 467	Pressure Relief Devices.	March 5, 1982	November 16, 1983, 48 FR 52054.	June 26, 2023	January 10, 2024.
SBCAPCD Rule 467	Pressure Release Devices.	February 1, 1977	September 8, 1978, 43 FR 40011.	June 26, 2023	January 10, 2024.
SoCalAPCD Rule 470 ^{a b}	Asphalt Air Blowing.	May 7, 1976	June 14, 1978, 43 FR 25684.	August 22, 2022 ..	November 30, 2022.
SBCAPCD Rule 470	Asphalt Air Blowing.	February 1, 1977	September 8, 1978, 43 FR 40011.	August 22, 2022 ..	November 30, 2022.
SBCAPCD Rule 480	Natural Gas Fired Control Devices.	February 20, 1979	January 27, 1981, 46 FR 8471.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 1101 ^a	Secondary Lead Smelters/Sulfur Oxides.	October 7, 1977 ...	September 2, 1981, 46 FR 43968.	June 26, 2023	January 10, 2024.
SCAQMD Rule 1104	Wood Flat Stock Coatings Operations.	March 1, 1991	June 23, 1994, 59 FR 32354.	August 28, 2023 ..	January 10, 2024.
SCAQMD Rule 1175	Control of Emissions from the Manufacture of Polymeric Cellular (Foam) Products.	January 5, 1990 ...	October 26, 1992, 57 FR 48457.	September 25, 2023.	January 10, 2024.
SCAQMD Rule 1176	Sumps and Wastewater Separators.	January 5, 1990 ...	October 26, 1992, 57 FR 48457.	August 28, 2023 ..	January 10, 2024.

^a SIP applicability was extended to the Southeast Desert Air Basin portion of Riverside County effective June 9, 1982. See 47 FR 25013 (June 9, 1982).

^b The November 30, 2022 SIP submission also listed SCAQMD Rule 470. However, the version of Rule 470 that is currently part of the SIP for the Riverside County portion of the MDAQMD was adopted by the SoCalAPCD.

TABLE 3—SUBMITTED RULE RESCISSIONS
[Regulation VII rules applicable in the San Bernardino County portion of the MDAQMD]

Local agency and rule No.	Title	Adopted/amended date	SIP approval date and FR citation	Date of rescission by MDAQMD	Submittal date
SBCAPCD Rule 702	Air Monitoring Stations.	July 25, 1977	June 3, 1980, 45 FR 37428.	September 26, 2022.	May 11, 2023.
SBCAPCD Rule 703	Air Monitoring Summaries.	February 1, 1977	June 3, 1980, 45 FR 37428.	September 26, 2022.	May 11, 2023.
SBCAPCD Rule 704	Episode Criteria ...	September 26, 1977.	June 21, 1982, 47 FR 26618.	September 26, 2022.	May 11, 2023.
SBCAPCD Rule 705	Episode Notification.	September 26, 1977.	June 21, 1982, 47 FR 26618.	September 26, 2022.	May 11, 2023.
SBCAPCD Rule 706	Episode Declaration.	February 1, 1977	June 3, 1980, 45 FR 37428.	September 26, 2022.	May 11, 2023.
SBCAPCD Rule 707	First Stage Episode Actions.	September 26, 1977.	June 21, 1982, 47 FR 26618.	September 26, 2022.	May 11, 2023.
SBCAPCD Rule 708	Second Stage Episode Actions.	September 26, 1977.	June 21, 1982, 47 FR 26618.	September 26, 2022.	May 11, 2023.
SBCAPCD Rule 709	Third Stage Episode Actions.	September 26, 1977.	June 21, 1982, 47 FR 26618.	September 26, 2022.	May 11, 2023.
SBCAPCD Rule 710	Inter-district Coordination.	September 26, 1977.	June 21, 1982, 47 FR 26618.	September 26, 2022.	May 11, 2023.
SBCAPCD Rule 711	Termination of Episodes.	September 26, 1977.	June 21, 1982, 47 FR 26618.	September 26, 2022.	May 11, 2023.
SBCAPCD Rule 712	Advisory Council ..	September 26, 1977.	June 21, 1982, 47 FR 26618.	September 26, 2022.	May 11, 2023.

TABLE 4—SUBMITTED RULE RESCISSIONS
[Regulation VII rules applicable in the Riverside County portion of the MDAQMD]

Local agency and rule No.	Title	Adopted/revised date	SIP approval date and FR citation ^a	Date of rescission by MDAQMD	Submittal date
SCAQMD Rule 701	General	April 4, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 702(a), (d), (e), (f), (h) and (i).	Definitions	April 4, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 702(b)	Definitions	July 11, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 702(c)	Definitions	May 6, 1977	May 26, 1978, 43 FR 22719.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 702 (map only)	Definitions	July 8, 1977	December 21, 1978, 43 FR 59490.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 703	Episode Criteria ...	April 4, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 704	Episode Declara- tion.	April 4, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 705	Termination of Epi- sodes.	April 4, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 706	Episode Notifica- tion.	April 4, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 707	Radio Commu- nication System.	July 11, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 708	Plans	July 11, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 708.1	Stationary Sources Required to File Plans.	May 6, 1977	May 26, 1978, 43 FR 22719.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 708.2	Content of Sta- tionary Source Curtailment Plans.	July 8, 1977	December 21, 1978, 43 FR 59490.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 708.3	Transportation Management Plans.	July 9, 1982	June 1, 1983, 48 FR 24362.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 708.4(a) and (b)	Procedural Re- quirements for Plans.	July 11, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 708.4(c), (d), (e), and (f).	Procedural Re- quirements for Plans.	May 6, 1977	May 26, 1978, 43 FR 22719.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 708.4(g) and (h)	Procedural Re- quirements for Plans.	April 4, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 709(a)	First Stage Epi- sode Actions.	April 4, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 709(b), (d), (f), and (g)	First Stage Epi- sode Actions.	May 6, 1977	May 26, 1978, 43 FR 22719.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 709(c)	First Stage Epi- sode Actions.	February 1, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 709(e)	First Stage Epi- sode Actions.	July 11, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 710(a) and (b)(4)	Second Stage Epi- sode Actions.	April 4, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023
SCAQMD Rule 710(b)(1)(A)–(C), (b)(2)(A)–(C), (b)(3)(A), (c)(1), (c)(2), and (c)(3)(A).	Second Stage Epi- sode Actions.	May 6, 1977	May 26, 1978, 43 FR 22719.	September 26, 2022.	May 11, 2023.

TABLE 4—SUBMITTED RULE RESCISSIONS—Continued
[Regulation VII rules applicable in the Riverside County portion of the MDAQMD]

Local agency and rule No.	Title	Adopted/revised date	SIP approval date and FR citation ^a	Date of rescission by MDAQMD	Submittal date
SCAQMD Rule 710(b)(1)(D), (b)(2)(D), (b)(3)(B), and (c)(3)(B).	Second Stage Episode Actions.	July 11, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 711(a)(1), (a)(4), (b)(1) and (b)(4).	Third Stage Episode Actions.	April 4, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 711(b)(2)(A) and (B), (b)(3)(A), (c)(2)(A) and (B), and (c)(3)(A).	Third Stage Episode Actions.	May 6, 1977	May 26, 1978, 43 FR 22719.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 711(a)(1)(E), (a)(2)(D), (a)(3)(B), (a)(4)(F), (b)(3)(B), and (b)(4)(F).	Third Stage Episode Actions.	July 11, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 713	Interdistrict Coordination.	April 4, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 714	Source Inspections	April 4, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.
SCAQMD Rule 715	Burning of Fossil Fuel on Episode Days.	April 4, 1980	September 28, 1981, 46 FR 47451.	September 26, 2022.	May 11, 2023.

^a With the exception of SCAQMD Rule 708.3, the applicability of SCAQMD rules that had been approved as part of the California SIP was extended to the Southeast Desert portion of Riverside County through the EPA's final action published at 47 FR 25013 (June 9, 1982). The July 9, 1982 version of SCAQMD Rule 708.3 became part of the applicable SIP for the SCAQMD, including the Southeast Desert portion of Riverside County in 1983.

We proposed to approve these rules and rule rescissions because we determined that they comply with the relevant CAA requirements. Our proposed action and related technical support documents contain more information on the rules and rule rescissions and our evaluation of them for compliance with CAA requirements.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is taking final action to approve revisions to the MDAQMD portion of the California SIP submitted by CARB on September 23, 2022, November 30, 2022, May 11, 2023, and January 10, 2024. More specifically, the EPA is finalizing the following actions:

- The EPA is approving submitted MDAQMD Rule 701 because it would strengthen the SIP.
- The EPA is approving the following rule rescissions because the rescissions of the rules meet all relevant requirements: SCAQMD Rules 405, 409, 466, 466.1, 467, 1101, 1104, 1175, and 1176; SoCalAPCD Rules 432 and 470; and SBCAPCD Rules 432, 470, and 480; and all the SBCAPCD and SCAQMD

Regulation VII rules listed in Tables 3 and 4 of this document.

- The EPA is taking no action on the rescissions of SoCalAPCD Rule 464 and SCAQMD Rule 464, other than to add clarifying regulatory text, because they were previously replaced in the applicable SIP by approval of SCAQMD Rule 464 and MDAQMD Rule 464, respectively. The EPA is also taking no action on the rescissions of SBCAPCD Rules 466 and 467 because they were previously removed as part of the applicable SIP and regulatory text was previously added to document their removal.

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 MDAQMD Rule 701, which establishes certain procedures and requirements for air pollution emergencies. The EPA is also finalizing regulatory text that deletes certain rules that were previously incorporated by reference from the applicable California SIP. The rules that were previously incorporated by reference are SCAQMD Rules 405, 409, 464, 466, 466.1, 467, 1101, 1104, 1175, and 1176; SoCalAPCD Rules 432, 464, and 470; and SBCAPCD Rules 432, 470, and 480 as listed in Table 2 of this document, and the air pollution

emergency rules listed in Tables 3 and 4 of this document. The EPA has made, and will continue to make, these documents available through <https://www.regulations.gov> and at the EPA Region IX 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 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, 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).

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

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 March 9, 2026. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur dioxide, Volatile organic compounds.

Dated: December 17, 2025.

Michael Martucci,

Acting Regional Administrator, Region IX.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

- 2. Section 52.220 is amended by adding paragraphs (c)(32)(iv)(K) and (L), (c)(38)(ii), (c)(39)(ii)(T) and (U), (c)(42)(xiii)(G) and (xvi)(D), (c)(51)(xii)(D), (c)(67)(i)(C), (c)(69)(vi) through (viii), (c)(70)(i)(H) and (I), (c)(79)(iv)(D), (c)(94)(iii)(B), (c)(103)(xviii)(E), (c)(125)(ii)(F), (c)(126)(iv)(B), (c)(166)(i)(A)(3), (c)(182)(i)(A)(6) and (7), (c)(186)(i)(C)(2), (c)(202)(i)(D)(2) and (c)(610)(i)(D)(7), to read as follows:

§ 52.220 Identification of plan.

* * * * *

- (c) * * *
(32) * * *
(iv) * * *

(K) Previously approved on June 14, 1978, in paragraph (c)(32)(iv)(A) of this section and now deleted without replacement for implementation in the Mojave Desert Air Quality Management District: Rules 432 and 470.

(L) Previously approved on June 14, 1978, in paragraph (c)(32)(iv)(A) of this section and now deleted with replacement in paragraph (c)(69)(i) of this section for implementation in the South Coast Air Quality Management District: Rule 464.

* * * * *

- (38) * * *

(ii) Previously approved on May 26, 1978, in paragraph (c)(38)(i) of this section and now deleted with replacement in paragraph (c)(610)(i)(D)(7) of this section for implementation in the Mojave Desert Air Quality Management District: Rules 702(c), 708.1, 708.4(c), (d), (e) and (f), 709(b), (d), (f), and (g), 710(b)(1)(A) through (C), (b)(2)(A) through (C), (b)(3)(A), (c)(1), (c)(2) and (c)(3)(A), and 711(b)(2)(A) and (B), (b)(3)(A), (c)(2)(A) and (B), and (c)(3)(A).

- (39) * * *
(ii) * * *

(T) Previously approved on September 8, 1978, in paragraph (c)(39)(ii)(C) of this section and now deleted without replacement: Rules 432 and 470.

(U) Previously approved on June 3, 1980, in paragraph (c)(39)(ii)(E) of this section and now deleted with replacement in paragraph (c)(610)(i)(D)(7) of this section: Rules 703 and 706.

* * * * *

- (42) * * *
(xiii) * * *

(G) Previously approved on June 3, 1980, in paragraph (c)(42)(xiii)(C) of this section and now deleted with replacement in paragraph (c)(610)(i)(D)(7) of this section: Rule 702.

* * * * *

- (xvi) * * *

(D) Previously approved on December 21, 1978, in paragraph (c)(42)(xvi)(B) of this section and now deleted with replacement in paragraph (c)(610)(i)(D)(7) of this section for implementation in the Mojave Desert Air Quality Management District: Rule 702 (Map only) and 708.2.

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- (51) * * *
(xii) * * *

(D) Previously approved on January 27, 1981, in paragraph (c)(51)(xii)(A) of this section and now deleted without replacement: Rule 480.

* * * * *

- (67) * * *
(i) * * *

(C) Previously approved on September 28, 1981, in paragraph (c)(67)(i)(B) of this section and now deleted with replacement in paragraph (c)(610)(i)(D)(7) of this section for implementation in the Mojave Desert Air Quality Management District: Rule 709(c).

* * * * *

- (69) * * *

(vi) Previously approved on January 21, 1981, in paragraph (c)(69)(i) of this section and now deleted with replacement in paragraph (c)(202)(i)(D)(1) of this section for implementation in the Mojave Desert Air Quality Management District: Rule 464.

(vii) Previously approved on September 28, 1981, in paragraph (c)(69)(ii) of this section and now deleted with replacement in paragraph (c)(610)(i)(D)(2) of this section for implementation in the Mojave Desert Air Quality Management District: Rule 405.

(viii) Previously approved on September 28, 1981, in paragraph

(c)(69)(ii) of this section and now deleted with replacement in paragraph (c)(610)(i)(D)(7) of this section for implementation in the Mojave Desert Air Quality Management District: Rules 701, 702(a), (d), (e), (f), (h) and (i), 703 through 706, 708.4(g) and (h), 709(a), 710(a) and (b)(4), 711(a)(1), (a)(4), (b)(1) and (b)(4) and 713–715.

(70) * * *

(i) * * *

(H) Previously approved on September 2, 1981, in paragraph (c)(70)(i)(B) of this section and now deleted without replacement for implementation in the Mojave Desert Air Quality Management District: Rule 1101.

(I) Previously approved on September 28, 1981, in paragraph (c)(70)(i)(C) of this section and now deleted with replacement in paragraph (c)(610)(i)(D)(7) of this section for implementation in the Mojave Desert Air Quality Management District: Rules 702(b), 707, 708, 708.4(a) and (b), 709(e), 710(b)(1)(D), (b)(2)(D), (b)(3)(B), and (c)(3)(B), and 711(a)(1)(E), (a)(2)(D), (a)(3)(B), (a)(4)(F), (b)(3)(B) and (b)(4)(F).

(79) * * *

(iv) * * *

(D) Previously approved on July 8, 1982, in paragraph (c)(79)(iv)(B) of this section and now deleted with replacement in paragraph (c)(207)(i)(D)(1) of this section for implementation in the Mojave Desert Air Quality Management District: Rule 466.1.

* * * * *

(94) * * *

(iii) * * *

(B) Previously approved on June 21, 1982, in paragraph (c)(94)(iii)(A) of this section and now deleted with replacement in paragraph (c)(610)(i)(D)(7) of this section: Rules 701, 704, 705, 707 through 711 and 712.

* * * * *

(103) * * *

(xviii) * * *

(E) Previously approved on July 6, 1982, in paragraph (c)(103)(xviii)(A) of this section and now deleted with replacement in paragraph (c)(610)(i)(D)(4) of this section for implementation in the Mojave Desert Air Quality Management District: Rule 409.

* * * * *

(125) * * *

(ii) * * *

(F) Previously approved on November 16, 1983, in paragraph (c)(125)(ii)(D) of this section and now deleted with replacement in paragraph (c)(207)(i)(D)(1) of this section for

implementation in the Mojave Desert Air Quality Management District: Rule 467.

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(126) * * *

(iv) * * *

(B) Previously approved on June 1, 1983, in paragraph (c)(126)(iv)(A) of this section and now deleted with replacement in paragraph (c)(610)(i)(D)(7) of this section for implementation in the Mojave Desert Air Quality Management District: Rule 708.3.

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(166) * * *

(i) * * *

(A) * * *

(3) Previously approved on January 15, 1987, in paragraph (c)(166)(i)(A)(1) of this section and now deleted with replacement in paragraph (c)(207)(i)(D)(1) of this section for implementation in the Mojave Desert Air Quality Management District: Rule 466.

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(182) * * *

(i) * * *

(A) * * *

(6) Previously approved on October 26, 1992, in paragraph (c)(182)(i)(A)(1) of this section and now deleted with replacement in paragraph (c)(457)(i)(B)(1) of this section for implementation in the Mojave Desert Air Quality Management District: Rule 1176.

(7) Previously approved on October 26, 1992, in paragraph (c)(182)(i)(A)(1) of this section and now deleted without replacement for implementation in the Mojave Desert Air Quality Management District: Rule 1175.

* * * * *

(186) * * *

(i) * * *

(C) * * *

(2) Previously approved on June 23, 1994, in paragraph (c)(186)(i)(C)(1) of this section and now deleted with replacement (c)(558)(i)(A)(1) of this section for implementation in the Mojave Desert Air Quality Management District: Rule 1104.

* * * * *

(202) * * *

(i) * * *

(D) * * *

(2) Previously approved on September 27, 1995, in paragraph (c)(202)(i)(D)(1) of this section and now deleted with replacement in paragraph (c)(457)(i)(B)(1) of this section: Rule 464.

* * * * *

(610) * * *

(i) * * *

(D) * * *

(7) Rule 701, “Air Pollution Emergency Contingency Actions,” adopted on September 26, 2022.

* * * * *

[FR Doc. 2026–00208 Filed 1–7–26; 8:45 am]

BILLING CODE 6560–50–P

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508

[CEQ–2025–0002]

RIN 0331–AA10

Removal of National Environmental Policy Act Implementing Regulations

AGENCY: Council on Environmental Quality.

ACTION: Final rule.

SUMMARY: The Council on Environmental Quality (CEQ) is adopting the interim final rule published on February 25, 2025, as final. In the interim final rule, CEQ provided a 30-day comment period for the public to review and make comments. This final rule addresses public comments and adopts as final the interim final rule, without changes, removing all iterations of CEQ’s regulations implementing the National Environmental Policy Act of 1969 (NEPA) from the Code of Federal Regulations.

DATES: This rule is effective January 8, 2026.

FOR FURTHER INFORMATION CONTACT: Megan Healy, Principal Deputy Director for NEPA, 202–395–5750, Megan.E.Healy@ceq.eop.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted NEPA to declare a national policy “to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and [to] fulfill the social, economic, and other requirements of present and future generations of Americans.” 42 U.S.C. 4331(a).

NEPA, as amended by the Fiscal Responsibility Act of 2023 (FRA), Public Law 118–5 (June 3, 2023), furthers this national policy by requiring Federal agencies to prepare a “detailed statement” for proposed “major Federal actions significantly affecting the

quality of the human environment.” 42 U.S.C. 4332(2)(C). NEPA, as amended, also provides that agencies shall prepare “environmental assessments” for proposed major Federal actions which do not have reasonably foreseeable significant environmental effects or for which the significance of their environmental effects is unknown, 42 U.S.C. 4336(b)(2), unless the action is excluded pursuant to a categorical exclusion. The statute defines categorical exclusions as a determination by an agency that a category of actions normally does not have a significant environmental effect. 42 U.S.C. 4336e(1). NEPA includes thresholds for determining whether an environmental document must be prepared and the appropriate level of environmental review. 42 U.S.C. 4336(a)–(b). NEPA further mandates that Federal agencies ensure the professional and scientific integrity of environmental documents; use reliable data and resources when carrying out NEPA; and study, develop, and describe technically and economically feasible alternatives. 42 U.S.C. 4332(2)(D)–(F). NEPA does not mandate particular results or substantive outcomes. Rather, NEPA requires Federal agencies to consider the environmental effects of proposed actions as part of agencies’ decisionmaking processes.

NEPA also established CEQ as an advisory agency within the Executive Office of the President to assist and advise the President on environmental matters and the implementation of NEPA’s national policy. 42 U.S.C. 4342; 42 U.S.C. 4344. Federal agencies must consult with CEQ while identifying and developing methods and procedures to govern environmental analysis of their proposed major Federal actions, 42 U.S.C. 4332(2)(B), and otherwise provide assistance to CEQ, 42 U.S.C. 4332(2)(L).

In 1970, President Nixon issued E.O. 11514, *Protection and Enhancement of Environmental Quality*, which directed CEQ to “[i]ssue guidelines to Federal agencies for the preparation of detailed statements on proposals for legislation and other Federal actions affecting the environment, as required by [42 U.S.C. 4332(2)(C)].” 35 FR 4247 (March 7, 1970). CEQ issued interim guidelines in 1970, 35 FR 7390 (May 12, 1970), and revised them in 1971, 36 CFR 7724 (April 23, 1971), and 1973. 38 CFR 20550 (August 1, 1973).

In 1977, President Carter issued E.O. 11991, *Relating to Protection and Enhancement of Environmental Quality*. E.O. 11991 amended section 3(h) of E.O. 11514, directing CEQ to “[i]ssue regulations to Federal agencies for the

implementation of the procedural provisions of [NEPA] . . . to make the environmental impact statement process more useful to decision[]makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives,” and to “require [environmental] impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses.” 42 FR 26967 (May 25, 1977). E.O. 11991 also amended section 2 of E.O. 11514 to require agency compliance with the regulations issued by CEQ. The Executive Order was based on the President’s constitutional and asserted statutory authority, including NEPA, the Environmental Quality Improvement Act, 42 U.S.C. 4371 *et seq.*, and section 309 of the Clean Air Act, 42 U.S.C. 7609. CEQ promulgated its NEPA implementing regulations in 1978. 43 FR 55978 (November 29, 1978). CEQ made typographical amendments to the 1978 implementing regulations in 1979 and amended one provision in 1986. *See* 44 FR 873 (Jan. 3, 1979) and 51 FR 15618 (April 25, 1986).

On August 15, 2017, President Trump issued E.O. 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*, which directed CEQ to establish and lead an interagency working group to identify and propose changes to its NEPA implementing regulations. 82 FR 40463 (Aug. 24, 2017). In response, CEQ issued an advance notice of proposed rulemaking in 2018, 83 FR 28591 (June 20, 2018), and a notice of proposed rulemaking in 2020, 85 FR 1684 (January 10, 2020), proposing broad revisions to revise, update, and modernize the 1978 regulations. CEQ promulgated its final rule on July 16, 2020. 85 FR 43304 (July 16, 2020).

On January 20, 2021, President Biden issued E.O. 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, which revoked E.O. 13807 and directed agencies to take steps to rescind any rules or regulations implementing it. 86 FR 7037 (Jan. 25, 2021). An accompanying White House fact sheet, published on January 20, 2021, specifically identified the 2020 regulations for CEQ’s review for consistency with E.O. 13990’s policy. Fact Sheet: List of Agency Actions for Review (Jan. 20, 2021), <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>.

After conducting that review, on June 29, 2021, CEQ issued an interim final rule (IFR) extending by two years the 2020 rule’s September 14, 2021, deadline for agencies to propose changes to their existing agency-specific NEPA procedures to make those procedures consistent with the 2020 regulations. 86 FR 34154 (June 29, 2021). Next, on October 7, 2021, CEQ issued a “Phase 1” proposed rule to amend the 2020 regulations to restore three discrete portions of the 1978 regulations, 86 FR 55757 (Oct. 7, 2021), which CEQ finalized on April 20, 2022. 87 FR 23453 (April 20, 2022).

On June 3, 2023, President Biden signed into law the FRA, which included amendments to NEPA. On July 31, 2023, CEQ published a “Phase 2” proposed rule. 88 FR 49924 (July 31, 2023). On May 1, 2024, CEQ finalized its Phase 2 rule, which incorporated many of its proposed revisions, including those to implement the FRA’s amendments. 89 FR 35442 (May 1, 2024).

On January 20, 2025, President Trump issued E.O. 14154, *Unleashing American Energy*. 90 FR 8353 (Jan. 29, 2025). The Executive Order revoked E.O. 11991, which had directed CEQ to issue NEPA implementing regulations and required Federal agencies to comply with those regulations. E.O. 14154 also directed CEQ to provide guidance on implementing NEPA, propose rescinding CEQ’s NEPA implementing regulations within 30 days of the order, and to convene a working group to coordinate agencies’ revisions of their individual NEPA implementing regulations or guidance for consistency. CEQ issued initial guidance on February 19, 2025.¹

In response to E.O. 14154, on February 25, 2025, CEQ issued an IFR to remove its existing NEPA implementing regulations, as amended, 42 U.S.C. 4321 *et seq.* 90 FR 10610 (Feb. 25, 2025). In the IFR, CEQ addressed its authority to issue binding NEPA implementing regulations in the absence of the now-rescinded E.O. 11991. Specifically, CEQ cited E.O. 11991 as authority in 1978 when it first issued its NEPA implementing regulations and in subsequent amendments to those regulations. CEQ determined that, in the absence of E.O. 11991, it was appropriate to remove CEQ’s regulations from the Code of Federal Regulations,

¹ Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies, Implementation of the National Environmental Policy Act, Feb. 19, 2025, <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf>.

stating that, “[i]n the absence of E.O. 11991, the plain text of NEPA itself may not directly grant CEQ the power to issue regulations binding on executive agencies” and that therefore “CEQ has concluded that it may lack authority to issue binding rules on agencies in the absence of now-rescinded E.O. 11991.”²

Publication of the IFR initiated a 30-day public comment period that concluded on March 27, 2025. CEQ requested and encouraged public comments on the rationale for the IFR that may inform CEQ’s decisionmaking. CEQ issued two corrections during the comment period, one to clarify the comment deadline (90 FR 11221 (March 5, 2025)), and another to add in a citation to the legal authority for rescinding the regulations (90 FR 12690 (March 19, 2025)).

On May 29, 2025, the U.S. Supreme Court issued a landmark decision, *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497 (2025), in which it decried the “transform[ation]” of NEPA from its roots as “a modest procedural requirement,” into a significant “substantive roadblock” that “paralyze[s]” “agency decisionmaking.” *Id.* at 1513 (quotations omitted). The Supreme Court accordingly issued a “course correction,” directing lower courts to give “substantial deference” to reasonable agency conclusions underlying its NEPA process. *Id.* at 1513–14. Through the “course correction,” the Court acknowledged, and sought to address the effect of overly prescriptive judicial review of agencies’ NEPA reviews on “litigation-averse agencies,” which had been “tak[ing] ever more time and [] prepar[ing] ever longer EISs [environmental impact statements] for future projects.” *Id.* at 1513.

With this Supreme Court decision, all three branches of government at the highest possible levels—Congress, the President, and the Supreme Court—have called for, authorized, and directed NEPA reform.

Finally, consistent with the directive in E.O. 14154 and guidance from CEQ, numerous agencies have issued updates (either in the form of IFRs, proposed rules, or updated guidance) to their NEPA implementing procedures.³

³ See Fed. Energy Regulatory Comm’n, *Removal of References to the Council on Environmental Quality’s Rescinded Regulations, Final Rule*, 90 FR 29423 (July 3, 2025) to be codified at 18 CFR pt. 380 and 18 CFR pt. 385; Fed. Energy Regulatory Comm’n, Office of Energy Products, *Staff Guidance Manual on Implementation of the National Environmental Policy Act* (June 2025); Dep’t of Energy, *Revision of National Environmental Policy Act Implementing Procedures, Interim Final Rule*, 90 FR 29676 (July 3, 2025) (to be codified at 10 CFR pt. 205 and 10 CFR pt. 1021); Dep’t of Energy, *National Environmental Policy Act Implementing Procedures* (June 30, 2025); Dep’t of Defense, *National Environmental Policy Act Implementing Procedures: Appendix A Department of Defense Categorical Exclusions* (June 30, 2025); Dep’t of the Air Force, *Removal of Environmental Impact Analysis Process (ELAP) Regulation, Interim Final Rule*, 90 FR 28021 (July 1, 2025) (to be codified at 32 CFR pt. 989); Dep’t of the Army, *Environmental Analysis of Army Actions (AR 200–2), Interim Final Rule*, 90 FR 29450 (July 3, 2025) (to be codified at 32 CFR pt. 61); Dep’t of the Navy, *Recission of Procedures for Implementing the National Environmental Policy Act (NEPA), Interim Final Rule*, 90 FR 29453 (July 3, 2025) (to be codified at 32 CFR pt. 75); Dep’t of the Army, Corps of Engineers, *Procedures for Implementing NEPA; Removal, Interim Final Rule*, 90 FR 29461 (July 3, 2025) (to be codified at 33 CFR pt. 230); Dep’t of the Army, Corps of Engineers, *Procedures for Implementing NEPA; Processing of Department of the Army Permits, Interim Final Rule*, 90 FR 29465 (July 3, 2025) (to be codified at 33 CFR pts. 320, 325, 333); Dep’t of the Interior, Office of the Sec’y, *National Environmental Policy Act Implementing Regulations, Interim Final Rule*, 90 FR 29498 (July 3, 2025) (to be codified at 43 CFR pt. 46); Dep’t of the Interior, Dep’t Manual, 516 DM 1—U.S. Department of the Interior Handbook of National Environmental Policy Act Implementing Procedures (June 2025); Dep’t of the Interior, Dep’t Manual, 516 DM 1—U.S. Department of the Interior Handbook of National Environmental Policy Act Implementing Procedures, Appendix 1: Actions Normally Requiring an Environmental Assessment or Environmental Impact Statement (June 2025); Dep’t of the Interior, Dep’t Manual, 516 DM 1—U.S. Department of the Interior Handbook of National Environmental Policy Act Implementing Procedures, Appendix 2: Bureau Categorical Exclusions (June 2025); Dep’t of the Interior, Dep’t Manual, 516 DM 1—U.S. Department of the Interior Handbook of National Environmental Policy Act Implementing Procedures, Appendix 3: Implementation Guidance to Bureaus (June 2025); Dep’t of Agriculture, *National Environmental Policy Act, Interim Final Rule*, 90 FR 29632 (July 3, 2025) (to be codified at 7 CFR pt. 1 and 36 CFR pt. 220); Dep’t of Commerce, Econ. Dev. Admin., *Amendment to Environment Regulation, Final Rule*, 90 FR 29417 (to be codified at 13 CFR pt. 302) (July 3, 2025); Dep’t of Commerce, Econ. Dev. Admin., *EDA National Environmental Policy Act Implementing Directive 17.02–2* (revised June 30, 2025); Dep’t of Commerce, Nat’l Oceanic and Atmospheric Admin., *Companion Manual for NOAA Administrative Order 216–6A, Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities* (June 30, 2025); Dep’t of Commerce, Nat’l Telecommunications and Info. Admin., *Guidance on NTIA National Environmental Policy Act Compliance* (June 2025); Dep’t of Commerce, Nat’l

II. Comments

CEQ received approximately 108,385 written submissions in response to the IFR. The overwhelming majority of the comments (approximately 90,123) were campaign form letters sent in response to organized initiatives and identical or very similar in form and content. CEQ received approximately 457 unique public comments.

CEQ considered and is responding to substantive comments in this final rule. CEQ is providing summaries of and responses to these comments in the following section of this final rule. Both general support and opposition to the IFR were expressed by unique comments received. None of the comments received altered CEQ’s conclusion that, absent E.O. 11991, CEQ lacks authority to issue regulations binding on other agencies. CEQ therefore adopts as final the interim rule without changes.

General Comments on the Interim Final Rule

Comment: Several commenters expressed support for the IFR. These commenters asserted that the IFR is required by E.O. 14154 and the district court decision in *Iowa v. CEQ*,⁴ and is supported by the D.C. Circuit’s decision in *Marin Audubon Society v. FAA*. In particular, they expressed support for a consistent, efficient, effective, and balanced NEPA process that will allow for a clear focus on achieving NEPA’s

Inst. of Standards and Tech., *National Environmental Policy Act Procedures* (June 30, 2025); Dep’t of Commerce, First Responder Network Authority, *Procedures for Implementing the National Environmental Policy Act* (June 2025); Dep’t of Transportation, *Procedures for Considering Environmental Impacts, Notice*, 90 FR 29621 (July 3, 2025); Dep’t of Transportation, DOT Order 5610.1D, *DOT’s Procedures for Considering Environmental Impacts* (June 30, 2025); Dep’t of Transportation, Fed. Aviation Admin., *Notice of Rescission of FAA Order 1050.1F, Availability of FAA Order 1050.1G, Request for Comments, Notice*, 90 FR 29615 (July 3, 2025); Dep’t of Transportation, Fed. Aviation Admin., *Order 1050.1G—FAA National Environmental Policy Act Implementing Procedures* (June 30, 2025); Dep’t of Transportation, Fed. Highway Admin., Fed. Railroad Admin., Fed. Transit Admin., *Revision of National Environmental Policy Act Regulations, Interim Final Rule*, 90 FR 29426 (July 3, 2025) (to be codified at 23 CFR pt. 771, 49 CFR pt. 264, and 49 CFR pt. 622); and Dep’t of Transportation, Nat’l Highway Traffic Safety Admin., *Recission of NHTSA’s 1975 Procedures for Considering Environmental Impacts*, 90 FR 29507 (July 3, 2025) (to be codified at 49 CFR pt. 520).

⁴ On July 29, 2025, the U.S. Court of Appeals for the Eighth Circuit issued an order vacating the district court’s decision pursuant to the *Munsingwear* doctrine. Given the IFR’s prior removal of 40 CFR part 1500 from the Code of Federal Regulations, this order has no legal effect on the status of CEQ’s NEPA implementing regulations; CEQ’s removal preceded the Eighth Circuit’s order.

² See 90 FR at 10613. As CEQ explained in the IFR and as CEQ reaffirms here, none of the other statutory authorities cited in E.O. 11991 furnishes CEQ with independent regulatory authority. Section 309 of the Clean Air Act directs the EPA Administrator to refer environmentally problematic actions to CEQ. 42 U.S.C. 7609. But that provision merely reinforces CEQ’s advisory role; it does not transform CEQ into a regulatory agency. The same is true of the Environmental Quality Improvement Act of 1970, which allows CEQ to “assist” agencies—but not to command them. 42 U.S.C. 4372(d). Neither statute gives CEQ the power to independently issue NEPA implementing regulations and binding on other agencies, much less legislative rules with the force and effect of law.

central goal of improving agency decisionmaking.

Commenters also stated that CEQ's role under the statute is consultative and that the President, in rescinding E.O. 11991 and directing CEQ to rescind its regulations, returns CEQ to its statutory origins and purpose. Specifically, a commenter noted that Congress narrowly tasked CEQ with promulgating regulations for operation of the Office of Environmental Quality Management Fund. The commenter stated that this narrow grant of internal rulemaking authority to administer the Fund confirms that Congress did not delegate to CEQ the power to issue binding NEPA implementing regulations.

Commenters also stated that agencies, not CEQ, are in the best position to establish NEPA implementing procedures and regulations that fit their programs and authorities. These commenters explained that without CEQ's rules, agencies will better be able to tailor the NEPA process to their programs and authorities and will not be bound by a one-size-fits-all process. These commenters stated that additional agency flexibility will improve the efficiency and effectiveness of NEPA reviews and expressed the desire that CEQ help agencies achieve the goals for the reforms passed in the FRA, to continue transparency in the NEPA process, and to conduct effective engagement with State, local, and Tribal entities, and the public.

A commenter expressed general support for CEQ's NEPA reforms. The commenter asserted that changes to NEPA in recent years have contributed to regulatory uncertainty and resulting hesitancy among project proponents and commended CEQ's efforts to modernize, simplify, and accelerate NEPA reviews and support responsible development. Several commenters stated that the Trump Administration should seek lasting and durable change to modernize and improve the NEPA process.

Another commenter stated that NEPA has been used by opponents of development to needlessly stifle many important infrastructure projects. This commenter outlined examples of projects that the commenter asserts have been delayed through the NEPA process and specifically pointed to CEQ's regulations as unduly burdensome. This commenter was supportive of NEPA reform efforts, including the IFR.

Response: CEQ acknowledges these supportive comments.

Comments Requesting Extension of the IFR Comment Period

Comment: Various commenters requested that CEQ extend the comment period for the IFR. A commenter stated that CEQ's NEPA implementing regulations have served to protect the human environment through a coordinated Federal approach since 1978, and therefore asked CEQ to extend its comment period by "at least 90 additional days" to allow for additional analysis of the effects of the IFR and ability to comment on the proposed course of action. Commenters stated that the IFR changes the relationship between CEQ and Federal agencies and leads to considerable uncertainty and harm. For these reasons, they asserted that CEQ should provide the public with additional time for review and comment. Commenters also stated that the provided opportunity to comment is meaningless as the IFR was effective 15 days after the close of the comment period. One commenter noted that the two clarifications issued by CEQ during the comment period further limited the time the public has to comment on the IFR. One commenter requested that CEQ hold public hearings, as has been its past practice, during the comment period. One commenter stated that guidance from the Office of Management and Budget indicates that agencies should provide a 60-day comment period for significant rules like this one.

Response: As described in the IFR, CEQ maintains that notice and comment was not required because the rulemaking fell within various exceptions to notice-and-comment rulemaking. *See* 5 U.S.C. 553(b). Regardless, CEQ did provide notice and an opportunity to comment on the IFR for a 30-day period before the IFR took effect. CEQ determined that 30 days was adequate because the scope of the IFR was limited to rescinding the CEQ regulations. The IFR explicitly does not reconsider the substance of CEQ's prior NEPA rulemakings, including the 2020 rule, the Phase 1 rule, or the Phase 2 rule. The rescission action is not a highly technical or complex issue that warrants a longer comment period. Contrary to the assertion from commenters, OMB guidance does not require a 60-day notice and comment period for significant rulemakings. CEQ received more than 100,000 comments on its IFR, and the volume and substantive content of the comments received indicate that the public had an adequate opportunity to comment on the limited, non-technical rescission action.

Comments Requesting an Extension of the IFR Effective Date

Comment: Several commenters stated that CEQ should extend the effective date of the IFR for an additional period of time, ranging from 30 to 90 additional days. These commenters suggested that the IFR should not take effect until CEQ has fully considered comments on the IFR and complied with additional requirements, including under NEPA itself, the Endangered Species Act (ESA), and Executive Orders regarding State and Tribal consultation. Some commenters requested that CEQ suspend the effective date at least until coordinated agency-specific NEPA implementing regulations have been adopted. Other commenters stated that extending the effective date is consistent with the President's direction to CEQ to "propose rescinding" its regulations in E.O. 14154. Commenters also stated that setting an effective date for the IFR 45 days after publication constrained CEQ's ability to take a different course based on public comment.

Response: As explained in the IFR, CEQ determined that the most appropriate means to accommodate both the President's direction and the principles of public participation in regulatory action was to issue an IFR with an opportunity for comment for 30 days and an effective date 45 days after publication. *See* 90 FR 10,614. These periods served to provide fair notice to interested persons before the rule took effect, while also allowing 30 days for public comment. Consistent with that determination, CEQ is providing a response herein to comments received on the IFR. Throughout this response to comments, CEQ explains why no comments received alter its determination that it lacks authority to issue NEPA implementing regulations binding agencies in the absence of the now-rescinded E.O. 11991.

In E.O. 14154, the President revoked E.O. 11991 and directed CEQ to "propose rescinding" the CEQ NEPA implementing regulations. Together, these directions necessitated that CEQ undertake a process to implement a rescission of its regulations. Nonetheless, CEQ provided an opportunity to comment on the rescission and delayed the effective date of the rule until after the comment period closed, thus providing the agency with the opportunity to determine if any comments altered its position that it lacks authority to issue NEPA implementing regulations binding agencies in the absence of the now-rescinded E.O. 11991. After reviewing the comments, CEQ is issuing

this final rule replacing the IFR and confirming the rationale for its rescission. CEQ's actions are, therefore, consistent with the E.O., and CEQ disagrees that the E.O. requires CEQ to extend the effective date.

Furthermore, because CEQ has determined that the rescission was non-discretionary, CEQ was not required to conduct a NEPA review, engage in ESA consultation, or consult with States or Tribes. Finally, the rescission of CEQ's NEPA regulations did not effectuate any changes to agency-specific NEPA implementing procedures. In its February 19, 2025, guidance, CEQ explained that agencies should continue to follow their existing NEPA implementing procedures to the extent consistent with the current statutory text and E.O. 14154. Moreover, as CEQ explained in the IFR, while agencies update their procedures, they may voluntarily continue to look to the version of CEQ's regulations that was in effect at the time the agency action was completed when defending against specific challenges to project-specific NEPA reviews. As the E.O. directed, and consistent with 42 U.S.C. 4332(2)(B), CEQ is coordinating with the agencies to establish or revise their NEPA implementing procedures, but, given the continuing validity of the agency-level NEPA implementing procedures in the interim, no purpose would have been served in delaying the effective date of the IFR until any revisions of those agency-level procedures were completed.

Comments Requesting Presidential or Congressional Action

Comment: Various commenters urged the President to reinstate CEQ's rulemaking authority and the regulations revoked by the IFR. Absent reinstatement of CEQ's authority to issue regulations binding on other agencies, these commenters expressed a desire that Congress would intervene and enact legislation expressly authorizing CEQ to issue binding regulations.

Another commenter encouraged the Administration to work with Congress to amend NEPA to provide clarity and consistency among agency procedures to avoid uncertainty that comes with regulatory whiplash, such as with other environmental rulemakings.

Response: CEQ acknowledges the comments and notes that any actions that the President or Congress may take in the future are outside the scope of the IFR and this rulemaking.

Comments on CEQ's Rationale for Removing Its NEPA Implementing Regulations

Comment: Several commenters stated that CEQ failed to provide a reasoned explanation for the reversal in its position that it has authority to issue binding regulations. Other commenters stated, on the other hand, that CEQ lacks legal authority to promulgate binding regulations due to: (a) the lack of statutory authority to do so; and (b) President Trump's rescission of E.O. 11991.

Response: As explained in detail throughout this rulemaking process, in the absence of an executive order delegating rulemaking authority to CEQ, the agency lacks independent statutory authority to maintain its NEPA implementing regulations and binding agencies in their implementation of NEPA.

NEPA itself provides only that CEQ has a consultative role. For example, the statute instructs CEQ to "consult[]" with agencies on the "develop[ment] of methods and procedures" to "ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations." 42 U.S.C. 4332(2)(B). And CEQ is directed to "develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation." 42 U.S.C. 4344(4). Absent from those provisions is any delegation of rulemaking authority by Congress to CEQ related to agencies' implementation of NEPA.

Consistent with that statutory framework, in 1970, President Nixon issued E.O. 11514, which, among other things, instructed CEQ to "[i]ssue guidelines to Federal agencies for the preparation of detailed statements on proposals for legislation and other Federal actions affecting the requirement, as required by section 102(2) of" NEPA. 35 FR 4247, 4248 (Mar. 7, 1970). Then, in 1977, President Carter issued E.O. 11991, which directed that CEQ "[i]ssue regulations to Federal agencies for the implementation of the procedural provisions" of NEPA and instructed agencies to "comply with the regulations issued by" CEQ unless otherwise inconsistent with their statutory requirements. 42 FR 26967, 26967–68 (May 25, 1977).

However, E.O. 14154 rescinded E.O. 11991 in its entirety. 90 FR 8353, 8355 (Jan. 29, 2025). That Order instructed

CEQ to: (1) "provide guidance on implementing" NEPA; and (2) "propose rescinding CEQ's NEPA implementing regulations found at 40 CFR 1500 *et seq.*" *Id.* Sec. 5(b). It also instructed CEQ to work with agencies as they revised their own, agency-specific NEPA implementing procedures to ensure consistency and conformity to the statute as amended in 2023 and, consistent with applicable law, the policies of E.O. 14154. Sec. 5(c). In other words, E.O. 14154 removed any Presidential delegation of rulemaking authority, and returned CEQ to its Congressionally directed role of consultation with agencies as they develop and maintain their own methods to govern their environmental analysis under NEPA. *See* 42 U.S.C. 4332(2)(B); *see also* E.O. 11514, 35 FR 4247 (Mar. 7, 1970) (an instruction contemporaneous with the passage of the statute).

Thus, while commenters are correct that CEQ promulgated regulations in 1978, subject to repeated regulatory amendment thereafter, each iteration of those regulations was based on the Presidential authority and direction to promulgate regulations provided by Executive Order 11991. Without that E.O., CEQ has determined that it lacks authority to promulgate regulations or to maintain the regulations that it had historically promulgated.

Many commenters addressed the issue of whether President Carter had authority to issue E.O. 11991 and delegate rulemaking authority to CEQ in the first instance. That issue is beyond the scope of this rulemaking. Irrespective of whether the President has the authority to delegate rulemaking authority to CEQ to govern agencies' implementation of NEPA, the President has rescinded that delegation of authority. Thus, the agency determined it lacks authority to maintain its regulations and must repeal them. CEQ adopts as final that action in this rulemaking.

Comment: Several commenters stated that neither the D.C. Circuit Court's opinion in *Marin Audubon Society v. FAA* nor the North Dakota District Court's opinion in *Iowa v. CEQ* amount to a final or binding judicial ruling that CEQ lacks rulemaking authority, and therefore that CEQ did not need to rescind its regulations in view of these authorities.

Response: As described above, CEQ's rescission of its NEPA implementing regulations is based on the President's rescission of E.O. 11991 and consistent with his direction to CEQ to undertake a process to rescind CEQ's NEPA implementing regulations. E.O. 14154,

90 FR 8353 (Jan. 29, 2025). Thus, commenters' views regarding *Marin Audubon* and *Iowa v. CEQ* are unrelated to the agency's discretion or action to rescind its regulations here. CEQ therefore disagrees that the binding or nonbinding nature of these cases affects its decision to rescind its regulations.

Comment: Several commenters stated that CEQ has authority to issue regulations binding on other agencies based on NEPA's mandate that CEQ develop and recommend national policies to foster and promote the improvement of environmental quality in 42 U.S.C. 4342 and 4344(4). These commenters also pointed to CEQ's responsibility, set forth in 42 U.S.C. 4344(3), for overseeing the various programs and activities of the Federal Government in light of the policy set forth in NEPA and CEQ's responsibility to consult with agencies to identify methods and procedures for complying with NEPA in 42 U.S.C. 4332(2)(B) as provisions that confer rulemaking authority on CEQ. Commenters asserted that Congress entrusted CEQ with flexibility to chart its implementation of NEPA and that it would be up to the White House to determine how best to proceed, whether through developing policies, guidance, or regulations. Commenters asserted that, at the time of NEPA's passage, there was little discussion of regulations because the doctrine of rulemaking authority had not been fully articulated when NEPA was originally enacted.

Response: None of the provisions of NEPA the commenters identify grants regulatory authority to CEQ. Instead, those provisions are consistent with CEQ's consultative role. CEQ's duty to "recommend" policies for the improvement of environmental quality, as in 42 U.S.C. 4342 and 4344(4), points to an advisory function rather than the power to bind other agencies through the issuance of regulations. Likewise, the directive to CEQ to "review and appraise" Federal Government activities and "make recommendations to the President with respect thereto," in 42 U.S.C. 4344(3), exemplifies a consultative role in support of the President's role in coordinating Executive functions. And the statement in 42 U.S.C. 4332(2)(B) that "all agencies of the Federal Government shall . . . identify and develop methods and procedures, in consultation with the Council on Environmental Quality" to ensure appropriate consideration of environmental concerns gives agencies, not CEQ, primary responsibility for implementing NEPA, with CEQ functioning as an advisory body. Thus, the statutory language commenters have

identified does not contain language sufficient for CEQ to find that it has independent regulatory authority via direct statutory delegation. CEQ agrees with the commenters to the extent they express that the President had authority to rescind E.O. 11991 and chose to exercise that authority in E.O. 14154. CEQ, as a result, views this action to rescind all iterations of its NEPA implementing regulations as non-discretionary in the absence of that delegation of Presidential authority.

Comment: Several commenters asserted that Congress has ratified CEQ's authority to issue binding regulations by codifying certain elements of CEQ's regulations in the NEPA amendments that were enacted as part of the FRA. One commenter stated that congressional activities since NEPA's passage constitute both ratification and acquiescence to CEQ's exercise of rulemaking authority. The commenter points to a Senate Committee on Environment and Public Works oversight hearing a year after the regulations took effect. The commenter also pointed to an oversight hearing on the regulation's impact on Rural Electric Cooperatives, and asserted that Congress has in various other statutes employed or otherwise relied on the existence of CEQ's regulations.

Response: In the FRA, Congress codified into statute certain provisions from aspects of CEQ's regulations. Congress did not, however, address the question of CEQ's authority to promulgate binding regulations, even though it was indisputably aware of CEQ's past practices.⁵ In fact, when Congress intended to grant rulemaking authority to CEQ, it did so explicitly and in limited fashion; the 1984 amendments to the Environmental Quality Improvement Act established the Office of Environmental Quality Management Fund and authorized CEQ, serving as the Director of the Office of Environmental Quality, to promulgate regulations and procedures for

operation.⁶ This Congressional practice demonstrates that, when Congress chooses to confer regulatory authority to CEQ, it does so explicitly, which undermines any argument that Congress implicitly granted CEQ regulatory authority elsewhere in NEPA.

Nor did Congress tacitly ratify CEQ's rulemaking authority. The most that can be said is that Congress legislated against the backdrop created by E.O. 11991's authorization and direction to CEQ to promulgate NEPA implementing regulations, and that in the FRA in 2023, Congress chose not to disturb that backdrop. Moreover, in passing the FRA, Congress could not have ratified CEQ's authority to issue binding regulations based on NEPA *alone*, given that E.O. 11991 was in effect when that law was enacted. Since then, however, the President has chosen to rescind E.O. 11991.

Comment: Several commenters assert that by cross-referencing portions of CEQ's regulations in appropriations, infrastructure, and other legislation (such as the Fixing America's Surface Transportation Act of 2015 or the Water Infrastructure Improvements for the Nation Act of 2016), Congress ratified CEQ's authority to issue binding regulations.

Response: CEQ notes that, as commenters point out, various pieces of legislation cross-reference portions of CEQ's regulations. For example, the Fixing America's Surface Transportation Act of 2015 uses the term "environmental assessment," and defines it by reference to CEQ's now-rescinded regulations. 42 U.S.C. 4370m(8). The Water Infrastructure Improvements for the Nation Act of 2016 references CEQ's rescinded NEPA implementing regulations as setting the standard for environmental review by the Army Corps of Engineers. 33 U.S.C. 408(b).⁷

⁶ See 42 U.S.C. 4375(c).

⁵ Congress has long been aware of this issue. Before the Senate Environment and Public Works Subcommittee on Superfund, Ocean, and Water Pollution in 1989, then-CEQ Chairman Alan Hill urged Congress to provide CEQ with clear statutory authority to regulate. *Amending the National Environmental Policy Act*, Hearing before Subcomm. on Superfund, Ocean, and Water Protection, S. Hrg. 101-132 (June 1, 1989) ("I think the first thing—and the legislation does touch on this—is granting statutory authority to the Council to promulgate regulations. Now, the regulations guiding the NEPA process for our Government are solely based on an authorization from executive order, and those are always subject to challenge."); see also *id.* (Testimony of Michael McCloskey, Chairman of Sierra Club) (urging Congress to empower CEQ by codifying E.O. 11991 in law, which would in turn "provide a statutory basis for [the 1978 regulations]").

⁷ Other statutes commenters have cited to this effect include the FAA Reauthorization Act of 2024, Public Law 118-63, Section 230 (2024); the Building Chips in America Act of 2023, Public Law 118-105, Section 2 (2024); the Hazard Eligibility and Local Projects Act of 2022, Public Law 117-332, Section 2 (2023); the NDAA for FY 2023, Public Law 117-263, Section 8134 (2022); the Infrastructure Investment and Jobs Act, Public Law 117-58, Section 11301, 11312, 11318, 40106 (2021); the Consolidated Appropriations Act of 2021, Public Law 116-260, Section 102 (2020); the Additional Supplemental Appropriations for Disaster Relief Act of 2019, Public Law 116-20 Title XI (2019); the Consolidated Appropriations Act of 2019, Public Law 115-245, Section 8141 (2018); the Bipartisan Budget Act of 2018, Public Law 115-123, Section 21101 (2018); the Agriculture Improvement Act of 2018, Public Law 115-334, Section 8611 (2018); the FAA Reauthorization Act of 2018, Public Law 115-254, Section 1220 (2018); the

However, none of these laws ratifies CEQ's authority to issue binding regulations. Instead, these cross-references—at most—define statutory terms or identify statutorily required processes by importing those terms or processes from CEQ's regulations as they existed at the time the legislation in question was enacted. Indeed, many simply refer agencies to follow processes set forth in the NEPA implementing regulations, like the use of categorical exclusions and different tiers of environmental review. Notably, Congress chose to codify provisions addressing precisely these NEPA procedural issues, among others, in the 2023 amendments—again, without amending the statute to delegate rulemaking authority to CEQ. Further, each of these statutes came into force while E.O. 11991 was in effect. Congress was therefore legislating against the backdrop created by President Carter's authorization and direction to CEQ to promulgate NEPA implementing regulations. Therefore, at most, Congress acquiesced to the President's authority to direct CEQ to promulgate NEPA implementing regulations.

Comment: Some commenters stated that while CEQ and the Executive do have the authority to propose amendments and changes to

rulemaking, they do not have the authority to remove 40 CFR parts 1500 to 1508 in their entirety. The commenters opined that by rescinding the regulations CEQ fails to meet its responsibilities as established in 42 U.S.C. 4321 to 4327 (“[p]romote efforts that will prevent and eliminate damage to the environment and promote public health”); 42 U.S.C. 4371 to 4375 (“[p]revent and control environmental pollution”); and E.O. 11514 (“[e]valuate environmental and public health impacts of proposed policies by the Federal Government; [r]ecommend to the President policies that achieve more effective protection and enhancement of environmental quality; [d]etermine the need for new policies and programs for dealing with environmental problems not being adequately addressed; [i]ssue guidelines to federal agencies on how policies and other federal projects affect the environment; [f]oster investigations, studies, surveys, research, and analyses related to ecological systems and environmental quality, the impact of new and changing technologies thereon, and means of preventing or reducing adverse effects from such technologies”). Another commenter stated that CEQ could not claim both that it may not have the authority under the NEPA statute to issue such regulations and that very same statute gives them the authority to issue this IFR. The commenter stated that the E.O. 11991 could have been used to promulgate the IFR before it was rescinded.

Response: Nothing in the provisions cited by the commenters requires CEQ or any agency to issue or have regulations to effectuate the mandates listed above. The authority CEQ cited when first establishing its NEPA implementing regulations was the statute in combination with E.O. 11991; the authority for repealing those regulations is likewise the statute in combination with E.O. 14154.

Comment: One commenter stated that the President could not unilaterally revoke an agency's authority to issue regulations binding on other agencies under a particular statute. The commenter states that a President cannot unilaterally revoke an authority given to an agency by way of legislation and that CEQ itself admits it is unsure if Congress has or has not done so in NEPA.

Response: In the absence of an executive order delegating rulemaking authority to CEQ, the agency lacks authority to maintain its NEPA implementing regulations and binding agencies in their implementation of NEPA. Congress has not delegated,

whether by ratification or otherwise, any rulemaking authority to CEQ.

Comment: Several commenters asserted that the Supreme Court, as well as lower courts, have affirmed CEQ's authority to promulgate binding regulations. As one example, commenters noted that the Supreme Court has stated that CEQ was “established by NEPA with authority to issue regulations interpreting it, [and] has promulgated regulations to guide Federal agencies in determining what actions are subject to that statutory requirement.” *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 757 (2004).

Response: None of the court decisions commenters reference holds that NEPA empowers CEQ to promulgate regulations binding on agencies. Instead, the decisions variously state that CEQ's NEPA implementing regulations are entitled to deference or bind agencies—but do not examine the underlying source of CEQ's authority to issue regulations. None of these court decisions therefore supports the proposition that CEQ has authority to maintain those regulations after the rescission of E.O. 11991, and none changes CEQ's view that it lacks rulemaking authority after that rescission. First, the statement in *Public Citizen* is likely dictum. Second, to the extent that the Supreme Court in *Public Citizen* was observing that Congress intended CEQ to issue what the Administrative Procedure Act refers to as “interpretative rules,” those are not equivalent to binding, “legislative” regulations. Congress has not delegated authority to CEQ to issue legislative regulations and the Supreme Court has not held otherwise. Third, the Supreme Court in *Public Citizen* spoke of CEQ “guid[ing]” other agencies. That role of issuing guidance is grounded in NEPA's text, 42 U.S.C. 4332(2)(B), requiring all agencies to “consult” with CEQ as the agencies “identify and develop methods and procedures” to conduct NEPA analyses. But that, again, is not a delegation by Congress of regulatory authority to CEQ to bind agencies in their implementation of NEPA.

Comment: Several commenters questioned whether rescission of CEQ's NEPA implementing regulations appropriately recognizes and accounts for their asserted reliance interests in a regulatory system that has been in place since 1978. Some commenters asserted that States' interests are specially implicated because they participate in the environmental review process. The commenters opined that States have significant resources devoted to NEPA implementation and the change would require them to invest more resources in

Consolidated Appropriations Act of 2018, Public Law 115–141, Section 121 (2018); the Reinforcing Education Accountability in Development Act of 2017, Public Law 115–56, Section 7 (2017); the NDAA of 2017, Public Law 114–328, Section 341 (2016); the Consolidated Appropriations Act of 2016, Public Law 114–113, Section 420 (2016); the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act of 2017, Public Law 114–223, Section 145 (2016); the Water Resources Reform and Development Act of 2014, Public Law 113–121, Section 1005 (2014); the Supplemental Appropriations Act of 2013, Public Law 113–2 Title VIII (2013); the Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act, Public Law 113–24, Section 2 (2013); the Moving Ahead for Progress in the 21st Century Act of 2012, Public Law 112–141, Sections 1315–18 (2012); the FAA Modernization and Reform Act of 2012, Public Law 112–95, Section 213 (2012); the Omnibus Appropriations Act of 2009, Public Law 111–8, Section 423 (2009); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005, Public Law 109–59, Section 6001 (2005); the Energy Policy Act of 2005, Public Law 109–58, Section 390 (2005); the Amendment of Federal Food, Drug, and Cosmetic Act of 2004, Public Law 108–282, Section 102 (2004); the Healthy Forest Restoration Act of 2003, Public Law 108–148, Section 404 (2003); the Consolidated Appropriations Resolution of 2003, Public Law 108–7, Section 403 (2003); the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century Act of 2000, Public Law 106–181, Section 803 (2000); the NDAA of 1996, Public Law 104–106, Section 2897 (1996); the National Highway System Designation Act of 1995, Public Law 104–59, Section 316 (1995); and the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, Section 5041 (1987). None of these expressly ratify CEQ's authority to issue binding regulations.

environmental review processes because staff assigned in each State must familiarize themselves with the regulations of the individual Federal agencies involved in each project.

Response: CEQ acknowledges commenters' concerns. However, CEQ does not have the authority to maintain its NEPA implementing regulations and binding agencies in their implementation of NEPA in the absence of a delegation of authority from the President under the now-rescinded E.O. 11991. As described elsewhere in this rulemaking, CEQ has determined that, without delegated authority from the President, the agency lacks authority to promulgate or maintain regulations implementing NEPA and binding agencies in their implementation of NEPA. The question of the validity of that now-rescinded delegation of authority from the President is beyond the scope of this final rule, because CEQ's conclusion is that, whatever its validity, its rescission leaves CEQ without authority to maintain its NEPA implementing regulations and binding agencies in their implementation of NEPA.

CEQ has considered whether any reliance interests constitute an independent basis for CEQ to take a different action. In brief, CEQ has concluded that they do not.

As an initial matter, CEQ's NEPA implementing regulations established procedures that only bind and direct Federal agencies. They do not impose fines or liability, confer discretionary benefits, or alter third parties' substantive statutory rights. Nor could CEQ's regulations have done so given that, as the Supreme Court emphasized in *Seven County*, "NEPA is a purely procedural statute." 145 S. Ct. at 1507. "NEPA 'does not mandate particular results, but simply prescribes the necessary process' for an agency's environmental review of a project[.]" *id.* at 1510 (citations omitted). Thus, to the extent that non-Federal entities have any reliance interests, those interests relate to the environmental review accompanying a specific agency action, and any pertinent agency specific processes concerning that environmental review, rather than to CEQ's overarching regulatory framework governing agencies' reviews. And, as discussed further below, CEQ has taken steps to ensure that at the agency level, environmental reviews remain predictable and efficient.

Moreover, rescission of CEQ's regulations does not alter an agency's duty to comply with the statute. As discussed in the preamble to the IFR, agencies maintain procedures that

govern their implementation of NEPA. CEQ's rescission did not effectuate the revision or rescission of any agency's NEPA implementing procedures. Indeed, in coordination with CEQ, some agencies have already updated or replaced their procedures to incorporate the FRA amendments to NEPA, the policies set forth in E.O. 14154 (as informed by CEQ's February 19, 2025 guidance), CEQ's rescission of its NEPA implementing regulations, and the Supreme Court's decision in *Seven County*.⁸

Through their individual implementing procedures, agencies tailor NEPA implementation to their particular statutory authorities, policies, and programs, resulting in improved efficiency. In addition, CEQ ensures consistency across the Federal Government by consulting with agencies on their NEPA implementing procedures, consistent with section 102(2)(B) of NEPA, 42 U.S.C. 4332(2)(B), and section 5 of E.O. 14154.

While some commenters asserted reliance interests in the predictable and efficient implementation of environmental reviews, those interests are ultimately implicated by agencies' project-specific NEPA reviews, not CEQ's rescission of its NEPA implementing regulations. As CEQ explained in the IFR, while agencies update their procedures, they may voluntarily continue to look for guidance in the version of CEQ's regulations that was in effect at the time an agency action was completed when defending against specific challenges to NEPA reviews. And as the February 19 guidance makes clear, an agency may use its existing procedures—with any adjustments necessary for consistency with the FRA amendments, the guidance, and E.O. 14154—to complete ongoing environmental reviews while that agency is undertaking the process of revising its own NEPA implementing procedures or regulations. This approach is consistent with CEQ's longstanding practice to direct agencies to rely on the CEQ regulations and agency NEPA procedures that were in effect when an ongoing environmental review was initiated, prior to changes in regulations or agency NEPA procedures taking effect.⁹

⁸ As of the date of this filing, over a dozen departments and agencies have published new or revised NEPA implementing procedures since CEQ's rescission became effective on April 11, 2025. For a list of recently completed updated procedures, please see footnote 4.

⁹ See 40 CFR 1506.12(a) (1978) ("These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These

Moreover, CEQ has taken steps to ensure consistency and efficiency across agency implementation of NEPA in the absence of CEQ's regulations. CEQ first issued its February 19, 2025 guidance to provide agencies with initial direction during the interim period before agencies are able to update their procedures. CEQ also convened a working group of select agencies and CEQ is continuing to work with agencies consistent with its statutory role and the President's direction in E.O. 14154 to coordinate the revision of agency-level implementing procedures for consistency. CEQ is in the process of publishing revised guidance informed by the discussions with the working group and CEQ's consultation with agencies that have already revised their NEPA implementing procedures. The revised guidance includes a template for agency NEPA implementing procedures, providing CEQ's view of an appropriate framework for agencies to use in revising their procedures to ensure conformity to the statute as amended, to the President's policies, and to the Supreme Court's *Seven County* opinion, and to reflect the rescission of CEQ's NEPA implementing regulations; agencies may further tailor this template to their particular programs and authorities.¹⁰ These measures further ensure the continuation of predictable and efficient implementation of environmental reviews.

Finally, with respect to State interests in maintaining CEQ's NEPA implementing regulations, the rescission does not change the statutory mandate for agencies to ensure a coordinated

regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations."); 40 CFR 1506.13 (2020); 85 FR 43304, 43339 (July 16, 2020) ("Finally, CEQ proposed to modify 1506.13, 'Effective date,' to clarify that these regulations would apply to all NEPA processes begun after the effective date, but agencies have the discretion to apply them to ongoing NEPA processes"); 40 CFR 1506.12 (2024); 89 FR 35442, 35530 (May 1, 2024) ("Section 1506.12 requires agencies to comply with the regulations for proposed actions begun after the effective date of the final rule. Agencies are in the best position to determine on a case-by-case basis whether applying provisions of the revised regulations to ongoing reviews will facilitate a more effective and efficient process, and CEQ declines to limit agency flexibility in this regard. Regarding potential conflict with existing agency procedures, an agency's existing NEPA procedures remain in effect until the agency revises its procedures consistent with 1507.3. . . . Additionally, CEQ notes that the Fiscal Responsibility Act's amendments to NEPA were effective upon enactment, so to the extent the regulations implement provisions of the NEPA amendments, these are applicable to ongoing reviews.").

¹⁰ See 90 FR 47734 (Oct. 2, 2025) and <https://ceq.doe.gov/guidance/guidance.html>.

environmental review process with the States. *See* 42 U.S.C. 4332(2)(C), 4332(2)(G), 4332(2)(J), 4334, and 4336a. In addition, any States that implement NEPA's requirements pursuant to other Federal law must continue to adhere to the relevant Federal agency NEPA implementing procedures, as applicable. Consistent with the statute, Federal agencies have maintained their own individual NEPA procedures to address their unique missions and programs. *See* 42 U.S.C. 4332(2)(B). The need for States, stakeholders, and the public to become familiar with them for the particular projects or actions at hand does not change with CEQ's rule rescission.

Comment: Several commenters asserted that some States maintain environmental review legislation or regulations that rely on CEQ's NEPA implementing regulations to ensure a coordinated State and Federal review process. The commenters opined that removing CEQ's NEPA implementing regulations would make it more difficult for States to rely on NEPA analyses for joint analyses under State and Federal law. Another commenter, however, stated that CEQ's NEPA implementing regulations are not needed because States already have comprehensive environmental review procedures that are well-developed and closely aligned with NEPA's core objectives, facilitating informed decisionmaking, engaging the public, and identifying environmental impacts and alternatives.

Response: CEQ will continue to work with agencies consistent with the President's direction in E.O. 14154 and its statutory role to ensure that the NEPA review process is efficient and, to the extent possible, avoids duplication with other environmental review processes. Moreover, rescission of CEQ's regulations has no effect on States' ability to regulate State-level actions. While commenters did not explain how these States relied upon CEQ's regulations specifically—rather than on statutory requirements or agency-specific implementing procedures—Federal agencies will continue to implement NEPA in an orderly and efficient manner pursuant to their own NEPA implementing procedures in a manner that takes into account other review processes and avoids duplication.

Comment: Numerous commenters raised concerns about or offered suggestions regarding the topics included in CEQ's February 19, 2025 guidance and potential future guidance, as well as suggestions for processes to be included in individual agency procedures.

Response: While CEQ acknowledges the commenters' suggestions, the content of individual agency procedures and any future CEQ guidance is beyond the scope of this rulemaking.

Comment: A commenter stated that the IFR creates uncertainty. A commenter stated that the removal of CEQ's implementing regulations is inconsistent with what the commenter described as Congress' vision of standardized, comprehensive procedures for environmental review with meaningful public engagement. Another commenter stated that Congress, federal courts, and the public have shared the understanding that CEQ's NEPA implementing regulations bind agencies and ensure that agencies adequately evaluate, consider, and share with the public the environmental effects of projects and their alternatives. The commenter stated that the removal of CEQ's regulations is counter to what the commenter describes as this longstanding shared understanding and to NEPA's text and purpose. More specifically, a commenter stated that CEQ's rescission of its NEPA implementing regulations strips away critical regulatory guardrails and undermines the very purpose of NEPA. Another commenter stated that NEPA has saved taxpayers countless dollars, protected wildlife, and ensured responsible Federal decisionmaking.

Response: While these commenters described their own interpretations of NEPA, none of them have substantiated the position that Congress provided the authority to CEQ to establish binding regulations for environmental reviews under NEPA in the absence of an executive order. Rather, NEPA requires that agencies consult with CEQ on their methods and procedures for implementing the statute. *See* 42 U.S.C. 4332(2)(B). As explained above, through this consultative role and the provision of guidance, CEQ is working to ensure consistency across the Federal Government regarding NEPA implementation.

Regardless of these asserted harms, CEQ has determined that it lacks the discretion to alter its action. CEQ first promulgated its NEPA implementing regulations in response to and citing as authority, E.O. 11991, and consistently cited that E.O. as authority when revising its implementing regulations. The President removed this authority when he rescinded the E.O. and at the same time, directed CEQ to begin the process of rescinding its NEPA implementing regulations. CEQ is issuing this final rule to respond to comments and explain to the public that it is reaffirming its decision to rescind

its NEPA implementing regulations as CEQ lacks the authority to maintain those regulations after the revocation of E.O. 11991. Neither the IFR nor this rulemaking alter agency obligations under the NEPA statute or remove any of the benefits that environmental review may provide.

Comments on the Interim Final Rule Process

Comment: Several commenters disagreed that CEQ had good cause to waive the Administrative Procedure Act (APA) notice and comment requirements at 5 U.S.C. 553(b). These commenters stated that CEQ's IFR did not establish that notice and comment is unnecessary, impracticable, or contrary to the public interest. More specifically, these commenters disagreed that CEQ had good cause to proceed with an IFR to meet the 30-day deadline in E.O. 14154, and instead stated that the President merely directed CEQ to “propose rescinding” its regulations within 30 days. Commenters also stated that self-imposed deadlines do not create good cause. Commenters also disagreed that CEQ needed to act swiftly to reduce confusion stemming from recent judicial decisions from the D.C. Circuit and district court in North Dakota discussing CEQ's authority to promulgate regulations. These commenters asserted that, rather than reducing confusion and supporting the public interest, the IFR creates more confusion about how agencies will undertake their NEPA review processes.

In addition, several commenters disagreed that CEQ's rule to rescind the NEPA implementing regulations is an interpretative rule or a rule of agency procedure that does not require notice and comment, and stated that CEQ's underlying NEPA implementing regulations were not and could not be so categorized.

Response: As CEQ explained in the IFR, CEQ proceeded via IFR in response to E.O. 14154, which, among other things, revoked E.O. 11991, the E.O. that provided CEQ with delegated authority to promulgate its NEPA implementing regulations. Without E.O. 11991 and its delegation of Presidential authority, CEQ was obligated to rescind its NEPA implementing regulations. Regardless, the process by which CEQ rescinded its NEPA implementing regulations is not procedurally invalid because CEQ's IFR contained all of the elements of a notice of proposed rulemaking as required by the APA.¹¹ CEQ explained its position

¹¹ 5 U.S.C. 553(b); *see also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657 (2020).

with sufficient detail to put the public on notice that it was rescinding its NEPA implementing regulations and provided its rationale along with an opportunity to comment before the IFR's effective date.¹² The public understood the action CEQ was taking and took advantage of the opportunity to comment; CEQ received more than 100,000 comments on its IFR. Thus, while CEQ maintains that its IFR is subject to the exceptions set forth in 5 U.S.C. 553(b), this final rule represents the culmination of notice-and-comment rulemaking regardless of the initial procedural basis for the IFR.

As explained in the response to other comments, *no commenter* has identified any authority sufficient for CEQ to maintain its NEPA implementing regulations now that E.O. 11991 has been rescinded. Thus, CEQ is issuing this final rule to respond to comments and explain that it is reaffirming its decision to rescind its NEPA implementing regulations. This final rule therefore supersedes the IFR. As such, even if CEQ were incorrect in initially proceeding via IFR with an opportunity to comment, publication of this final rule has rectified any earlier error given that the public had the opportunity to comment prior to issuance of this final rule, thus rendering comments objecting to the IFR process moot.

Comment: Several commenters stated that since CEQ promulgated its NEPA implementing regulations by notice and comment rulemaking, CEQ was legally obligated to follow the same process when rescinding those regulations. These commenters stated that the President's direction in E.O. 14154 also requires notice-and-comment rulemaking.

Response: CEQ disagrees that it was foreclosed from employing an IFR because it previously promulgated its NEPA implementing regulations through another process. As CEQ explained in its IFR, CEQ proceeded via IFR in response to revocation of E.O. 11991. Without that E.O. and its delegation of Presidential authority, CEQ was obligated to rescind its NEPA implementing regulations. Moreover, CEQ disagrees that revocation of its regulations required notice and comment simply because those regulations were promulgated via notice and comment; CEQ's implementing regulations were promulgated when E.O. 11991 was effective and the agency took different procedural steps to carry out the Presidential directives in place at the time the regulations were issued.

Comment: Several commenters stated that CEQ did not have good cause to waive the 30-day period between issuing the IFR and the rule taking effect.

Response: CEQ provided 45 days between publishing the IFR and the effective date of the IFR. As CEQ explained in the prior comment responses, CEQ offered an opportunity for public comment. This final rule, including its response to comments submitted, now replaces the IFR and is effective immediately.

Comments on the Consequences of the Interim Final Rule

Comment: Some commenters stated that the IFR, by removing CEQ's NEPA implementing regulations, will result in increased litigation concerning NEPA's requirements, potentially delaying projects and increasing costs. Commenters also asserted that increased litigation over NEPA's requirements will raise the potential for conflicting judicial opinions, which will further complicate environmental review processes.

Response: The asserted harm that commenters raise is speculative. It is unclear whether or how the rescission will increase NEPA litigation. Agencies will continue to implement NEPA, consistent with their agency-specific NEPA implementing procedures, established in consultation with CEQ.¹³ As agencies revise their NEPA implementing procedures, CEQ will review them for consistency across the Government and with NEPA's requirements, as required by E.O. 14154 and consistent with CEQ's statutory role. Moreover, even if there were a risk of increased litigation, any such increased risk would not justify retaining the regulation because CEQ has determined that it lacks discretion over the decision to rescind its NEPA implementing regulations. E.O. 14154 rescinded E.O. 11991, which delegated CEQ the authority to issue its regulations, and directed CEQ to propose rescinding its regulations. CEQ is issuing this final rule to respond to comments and explain to the public that it is reaffirming its decision to rescind its NEPA implementing regulations as CEQ lacks the authority to maintain those regulations. Finally, these asserted harms, if they materialize, would stem from future agency action or would be addressed by the content of agency implementing procedures. As explained above, some agencies have recently revised their NEPA implementing procedures consistent with E.O. 14154,

while others are currently under review or in development. However, the contents of such agency procedures are beyond the scope of the IFR and this rulemaking.

Comment: Multiple commenters stated that the IFR's repeal of CEQ's NEPA implementing regulations will create confusion for Federal agencies and States applying CEQ's NEPA implementing regulations or incorporating them into other law. A commenter stated that the IFR undoes the 40-year history of stability and public review. Commenters stated that removal of CEQ's regulations will impede environmental reviews across the government, complicate coordination among agencies conducting joint environmental reviews of activities requiring multiple agency actions, and likely slow environmental review and permitting timelines. These commenters also stated that the loss of CEQ's NEPA implementing regulations will create uncertainty for Federal agencies in how they carry out streamlining mechanisms (*e.g.*, establishment of categorical exclusions, tiered reviews, emergency reviews) in their agency-specific NEPA processes.

Response: The asserted harm that commenters raise is speculative. It is unclear whether or how the rescission will increase confusion. Agencies will continue to implement NEPA, consistent with their agency-specific NEPA implementing procedures, established in consultation with CEQ.¹⁴ As agencies revise their NEPA implementing procedures, CEQ will review them for consistency across the Government and with NEPA's requirements, as required by E.O. 14154 and consistent with CEQ's statutory role. Moreover, any confusion would not require a different result. CEQ has determined that it lacks discretion over the decision to rescind its NEPA implementing regulations. E.O. 14154 rescinded E.O. 11991, which delegated CEQ the authority to issue its regulations, and directed CEQ to propose rescinding its regulations. CEQ is issuing this final rule to respond to comments and explain to the public that it is reaffirming its decision to rescind its NEPA implementing regulations as CEQ lacks the authority to maintain those regulations. Furthermore, CEQ notes that Congress's 2023 amendments to NEPA provided direction to agencies on many of the issues raised here, specifically categorical exclusions and programmatic reviews.

As directed in E.O. 14154 and consistent with its statutory role, CEQ is

¹² 5 U.S.C. 553(c) & (d).

¹³ See 42 U.S.C. 4332(2)(B).

¹⁴ *Id.*

working directly with agencies as they revise their NEPA procedures. Nothing in the IFR or this rulemaking abrogates the statutory requirement that agencies consult with CEQ when revising or developing their NEPA implementing procedures.

Accordingly, CEQ is working, to coordinate the revision of agency-level implementing regulations for consistency, as directed by Congress in section 102(2)(B) of NEPA, 42 U.S.C. 4332(2)(B), and the President in E.O. 14154, and several agencies have taken action to revise their NEPA implementing procedures. Therefore, commenters' concerns that future NEPA reviews may be deficient absent the CEQ NEPA implementing regulations are premature and speculative. Further, agencies can rely on their existing NEPA implementing procedures while revising their procedures, minimizing any uncertainty or inefficiency during that process.

Comment: Multiple commenters asserted that agencies, States, and stakeholders would experience increased delays and costs resulting from the IFR and the confusion they assert that it creates over NEPA's requirements, including confusion over how CEQ will fulfill its consultative role under the statute. One commenter stated that the IFR placed increased regulatory strain on States to evaluate impacts of Federal action.

Response: CEQ's rescission did not constitute the revision or rescission of any agency's NEPA implementing procedures. Many NEPA implementing procedures had not been updated following the 2023 Fiscal Responsibility Act's amendments to NEPA. This, as well as other circumstances that may be unique to agencies' missions and programs, was also a factor in agencies revising their NEPA implementing procedures.

In its February 19, 2025, guidance, CEQ explained that agencies should continue to follow their NEPA implementing procedures to the extent consistent with the current statutory text and E.O. 14154. Moreover, as CEQ explained in the IFR, while agencies update their procedures, they may voluntarily continue to look for guidance to the version of CEQ's regulations that was in effect at the time the agency action was completed when defending against specific challenges to NEPA reviews. Any States that implement NEPA's requirements pursuant to other Federal law will continue to adhere to the relevant Federal agency NEPA implementing procedures as they always have. As directed in E.O. 14154 and consistent

with its statutory role, CEQ is working with agencies as they revise their NEPA procedures, consistent with its statutory role under section 102(2)(B) of NEPA, 42 U.S.C. 4332(2)(B). In addition, as noted earlier in the response to comments, concurrent with this Final Rule, CEQ is publishing revised guidance informed by the working group and CEQ's consultation with agencies that have already revised their NEPA implementing procedures.¹⁵ These measures further ensure the continuation of predictable and efficient implementation of environmental reviews.

Comment: Many commenters stated that the rescission of the CEQ regulations will have negative public health and environmental consequences, including by curtailing public participation. Commenters specifically expressed concerns that the IFR would decrease government transparency and lead to less resilient infrastructure. Several commenters also stated that some communities will disproportionately face harm from the absence of CEQ's uniform NEPA implementing regulations. Some State government commenters indicated that States in particular have a vital interest in environmental protection and in ensuring that Federal agencies take a "hard look" at the environmental and public health consequences of their actions. These commenters stated that they would experience negative environmental outcomes without uniform NEPA implementing regulations.

Some commenters expressed concern about the effect on Tribal engagement, asserting that Tribes rely on CEQ's regulations to ensure that Federal agencies engage with Tribes on a government-to-government basis during NEPA reviews. These commenters asserted that the rescission of CEQ's NEPA implementing regulations raises the possibility that Federal agencies will fail to satisfy statutory, treaty, and constitutional obligations to Tribes when implementing NEPA.

Response: The harm that commenters assert is speculative. It is unclear whether or how the rescission will result in negative public health and environmental consequences confusion. Agencies will continue to establish NEPA implementing procedures in consultation with CEQ.¹⁶ CEQ will review agency procedures for consistency as required by E.O. 14154. CEQ has determined that it lacks

discretion over the decision to rescind its regulations; E.O. 14154 rescinded E.O. 11991, which delegated CEQ the authority to issue its regulations, and directed CEQ to propose rescinding its regulations. CEQ is issuing this final rule to respond to comments and explain to the public that it is reaffirming its decision to rescind its NEPA implementing regulations as CEQ lacks the authority to maintain those regulations.

In addition, as explained in the IFR, "the removal of CEQ's regulations does not strip agencies of discretion to continue following" their existing NEPA implementing procedures, which generally conform to the preexisting CEQ regulations. E.O. 14154 directs agencies to revise their NEPA implementing procedures consistent with the E.O. and CEQ guidance. Neither the IFR nor this rulemaking effectuates those revisions. Thus, commenters' concerns that future NEPA reviews may be deficient absent the CEQ NEPA implementing regulations are premature and speculative. Further, agencies can rely on their existing NEPA implementing procedures while revising those procedures, minimizing any uncertainty or inefficiency during that process. Nothing in the IFR or this rulemaking abrogates the statutory requirement that agencies consult with CEQ when revising or developing their NEPA implementing procedures, as agencies have been doing.

Similarly, neither the IFR nor this rulemaking alters agencies' duties towards Tribes. Regarding community impact, commenters' concerns appear to stem from separate Presidential actions revoking¹⁷ E.O. 14096¹⁸ and E.O. 12898.¹⁹ As explained elsewhere in this rule, the IFR and this rulemaking explicitly do not reconsider the substance of CEQ's prior NEPA rulemakings, including the 2020 rule, the Phase 1 rule, or the Phase 2 rule, and comments related to the substance of those prior rulemakings are outside the scope of this action to rescind CEQ's NEPA implementing regulations.

Comment: An individual commenter stated that the rescission of the CEQ's NEPA implementing regulations will place significant burdens on the 86

¹⁷ E.O. 14148, *Initial Rescissions of Harmful Executive Orders and Actions*, 90 FR 8237 (Jan. 28, 2025); E.O. 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, 90 FR 8633 (Jan. 31, 2025).

¹⁸ E.O. 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All*, 88 FR 25251 (Apr. 26, 2023).

¹⁹ E.O. 12898, *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 FR 7629 (Feb. 16, 1994).

¹⁵ See 90 FR 47734 (Oct. 2, 2025) and <https://ceq.doe.gov/guidance/guidance.html>.

¹⁶ See 42 U.S.C. 4332(2)(B).

Federal agencies that it asserts maintain NEPA implementing procedures. The commenter indicated that revising these procedures will require notice and comment rulemaking under the APA as well as interagency review under E.O. 12866. According to the commenter, this “demanding” process will slow government decisionmaking, causing projects to languish, with negative economic consequences.

Response: As explained in the IFR, “the removal of CEQ’s regulations does not strip agencies of discretion to continue following” their existing NEPA implementing procedures, which generally conform to the preexisting CEQ regulations. E.O. 14154 directs agencies to revise their NEPA implementing procedures consistent with the E.O. and CEQ guidance, but ongoing reviews should continue apace. Indeed, CEQ’s February 19, 2025, guidance indicates that “[a]gencies should not delay pending or ongoing NEPA analyses while undertaking these revisions,” and encourages agencies to apply their current NEPA implementing procedures, updated as necessary to reflect the statute, until revisions are complete.

Comments on Agency-Specific NEPA Procedures

Comment: Several commenters suggested topics or processes for agencies to include in agency-specific NEPA procedures to be developed or revised in light of the IFR and rescission of CEQ’s NEPA implementing regulations.

Among other things, commenters suggested agency-specific or sector-specific provisions and requested that agency procedures: include and expand on NEPA efficiencies such as programmatic environmental reviews, tiering, and categorical exclusions; limit alternatives analysis; prescribe mechanisms for public engagement and scoping; clarify the meaning of “major Federal action;” and fully implement the amendments to NEPA from the FRA.

Some commenters also requested that agencies provide notice and comment on agency procedures, pursuant to the APA, or that agencies consider agency-specific factors when determining if notice and comment is appropriate and reference the part of the APA that the agency used to determine whether notice and comment is required.

Response: Comments about revisions to agency-specific NEPA procedures are outside of the scope of this rulemaking. CEQ notes, however, that consistent with its statutory role, E.O. 14154 directed CEQ to issue guidance on implementing NEPA, which CEQ issued

on February 19, 2025. This guidance included multiple issues agencies should consider when developing or revising agency procedures. In addition, as noted earlier in the response to comments, CEQ is in the process of publishing revised guidance, which includes a template for agency NEPA implementing procedures, providing CEQ’s view of an appropriate framework for agencies to use in revising their procedures to ensure conformity to the statute as amended, to the President’s policies, and to the Supreme Court’s *Seven County* opinion, and to reflect the rescission of CEQ’s NEPA implementing regulations; the agencies may tailor this template to their particular programs and authorities. CEQ encourages commenters to direct their comments on agency-specific procedures to the appropriate department and agency, as applicable.

Comments on CEQ’s Ongoing Role and Guidance

Comment: Multiple commenters provided suggestions regarding CEQ’s ongoing role in the NEPA process, including requests for CEQ to issue guidance on particular topics of interest. These commenters stated that CEQ has an important statutorily authorized advisory role within the executive branch, including as a resource for Federal agencies in their implementation of NEPA. These commenters stated that CEQ should continue to ensure that agencies adopt practices and procedures to implement NEPA that are consistent with NEPA, and requested that CEQ continue to ensure that agency NEPA practices are consistent across the Federal Government. A few commenters also requested that CEQ develop resources to help the public and project sponsors understand the status of agency NEPA procedures and ongoing projects, such as a dashboard or website.

Response: Comments concerning CEQ’s ongoing role in the NEPA process are outside of the scope of this rulemaking. CEQ notes, however, that consistent with its statutory role, E.O. 14154 directed CEQ to issue guidance on implementing NEPA, which CEQ issued on February 19, 2025. The E.O. also directed CEQ to convene a working group to coordinate the revision of agency-level procedures for consistency. Consistent with the E.O. and NEPA, CEQ will continue to work with agencies to assist them in developing or revising their procedures and to ensure consistent NEPA application across the Federal Government. For example, as noted earlier in the response to comments, concurrent with this Final

Rule, CEQ is publishing revised guidance on implementing NEPA. In addition, the President has directed CEQ to establish a Permitting Innovation Center and, in consultation with the National Energy Dominance Council and relevant permitting agencies, to issue a Permitting Technology Action Plan for modernizing the technology used for Federal permitting and environmental review processes for infrastructure projects, including data-driven tools for providing transparency and reducing timeline uncertainty for environmental reviews.²⁰ On June 5, CEQ’s Permitting Innovation Center launched the Categorical Exclusion Explorer (CE Explorer), a technology tool that will increase transparency and streamline environmental review and permitting processes by providing a digitized public database of each Federal agency’s existing categorical exclusions established under NEPA.²¹

Comment: Numerous commenters generally supported the direction that CEQ provided in its February 19, 2025, memorandum to agencies on NEPA implementation, including the direction to agencies to revise their agency procedures within 12 months and regarding NEPA compliance prior to finalizing revisions to agency NEPA procedures. Several commenters also supported the direction that agencies use the 2020 rule as the basis for updates to agency procedures, while multiple other comments disagreed with this direction, noting their prior concerns with the 2020 rule. A few commenters also specifically disagreed with certain elements in the guidance, including the direction not to consider cumulative effects or community effects.

Many commenters suggested topics for future detailed CEQ guidance regarding NEPA implementation and agency procedures. Some commenters requested that CEQ issue detailed guidance and model or template regulations for agencies to follow in revising their NEPA implementing procedures. Other commenters requested that CEQ issue guidance on topics ranging from conducting effects analyses, including direct, indirect, and cumulative effects; appropriate consideration of community impact and greenhouse gas emissions; the scope of reasonable alternatives; the appropriate level of NEPA review; the meaning of “extraordinary complexity” as applied

²⁰ Council on Environmental Quality, Permitting Technology Action Plan, May 30, 2025. https://permitting.innovation.gov/CEQ_Permitting_Technology_Action_Plan.pdf.

²¹ The CE Explorer is available at: <https://ce.permitting.innovation.gov/>.

to page limits; functional equivalence; narrowly tailoring the purpose and need statement; effective communication with stakeholders; improved interagency coordination and collaboration; role of cooperating agencies; mitigation; and the definition of major Federal action, with a focus on “sufficient control and responsibility,” among others. Several of these commenters also requested that CEQ provide an opportunity for public comment on any future guidance.

Some commenters requested that CEQ provide guidance to address specific Tribal concerns and interests and expressed concern regarding CEQ’s direction in the February 19 memorandum that agencies “prioritize efficiency and certainty over any other policy objectives that could add delays and ambiguity to the permitting process.” These commenters urged CEQ to clarify in guidance and in the final rule that efficiency and certainty do not supersede the Federal Government’s trust responsibility and legal obligations to Tribal Nations. One commenter listed several specific elements for CEQ to consider for guidance related to Tribal interests.

Response: Comments on CEQ’s February 19, 2025 guidance are outside the scope of this rulemaking, as are comments on potential future CEQ guidance. However, CEQ notes that it will continue to work with agencies as they revise their agency NEPA implementing procedures and will share additional guidance as necessary and appropriate.

Comment: Some commenters requested that CEQ provide detail on the formation of the interagency working group established under Section 5(c) of E.O. 14154. Some commenters suggested that this working group include liaisons from the U.S. House of Representatives and the U.S. Senate Committees involved in NEPA reforms as well as non-Federal NEPA representatives.

Response: These comments are outside of the scope of this rulemaking. CEQ notes, however, that, consistent with its statutory role and as directed by the President through E.O. 14154, CEQ is convening a working group to coordinate the revision of agency-level implementing procedures for consistency.

Comments Regarding Compliance With E.O. 12866

Comment: One commenter indicated that the IFR constituted a “significant regulatory action” that required CEQ to prepare a cost-benefit analysis. The commenter stated that due to OMB’s

determination that the IFR qualifies as a “significant regulatory action,” CEQ must prepare either a rigorous cost-benefit analysis as required by E.O. 12866 section 6(a)(3)(C) or, at a minimum, the cost-benefit analysis required by section 6(a)(3)(B). The commenter requested CEQ to provide a rationale for its decision not to prepare the cost-benefit analysis.

Response: The assessments required by E.O. 12866 section 6(a)(3)(C) apply to actions that OIRA designates “economically significant” under E.O. 12866 section 3(f)(1). OMB determined that this action rescinding CEQ’s regulations is not “economically significant,” absent subsequent actions by agencies. As such, an E.O. 12866 section 6(a)(3)(C) assessment is not required for this rescission.

Comments Related to Regulatory Flexibility Act, E.O. 13272, and the Small Business Jobs Act of 2010

Comment: The Small Business Administration (SBA) submitted comments on the IFR, which it indicated reflect discussions with small businesses from multiple sectors of the economy. SBA stated that the small businesses generally supported the IFR, but noted some small businesses were apprehensive about how individual agencies may fill the void left by removing CEQ’s NEPA implementing regulations. SBA recommended that CEQ focus on reducing unnecessary confusion and prioritizing consistency while agencies revise their NEPA procedures and provided recommendations and examples from small businesses for how CEQ could achieve this goal.

Response: CEQ acknowledges the input from SBA on behalf of small businesses. As directed by the President through E.O. 14154, and consistent with its statutory role under NEPA, CEQ is coordinating with agencies as they review and revise their NEPA implementing procedures, as appropriate, to ensure consistency. However, that process is beyond the scope of the IFR and this rulemaking.

Comments on the Applicability of NEPA to the IFR

Comment: Several commenters indicated that CEQ should have undertaken a NEPA review for its rulemaking action. The commenters stated that the rulemaking is a major Federal action that may have significant environmental effects. Specifically, commenters stated that Federal agencies rely on CEQ’s NEPA implementing regulations and that repealing them will likely lead agencies to establish NEPA

implementing procedures with weaker, less environmentally protective requirements. Commenters claimed these were effects of CEQ’s action that the agency should have considered under NEPA.

Response: In rescinding E.O. 11991, the President removed CEQ’s authority to promulgate NEPA implementing regulations and directed CEQ to rescind its regulations. As a result, CEQ has determined that it lacks the discretion to retain its regulations, and NEPA does not apply to such nondiscretionary actions. *See* 42 U.S.C. 4336e(10)(B)(vii). Moreover, even assuming that CEQ retained some discretion, the rescission action did not require a NEPA analysis because it does not have independent environmental effects. The IFR does not authorize any specific agency activity or commit resources to any further agency action. For this reason, CEQ has consistently taken the position that a NEPA analysis is not required when agencies establish or update their NEPA procedures to apply to future Federal actions.²²

Comments Related to Federalism

Comment: A group of commenters representing State and local jurisdictions stated that CEQ did not follow the State consultation process mandated by E.O. 13132, *Federalism*. These comments state that direct application of CEQ’s regulations to Federal agencies has federalism implications as does the rescission of CEQ’s regulations. For example, some State government commenters asserted that the rescission of CEQ’s NEPA implementing regulations would increase burdens on States that have their own environmental review statutes. These commenters speculate that the rescission of CEQ’s uniform NEPA implementing regulations would require the States to prepare more documents under State environmental review laws because future federal NEPA documents under the patchwork of agency NEPA implementing regulations would be insufficient to satisfy State requirements.

Response: CEQ has determined that neither the IFR nor this rulemaking has federalism implications as these

²² CEQ’s position here is longstanding as evidenced by 40 CFR 1507.3(b)(3) (2024); 85 FR 43304, 43353–43354 (July 16, 2020); 88 FR 49924, 49965 (July 31, 2023); 89 FR 35442, 35532 and 35552 (May 1, 2024). *See also, Heartwood v. U.S. Forest Serv.*, 230 F.3d 947, 954–55 (7th Cir. 2000) (finding that neither NEPA or the CEQ regulations required the Forest Service to conduct an EA or an EIS prior to the promulgation of its procedures creating a CE). Nonetheless, CEQ voluntarily prepared a Special EA for its most recent revisions to its NEPA implementing regulations.

rulemakings concern Federal agency implementation of NEPA. The decision to rescind CEQ's NEPA implementing regulations does not impose specific requirements on States or require States to change their behavior. In addition, speculation regarding the inadequacy of future Federal environmental documents under agency-specific procedures is outside of CEQ's authority in this rulemaking as CEQ has determined that it lacks discretion over the decision to rescind its NEPA implementing regulations. Further, any concerns about the effect of the rescission on State environmental review laws and processes are likewise outside of scope; they are grounded first and foremost in the independent actions of State legislatures and State administrative agencies.

Comments Related to Tribal Consultation

Comment: Various Tribes and organizations representing Tribal interests requested formal government-to-government consultation regarding the IFR before the IFR took effect. The commenters noted that there was no communication or notification of the IFR before publication. Another Tribal commenter disagreed with CEQ's statement that the IFR does not require consultation with Tribal governments. The commenter stated that the IFR incorrectly states that it is not a regulatory policy with Tribal implications. This commenter and other commenters indicated that the rescission of the CEQ regulations would negatively affect how Federal agencies engage with Tribes through the NEPA process. The commenters requested that CEQ pause the effective date of the IFR until CEQ has completed government-to-government consultation with the Tribes.

Response: Pursuant to E.O. 13175, *Consultation and Coordination with Indian Tribal Governments* (Nov. 6, 2000), agencies must consult with Tribes before promulgating regulations with Tribal implications in certain instances, none of which are triggered here. Any harms the Tribes assert are speculative. Agencies will continue to implement NEPA, consistent with their agency-specific NEPA implementing procedures. As agencies revise their NEPA implementing procedures, CEQ will review them for consistency across the Government and with NEPA's requirements, as required by E.O. 14154 and consistent with CEQ's statutory role. CEQ encourages agency coordination with Tribes on actions that may affect Tribe resources. Although CEQ is not conducting government-to-government consultation, it has

considered the input from Tribal governments and organizations representing Tribal interests provided during the public comment period on the IFR, as reflected in this rulemaking.

Comments Related to Endangered Species Act Applicability to the IFR

Comment: One commenter stated that CEQ was required to engage in consultation with the National Marine Fisheries Service and the Fish and Wildlife Service, as appropriate, under Section 7 of the ESA, which requires each Federal agency to "insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of" any designated critical habitat. The commenter stated that the IFR threatens significant harm to endangered and threatened species throughout the United States. The commenter stated that CEQ did not identify, quantify, or consider the adverse impacts of repealing the NEPA implementing regulations on a programmatic basis nor its impacts to any specific threatened or endangered species or designated critical habitat. The commenter stated that CEQ failed to even make a "no effect" determination, noting that CEQ had done so with regard to prior regulatory actions.

Response: CEQ has determined that Section 7 of ESA does not apply to the IFR or this rulemaking. Neither the CEQ NEPA implementing regulations themselves nor the action to rescind them would result in adverse impacts on endangered or threatened species or critical habitat. Rather, NEPA and its regulations provide procedures to ensure that agencies account for the environmental impacts of their actions. The commenter's alleged harm to species is speculative. To the extent any harm occurs, it would result from future agency actions, not from this rescission action, which only removes requirements applicable to Federal agencies regarding compliance with NEPA, which is a purely procedural requirement. Moreover, CEQ has determined that its rescission of its NEPA implementing regulations was non-discretionary, and the ESA does not apply to non-discretionary actions.

III. Regulatory Analyses and Notices

A. Regulatory Procedures

Under the APA, notice and comment procedures are not required if an action is an interpretative rule, a general statement of policy, or a rule of agency organization, procedure, or practice. See

5 U.S.C. 553(b)(A). CEQ has determined that the CEQ rules were rules of "agency organization, procedure, or practice" or, alternatively, interpretive rules. Therefore, CEQ was not required to engage in a notice and comment rulemaking process to remove them. Even if notice and comment rulemaking were required, as explained in the IFR and elsewhere in this final rule, CEQ has good cause to waive notice and comment because such procedures are impracticable, unnecessary, and contrary to the public interest. 5 U.S.C. 553(b)(B). Moreover, the public understood the action CEQ was taking and took advantage of the opportunity to comment. CEQ received more than 100,000 comments on its IFR. Thus, while CEQ maintains that the IFR was subject to the exceptions set forth in 5 U.S.C. 553(b), this final rule represents the culmination of a traditional notice-and-comment rulemaking regardless of the initial procedural basis for the IFR.

B. E.O. 12866, Regulatory Planning and Review, and E.O. 13563, Improving Regulation and Regulatory Review

E.O. 12866 provides that OIRA will review all significant rules. E.O. 13563 reaffirms the principles of E.O. 12866, calling for improvements in the Federal Government's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory objectives. OMB determined that this final rule is a significant regulatory action under E.O. 12866, as supplemented by E.O. 13563.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended, (RFA), 5 U.S.C. 601 *et seq.*, and E.O. 13272 require agencies to assess the impacts of proposed and final rules on small entities. Under the RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). This final rule does not directly regulate small entities. Rather, the focus of CEQ's NEPA implementing regulations and, consequently, of this rescission rule, is on Federal agencies compliance with NEPA. Accordingly, CEQ hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Environmental Analysis

Section 111(10)(B)(vii) of NEPA excludes from the definition of major Federal actions activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority. CEQ has determined that, absent E.O. 11991, its rescission is non-discretionary and, therefore, not subject to NEPA. Moreover, the rescinded CEQ regulations did not require agencies to prepare a NEPA analysis before establishing or updating agency NEPA implementing procedures. While CEQ prepared environmental assessments for its promulgation of the CEQ regulations in 1978, its amendments to 40 CFR 1502.22 in 1986, and its Phase 1 and Phase 2 regulations, in the development of this final rule, CEQ has determined that the rule, standing on its own, will not have a significant effect on the environment because it will not authorize any specific agency activity or commit resources to a project that may affect the environment. Therefore, CEQ has not conducted a NEPA analysis of this rulemaking.

E. Executive Order 13132, Federalism

E.O. 13132 requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. Policies that have federalism implications include regulations 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. This final rule is not a regulatory policy that has federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

E.O. 13175 requires agencies to have a process to ensure meaningful and timely input by Tribal officials in the development of policies that have Tribal implications. Such policies include

regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This final rule is not a regulatory policy that has Tribal implications because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This rulemaking rescinds CEQ's regulations binding Federal agencies on their implementation of NEPA. Federal agencies will continue to have responsibility for implementing NEPA, pursuant to their own internal procedures, as applicable. Agencies will also continue to have responsibility for upholding government-to-government relations with Tribes, pursuant to their own procedures, including coordination on future actions, as applicable. CEQ encourages agency coordination with Tribes on actions and associated NEPA reviews that may affect resources of importance to Tribal Nations. Although CEQ is not conducting government-to-government consultation, it has considered the input from Tribal governments and organizations representing Tribal interests provided during the public comment period on the IFR, as reflected in this rulemaking.

G. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

Agencies must prepare a Statement of Energy Effects for significant energy actions under E.O. 13211. This final rule is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

H. Executive Order 12988, Civil Justice Reform

Under section 3(a) E.O. 12988, agencies must review their proposed regulations to eliminate drafting errors and ambiguities, draft them to minimize litigation, and provide a clear legal standard for affected conduct. Section 3(b) provides a list of specific issues for review to conduct the reviews required

by section 3(a). CEQ has conducted this review and determined that this final rule complies with the requirements of E.O. 12988.

I. Unfunded Mandates Assessment

Section 201 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments, and the private sector to the extent that such regulations incorporate requirements specifically set forth in law. Before promulgating a rule that may result in the expenditure by a State, Tribal, or local government, in the aggregate, or by the private sector of \$100 million, adjusted annually for inflation, in any 1 year, an agency must prepare a written statement that assesses the effects on State, Tribal, and local governments and the private sector. 2 U.S.C. 1532. This final rule applies to Federal agencies and would not result in expenditures of \$100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any 1 year. This action also does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of 2 U.S.C. 1531–1538.

J. Paperwork Reduction Act

This final rule does not impose any new information collection burden that would require additional review or approval by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects

Administrative practice and procedure; Environmental impact statements; Environmental protection; Natural resources.

Katherine R. Scarlett,
Chairman.

■ For the reasons stated in the preamble, and under the authority of 42 U.S.C. 4321–4347; E.O. 14154, 90 FR 8353 (Jan. 29, 2025), the Council on Environmental Quality's amendments to subchapter A of chapter V in title 40 of the Code of Federal Regulations as published February 25, 2025, at 90 FR 10610 are adopted as final.

[FR Doc. 2026–00178 Filed 1–7–26; 8:45 am]

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Proposed Rules

Federal Register

Vol. 91, No. 5

Thursday, January 8, 2026

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. FAA–2025–2409; Notice No. 33–25–02–SC]

Special Conditions: ZeroAvia, Inc. Model ZA601 Electric Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for ZeroAvia, Inc. (ZeroAvia) Model ZA601 electric engines that operate using electrical technology installed on the aircraft for use as an aircraft engine. These engines will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for aircraft engines. The design feature is an electrical system that will power a mechanical rotating shaft to provide propulsion for airplanes which will be certified separately from the engine. 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 February 9, 2026.

ADDRESSES: Send comments identified by Docket No. FAA–2025–2409 using any of the following methods:

Federal eRegulations 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.

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:

Mark Bouyer, Engine and Propulsion Section, AIR–625, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 1200 District Ave., Burlington, MA 01803; telephone (781) 238–7755; email Mark.Bouyer@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.

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 proposed special conditions. Send submissions containing CBI to the individual listed in the For Further Information Contact section above. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these proposed special conditions.

Background

On May 3, 2024, ZeroAvia, applied for a type certificate for its Model ZA601 electric engine. The electric engine consists of an electric motor, stator, inverters/controllers and will operate with low and high-voltage electrical systems. The ZeroAvia ZA601 electric engine will be used in airplanes certificated under 14 CFR part 23 in the normal category, level 4 and higher.

Type Certification Basis

Under the provisions of 14 CFR 21.17, ZeroAvia must show that the Model ZA601 electrical engines meet the applicable provisions of part 33, as amended by amendments 33–1 through 33–36, in effect on the date of application for a type certificate.

If the FAA finds that the applicable airworthiness regulations (*e.g.*, 14 CFR part 33) do not contain adequate or appropriate safety standards for the ZeroAvia Model ZA601 engine because of a novel or unusual design feature, the FAA prescribes special conditions 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.

In addition to the applicable airworthiness regulations and special conditions, the ZeroAvia Model ZA601 engine must comply with the noise-certification requirements of 14 CFR part 36.

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 ZeroAvia ZA601 electric engine will incorporate the following novel or unusual design feature:

An electric motor, motor controller, and high-voltage electrical system used as the primary source of propulsion for an airplane.

Discussion

Aircraft engines make use of an energy source to drive mechanical systems that provide propulsion for the aircraft. The technology that the FAA anticipated in the development of 14 CFR part 33 converts oxygen and fuel to generate energy through an internal combustion system for turning shafts attached to propulsion devices such as propellers and ducted fans.

Electric propulsion technology is substantially different from the technology used in previously certificated turbine and reciprocating engines. Therefore, these engines introduce new safety concerns that need to be addressed in the certification basis.

A growing interest within the aviation industry involves electric propulsion technology. As a result, international agencies and industry stakeholders formed Committee F39 under ASTM International, formerly known as American Society for Testing and Materials, to identify the appropriate technical criteria for aircraft engines using electrical technology that has not been previously type certificated for aircraft propulsion systems. ASTM International is an international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems, and services. ASTM International published ASTM F3338–18, “Standard Specification for Design of Electric

Propulsion Units for General Aviation Aircraft,” in December 2018.¹ The FAA used the technical criteria from the ASTM F3338–18, the published Special Conditions No. 33–022–SC for the magniX USA, Inc. Model magni350 and magni650 engines, and information from the ZeroAvia Model ZA601 engine design to develop special conditions that establish an equivalent level of safety to that required by part 33.

Part 33 Was Developed for Gas-Powered Turbine and Reciprocating Engines

Energy can be generated from various sources such as petroleum and natural gas. The turbine and reciprocating aircraft engines certificated under part 33 use aviation fuel for an energy source. The reciprocating and turbine engine technology that was anticipated in the development of part 33 converts oxygen and fuel to energy using an internal combustion system, which generates heat and mass flow of combustion products for turning shafts that are attached to propulsion devices such as propellers and ducted fans. Part 33 regulations set forth standards for these engines and mitigate potential hazards resulting from failures and malfunctions. The nature, progression, and severity of engine failures are tied closely to the technology that is used in the design and manufacture of aircraft engines. These technologies involve chemical, thermal, and mechanical systems. Therefore, the existing engine regulations in part 33 address certain chemical, thermal, and mechanically induced failures that are specific to air and fuel combustion systems operating with cyclically loaded, high speed, high-temperature, and highly stressed components.

ZeroAvia’s Proposed Electric Engines Are Novel or Unusual

The existing part 33 airworthiness standards for aircraft engines date back to 1965. As discussed in the previous paragraphs, these airworthiness standards are based on fuel-burning reciprocating and turbine engine technology. The ZeroAvia Model ZA601 engines are neither turbine nor reciprocating engines. These engines have a novel or unusual design feature, which is the use of electrical sources of energy instead of fuel to drive the mechanical systems that provide propulsion for aircraft. The ZeroAvia aircraft engine is subject to operating conditions produced by chemical, thermal, and mechanical components working together, but the operating

conditions are unlike those observed in internal combustion engine systems. Therefore, part 33 does not contain adequate or appropriate safety standards for the ZeroAvia Model ZA601 engine’s novel or unusual design feature.

ZeroAvia’s proposed aircraft engines will operate using electrical power instead of air and fuel combustion to propel the aircraft. These electric engines will be designed, manufactured, and controlled differently than turbine or reciprocating aircraft engines. They will be built with an electric motor, motor controller, and high-voltage electrical systems that draw energy from electrical storage or electrical energy generating systems. The electric motor is a device that converts electrical energy into mechanical energy by electric current flowing through windings (wire coils) in the motor, producing a magnetic field that interacts with permanent magnets mounted on the engine’s main rotor. The controller is a system that consists of two main functional elements: the motor controller and an electric power inverter to drive the motor.² The high-voltage electrical system is a combination of wires and connectors that integrate the motor and controller.

In addition, the technology comprising these high-voltage and high-current electronic components introduces potential hazards that do not exist in turbine and reciprocating aircraft engines. For example, high-voltage transmission lines, electromagnetic shields, magnetic materials, and high-speed electrical switches are necessary to use the physical properties of an electric engine for propelling an aircraft. However, this technology also exposes the aircraft to potential failures that are not common to gas-powered turbine and reciprocating engines, technological differences which could adversely affect safety if not addressed through these proposed special conditions.

ZeroAvia’s Proposed Electric Engines Require a Mix of Part 33 Standards and Special Conditions

Although the electric aircraft engines ZeroAvia proposes use a novel or unusual design feature that the FAA did not envisage during the development of its existing part 33 airworthiness standards, these engines share some basic similarities, in configuration and function, to engines that use the combustion of air and fuel, and therefore require similar provisions to

² Sometimes the entire system is referred to as an inverter. Throughout this document, it is referred to as the controller.

¹ <https://www.astm.org/Standards/F3338.html>.

prevent common hazards (e.g., fire, uncontained high energy debris, and loss of thrust control). However, the primary failure concerns and the probability of exposure to these common hazards are different for the proposed ZeroAvia Model ZA601 electric engine. This creates a need to develop special conditions to ensure the engine's safety and reliability.

The requirements in part 33 ensure that the design and construction of aircraft engines, including the engine control systems, are proper for the type of aircraft engines considered for certification. However, part 33 does not fully address aircraft engines like the ZeroAvia Model ZA601, which operates using electrical technology as the primary means of propelling the aircraft. This necessitates the development of special conditions that provide adequate airworthiness standards for these aircraft engines.

The requirements in part 33, subpart B, are applicable to reciprocating and turbine aircraft engines. Subparts C and D are applicable to reciprocating aircraft engines. Subparts E through G are applicable to turbine aircraft engines. As such, subparts B through G do not adequately address the use of aircraft engines that operate using electrical technology. Special conditions are needed to ensure a level of safety for electric engines that is commensurate with these subparts, as those regulatory requirements do not contain adequate or appropriate safety standards for electric aircraft engines that are used to propel aircraft.

FAA Proposed Special Conditions for the ZeroAvia Engine Design

Applicability: Proposed special condition no. 1 would require ZeroAvia to comply with part 33, except for those airworthiness standards specifically and explicitly applicable only to reciprocating and turbine aircraft engines.

Engine Ratings and Operating Limitations: Proposed special condition no. 2 would, in addition to compliance with § 33.7(a), require ZeroAvia to establish engine operating limits related to the power, torque, speed, and duty cycles specific to ZeroAvia Model ZA601 electric engines. The duty or duty cycle is a statement of the load(s) to which the engine is subjected, including, if applicable, starting, no-load and rest, and de-energized periods, including their durations or cycles and sequence in time. This special condition also requires ZeroAvia to declare cooling fluid grade or specification, power supply requirements, and to establish any additional ratings that are

necessary to define the ZeroAvia Model ZA601 electric engine capabilities required for safe operation of the engine.

Materials: Proposed special condition no. 3 would require ZeroAvia to comply with § 33.15, which sets requirements for the suitability and durability of materials used in the engine, and which would otherwise be applicable only to reciprocating and turbine aircraft engines.

Fire Protection: Proposed special condition no. 4 would require ZeroAvia to comply with § 33.17, which sets requirements to protect the engine and certain parts and components of the airplane against fire, and which would otherwise be applicable only to reciprocating and turbine aircraft engines. Additionally, this proposed special condition would require ZeroAvia to ensure that the high-voltage electrical wiring interconnect systems that connect the controller to the motor are protected against arc faults. An arc fault is a high-power discharge of electricity between two or more conductors. This discharge generates heat, which can break down the wire's insulation and trigger an electrical fire. Arc faults can range in power from a few amps up to thousands of amps and are highly variable in strength and duration.

Durability: Proposed special condition no. 5 would require the design and construction of ZeroAvia Model ZA601 electric engines to minimize the development of an unsafe condition between maintenance intervals, overhaul periods, and mandatory actions described in the Instructions for Continued Airworthiness (ICA).

Engine Cooling: Proposed special condition no. 6 would require ZeroAvia to comply with § 33.21, which requires the engine design and construction to provide necessary cooling, and which would otherwise be applicable only to reciprocating and turbine aircraft engines. Additionally, this proposed special condition would require ZeroAvia to document the cooling system monitoring features and usage in the engine installation manual (see § 33.5) if cooling is required to satisfy the safety analysis described in proposed special condition no. 17. Loss of cooling to an aircraft engine that operates using electrical technology can result in rapid overheating and abrupt engine failure, with critical consequences to safety.

Engine Mounting Attachments and Structure: Proposed special condition no. 7 would require ZeroAvia and the proposed design to comply with § 33.23, which requires the applicant to define,

and the proposed design to withstand, certain load limits for the engine mounting attachments and related engine structure. These requirements would otherwise be applicable only to reciprocating and turbine aircraft engines.

Accessory Attachments: Proposed special condition no. 8 would require the proposed design to comply with § 33.25, which sets certain design, operational, and maintenance requirements for the engine's accessory drive and mounting attachments, and which would otherwise be applicable only to reciprocating and turbine aircraft engines.

Overspeed: Proposed special condition no. 9 would require ZeroAvia to establish by test, validated analysis, or a combination of both, that—

- (1) the rotor overspeed must not result in a burst, rotor growth, or damage that results in a hazardous engine effect;
- (2) rotors must possess sufficient strength margin to prevent burst; and
- (3) operating limits must not be exceeded in service.

The proposed special condition associated with rotor overspeed is necessary because of the differences between turbine engine technology and the technology of these electric engines. Turbine rotor speed is driven by expanding gas and aerodynamic loads on rotor blades. Therefore, the rotor speed or overspeed results from interactions between thermodynamic and aerodynamic engine properties. The speed of an electric engine is directly controlled by electric current, and an electromagnetic field created by the controller. Consequently, electric engine rotor response to power demand and overspeed-protection systems is quicker and more precise. Also, the failure modes that can lead to overspeed between turbine engines and electric engines are vastly different, and therefore this special condition is necessary.

Engine Control Systems: Proposed special condition no. 10(b) would require ZeroAvia to ensure that these engines do not experience any unacceptable operating characteristics, such as unstable speed or torque control, or exceed any of their operating limitations.

The FAA originally issued § 33.28 at amendment 33-15 to address the evolution of the means of controlling the fuel supplied to the engine, from carburetors and hydro-mechanical controls to electronic control systems. These electronic control systems grew in complexity over the years, and as a result, the FAA amended § 33.28 at amendment 33-26 to address these

increasing complexities. The controller that forms the controlling system for these electric engines is significantly simpler than the complex control systems used in modern turbine engines. The current regulations for engine control are inappropriate for electric engine control systems; therefore, the proposed special condition no. 10(b) associated with controlling these engines is necessary.

Proposed special condition no. 10(c) would require ZeroAvia to develop and verify the software and complex electronic hardware used in programmable logic devices, using proven methods that ensure that the devices can provide the accuracy, precision, functionality, and reliability commensurate with the hazard that is being mitigated by the logic. RTCA DO-254, "Design Assurance Guidance for Airborne Electronic Hardware," dated April 19, 2000,³ distinguishes between complex and simple electronic hardware.

Proposed special condition no. 10(d) would require data from assessments of all functional aspects of the control system to prevent errors that could exist in software programs that are not readily observable by inspection of the code. Also, ZeroAvia must use methods that will result in the expected quality that ensures the engine control system performs the intended functions throughout the declared operational envelope.

The environmental limits referred to in proposed special condition no. 10(e) include temperature, vibration, high-intensity radiated fields (HIRF), and others addressed in RTCA DO-160G, "Environmental Conditions and Test Procedures for Airborne Electronic/Electrical Equipment and Instruments" dated December 8, 2010, which includes "DO-160G Change 1—Environmental Conditions and Test Procedures for Airborne Equipment" dated December, 16, 2014, and "DO-357—User Guide: Supplement to DO-160G" dated December 16, 2014.⁴ Proposed special condition 10(e) would require ZeroAvia to demonstrate by system or component tests in proposed special condition no. 27 any environmental limits that cannot be adequately substantiated by the endurance demonstration, validated analysis, or a combination thereof.

Proposed special condition no. 10(f) would require ZeroAvia to evaluate various control system failures to ensure that such failures will not lead to

unsafe engine conditions. The FAA issued Advisory Circular (AC) AC 33.28-3, "Guidance Material for 14 CFR 33.28, Engine Control Systems," on May 23, 2014, for reciprocating and turbine engines.⁵ Paragraph 6-2 of this AC provides guidance for defining an engine control system failure when showing compliance with the requirements of § 33.28. AC 33.28-3 also includes objectives for control system integrity requirements, criteria for a loss of thrust (or power) control (LOTC/LOPC) event, and an acceptable LOTC/LOPC rate. The electrical and electronic failures and failure rates did not account for electric engines when the FAA issued this AC, and therefore performance-based special conditions are proposed to allow fault accommodation criteria to be developed for electric engines.

The phrase "in the full-up configuration" used in proposed special condition no. 10(f)(2) refers to a system without any fault conditions present. The electronic control system must, when in the full-up configuration, be single-fault tolerant, as determined by the Administrator, for electrical, electrically detectable, and electronic failures involving LOPC events.

The term "local" in the context of "local events" used in proposed special condition no. 10(f)(4) means failures or malfunctions leading to events in the intended aircraft installation such as fire, overheat, or failures leading to damage to engine control system components. These local events must not result in a hazardous engine effect due to engine control system failures or malfunctions.

Proposed special condition no. 10(g) would require ZeroAvia to conduct a safety assessment of the control system to support the safety analysis in proposed special condition no. 17. This control system safety assessment provides engine response to failures, and rates of these failures that can be used at the aircraft-level safety assessment.

Proposed special condition no. 10(h) requires ZeroAvia to provide appropriate protection devices or systems to ensure that engine operating limits will not be exceeded in service.

Proposed special condition no. 10(i) is necessary to ensure that the controllers are self-sufficient and isolated from other aircraft systems. The aircraft-supplied data supports the analysis at the aircraft level to protect the aircraft from common mode failures that could lead to major propulsion power loss.

The exception "other than power command signals from the aircraft," noted in proposed special condition no. 10(i), is based on the FAA's determination that the engine controller has no reasonable means to determine the validity of any in-range signals from the electrical power system. In many cases, the engine control system can detect a faulty signal from the aircraft, but the engine control system typically accepts the power command signal as a valid value.

The term "independent" in the context of "fully independent engine systems" referenced in proposed special condition no. 10(i) means the controllers should be self-sufficient and isolated from other aircraft systems or provide redundancy that enables the engine control system to accommodate aircraft data system failures. In the case of loss, interruption, or corruption of aircraft-supplied data, the engine must continue to function in a safe and acceptable manner without hazardous engine effects.

The term "accommodated," in the context of "detected and accommodated," referenced in proposed special condition 10(i)(2) is to assure that, upon detecting a fault, the system continues to function safely.

Proposed special condition no. 10(j) would require ZeroAvia to show that the loss of electric power from the aircraft will not cause the electric engine to malfunction in a manner hazardous to the aircraft. The total loss of electric power to the electric engine may result in an engine shutdown.

Instrument Connection: Proposed special condition no. 11 would require ZeroAvia to comply with § 33.29(a), (e), and (g), which set certain requirements for the connection and installation of instruments to monitor engine performance. The remaining requirements in § 33.29 apply only to technologies used in reciprocating and turbine aircraft engines.

Instrument connections (wires, wire insulation, potting, grounding, connector designs, etc.) must not introduce unsafe features or characteristics to the aircraft. Proposed special condition no. 11 would require the safety analysis to include potential hazardous effects from failures of instrument connections to function properly. The outcome of this analysis might identify the need for design enhancements or additional ICA to ensure safety.

Stress Analysis: Section 33.62 requires applicants to perform a stress analysis on each turbine engine. This regulation is explicitly applicable only to turbine engines and turbine engine

³ <https://my.rtca.org/productdetails?id=a1B36000001IcJTEAS>.

⁴ https://my.rtca.org/NC_Product?id=a1B36000001IcnSEAS.

⁵ https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_33_28-3.pdf.

components, and it is not appropriate for the ZeroAvia Model ZA601 electric engines. However, the FAA proposes that a stress analysis particular to these electric engines is necessary to account for stresses resulting from electric technology used in the engine.

Proposed special condition no. 12 would require a mechanical, thermal, and electrical stress analysis to show that the engine has a sufficient design margin to prevent unacceptable operating characteristics. Also, the applicant must determine the maximum stresses in the engine by tests, validated analysis, or a combination thereof, and show that they do not exceed minimum material properties.

Critical and Life-Limited Parts: Proposed special condition no. 13 would require ZeroAvia to show whether rotating or moving components, bearings, shafts, static parts, and non-redundant mount components should be classified, designed, manufactured, and managed throughout their service life as critical or life-limited parts.

The term “low-cycle fatigue,” referenced in proposed special condition no. 13(a)(2), is a decline in material strength from exposure to cyclic stress at levels beyond the stress threshold the material can sustain indefinitely. This threshold is known as the “material endurance limit.” Low-cycle fatigue typically causes a part to sustain plastic or permanent deformation during the cyclic loading and can lead to cracks, crack growth, and fracture. Engine parts that operate at high temperatures and high mechanical stresses simultaneously can experience low-cycle fatigue coupled with creep. Creep is the tendency of a metallic material to permanently move or deform when it is exposed to the extreme thermal conditions created by hot combustion gasses, and substantial physical loads such as high rotational speeds and maximum thrust. Conversely, high-cycle fatigue is caused by elastic deformation, small strains caused by alternating stress, and a much higher number of load cycles compared to the number of cycles that cause low-cycle fatigue.

The engineering plan referenced in proposed special condition no. 13(b)(1) informs the manufacturing and service management processes of essential information that ensures the life limit of a part is valid. The engineering plan provides methods for verifying the characteristics and qualities assumed in the design data using methods that are suitable for the part criticality. The engineering plan informs the manufacturing process of the attributes

that affect the life of the part. The engineering plan, manufacturing plan, and service management plan are related in that assumptions made in the engineering plan are linked to how a part is manufactured and how that part is maintained in service. For example, environmental effects on life limited electric engine parts, such as humidity, might not be consistent with the assumptions used to design the part. ZeroAvia must ensure that the engineering plan is complete, available, and acceptable to the Administrator.

The term “manufacturing plan,” referenced in proposed special condition no. 13(b)(2), is the collection of data required to translate documented engineering design criteria into physical parts, and to verify that the parts comply with the properties established by the design data. Because engines are not intentionally tested to failure during a certification program, documents and processes used to execute production and quality systems required by § 21.137 guarantee inherent expectations for performance and durability. These systems limit the potential manufacturing outcomes to parts that are consistently produced within design constraints.

The manufacturing plan and service management plan ensure that essential information from the engineering plan, such as the design characteristics that safeguard the integrity of critical and life-limited parts, is consistently produced and preserved over the lifetime of those parts. The manufacturing plan includes special processes and production controls to prevent inclusion of manufacturing-induced anomalies, which can degrade the part’s structural integrity. Examples of manufacturing-induced anomalies are material contamination, unacceptable grain growth, heat-affected areas, and residual stresses.

The service-management plan ensures the method and assumptions used in the engineering plan to determine the part’s life remain valid by enabling corrections identified from in-service experience, such as service-induced anomalies and unforeseen environmental effects, to be incorporated into the design process. The service-management plan also becomes the ICA for maintenance, overhaul, and repairs of the part.

Lubrication System: Proposed special condition no. 14 would require ZeroAvia to ensure that the lubrication system is designed to function properly between scheduled maintenance intervals and to prevent contamination of the engine bearings. This proposed special condition would also require ZeroAvia to demonstrate the unique

lubrication attributes and functional capability of the ZeroAvia Model ZA601 electric engine design.

The corresponding part 33 regulations include provisions for lubrication systems used in reciprocating and turbine engines. The part 33 requirements account for safety issues associated with specific reciprocating and turbine engine system configurations. These regulations are not appropriate for the ZeroAvia Model ZA601 electric engines. For example, electric engines do not have a crankcase or lubrication oil sump. Electric engine bearings are sealed, so they do not require an oil circulation system. The lubrication system in these engines is also independent of the propeller pitch control system. Therefore, proposed special condition no. 14 incorporates only certain requirements from the part 33 regulations.

Power Response: Proposed special condition no. 15 would require the design and construction of the ZeroAvia Model ZA601 electric engines to enable an increase from the minimum—

(1) power setting to the highest rated power without detrimental engine effects, and

(2) within a time interval appropriate for the intended aircraft application.

The engine control system governs the increase or decrease in power in combustion engines to prevent too much (or too little) fuel from being mixed with air before combustion. Due to the lag in rotor response time, improper fuel/air mixtures can result in engine surges, stalls, and exceedances above rated limits and durations. Failure of the combustion engine to provide thrust, maintain rotor speeds below rotor burst thresholds, and keep temperatures below limits can have engine effects detrimental to the aircraft. Similar detrimental effects are possible in the ZeroAvia Model ZA601 electric engines, but the causes are different. Electric engines with reduced power response time can experience insufficient thrust to the aircraft, shaft over-torque, and over-stressed rotating components, propellers, and critical propeller parts. Therefore, this proposed special condition is necessary.

Continued Rotation: Proposed special condition no. 16 would require ZeroAvia to design the Model ZA601 electric engines such that, if the main rotating systems continue to rotate after the engine is shut down while in-flight, this continued rotation will not result in any hazardous engine effects.

The main rotating system of the ZeroAvia Model ZA601 engines consists of the rotors, shafts, magnets, bearings, and wire windings that convert

electrical energy to shaft torque. For the initial aircraft application, this rotating system must continue to rotate after the power source to the engine is shut down. The safety concerns associated with this proposed special condition are substantial asymmetric aerodynamic drag that can cause aircraft instability, loss of control, and reduced efficiency; and may result in a forced landing or inability to continue safe flight.

Safety Analysis: Proposed special condition no. 17 would require ZeroAvia to comply with § 33.75(a)(1) and (a)(2), which require the applicant to conduct a safety analysis of the engine, and which would otherwise be applicable only to turbine aircraft engines. Additionally, this proposed special condition would require ZeroAvia to assess its engine design to determine the likely consequences of failures that can reasonably be expected to occur. The failure of such elements, and associated prescribed integrity requirements, must be stated in the safety analysis.

A primary failure mode is the manner in which a part is most likely going to fail. Engine parts that have a primary failure mode, a predictable life to the failure, and a failure consequence that results in a hazardous effect, are life-limited or critical parts. Some life-limited or critical engine parts can fail suddenly in their primary failure mode, from prolonged exposure to normal engine environments such as temperature, vibration, and stress, if those engine parts are not removed from service before the damage mechanisms progress to a failure. Due to the consequence of failure, these parts are not allowed to be managed by on-condition or probabilistic means because the probability of failure cannot be sensibly estimated in numerical terms. Therefore, the parts are managed by compliance with integrity requirements, such as mandatory maintenance (life limits, inspections, inspection techniques), to ensure the qualities, features, and other attributes that prevent the part from failing in its primary failure mode are preserved throughout its service life. For example, if the number of engine cycles to failure are predictable and can be associated with specific design characteristics, such as material properties, then the applicant can manage the engine part with life limits.

Complete or total power loss is not assumed to be a minor engine event, as it is in the turbine engine regulation § 33.75, to account for experience data showing a potential for higher hazard levels from power loss events in single-engine general aviation aircraft. The

criteria in these proposed special conditions apply to an engine that continues to operate at partial power after a single electrical or electronic fault or failure. Total loss of power is classified at the aircraft level using proposed special condition nos. 10(g) and 33(h).

Ingestion: Proposed special condition no. 18 would require ZeroAvia to ensure that these engines will not experience unacceptable power loss or hazardous engine effects from ingestion. The associated regulations for turbine engines, §§ 33.76, 33.77, and 33.78, are based on potential performance impacts and damage from birds, ice, rain, and hail being ingested into a turbine engine that has an inlet duct, which directs air into the engine for combustion, cooling, and thrust. By contrast, the ZeroAvia electric engines are not configured with inlet ducts.

An “unacceptable” power loss, as used in proposed special condition no. 18(b), is such that the power or thrust required for safe flight of the aircraft becomes unavailable to the pilot. The specific amount of power loss that is required for safe flight depends on the aircraft configuration, speed, altitude, attitude, atmospheric conditions, phase of flight, and other circumstances where the demand for thrust is critical to safe operation of the aircraft.

Liquid and Gas Systems: Proposed special condition no. 19 would require ZeroAvia to ensure that systems used for lubrication or cooling of engine components are designed and constructed to function properly. Also, if a system is not self-contained, the interfaces to that system would be required to be defined in the engine installation manual. Systems for the lubrication or cooling of engine components can include heat exchangers, pumps, fluids, tubing, connectors, electronic devices, temperature sensors and pressure switches, fasteners and brackets, bypass valves, and metallic chip detectors. These systems allow the electric engine to perform at extreme speeds and temperatures for durations up to the maintenance intervals without exceeding temperature limits or predicted deterioration rates.

Vibration Demonstration: Proposed special condition no. 20 would require ZeroAvia to ensure the engine—

(1) is designed and constructed to function throughout its normal operating range of rotor speeds and engine output power without inducing excessive stress caused by engine vibration, and

(2) design undergoes a vibration survey.

The vibration demonstration is a survey that characterizes the vibratory attributes of the engine. It verifies that the stresses from vibration do not impose excessive force or result in natural frequency responses on the aircraft structure. The vibration demonstration also ensures internal vibrations will not cause engine components to fail. Excessive vibration force occurs at magnitudes and forcing functions or frequencies, which may result in damage to the aircraft. Stress margins to failure add conservatism to the highest values predicted by analysis for additional protection from failure caused by influences beyond those quantified in the analysis. The result of the additional design margin is improved engine reliability that meets prescribed thresholds based on the failure classification. The amount of margin needed to achieve the prescribed reliability rates depends on an applicant's experience with a product. The FAA considers the reliability rates when deciding how much vibration is “excessive.”

Overtorque: Proposed special condition no. 21 would require ZeroAvia to demonstrate that the engine is capable of continued operation without the need for maintenance if it experiences a certain amount of overtorque.

ZeroAvia's proposed electric engine converts electrical energy to shaft torque, which is used for propulsion. The electric motor, controller, and high-voltage systems control the engine torque. When the pilot commands power or thrust, the engine responds to the command and adjusts the shaft torque to meet the demand. During the transition from one power or thrust setting to another, a small delay, or latency, occurs in the engine response time. While the engine dwells in this time interval, it can continue to apply torque until the command to change the torque is applied by the engine control. The allowable amount of overtorque during operation depends on the engine's response to changes in the torque command throughout its operating range.

Calibration Assurance: Proposed special condition no. 22 would require ZeroAvia to subject the engine to calibration tests to establish its power characteristics and the conditions both before and after the endurance and durability demonstrations specified in proposed special condition nos. 23 and 26. The calibration test requirements specified in § 33.85 only apply to the endurance test specified in § 33.87, which is applicable only to turbine engines. The FAA proposes that the

methods used for accomplishing those tests for turbine engines are not the best approach for electric engines. The calibration tests in § 33.85 have provisions applicable to ratings that are not relevant to the ZeroAvia Model ZA601 engines. Proposed special condition no. 22 would allow ZeroAvia to demonstrate the endurance and durability of the electric engine either together or independently, whichever is most appropriate for the engine qualities being assessed. Consequently, the proposed special condition applies the calibration requirement to both the endurance and durability tests.

Endurance Demonstration: Proposed special condition no. 23 would require ZeroAvia to perform an endurance demonstration test that is acceptable to the Administrator. The Administrator will evaluate the extent to which the test exposes the engine to failures that could occur when the engine is operated at up to its rated values, and determine if the test is sufficient to show that the engine design will not exhibit unacceptable effects in service, such as significant performance deterioration, operability restrictions, and engine power loss or instability, when it is run repetitively at rated limits and durations in conditions that represent extreme operating environments.

Temperature Limit: Proposed special condition no. 24 would require ZeroAvia to ensure the engine can endure operation at its temperature limits plus an acceptable margin. An “acceptable margin,” as used in the proposed special condition, is the amount of temperature above that required to prevent the least capable engine allowed by the type design, as determined by § 33.8, from failing due to temperature-related causes when operating at the most extreme engine and environmental thermal conditions.

Operation Demonstration: Proposed special condition no. 25 would require the engine to demonstrate safe operating characteristics throughout its declared flight envelope and operating range. Engine operating characteristics define the range of functional and performance values the ZeroAvia Model ZA601 electric engines can achieve without incurring hazardous effects. The characteristics are requisite capabilities of the type design that qualify the engine for installation into aircraft and that determine aircraft installation requirements. The primary engine operating characteristics are assessed by the tests and demonstrations that would be required by these special conditions. Some of these characteristics are shaft output torque, rotor speed, power consumption, and engine thrust

response. The engine performance data ZeroAvia will use to certify the engine must account for installation loads and effects. These are aircraft-level effects that could affect the engine characteristics that are measured when the engine is tested on a stand or in a test cell. These effects could result from elevated inlet cowl temperatures, aircraft maneuvers, flowstream distortion, and hard landings. For example, an engine that is run in a sea-level, static test facility could demonstrate more capability for some operating characteristics than it will have when operating on an aircraft in certain flight conditions. Discoveries like this during certification could affect proposed engine ratings and operating limits. Therefore, the installed performance defines the engine performance capabilities.

Durability Demonstration: Proposed special condition no. 26 would require ZeroAvia to subject the engine to a durability demonstration. The durability demonstration must show that the engine is designed and constructed to minimize the development of any unsafe condition between maintenance intervals or between engine replacement intervals if maintenance or overhaul is not defined. The durability demonstration also verifies that the ICA is adequate to ensure the engine, in its fully deteriorated state, continues to generate rated power or thrust, while retaining operating margins and sufficient efficiency, to support the aircraft safety objectives. The amount of deterioration an engine can experience is restricted by operating limitations and managed by the engine ICA. Section 33.90 specifies how maintenance intervals are established; it does not include provisions for an engine replacement. Electric engines and turbine engines deteriorate differently; therefore, ZeroAvia will use different test effects to develop maintenance, overhaul, or engine replacement information for their electric engine.

System and Component Tests: Proposed special condition no. 27 would require ZeroAvia to show that the systems and components of the engine would perform their intended functions in all declared engine environments and operating conditions.

Sections 33.87 and 33.91, which are specifically applicable to turbine engines, have conditional criteria to decide if additional tests will be required after the engine tests. The criteria are not suitable for electric engines. Part 33 associates the need for additional testing with the outcome of the § 33.87 endurance test because it is designed to address safety concerns in

combustion engines. For example, § 33.91(b) requires the establishment of temperature limits for components that require temperature-controlling provisions, and § 33.91(a) requires additional testing of engine systems and components where the endurance test does not fully expose internal systems and components to thermal conditions that verify the desired operating limits. Exceeding temperature limits is a safety concern for electric engines. The FAA proposes that the § 33.87 endurance test might not be the best way to achieve the highest thermal conditions for all the electronic components of electric engines because heat is generated differently in electronic systems than it is in turbine engines. Additional safety considerations also need to be addressed in the test. Therefore, proposed special condition no. 27 would be a performance-based requirement that allows ZeroAvia to determine when engine systems and component tests are necessary and to determine the appropriate limitations of those systems and components used in the ZeroAvia Model ZA601 electric engine.

Rotor Locking Demonstration: Proposed special condition no. 28 would require the engine to demonstrate reliable rotor locking performance and that no hazardous effects will occur if the engine uses a rotor locking device to prevent shaft rotation.

Some engine designs enable the pilot to prevent a propeller shaft or main rotor shaft from turning while the engine is running, or the aircraft is in-flight. This capability is needed for some installations that require the pilot to confirm functionality of certain flight systems before takeoff. The proposed ZeroAvia engine installations are not limited to aircraft that will not require rotor locking. Section 33.92 prescribes a test that may not include the appropriate criteria to demonstrate sufficient rotor locking capability for these engines. Therefore, this special condition is necessary.

The proposed special condition does not define “reliable” rotor locking but would allow ZeroAvia to classify the hazard as major or minor and assign the appropriate quantitative criteria that meet the safety objectives required by special condition no. 17 and the applicable portions of § 33.75.

Teardown Inspection: Proposed special condition no. 29 would require ZeroAvia to perform a teardown or non-teardown evaluation after the endurance, durability, and overtorque demonstrations, based on the criteria proposed in special condition no. 29(a) or (b).

Proposed special condition no. 29(b) includes restrictive criteria for “non-teardown evaluations” to account for electric engines, sub-assemblies, and components that cannot be disassembled without destroying them. Some electrical and electronic components like ZeroAvia’s are constructed in an integrated fashion that precludes the possibility of tearing them down without destroying them. The proposed special condition indicates that, if a teardown cannot be performed in a non-destructive manner, then the inspection or replacement intervals must be established based on the endurance and durability demonstrations. The procedure for establishing maintenance should be agreed upon between the applicant and the FAA prior to running the relevant tests. Data from the endurance and durability tests may provide information that can be used to determine maintenance intervals and life limits for parts. However, if life limits are required, the lifing procedure is established by special condition no. 13, Critical and Life-Limited Parts, which corresponds to § 33.70. Therefore, the procedure used to determine which parts are life-limited, and how the life limits are established, requires FAA approval, as it does for § 33.70. Sections 33.55 and 33.93 do not contain similar requirements because reciprocating and turbine engines can be completely disassembled for inspection.

Containment: Proposed special condition no. 30 would require the engine to have containment features that protect against likely hazards from rotating components, unless ZeroAvia can show the margin to rotor burst does not justify the need for containment features. Rotating components in electric engines are typically disks, shafts, bearings, seals, orbiting magnetic components, and the assembled rotor core. However, if the margin to rotor burst does not unconditionally rule out the possibility of a rotor burst, then the proposed special condition would require ZeroAvia to assume a rotor burst could occur and design the stator case to contain the failed rotors, and any components attached to the rotor that are released during the failure. In addition, ZeroAvia must also determine the effects of subsequent damage precipitated by a main rotor failure and characterize any fragments that are released forward or aft of the containment features. Further, decisions about whether the ZeroAvia engine requires containment features, and the effects of any subsequent damage following a rotor burst, should be based

on test or validated analysis. The fragment energy levels, trajectories, and size are typically documented in the installation manual because the aircraft will need to account for the effects of a rotor failure in the aircraft design. The intent of this proposed special condition is to prevent hazardous engine effects from structural failure of rotating components and parts that are built into the rotor assembly.

Engine and Propeller Systems Test: Proposed special condition no. 31 would require ZeroAvia to conduct functional demonstrations, including feathering, negative torque, negative thrust, and reverse thrust operations, as applicable, based on the propeller’s or fan’s variable pitch functions that are planned for use on these electric engines, using a representative propeller. The requirements of § 33.95 prescribe tests based on the operating characteristics of turbine engines equipped with variable pitch propellers, which include thrust response times, engine stall, propeller shaft overload, loss of thrust control, and hardware fatigue. The electric engines ZeroAvia proposes have different operating characteristics that substantially affect their susceptibility to these and other potential failures typical of turbine engines. Because ZeroAvia’s proposed electric engines may be installed with a variable pitch propeller, the proposed special condition is necessary.

General Conduct of Tests: Proposed special condition no. 32 would require ZeroAvia to—

- (1) include scheduled maintenance in the engine ICA;
- (2) include any maintenance, in addition to the scheduled maintenance, that was needed during the test to satisfy the applicable test requirements; and
- (3) conduct any additional tests that the Administrator finds necessary, as warranted by the test results.

For example, certification endurance test shortfalls might be caused by omitting some prescribed engine test conditions, or from accelerated deterioration of individual parts arising from the need to force the engine to operating conditions that drive the engine above the engine cycle values of the type design. If an engine part fails during a certification test, the entire engine might be subjected to penalty runs, with a replacement or newer part design installed on the engine, to meet the test requirements. Also, the maintenance performed to replace the part, so that the engine could complete the test, would be included in the engine ICA. In another example, if the applicant replaces a part before

completing an engine certification test because of a test facility failure and can substantiate the part to the Administrator through bench testing, they might not need to substantiate the part design using penalty runs with the entire engine.

The term “excessive” is used to describe the frequency of unplanned engine maintenance, and the frequency of unplanned test stoppages, to address engine issues that prevent the engine from completing the tests in proposed special condition nos. 32(b)(1) and (2), respectively. Excessive frequency is an objective assessment from the FAA’s analysis of the amount of unplanned maintenance needed for an engine to complete a certification test. The FAA’s assessment may include the reasons for the unplanned maintenance, such as the effects test facility equipment may have on the engine, the inability to simulate a realistic engine operating environment, and the extent to which an engine requires modifications to complete a certification test. In some cases, the applicant may be able to show that unplanned maintenance has no effect on the certification test results, or they might be able to attribute the problem to the facility or test-enabling equipment that is not part of the type design. In these cases, the ICA will not be affected. However, if ZeroAvia cannot reconcile the amount of unplanned service, then the FAA may consider the unplanned maintenance required during the certification test to be “excessive,” prompting the need to add the unplanned maintenance to mandatory ICA to comply with the certification requirements.

Engine electrical systems: The current requirements in part 33 for electronic engine control systems were developed to maintain an equivalent level of safety demonstrated by engines that operate with hydromechanical engine control systems. At the time § 33.28 was codified, the only electrical systems used on turbine engines were low-voltage, electronic engine control systems (EEC) and high-energy spark-ignition systems. Electric aircraft engines use high-voltage, high-current electrical systems and components that are physically located in the motor and motor controller. Therefore, the existing part 33 control system requirements do not adequately address all the electrical systems used in electric aircraft engines. Proposed special condition no. 33 is established using the existing engine control systems requirement as a basis. It applies applicable airworthiness criteria from § 33.28 and incorporates airworthiness criteria that recognize and

focus on the electrical power system used in the engine.

Proposed special condition no. 33(b) would ensure that all aspects of an electrical system, including generation, distribution, and usage, do not experience any unacceptable operating characteristics.

Proposed special condition no. 33(c) would require the electrical power distribution aspects of the electrical system to provide the safe transfer of electrical energy throughout the electric engine.

Proposed special condition no. 33(d) would require the engine electrical system to be designed such that the loss, malfunction, or interruption of the electrical power source, or power conditions that exceed design limits, will not result in a hazardous engine effect.

Proposed special condition no. 33(e) requires ZeroAvia to identify and declare, in the engine installation manual, the characteristics of any electrical power supplied from the aircraft to the engine, or electrical power supplied from the engine to the aircraft via energy regeneration, and any other characteristics necessary for safe operation of the engine.

Proposed special condition no. 33(f) requires ZeroAvia to demonstrate that systems and components will operate properly up to environmental limits, using special conditions, when such limits cannot be adequately substantiated by the endurance demonstration, validated analysis, or a combination thereof. The environmental limits referred to in this proposed special condition include temperature, vibration, HIRF, and others addressed in RTCA DO-160G, "Environmental Conditions and Test Procedures for Airborne Electronic/Electrical Equipment and Instruments."

Proposed special condition 33(g) would require ZeroAvia to evaluate various electric engine system failures to ensure that these failures will not lead to unsafe engine conditions. The evaluation would include single-fault tolerance, would ensure no single electrical or electronic fault or failure would result in hazardous engine effects, and ensure that any failure or malfunction leading to local events in the intended aircraft application do not result in certain hazardous engine effects. The special condition would also implement integrity requirements, criteria for LOTC/LOPC events, and an acceptable LOTC/LOPC rate.

Proposed special condition 33(h) would require ZeroAvia to conduct a safety assessment of the engine electrical system to support the safety

analysis in special condition no. 17. This safety assessment provides engine response to failures, and rates of these failures, that can be used at the aircraft safety assessment level.

The 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.

Applicability

As discussed above, these proposed special conditions are 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 apply to the other model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model of 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), 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 ZeroAvia's Model ZA601 engine. The applicant must also comply with the certification procedures set forth in title 14, Code of Federal Regulations (14 CFR) part 21.

1. *Applicability:*

(a) Unless otherwise noted in these special conditions, the engine design must comply with the airworthiness standards for aircraft engines set forth in 14 CFR part 33, except for those airworthiness standards that are specifically and explicitly applicable only to reciprocating and turbine aircraft engines or as specified herein.

(b) The applicant must comply with this part using a means of compliance, which may include consensus standards, accepted by the Administrator.

(c) The applicant requesting acceptance of a means of compliance must provide the means of compliance to the FAA in a form and manner acceptable to the Administrator.

2. *Engine Ratings and Operating Limits:* In addition to § 33.7(a), the engine ratings and operating limits must be established and included in the type certificate data sheet based on:

(a) Shaft power, torque, rotational speed, temperature, and time for:

(1) Rated takeoff power;

(2) Rated maximum continuous power; and

(3) Rated maximum temporary power and associated time limit.

(b) Duty cycle and the rating at that duty cycle. The duty cycle must be declared in the engine type certificate data sheet.

(c) Cooling fluid grade or specification.

(d) Power-supply requirements.

(e) Any other ratings or limitations that are necessary for the safe operation of the engine.

(f) In determining the engine performance and operating limitations, the overall limits of accuracy of the engine control system, of the engine electrical systems, and of the necessary instrumentation as defined in § 33.5(a)(6) must be taken into account.

3. *Materials:* The engine design must comply with § 33.15.

4. *Fire Protection:* The engine design must comply with § 33.17(b) through (g). In addition—

(a) The design and construction of the engine and the materials used must minimize the probability of the occurrence and spread of fire during normal operation and failure conditions and must minimize the effect of such a fire.

(b) Electrical wiring interconnection systems must be protected against arc faults that can lead to a fire that could result in hazardous engine effects as defined in special condition no. 17(d)(2) of these special conditions. Any non-protected electrical wiring interconnects must be analyzed to show that arc faults that can lead to a fire do not cause a hazardous engine effect.

5. *Durability:* The engine design and construction must minimize the development of an unsafe condition of the engine between maintenance intervals, overhaul periods, or mandatory actions described in the applicable ICA. The engine design must also comply with § 33.19(b).

6. *Engine Cooling:* The engine design and construction must comply with § 33.21. In addition, if cooling is required to satisfy the safety analysis as described in special condition no. 17 of these special conditions, the cooling system monitoring features and usage must be documented in accordance with § 33.5.

7. *Engine Mounting Attachments and Structure:* The engine mounting

attachments and related engine structures must comply with § 33.23.

8. *Accessory Attachments:* The engine must comply with § 33.25.

9. *Overspeed:*

(a) A rotor overspeed must not result in a burst, rotor growth, or damage that results in a hazardous engine effect, as defined in special condition no. 17(d)(2) of these special conditions. Compliance with this paragraph must be shown by test, validated analysis, or a combination of both. Applicable assumed rotor speeds must be declared and justified.

(b) Rotors must possess sufficient strength with a margin to burst above certified operating conditions and above failure conditions leading to rotor overspeed. The margin to burst must be shown by test, validated analysis, or a combination thereof.

(c) The engine must not exceed the rotor speed operational limitations that could affect rotor structural integrity.

10. *Engine Control Systems:*

(a) *Applicability.* The requirements of this special condition apply to any system or device that is part of the engine type design that controls, limits, monitors, or protects engine operation, and is necessary for the continued airworthiness of the engine.

(b) *Engine control.* The engine control system must ensure that the engine does not experience any unacceptable operating characteristics or exceed its operating limits, including in failure conditions where the fault or failure results in a change from one control mode to another, from one channel to another, or from the primary system to the back-up system, if applicable.

(c) *Design Assurance.* The software and complex electronic hardware, including programmable logic devices, must be:

(1) Designed and developed using a structured and systematic approach that provides a level of assurance for the encoded logic commensurate with the hazard associated with the failure or malfunction of the systems in which the devices are located; and

(2) Substantiated by a verification methodology acceptable to the Administrator.

(d) *Validation.* All functional aspects of the control system must be substantiated by test, analysis, or a combination thereof, to show that the engine control system performs the intended functions throughout the declared operational envelope.

(e) *Environmental Limits.*

Environmental limits that cannot be adequately substantiated by endurance demonstration, validated analysis, or a combination thereof must be

demonstrated by the system and component tests in special condition no. 27 of these special conditions.

(f) *Engine control system failures.* The engine control system must:

(1) Have a maximum rate of loss of power control (LOPC) that is suitable for the intended aircraft application. The estimated LOPC rate must be documented in accordance with § 33.5;

(2) When in the full-up configuration, be single-fault tolerant, as determined by the Administrator, for electrical, electrically detectable, and electronic failures involving LOPC events;

(3) Not have any single failure that results in hazardous engine effects as defined in special condition no. 17(d)(2) of these special conditions; and

(4) Ensure failures or malfunctions that lead to local events in the aircraft do not result in hazardous engine effects, as defined in special condition no. 17(d)(2) of these special conditions, due to engine control system failures or malfunctions.

(g) *System safety assessment.* The applicant must perform a system safety assessment. This assessment must identify faults or failures that affect normal operation, together with the predicted frequency of occurrence of these faults or failures. The intended aircraft application must be taken into account to assure that the assessment of the engine control system safety is valid. The rates of hazardous and major faults must be documented in accordance with § 33.5.

(h) *Protection systems.* The engine control devices and systems' design and function, together with engine instruments, operating instructions, and maintenance instructions, must ensure that engine operating limits that can lead to a hazard will not be exceeded in service.

(i) *Aircraft supplied data.* Any single failure leading to loss, interruption, or corruption of aircraft-supplied data (other than power-command signals from the aircraft), or aircraft-supplied data shared between engine systems within a single engine or between fully independent engine systems, must:

(1) Not result in a hazardous engine effect, as defined in special condition no. 17(d)(2) of these special conditions, for any engine installed on the aircraft; and

(2) Be able to be detected and accommodated by the control system.

(j) *Engine control system electrical power.*

(1) The engine control system must be designed such that the loss, malfunction, or interruption of the control system electrical power source will not result in a hazardous engine

effect, unacceptable transmission of erroneous data, or continued engine operation in the absence of the control function. Hazardous engine effects are defined in special condition no. 17(d)(2) of these special conditions. The engine control system must be capable of resuming normal operation when aircraft-supplied power returns to within the declared limits.

(2) The applicant must identify, document, and provide to the installer as part of the requirements in § 33.5, the characteristics of any electrical power supplied from the aircraft to the engine control system, including transient and steady-state voltage limits, and any other characteristics necessary for safe operation of the engine.

11. *Instrument Connection:* The applicant must comply with § 33.29(a), (e), and (g).

(a) In addition, as part of the system safety assessment of special condition nos. 10(g) and 33(h) of these special conditions, the applicant must assess the possibility and subsequent effect of incorrect fit of instruments, sensors, or connectors. Where practicable, the applicant must take design precautions to prevent incorrect configuration of the system.

(b) The applicant must provide instrumentation enabling the flight crew to monitor the functioning of the engine cooling system unless evidence shows that:

(1) Other existing instrumentation provides adequate warning of failure or impending failure;

(2) Failure of the cooling system would not lead to hazardous engine effects before detection; or

(3) The probability of failure of the cooling system is extremely remote.

12. *Stress Analysis:*

(a) A mechanical and thermal stress analysis, as well as an analysis of the stress caused by electromagnetic forces, must show a sufficient design margin to prevent unacceptable operating characteristics and hazardous engine effects as defined in special condition no. 17(d)(2) of these special conditions.

(b) Maximum stresses in the engine must be determined by test, validated analysis, or a combination thereof, and must be shown not to exceed minimum material properties.

13. *Critical and Life-Limited Parts:*

(a) The applicant must show, by a safety analysis or means acceptable to the Administrator, whether rotating or moving components, bearings, shafts, static parts, and non-redundant mount components should be classified, designed, manufactured, and managed throughout their service life as critical or life-limited parts.

(1) Critical part means a part that must meet prescribed integrity specifications to avoid its primary failure, which is likely to result in a hazardous engine effect as defined in special condition no. 17(d)(2) of these special conditions.

(2) Life-limited parts may include but are not limited to a rotor or major structural static part, the failure of which can result in a hazardous engine effect, as defined in special condition no. 17(d)(2) of these special conditions, due to a low-cycle fatigue (LCF) mechanism. A life limit is an operational limitation that specifies the maximum allowable number of flight cycles that a part can endure before the applicant must remove it from the engine.

(b) In establishing the integrity of each critical part or life-limited part, the applicant must provide the Administrator the following three plans for approval:

(1) an engineering plan, as defined in § 33.70(a);

(2) a manufacturing plan, as defined in § 33.70(b); and

(3) a service-management plan, as defined in § 33.70(c).

14. Lubrication System:

(a) The lubrication system must be designed and constructed to function properly between scheduled maintenance intervals in all flight attitudes and atmospheric conditions in which the engine is expected to operate.

(b) The lubrication system must be designed to prevent contamination of the engine bearings and lubrication system components.

(c) The applicant must demonstrate by test, validated analysis, or a combination thereof, the unique lubrication attributes and functional capability of (a) and (b).

15. Power Response:

(a) The design and construction of the engine, including its control system, must enable an increase:

(1) From the minimum power setting to the highest rated power without detrimental engine effects;

(2) From the minimum obtainable power while in-flight and while on the ground to the highest rated power within a time interval determined to be appropriate for the intended aircraft application; and

(3) From the minimum torque to the highest rated torque without detrimental engine effects in the intended aircraft application.

(b) The results of (a)(1), (a)(2), and (a)(3) of this special condition must be documented in accordance with § 33.5.

16. Continued Rotation: If the design allows any of the engine main rotating

systems to continue to rotate after the engine is shut down while in-flight, this continued rotation must not result in any hazardous engine effects, as defined in special condition no. 17(d)(2) of these special conditions.

17. Safety Analysis:

(a) The applicant must comply with § 33.75(a)(1) and (a)(2) using the failure definitions in special condition no. 17(d) of these special conditions.

(b) The primary failure of certain single elements cannot be sensibly estimated in numerical terms. If the failure of such elements is likely to result in hazardous engine effects, then compliance may be shown by reliance on the prescribed integrity requirements of § 33.15 and special condition nos. 9 and 13 of these special conditions, as applicable. These instances must be stated in the safety analysis.

(c) The applicant must comply with § 33.75(d) and (e) using the failure definitions in special condition no. 17(d) of these special conditions, and the ICA in § 33.4.

(d) Unless otherwise approved by the Administrator, the following definitions apply to the engine effects when showing compliance with this condition:

(1) A minor engine effect does not prohibit the engine from performing its intended functions in a manner consistent with § 33.28(b)(1)(i), (b)(1)(iii), and (b)(1)(iv), and the engine complies with the operability requirements of special condition no. 15, special condition no. 25 and special condition no. 31 of these special conditions, as appropriate.

(2) The engine effects in § 33.75(g)(2) are hazardous engine effects with the addition of:

(i) Electrocution of the crew, passengers, operators, maintainers, or others; and

(ii) Blockage of cooling systems that could cause the engine effects described in § 33.75(g)(2) and special condition 17(d)(2)(i) of these special conditions.

(3) Any other engine effect is a major engine effect.

(e) The intended aircraft application must be taken into account when performing the safety analysis.

(f) The results of the safety analysis, and the assumptions about the aircraft application used in the safety analysis, must be documented in accordance with § 33.5(c).

18. Ingestion:

(a) Rain, ice, and hail ingestion must not result in an abnormal operation such as shutdown, power loss, erratic operation, or power oscillations throughout the engine operating range.

(b) Ingestion from other likely sources (birds, foreign objects—ice slabs) must not result in unacceptable power or thrust loss, or hazardous engine effects defined by special condition no. 17(d)(2) of these special conditions, or unacceptable power loss.

(c) If the design of the engine relies on features, attachments, or systems that the installer may supply, for the prevention of unacceptable power loss or hazardous engine effects, as defined in special condition no. 17(d)(2) of these special conditions, following potential ingestion, then the features, attachments, or systems must be documented in accordance with § 33.5.

19. Liquid and Gas Systems:

(a) Each system used for lubrication or cooling of engine components must be designed and constructed to function properly in all flight attitudes and atmospheric conditions in which the engine is expected to operate.

(b) If a system used for lubrication or cooling of engine components is not self-contained, the interfaces to that system must be defined and documented in accordance with § 33.5.

(c) The applicant must establish by test, validated analysis, or a combination of both that all static parts subject to significant pressure loads will not:

(1) Exhibit permanent distortion beyond serviceable limits, or exhibit leakage that could create a hazardous condition when subjected to normal and maximum working pressure with margin;

(2) Exhibit fracture or burst when subjected to the greater of maximum possible pressures with margin.

(d) Compliance with special condition no. 19(c) of these special conditions must take into account:

(1) The operating temperature of the part;

(2) Any other significant static loads in addition to pressure loads;

(3) Minimum properties representative of both the material and the processes used in the construction of the part; and

(4) Any adverse physical geometry conditions allowed by the type design, such as minimum material and minimum radii.

(e) Approved coolants and lubricants must be documented in accordance with § 33.5.

20. Vibration Demonstration:

(a) The engine must be designed and constructed to function throughout its operating range of rotational speeds and engine output power, including defined

exceedances, without inducing excessive stress in any of the engine parts because of vibration and without imparting excessive vibration forces to the aircraft structure.

(b) Each engine design must undergo a vibration survey to establish that the vibration characteristics of those components subject to induced vibration are acceptable throughout the declared flight envelope and engine operating range for the specific installation configuration. The possible sources of the induced vibration that the survey must assess are mechanical, aerodynamic, acoustical, internally induced electromagnetic, installation induced effects that can affect the engine vibration characteristics, and likely environmental effects. This survey must be shown by test, validated analysis, or a combination thereof.

21. Overtorque: When approval is sought for a transient maximum engine overtorque, the applicant must demonstrate by test, validated analysis, or a combination thereof, that the engine can continue operation after operating at the maximum engine overtorque condition without maintenance action. Upon conclusion of overtorque tests conducted to show compliance with this special condition, or any other tests that are conducted in combination with the overtorque test, each engine part or individual groups of components must meet the requirements of special condition no. 29 of these special conditions.

22. Calibration Assurance: Each engine must be subjected to calibration tests to establish its power characteristics, and the conditions both before and after the endurance and durability demonstrations specified in special condition nos. 23 and 26 of these special conditions.

23. Endurance Demonstration: The applicant must subject the engine to an endurance demonstration, acceptable to the Administrator, to demonstrate the engine's limit capabilities. The endurance demonstration must include increases and decreases of the engine's power settings, energy regeneration, and dwellings at the power settings and energy regeneration for sufficient durations that produce the extreme physical conditions the engine experiences at rated performance levels, operational limits, and at any other conditions or power settings, including energy regeneration, that are required to verify the limit capabilities of the engine.

24. Temperature Limit: The engine design must demonstrate its capability to endure operation at its temperature limits plus an acceptable margin. The

applicant must quantify and justify the margin to the Administrator. The demonstration must be repeated for all declared duty cycles and ratings, and operating environments, which would impact temperature limits.

25. Operation Demonstration: The engine design must demonstrate safe operating characteristics, including but not limited to power cycling, starting, acceleration, overspeeding, and power response in accordance with special condition no. 15 of these special conditions, throughout its declared flight envelope and operating range. The declared engine operational characteristics must account for installation loads and effects.

26. Durability Demonstration: The engine must be subjected to a durability demonstration to show that each part of the engine has been designed and constructed to minimize any unsafe condition of the system between overhaul periods, or between engine replacement intervals if the overhaul is not defined. This test must simulate the conditions in which the engine is expected to operate in service, including typical start-stop cycles, to establish when the initial maintenance is required.

27. System and Component Tests: The applicant must show that systems and components that cannot be adequately substantiated in accordance with the endurance demonstration or other demonstrations will perform their intended functions in all declared environmental and operating conditions.

28. Rotor Locking Demonstration: If shaft rotation is prevented by locking the rotor(s), the engine must demonstrate:

- (a) Reliable rotor locking performance;
- (b) Reliable rotor unlocking performance; and
- (c) That no hazardous engine effects, as specified in special condition no. 17(d)(2) of these special conditions, will occur.

29. Teardown Inspection:

(a) After the endurance and durability demonstrations have been completed, the engine must be completely disassembled. Each engine component and lubricant must be eligible for continued operation in accordance with the information submitted for showing compliance with § 33.4.

(b) Each engine component, having an adjustment setting and a functioning characteristic that can be established independent of installation on or in the engine, must retain each setting and functioning characteristic within the established and recorded limits at the

beginning of the endurance and durability demonstrations.

(c) If a teardown cannot be performed for all engine components in a non-destructive manner, then the inspection or replacement intervals for these components and lubricants must be:

(1) established based on the endurance and durability demonstrations; and

(2) documented in the ICA in accordance with § 33.4.

30. Containment: The engine must be designed and constructed to protect against likely hazards from rotating components as follows:

(a) The design of the stator case surrounding rotating components must provide for the containment of the rotating components in the event of failure, unless the applicant shows that the margin to rotor burst precludes the possibility of a rotor burst.

(b) If the margin to burst shows that the stator case must have containment features in the event of failure, then the stator case must provide for the containment of the failed rotating components. The applicant must define by test, validated analysis, or a combination thereof, and document and provide to the installer as part of the requirements in § 33.5, the energy level, trajectory, and size of fragments released from damage caused by the main-rotor failure, and that pass forward or aft of the surrounding stator case.

31. Engine and Propeller Systems Test:

(a) An engine that is intended to be equipped with a propeller must be fitted for the endurance, durability, vibration and operation demonstrations with a representative propeller.

(b) For variable pitch propellers, the applicant must conduct functional demonstrations including feathering, negative torque, negative thrust, and reverse thrust operations, as applicable, with a representative propeller.

(c) The demonstrations must be accomplished in accordance with (a) and (b) or otherwise performed in a manner acceptable to the Administrator.

32. General Conduct of Tests:

(a) Maintenance of the engine may be made during the tests in accordance with the service and maintenance instructions submitted in compliance with § 33.4.

(b) The applicant must subject the engine or its parts to any additional tests that the Administrator finds necessary if:

- (1) The frequency of engine service is excessive;
 - (2) The number of stops due to engine malfunction is excessive;
 - (3) Major engine repairs are needed;
- or

(4) Replacement of an engine part is found necessary during the tests, or due to the teardown inspection findings.

(c) Upon completion of all demonstrations and testing specified in these special conditions, the engine and its components must be:

- (1) Within serviceable limits;
- (2) Safe for continued operation; and
- (3) Capable of operating at declared ratings while remaining within limits.

33. Engine Electrical Systems:

(a) Applicability. Any system or device that provides, uses, conditions, or distributes electrical power, and is part of the engine type design, must provide for the continued airworthiness of the engine, and must maintain electric engine ratings.

(b) Electrical systems. The electrical system must ensure the safe generation and transmission of power, and electrical load shedding if load shedding is required, and that the engine does not experience any unacceptable operating characteristics or exceed its operating limits. Electrical wiring interconnection systems must be protected against arc faults that could result in hazardous engine effects as defined in special condition no. 17(d)(2) of these special conditions.

(c) Electrical power distribution.

(1) The engine electrical power distribution system must be designed to provide the safe transfer of electrical energy throughout the electric engine. The system must be designed to provide electrical power so that the loss, malfunction, or interruption of the electrical power source will not result in a hazardous engine effect, as defined in special condition no. 17(d)(2) of these special conditions.

(2) The system must be designed and maintained to withstand normal and abnormal conditions during all ground and flight operations.

(3) The system must provide mechanical or automatic means of isolating a faulted electrical energy generation or storage device from leading to hazardous engine effects, as defined in special condition no. 17(d)(2) of these special conditions, or detrimental effects in the intended aircraft application.

(d) Protection systems. The engine electrical system must be designed such that the loss, malfunction, interruption of the electrical power source, or power conditions that exceed design limits, will not result in a hazardous engine effect, as defined in special condition no. 17(d)(2) of these special conditions.

(e) Electrical power characteristics. The applicant must document, and provide to the installer as part of the requirements in § 33.5, the

characteristics of any electrical power supplied from:

(1) the aircraft to the engine electrical system, for starting and operating the engine, including transient and steady state voltage limits, and

(2) the engine to the aircraft via energy regeneration, and any other characteristics necessary for safe operation of the engine.

(f) Environmental limits. Environmental limits that cannot adequately be substantiated by endurance demonstration, validated analysis, or a combination thereof must be demonstrated by the system and component tests in special condition no. 27 of these special conditions.

(g) Electrical system failures. The engine electrical system must:

(1) Have a maximum rate of loss of power control (LOPC) that is suitable for the intended aircraft application;

(2) When in the full-up configuration, be single-fault tolerant, as determined by the Administrator, for electrical, electrically detectable, and electronic failures involving LOPC events;

(3) Not have any single failure that results in hazardous engine effects; and

(4) Ensure any electrical system failures or malfunctions that lead to local events in the intended aircraft application do not result in hazardous engine effects, as defined in special condition no. 17(d)(2) of these special conditions, due to electrical system failures or malfunctions.

(h) System safety assessment. The applicant must perform a system safety assessment. This assessment must identify faults or failures that affect normal operation, together with the predicted frequency of occurrence of these faults or failures. The intended aircraft application must be taken into account to assure the assessment of the engine system safety is valid. The rates of hazardous and major faults must be documented in accordance with § 33.5.

Issued in Kansas City, Missouri, on January 6, 2026.

Patrick R. Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2026-00171 Filed 1-7-26; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2026-0007; Project Identifier MCAI-2025-01183-R]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Helicopters Model AS350B2, AS350B3, EC130B4, and EC130T2 helicopters. This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the airworthiness limitations section (ALS) of the existing maintenance manual (MM) or instructions for continued airworthiness and the existing approved maintenance or inspection program. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by February 23, 2026.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2026-0007; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668

Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at regulations.gov under Docket No. FAA-2026-0007.

FOR FURTHER INFORMATION CONTACT:

Matthew Williams, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946-4134; email: matthew.t.williams@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under **ADDRESSES**. Include “Docket No. FAA-2026-0007; Project Identifier MCAI-2025-01183-R” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to regulations.gov, 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 Matthew Williams, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2025-0137, dated June 27, 2025, and corrected October 29, 2025 (EASA AD 2025-0137) (also referred to as the MCAI), to correct an unsafe condition on Airbus Helicopters Model AS 350 B2, AS 350 B3, EC 130 B4, and EC 130 T2 helicopters. The MCAI states that new or more restrictive airworthiness limitations have been developed. Additionally, the MCAI advises that the airworthiness limitations are identified as mandatory for continued airworthiness and that AH [Airbus Helicopters] has issued applicable ALS revisions to specify new and more restrictive life limits and maintenance tasks. The FAA is issuing this proposed AD to prevent failure of critical parts and primary structural components, which if not addressed, could result in loss of control of the helicopter.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA-2026-0007.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2025-0137, which specifies replacing components before exceeding their life limits and accomplishing all applicable maintenance tasks within thresholds and intervals specified in the ALS as defined in EASA AD 2025-0137. Depending on the results of the maintenance tasks, EASA AD 2025-0137 specifies accomplishing corrective action(s) or contacting Airbus Helicopters for approved instructions and accomplishing those instructions.

Additionally, EASA AD 2025-0137 specifies revising the Aircraft Maintenance Programme (AMP) by incorporating the limitations, tasks, and associated thresholds and intervals described in the specified ALS, as applicable. Revising the AMP constitutes terminating action for the requirement to record accomplishment of the actions of replacing components before exceeding their life limits and accomplishing maintenance tasks within thresholds and intervals specified in the applicable ALS as

specified in EASA AD 2025-0137 for demonstration of AD compliance on a continued basis.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These products have been approved by the civil aviation authority (CAA) of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI and material 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 the actions specified in EASA AD 2025-0137, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD. See “Differences Between this Proposed AD and the MCAI” for a discussion of the general differences included in this AD.

Differences Between This Proposed AD and the MCAI

Where EASA AD 2025-0137 specifies revising the approved AMP within 12 months after the effective date of EASA AD 2025-0137, this proposed AD would require revising the ALS of the existing approved maintenance or inspection program, as applicable, within 30 days after the effective date 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 CAA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2025-0137 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2025-0137 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed

AD. Using common terms that are the same as the heading of a particular section in EASA AD 2025–0137 does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is

not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2025–0137. Material required in EASA AD 2025–0137 for compliance will be available at *regulations.gov* under Docket No. FAA–2026–0007 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,163 helicopters of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise ALS	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$98,855

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Airbus Helicopters: Docket No. FAA–2026–0007; Project Identifier MCAI–2025–01183–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 23, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model AS350B2, AS350B3, EC130B4, and EC130T2 helicopters, certificated in any category.

Note 1 to paragraph (c): Helicopters with AS350B3e designation are Model AS350B3 helicopters.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by new or more restrictive airworthiness limitations. The FAA is issuing this AD to prevent failure of critical parts and primary structural components, which if not addressed, could result in loss of control of the helicopter.

(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: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2025–0137, dated June 27, 2025, and corrected October 29, 2025 (EASA AD 2025–0137).

(h) Exceptions to EASA AD 2025–0137

(1) Where EASA AD 2025–0137 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt paragraphs (1), (2), (4), and (5) of EASA AD 2025–0137.

(3) Where paragraph (3) of EASA AD 2025–0137 specifies “Within 12 months after the effective date of this AD, revise the approved AMP”, this AD requires replacing that text with “Within 30 days after the effective date of this AD, revise the airworthiness limitations section of the existing maintenance manual or instructions for continued airworthiness and the existing approved maintenance or inspection program, as applicable”.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2025–0137 is on or before the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2025–0137 or within 30 days after the effective date of this AD, whichever occurs later.

(5) This AD does not adopt the “Remarks” section of EASA AD 2025–0137.

(i) Provisions for Alternative Actions and Intervals

After the action required by paragraph (g) of this AD has been done, no alternative actions and associated thresholds and intervals, including any life limits, are allowed unless they are approved as specified in the provisions of the Ref. Publications section of EASA AD 2025–0137.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation

Branch, send it to the attention of the person identified in paragraph (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 Matthew Williams, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946-4134; email: matthew.t.williams@faa.gov.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2025-0137, dated June 27, 2025, and corrected October 29, 2025.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222 5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on January 5, 2026.

Steven W. Thompson,

Acting Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2026-00137 Filed 1-7-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2026-0006; Project Identifier MCAI-2024-00735-R]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2022-11-08, which applies to all Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, EC130B4, and EC130T2 helicopters. AD 2022-11-08 requires incorporating into maintenance records certain requirements (airworthiness limitations). Since the FAA issued AD 2022-11-08, it was determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the airworthiness limitations section (ALS) of the existing maintenance manual (MM) or instructions for continued airworthiness (ICAs) and the existing approved maintenance or inspection program, as applicable. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by February 23, 2026.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- **Federal eRulemaking Portal:** Go to regulations.gov. Follow the instructions for submitting comments.

- **Fax:** (202) 493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2026-0006; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI) any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.eu. It is also available at regulations.gov under Docket No. FAA-2026-0006.

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N-321, Fort Worth, TX

76177. For information on the availability of this material at the FAA, call (817) 222-5110.

FOR FURTHER INFORMATION CONTACT:

Matthew Williams, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946-4134; email: matthew.t.williams@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under **ADDRESSES**. Include "Docket No. FAA-2026-0006; Project Identifier MCAI-2024-00735-R" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to regulations.gov, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Matthew Williams, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2022–11–08, Amendment 39–22058 (87 FR 33632, June 3, 2022) (AD 2022–11–08), for Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350D, EC130B4, and EC130T2 helicopters. AD 2022–11–08 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0194R1, dated October 8, 2021 (EASA AD 2021–0194R1) to address the identification of certain parts needing maintenance actions, including life limits and maintenance tasks.

AD 2022–11–08 requires incorporating into maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2), as applicable for the helicopter, the requirements (airworthiness limitations) specified in EASA AD 2021–0194R1. The FAA issued AD 2022–11–08 to address the failure of certain parts, which could result in the loss of control of the helicopter.

Actions Since AD 2022–11–08 Was Issued

Since the FAA issued AD 2022–11–08, EASA superseded EASA AD 2021–0194R1, with EASA AD 2024–0133R1, dated July 10, 2024, which was then superseded by EASA AD 2024–0133R1, dated June 27, 2025 (EASA AD 2024–0133R1) (also referred to as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been developed. Additionally, the MCAI advises that the airworthiness limitations and certification maintenance instructions are identified as mandatory for continued airworthiness and that AH [Airbus Helicopters] has issued applicable ALS revisions to specify new and more restrictive life limits and maintenance tasks, which includes repetitive checks and inspection requirements. The FAA is issuing this proposed AD to prevent failure of critical parts and primary structural components, which if not addressed, could result in loss of control of the helicopter.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2026–0006.

Relationship Between This Proposed AD and Other Relevant Rulemaking

EASA AD 2024–0133R1 specifies that the manufacturer revised the ALS, for Airbus Helicopters Model AS350B2, AS350B3, EC130B4, and EC130T2 helicopters as applicable. The revised

ALS for each model now incorporates the new and more restrictive tasks and limitations. The FAA is evaluating this issue and may take further rulemaking action to accommodate these ALS amendments.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2024–0133R1, which specifies procedures for replacing components before exceeding their life limits and accomplishing all applicable maintenance tasks within thresholds and intervals specified in the ALS as defined in EASA AD 2024–0133R1. Depending on the results of the maintenance tasks, EASA AD 2024–0133R1 specifies accomplishing corrective action(s) or contacting Airbus Helicopters for approved instructions and accomplishing those instructions.

Additionally, EASA AD 2024–0133R1 specifies revising the Aircraft Maintenance Programme (AMP) by incorporating the limitations, tasks, and associated thresholds and intervals described in the specified ALS, as applicable. Revising the AMP constitutes terminating action for the requirement to record accomplishment of the actions of replacing components before exceeding their life limits and accomplishing maintenance tasks within thresholds and intervals specified in the applicable ALS as required by EASA AD 2024–0133R1 for demonstration of AD compliance on a continued basis.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These products have been approved by the civil aviation authority (CAA) of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and material 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 retain none of the requirements of AD 2022–11–08 and would require the actions specified in EASA AD 2024–0133R1, described previously, as incorporated by

reference, except for any differences identified as exceptions in the regulatory text of this proposed AD. See “Differences Between this Proposed AD and the MCAI” for a discussion of the general differences included in this AD.

Differences Between This Proposed AD and the MCAI

Where EASA AD 2024–0133R1 specifies revising the approved AMP within 12 months after the effective date of EASA AD 2024–0133R1, this proposed AD would require revising the ALS of the existing approved maintenance or inspection program, as applicable, within 30 days after the effective date of this proposed AD.

EASA AD 2024–0133R1 applies to Airbus Helicopters Model AS350BB, whereas this proposed AD would not because that model does not have an FAA type certificate.

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 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 2024–0133R1 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2024–0133R1 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 2024–0133R1 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 2024–0133. Material required in EASA AD 2024–0133R1 for compliance will be available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2026–0006 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 963 helicopters of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise ALS	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$81,855

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 2022–11–08, Amendment 39–22058 (87 FR 33632, June 3, 2022); and
 - b. Adding the following new airworthiness directive:

Airbus Helicopters: Docket No. FAA–2026–0006; Project Identifier MCAI–2024–00735–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 23, 2026.

(b) Affected ADs

This AD replaces AD 2022–11–08, Amendment 39–22058 (87 FR 33632, June 3, 2022).

(c) Applicability

This AD applies to all Airbus Helicopters Model AS350B, AS350BA, AS350B1, and AS350D helicopters, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by new and more restrictive airworthiness limitations. The FAA is issuing this AD to prevent failure of critical parts and primary structural components, which if not addressed, could result in loss of control of the helicopter.

(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: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency AD 2024–0133R1, dated June 27, 2025 (EASA AD 2024–0133R1).

(h) Exceptions to EASA AD 2024–0133R1

(1) Where EASA AD 2024–0133R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt paragraphs (1), (2), (4), and (5) of EASA AD 2024–0133R1.

(3) Where paragraph (3) of EASA AD 2024–0133R1 specifies, "Within 12 months after the effective date of this AD, revise the approved AMP", this AD requires replacing that text with "Within 30 days after the effective date of this AD, revise the airworthiness limitations section of the existing maintenance manual or instructions for continued airworthiness and the existing approved maintenance or inspection program, as applicable."

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2024–0133R1 is on or before the applicable limitations and associated thresholds as incorporated by the requirements of paragraph (3) of EASA AD 2024–0133R1 or within 30 days after the effective date of this AD, whichever occurs later.

(5) This AD does not adopt the "Remarks" section of EASA AD 2024–0133R1.

(i) Provisions for Alternative Actions and Intervals

After the action required by paragraph (g) of this AD has been done, no alternative actions and associated thresholds and intervals, including any life limits, are allowed unless they are approved as specified in the provisions of the Ref. Publications section of EASA AD 2024–0133R1.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (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 Matthew Williams, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946–4134; email: matthew.t.williams@faa.gov.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2024–0133R1, dated June 27, 2025.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find the EASA material on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222 5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on January 5, 2026.

Steven W. Thompson,

Acting Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2026–00138 Filed 1–7–26; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 111

Parcel Dimension Compliance

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to amend *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) in various sections to expand the current requirement to include accurate parcel dimensions in a manifest.

DATES: Submit comments on or before February 9, 2026.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to PCFederalRegister@usps.gov, with a subject line of “Parcel Dimension Compliance”. Faxed comments are not accepted.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Catherine Knox at (202) 268–5636 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Currently, the Postal Service only requires mailers to include accurate parcel dimensions in a manifest (Shipping Services File (SSF) or other approved electronic documentation) when the dimensions exceed 1 cubic foot or 22 inches in length. Failure to comply with this requirement, would subject the parcel to the Dimension Noncompliance Fee.

The Postal Service is proposing to expand the current standard in the Domestic Mail Manual by requiring mailers to always include accurate dimensions (length, width, and height) for parcels included in a manifest. Dimensions would not be required for Flat Rate priced pieces or USPS Returns pieces. Failure to comply with the expanded requirement, would continue to subject the parcel to the Dimension Noncompliance Fee. This proposal would also continue to only apply to commercial Priority Mail Express, Priority Mail, USPS Ground Advantage, and Parcel Select, products.

The Postal Service is proposing to implement this change effective July 12, 2026.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the proposed revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, the Postal Service proposes the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1):

PART 111—[AMENDED.]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Letters, Cards, Flats, and Parcels

* * * * *

210 Commercial Mail Priority Mail Express

213 Prices and Eligibility

* * * * *

1.0 Prices and Fees

* * * * *

1.4 Dimensional Weight Price for Low-Density Parcels

* * * * *

[Delete 1.4.4, Dimensional Weight Pricing Dimension Standard, in its entirety.]

* * * * *

1.8 Nonstandard Fees

Except for Priority Mail Express Return service, a Priority Mail Express piece is subject to a nonstandard fee (see Notice 123—Price List) as follows:

* * * * *

[Revise the text of items g and h to read as follows:]

g. Shipping Services file manifests or other approved electronic documentation must include the extra service code (ESC) for the characteristics category (see 201.7.6.2).

h. Mailers of parcels requiring the characteristics extra service code (ESC) and have a Shipping Services file manifest or other approved electronic documentation, that do not meet the requirement to include the ESC under 1.8g will be assessed the Dimension Noncompliance fee under 1.9.

1.9 Dimension Noncompliance Fee

[Revise the first sentence of 1.9 to read as follows:]

Except for Flat Rate priced pieces and Priority Mail Express Return service pieces, mailers of Priority Mail Express parcels are required to include the parcel's dimensions (length, width, height), and when applicable the characteristics ESC (see 1.8g), in the Shipping Services file manifest or other approved electronic documentation or will be assessed the Dimension

Noncompliance fee (see Notice 123—Price List) if the parcel's dimensions or ESC are omitted or inaccurate.* * *

* * * * *

220 Commercial Mail Priority Mail

223 Prices and Eligibility

1.0 Prices and Fees

* * * * *

1.4 Dimensional Weight Price for Low-Density Parcels

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[Delete 1.4.4, Dimensional Weight Pricing Dimension Standard, in its entirety.]

* * * * *

1.10 Nonstandard Fees

Except for Flat Rate and Priority Mail Return service packages, a Priority Mail piece is subject to a nonstandard fee (see Notice 123—Price List) as follows:

* * * * *

[Revise the text of items g and h to read as follows:]

g. Shipping Services file manifests or other approved electronic documentation must include the extra service code (ESC) for the characteristics category (see 201.7.6.2).

h. Mailers of parcels requiring the characteristics extra service code (ESC) and have a Shipping Services file manifest or other approved electronic documentation, that do not meet the requirement to include the ESC under 1.10g will be assessed the Dimension Noncompliance fee under 1.11.

1.11 Dimension Noncompliance Fee

[Revise the first sentence of 1.11 to read as follows:]

Except for Flat Rate priced pieces and Priority Mail Return service pieces, mailers of Priority Mail parcels are required to include the parcel's dimensions (length, width, height), and when applicable the characteristics ESC (see 1.10g), in the Shipping Services file manifest or other approved electronic documentation or will be assessed the Dimension Noncompliance fee (see Notice 123—Price List) if the parcel's dimensions or ESC are omitted or inaccurate.* * *

* * * * *

250 Commercial Mail Parcel Select

253 Prices and Eligibility

1.0 Prices and Fees

* * * * *

1.2 Dimensional Weight Price for Low-Density Parcels

* * * * *

[Delete 1.2.4, Dimensional Weight Pricing Dimension Standard, in its entirety.]

* * * * *

1.7 Nonstandard Fees

Except for oversized priced parcels, a Parcel Select Destination Entry or USPS Connect Local piece is subject to a nonstandard fee (see Notice 123—Price List) as follows:

* * * * *

[Revise the text of items g and h to read as follows:]

g. Shipping Services file manifests or other approved electronic documentation must include the extra service code (ESC) for the characteristics category (see 201.7.6.2).

h. Mailers of parcels requiring the characteristics extra service code (ESC) and have a Shipping Services file manifest or other approved electronic documentation, that do not meet the requirement to include the ESC under 1.7g will be assessed the Dimension Noncompliance fee under 1.8.

1.8 Dimension Noncompliance Fee

[Revise the first sentence of 1.8 to read as follows:]

Mailers of Parcel Select parcels are required to include the parcel's dimensions (length, width, height), and when applicable the characteristics ESC (see 1.7g), in the Shipping Services file manifest or other approved electronic documentation or will be assessed the Dimension Noncompliance fee (see Notice 123—Price List) if the parcel's dimensions or ESC are omitted or inaccurate.* * *

* * * * *

280 Commercial Mail USPS Ground Advantage—Commercial

283 Prices and Eligibility

1.0 Prices and Fees

* * * * *

1.4 Dimensional Weight Price for Low-Density Parcels

* * * * *

[Delete 1.4.4, Dimensional Weight Pricing Dimension Standard, in its entirety.]

* * * * *

1.7 Nonstandard Fees

Except for oversized priced parcels and USPS Ground Return service parcels, a USPS Ground Advantage—Commercial piece is subject to a nonstandard fee (see Notice 123—Price List) as follows:

* * * * *

[Revise the text of items g and h to read as follows:]

g. Shipping Services file manifests or other approved electronic documentation must include the extra service code (ESC) for the characteristics category (see 201.7.6.2).

h. Mailers of parcels requiring the characteristics extra service code (ESC) and have a Shipping Services file manifest or other approved electronic documentation, that do not meet the requirement to include the ESC under 1.7g will be assessed the Dimension Noncompliance fee under 1.8.

1.8 Dimension Noncompliance Fee

[Revise the first sentence of 1.8 to read as follows:]

Except for USPS Ground Advantage Return service pieces, mailers of USPS Ground Advantage—Commercial parcels are required to include the parcel's dimensions (length, width, height), and when applicable the characteristics ESC (see 1.7g), in the Shipping Services file manifest or other approved electronic documentation or will be assessed the Dimension Noncompliance fee (see Notice 123—Price List) if the parcel's dimensions or ESC are omitted or inaccurate.* * *

* * * * *

Kevin Rayburn,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2026–00131 Filed 1–7–26; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2025–3161; FRL–13099–01–R7]

Air Plan Approval; Missouri; Construction Permits Required

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Missouri State Implementation Plan (SIP) received on March 19, 2025, that contain updates to the construction permit requirement regulations for stationary and portable air sources in Missouri that help ensure ambient air quality standards are met. The revisions to this rule include updating the fees for facilities applying for and receiving construction permits for air pollution sources; removing a subsection from the state rule that was never approved in the SIP; and making administrative wording changes. These revisions do not impact the stringency

of the SIP or have an adverse effect on air quality. The EPA's proposed approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before February 9, 2026.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-R07-OAR-2025-3161 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: 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: Steven Brown, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7718; email address: brown.steven@epa.gov.

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

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2025-3161, 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 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 is being addressed in this document?

The EPA is proposing to approve a SIP revision submitted by the State of Missouri on March 19, 2025. The revisions are to Title 10, Division 10 of the Code of State Regulations (CSR), 10 CSR 10-6.060 "Construction Permits Required". The purpose of the state regulation is to define sources required to obtain permits to construct and establishes requirements to be met prior to construction or modification of any sources, including procedures for the permitting authority to issue general permits, fees, and public notice requirements. The March 19, 2025, revisions to this rule include updates to the fees for facilities applying for and receiving construction permits for air pollution sources, removal of subsection (1)(B) from the state rule that provided the ability for facilities to apply for and receive voluntary permits which was never approved in the SIP, and administrative wording changes. EPA proposes to find that these revisions meet the requirements of the CAA, do not impact the stringency of the SIP, and do not adversely impact air quality. The full text of the rule revisions can be found in the redline strikeout section of the Missouri submittal included in this docket.

III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from July 15, 2024, to September 5, 2024, and held a public hearing on August 29, 2024. Missouri received one (1) supporting comment during the comment period on 10 CSR 10-6.060. As explained above the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What action is the EPA taking?

The EPA is proposing to amend the Missouri SIP by approving the State's request to revise 10 CSR 10-6.060 "Construction Permits Required." We are processing this as a proposed action because we are soliciting comments on

this proposed action. Final rulemaking will occur after consideration of any comments.

V. 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 finalize the incorporation by reference of the Missouri rule 10 CSR 10-6.060 discussed in section II. of this preamble and as set forth below in the proposed amendments to 40 CFR part 52. The purpose of the state regulation is to define sources required to obtain permits to construct and establish requirements to be met prior to construction or modification of any sources and establish procedures for the permitting authority to issue general permits, fees, and public notice requirements. 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).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of

Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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: December 18, 2025.

James Macy,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
10–6.060	Construction Permits Required.	1/1/2026	[Date of publication of the final rule in the Federal Register], 90 FR [Federal Register page where the document begins of the final rule].	
*	*	*	*	*

* * * * *

[FR Doc. 2026–00214 Filed 1–7–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R03–OAR–2025–1614; FRL–13044–01–R3]

Clean Air Act Title V Operating Permit Program Revision; District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the District of Columbia (DC, the District)’s title V operating permits program, submitted on behalf of the

District by the Department of Energy and Environment (DOEE). The revision updated title V operating permit fees collected by DOEE in order to ensure that the title V operating program will continue to be adequately funded. The revision also reorganized some sections in Chapter 3 with no substantive change in content. This action is being taken under section 502 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before February 9, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2025–1614 at www.regulations.gov, or via email to Supplee.Gwendolyn@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner

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 AA—Missouri

■ 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry “10–6.060” to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT:

Yongtian He, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2339. Mr. He can also be reached via electronic mail at he.yongtian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The DC title V operating permit program is implemented through its “Operating Permits and Acid Rain Programs,” codified in 20 District of Columbia Municipal Regulations (DCMR) Chapter 3. The EPA initially granted full approval of the DC title V operating permit program effective on November 30, 2001. See 66 FR 52538 (October 16, 2001). However, in a notice of deficiency (NOD) published in the *Federal Register* on December 21, 2001 (66 FR 65947), the EPA notified the District of Columbia of EPA’s finding that the District’s provisions for providing public notification of permitting actions did not fully comply with the requirements of the CAA and its implementing regulations. On April 4, 2003, the District of Columbia submitted revisions to the public notification requirements of the operating permit program and adequately resolved the deficiency identified in the 2001 EPA NOD (December 21, 2001, 66 FR 65947). The EPA subsequently determined that the District of Columbia maintains final full approval of the Clean Air Act title V operating permit program. See 68 FR 18581 (April 16, 2003).

On May 30, 2024, DOEE submitted a revision to 20 DCMR Chapter 3 for approval into the state’s EPA-approved title V program. DOEE revised 20 DCMR Chapter 3 to update fees for 40 CFR part 70 operating permits (“major source” or title V permits). Additionally, the DOEE revision clarified and resolved errors in the existing regulations, including adding a definition for the term “relevant emission units.” The revision also reorganized some sections in Chapter 3 with no substantive change in content.

DOEE’s updated fee collection schedule is designed to ensure sufficient funding for its title V program, in order to cover all reasonable costs required to implement and administer the DOEE Title V Operating Permit Program as required by 40 CFR 70.9(a) and (b). Title V program costs include those for

activities such as reviewing and processing operating permits and preconstruction permits, conducting inspections, responding to complaints and pursuing enforcement actions, emissions and ambient air monitoring, preparing applicable regulations and guidance, modeling, analyses, demonstrations, emission inventories, and tracking emissions. Under 40 CFR 70.9(a), an approved state or local title V operating permits program must require that the owners or operators of 40 CFR part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and ensure that any fee required under 40 CFR 70.9 is used solely for permit program costs. The fee schedule must result in the collection and retention of revenues sufficient to cover the permit program implementation and oversight costs. See 40 CFR 70.9(b).

Following the District of Columbia’s municipal rulemaking process, DC revised its State Operating Permits Program under title V of the Clean Air Act through a rulemaking titled *Air Quality Permit Fees and Synthetic Minor Permitting Program* (effective June 5, 2020, 67 DCR 006789–006825). Through this rulemaking, DOEE revised fees for 40 CFR part 70 operating permits—major sources or title V permits—in 20 DCMR Chapter 3. Additionally, Chapter 3 was revised to clarify and resolve errors in the existing regulations, including adding a definition for the term “relevant emission units.” The District requests the EPA approval of *Air Quality Permit Fees and Synthetic Minor Permitting Program* as a revision to the District of Columbia’s title V program, as required under 40 CFR 70.4(i). This submittal also satisfies one of the action items from DOEE’s FY2023 Clean Air Act Title V Program Evaluation, dated September 6, 2023, which required DOEE to submit this regulation as a title V program revision within 12 months of the report date.¹ The DC submission indicates that it is necessary to update its fee collection schedule, otherwise DOEE would not be able to fully fund its title V program.

II. Summary of Title V Program Revision and EPA Analysis

In its May 30, 2024 submittal, DC sought the EPA approval of its revisions to 20 DCMR Chapter 3 into its title V program. DC’s revisions to 20 DCMR

Chapter 3 revised fees (Section 305) for its title V operating permit program. The revision reorganized three sections in Chapter 3 with no substantive change in content, including section 300 on applicability, section 301 on permit applications, and section 303 on permit issuance, renewal, reopening, and revision. The revision also clarified and resolved errors in the existing regulations, including adding a definition for the term “relevant emission units.” DOEE’s initial submission also included revisions in 20 DCMR Chapter 2 sections 200, 202, and 210 to create a synthetic minor permitting program, and added new section 211 to establish general construction and operating permit fees. However, in a May 28, 2025 supplemental letter which is included in the docket for this action, DOEE clarified its request so that only the revisions in 20 DCMR Chapter 3 found in *Air Quality Permit Fees and Synthetic Minor Permitting Program* will be incorporated as a revision to the District of Columbia’s title V program, as required under 40 CFR 70.4(i).²

In 20 DCMR Chapter 3 section 305, DOEE restructured 40 CFR part 70 sources permit application fee (section 305.1) and annual fees based on the total tons of actual emissions of each regulated pollutant (section 305.2, section 305.3). Section 305.5 requires that owners or operators of sources accepting federally enforceable emission limits pursuant to sections 200.6 and 300.3(c) shall pay a permit application fee (original and renewal applications) of five thousand dollars (\$5,000). Section 305.6 stipulates that DOEE use the Consumer Price Index for annual increases of fees charged under sections 305.2 and 305.3. Other subsections of section 305 are related to when and where to pay and penalties for failure to pay on time. DOEE added a definition of “relevant emission units” in section 399 (Definitions and Abbreviations).

With this fee schedule change, DOEE indicates that it can ensure that fees will remain sufficient to cover the costs of administering the plan approval application and operating permit process as required by section 502(b) of the CAA. Without this fee update, DOEE’s title V program is vulnerable and may not be able to sustain its title V operating permit program in a manner that is consistent with Federal requirements. If funds were to become

¹ September 6, 2023, the US EPA Region 3 issued a Clean Air Act Title V Program Evaluation Report for District of Columbia Department of Energy and Environment—FY2023.

² On November 20, 2025, the EPA proposed approval of a revision to the DC SIP that included revisions to Chapter 2 which, among other things, created a synthetic minor program to which the relevant fees in this current action apply. See 90 FR 52305.

insufficient to sustain an adequate title V program in DC, the EPA may determine that DOEE has not taken “significant action to assure adequate administration and enforcement of the Program” and take subsequent action as required under 40 CFR 70.10(b) and (c). This determination could lead to the EPA withdrawing approval of the DC title V operating permit program. Were that to occur, the EPA would have the authority and obligation to implement a Federal title V operating permit program in DC pursuant to 40 CFR part 71. The withdrawal of program approval could also lead to the imposition of mandatory and discretionary sanctions under the CAA. See 42 U.S.C. 7509(b).

The EPA reviewed DOEE’s submittal for consistency with the presumptive minimum fee rate outlined in the September 17, 2024, EPA Office of Air Quality Planning and Standards memorandum,³ as well as the requirements of 40 CFR 70.9(b)(2), and determined that DOEE met the requirements of CAA section 502. The EPA also determined the submittal is consistent with applicable EPA requirements in the title V operating permit program of the CAA and 40 CFR 70.9 for the collection of sufficient title V fees to cover permit program implementation and oversight costs. This rulemaking proposes to approve DC’s revision of its title V fees in order to ensure the fees collected are sufficient to fund DC’s title V program.

III. Proposed Action

Pursuant to 40 CFR 70.4(i)(2), the EPA is proposing to approve as a revision to the District of Columbia title V operating permit program. DOEE’s May

30, 2024 submittal revised DC’s title V fee structure in order to ensure sufficient fees are collected each year adequately and continually fund DC’s title V program. The revisions meet the relevant requirements of section 502 of the CAA and 40 CFR 70.4 and 70.9. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator approves title V operating permit program revisions that comply with the Act and applicable Federal Regulations. See 42 U.S.C. 7661a(d). Thus, in reviewing title V operating permit program submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. 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 Clean Air Act.

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

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, 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.

Amy Van Blarcom-Lackey,

Regional Administrator, Region III.

[FR Doc. 2026–00215 Filed 1–7–26; 8:45 am]

BILLING CODE 6560–50–P

³ Office of Air Quality Planning and Standards (OAQPS), https://www.epa.gov/system/files/documents/2024-09/fee70_2025.pdf.

Notices

Federal Register

Vol. 91, No. 5

Thursday, January 8, 2026

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2025–0769]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Contract Pilot and Aircraft Acceptance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the use of contract pilots and aircraft in Plant Protection and Quarantine domestic, emergency, and biological control programs.

DATES: We will consider all comments that we receive on or before March 9, 2026.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Enter APHIS–2025–0769 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2025–0769, Regulatory Analysis and Development, PPD, APHIS, 5601 Sunnyside Ave., #AP760, Beltsville, MD 20705.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov> or in our reading room, which is in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington,

DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on contract pilot and aircraft acceptance, contact Ms. Catherine Marzolf, National Policy Manager, PPQ, APHIS, USDA, 1400 Independence Ave. SW, Washington, DC 20250; catherine.a.marzolf@usda.gov; (386) 666–9932. For more information on the information collection reporting process, contact Ms. Sheniqua Harris, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2528; or email: APHIS.PRA@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Contract Pilot and Aircraft Acceptance.

OMB Control Number: 0579–0298.

Type of Request: Revision to and Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture, either independently or in cooperation with States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests and noxious weeds that are new to or not widely distributed within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS).

As part of this mission, APHIS' Plant Protection and Quarantine (PPQ) program responds to introductions of plant pests with eradication, suppression, or containment through various programs in cooperation with State departments of agriculture and other government agencies. These programs may include the aerial application of treatments to control plant pests.

APHIS contracts for these services, and prior to any aerial applications, requests certain information from the contractors and/or contract pilots to ensure that the work will be done according to specifications. Among other things, APHIS asks to see the aircraft registration, the aircraft's airworthiness certificate, the pilot's license, the pilot's medical certification, the pilot's proof of flight review, the pilot's pesticide applicator's license, and the aircraft logbook. Information

from these documents and aircraft inspection results are consolidated by APHIS for signature by the APHIS official and the contractor or contract pilot, indicating acceptance of the pilot and aircraft for the job.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years. APHIS has amended this information collection by decreasing the number of Respondents reporting; however, the number of Responses and Total Burden Hours reported for the collection has increased.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.259 hours per response.

Respondents: Contractors and/or contract pilots of aircraft.

Estimated annual number of respondents: 8.

Estimated annual number of responses per respondent: 4.

Estimated annual number of responses: 32.

Estimated total annual burden on respondents: 8 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 5th day of January 2026.

Michael Watson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2026-00108 Filed 1-7-26; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2025-0407]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Animal Welfare

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the Animal Welfare Act regulations for the humane handling, care, treatment, and transportation of certain animals by dealers, exhibitors, operators of auction sales, research facilities, carriers and intermediate handlers.

DATES: We will consider all comments that we receive on or before March 9, 2026.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Enter APHIS-2025-0407 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.

- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS-2025-0407, Regulatory Analysis and Development, PPD, APHIS, 5601 Sunnyside Ave., #AP760, Beltsville, MD 20705.

Supporting documents and any comments we receive on this docket may be viewed at www.regulations.gov or in our reading room, which is in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the Animal Welfare Act

contact Ms. SaMonia Ford, APHIS, Animal Care, 2150 Centre Avenue, Building B, 3W11, Fort Collins, CO 80526, 970-494-7478, AC.PublicComment@usda.gov. For more information on the information collection reporting process, contact Ms. Sheniqua Harris, APHIS' Paperwork Reduction Act Coordinator, at (301) 851-2528 or email: APHIS.PRA@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Animal Welfare.

OMB Control Number: 0579-0036.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Animal Welfare Act (AWA, 7 U.S.C. 2131 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to ensure the humane treatment of animals covered by the Animal Welfare Act, provide national leadership on the safety and well-being of pets and other animals during disasters, and to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, exhibitors, operators of auction sales, research facilities, carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), Animal Care.

Definitions, regulations, and standards established under the AWA are contained in 9 CFR parts 1, 2, and 3 (referred to below as the regulations). Part 1 contains definitions for terms used in parts 2 and 3. Part 2 provides administrative requirements and sets forth institutional responsibilities for regulated parties, including licensing requirements for dealers, exhibitors, and operators of auction sales. Part 3 provides standards for humane handling, care, treatment, and transportation of covered animals, and consists of subparts which contain specific standards for animals covered under the AWA.

Administering the AWA requires the use of several information collection activities such as license applications, registration applications and updates; annual reports; acknowledgement of regulations and standards; inspections; requests; notifications; plans; written program of veterinary care and health records; itineraries; applications and permits; records of acquisition, disposition, or transport of animals; official identification; variances;

protocols; health certificates; complaints; marking requirements; and recordkeeping.

These information collection activity requirements include activities merged in from information collection 0579-0486; Animal Care; Standards for Birds Not Bred for Use in Research Under the Animal Welfare Act.

The information collection requirements above represent Office of Management and Budget (OMB) Control Number 0579-0036, Animal Welfare, and OMB Control Number 0579-0486, Animal Care; Standards for Birds Not Bred for Use in Research Under the Animal Welfare Act. Once OMB approves this combined information collection package (0579-0036), APHIS will retire OMB Control Number 0579-0486.

We are asking the OMB to approve our use of these information collection activities for an additional 3 years. APHIS has amended this collection in the following ways:

- APHIS included the activities under 9 CFR 2.31, 2.33, 2.35, 2.36 and 2.40 with merging the activities from information collection and OMB Control Number 0579-0486, Animal Care; Standards for Birds Not Bred for Use in Research Under the Animal Welfare Act.

- With the merging of information collection 0579-0486 the number of respondents and responses have increased.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

- (2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

- (3) Enhance the quality, utility, and clarity of the information to be collected; and

- (4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.232 hours per response.

Respondents: Individuals or households; businesses or other for-profit entities; not-for-profit institutions;

farms; State, local, or tribal government officials; and foreign government officials.

Estimated annual number of respondents: 52,735.

Estimated annual number of responses per respondent: 18.

Estimated annual number of responses: 972,781.

Estimated total annual burden on respondents: 225,730 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 6th day of January 2026.

Michael Watson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2026-00200 Filed 1-7-26; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2025-0539]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Infectious Salmon Anemia; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the payment of indemnity due to infectious salmon anemia.

DATES: We will consider all comments that we receive on or before March 9, 2026.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Enter APHIS-2025-0539 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS-2025-0539, Regulatory Analysis

and Development, PPD, APHIS, 5601 Sunnyside Ave., #AP760, Beltsville, MD 20705.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov> or in our reading room, which is in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the payment of indemnity due to infectious salmon anemia, contact Mrs. Teresa Robinson, USDA-APHIS-VS, Maine ISA Program Aquaculture Liaison, via the District Office at 146 Mendon Street, Suite MM-2-W, Uxbridge, MA 01569 or at Teresa.robinson@aphis.usda.gov. For more information on the information collection reporting process, contact Ms. Sheniqua Harris, APHIS' Paperwork Reduction Act Coordinator, at (301) 851-2528 or email APHIS.PRA@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Infectious Salmon Anemia; Payment of Indemnity.

OMB Control Number: 0579-0192.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to prevent the interstate spread of serious diseases and pests of livestock within the United States when feasible. In connection with this mission, APHIS established regulations in 9 CFR part 53 to pay indemnity to salmon producers in Maine whose fish are destroyed because of infectious salmon anemia (ISA). However, payment is subject to the availability of funding. ISA is a foreign animal disease of Atlantic salmon that is caused by an orthomyxovirus. The disease affects wild and farmed Atlantic salmon. ISA poses a substantial threat to the economic viability and sustainability of salmon aquaculture in the United States.

To take part in this indemnity program, producers must enroll in the cooperative ISA control program administered by APHIS and the State of Maine. Program participants must also inform the ISA Program Veterinarian in writing of the name of their accredited veterinarian, develop biosecurity

protocols and a site-specific ISA action plan, submit fish inventory and mortality information, and assist APHIS or State officials with onsite disease surveillance, testing, and biosecurity audits. Program participants, who may include certain aquaculture industry business owners, managers, site employees, accredited veterinarians, and designated laboratories, must also assist APHIS with certain disease surveillance activities.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years. APHIS has amended this information collection by removing the following forms because they are now being reported in a Universal Permit information collection:

- All Species Appraisal and Indemnity Claim Form and Continuation Sheet (VS Forms 1-23 and 1-23A).

- Proceeds from Animals Sold for Slaughter (VS Form 1-24).

- Appraisal Request for Affected Premises Using Contract Growers (VS Form 1-26).

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

- (2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

- (3) Enhance the quality, utility, and clarity of the information to be collected; and

- (4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 2.91 hours per response.

Respondents: ISA program participants such as certain aquaculture industry business owners, managers, site employees, accredited veterinarians, and laboratory personnel; exporters; and foreign animal health authorities from exporting countries.

Estimated annual number of respondents: 13.

Estimated annual number of responses per respondent: 14.

Estimated annual number of responses: 187.

Estimated total annual burden on respondents: 544 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 5th day of January 2026.

Michael Watson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2026-00106 Filed 1-7-26; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Fats and Oils

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S. Codex Office is sponsoring a public meeting on January 21, 2026. The objective of the public meeting is to provide information and receive public comments on agenda items and draft U.S. positions to be discussed at the 29th Session of the Codex Committee on Fats and Oils (CCFO29) of the Codex Alimentarius Commission (CAC). CCFO29 will be held in Kuala Lumpur, Malaysia, from February 9–13, 2026. The U.S. Manager for Codex Alimentarius and the Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 29th Session of the CCFO and to address items on the agenda.

DATES: The public meeting is scheduled for January 21, 2026, from 2–4 p.m. ET.

ADDRESSES: The public meeting will take place via video teleconference only. Documents related to the 29th Session of the CCFO will be accessible via the internet at the following link: <https://www.fao.org/fao-who-codexalimentarius/meetings/detail/ro?meeting=CCFO&session=29>.

Dr. Girdhari Sharma, U.S. Delegate to the 29th Session of the CCFO, invites interested U.S. parties to submit their comments electronically to the following email address: Girdhari.Sharma@fda.hhs.gov.

Comments should state that they relate to the activities of the 29th Session of the CCFO.

Registration: Attendees may register to attend the public meeting at the following link: <https://www.zoomgov.com/meeting/register/KwsTgOvcQw6irPFvkTo7nQ>. After registering, you will receive a confirmation email containing information about joining the meeting.

For further information about the 29th Session of the CCFO, contact U.S. Delegate, Dr. Girdhari Sharma of the U.S. Food and Drug Administration, Girdhari.Sharma@fda.hhs.gov. For additional information regarding the public meeting, contact the U.S. Codex Office by email at: uscodex@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission was established in 1963. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Committee on Fats and Oils (CCFO) are: (a) To elaborate worldwide standards for fats and oils of animal, vegetable and marine origin including margarine and olive oil.

The CCFO is hosted by Malaysia. The United States attends the CCFO as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items from the agenda for the 29th Session of the CCFO will be discussed during the public meeting:

- Adoption of the Agenda
- Matters arising from the Codex Alimentarius Commission and other subsidiary bodies
- Activities of international organizations relevant to the work of CCFO
- *Standard for named vegetable oils* (CXS 210–1999), Appendix Section 5 Methods of Analysis and Sampling—fitness for purpose of the method for determination of gamma oryzanol in rice bran oil
- Proposed draft revisions to Codex standards on fats and oils to reduce trans-fatty acid (TFA) intake
- Proposed draft standard for microbial omega-3 oils
- Review of the *List of Acceptable Previous Cargoes* (Appendix II to CXC 36–1987)

- Revision to the *Standard for olive oil and olive pomace oil* (CXS 33–1981)
 - Update on the progress for the collection of scientific data and information in relation to PPP and 1,2-DAG
 - Development of a framework for data collection on Section 3.2.3 footnote (c) (decision tree)—Follow up on the CAC47 directive
- Proposals for new work and/or revision to existing Codex standards
 - Discussion paper—revision to the *Standard for named vegetable oils* (CXS 210–1999) to include Shea butter
 - Discussion paper—revision to the *Standard for named vegetable oils* (CXS 210–1999) to include virgin coconut oil
 - Discussion paper—revision to the *Standard for named vegetable oils* (CXS 210–1999) to adjust stearic acid content for high oleic acid sunflower seed oil
 - Discussion paper: development of a standard for Sea buckthorn oil
- Other Business

Public Meeting

At the January 21, 2026, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Dr. Girdhari Sharma, U.S. Delegate to the 29th Session of CCFO, at Girdhari.Sharma@fda.hhs.gov. Written comments should state that they relate to activities of the 29th Session of the CCFO.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA Codex web page located at: <https://www.usda.gov/codex>.

Done at Washington, DC, on January 6, 2026.

Julie A. Chao,

Deputy U.S. Manager for Codex Alimentarius.

[FR Doc. 2026-00165 Filed 1-7-26; 8:45 am]

BILLING CODE 3420-3F-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Virginia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Virginia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is to continue discussing potential civil rights topics of study and vote to approve a topic if ready.

DATES: Wednesday, February 11, 2026, from 1:00 p.m.–2:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual):
https://www.zoomgov.com/webinar/register/WN_ZZO7567rT9aDMUv-yor9EA.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Webinar ID: 160 613 6246 #.

Agenda: <https://usccr.box.com/s/e5mqzytk1j5jkpdvg1iqn4nll8jr2g> (note: a final meeting agenda will be available prior to the meeting date).

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, Designated Federal Officer, at mtrachtenberg@usccr.gov or (202) 809–9618.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the registration link above. Any interested members of the public may attend this meeting. An open comment period will be provided to allow members of the public to make oral comments as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting “CC” in the meeting platform. To request additional accommodations, please email mtrachtenberg@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be emailed to mtrachtenberg@usccr.gov. Persons who desire additional information may

contact the Regional Programs Coordination Unit at (202) 809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via the file sharing website, <https://bit.ly/3ZzHlj5>. Persons interested in the work of this Committee are directed to the Commission’s website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at mtrachtenberg@usccr.gov.

Dated: January 5, 2026.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2026–00101 Filed 1–7–26; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wisconsin Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Wisconsin Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public business meeting via Zoom at 12:00 p.m. CT on Friday, January 30, 2026. The purpose of this meeting is to discuss civil rights topics for the Committee’s first study.

DATES: Friday, January 30, 2026, from 12:00 p.m.–1:30 p.m. Central Time.

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual):
https://www.zoomgov.com/webinar/register/WN_WJlvSM-OQG-HJwYndTPBRw.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 160 792 0396.

FOR FURTHER INFORMATION CONTACT:

David Barreras, Designated Federal Officer, at dbarreras@usccr.gov or (202) 656–8937.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public

minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any charges incurred. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at lschiller@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at dbarreras@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 656–8937.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via this file sharing website. Persons interested in the work of this Committee are directed to the Commission’s website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

- I. Welcome & Roll Call
- II. Discuss Topics for Study
- III. Public Comment
- IV. Next Steps
- V. Adjournment

Dated: January 5, 2026.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2026–00107 Filed 1–7–26; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Georgia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the

Federal Advisory Committee Act, that the Georgia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public business meeting via Zoom. The purpose of the meeting is to review the first draft of the proposal on the Committee's selected civil rights topic and vote to approve if ready.

DATES: Wednesday, February 18, 2026, from 2:00 p.m.–3:00 p.m. Eastern Time.

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_3xmZ-K0cSxmPBfE-pkOauw.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 826 4412 #.

Agenda: <https://usccr.box.com/s/wh8bf7dgcgbezv9v9acmt334v4pbw1f> (note: a final meeting agenda will be available prior to the meeting date).

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, Designated Federal Officer, at mtrachtenberg@usccr.gov or (202) 809–9618.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the registration link above. Any interested members of the public may attend this meeting. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting “CC” in the meeting platform. To request additional accommodations, please email mtrachtenberg@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be emailed to mtrachtenberg@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both

before and after the meeting. Records of the meetings will be available via the file sharing website, <https://bit.ly/42t1cCA>. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at mtrachtenberg@usccr.gov.

Dated: January 5, 2026.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2026–00103 Filed 1–7–26; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Ohio Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual business meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Ohio Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold public meetings via Zoom. The purpose of the meetings is to review and vote on the Committee's draft report on antisemitism.

DATES:

- Friday, February 20, 2026, from 2:00 p.m. to 3:00 p.m. Eastern Time.
- Monday, March 16, 2026, from 2:00 p.m. to 3:00 p.m. Eastern Time.
- Tuesday, April 7, 2026, from 1:00 p.m. to 2:00 p.m. Eastern Time.

ADDRESSES: The meetings will be held via Zoom.

• **2/20/26 Registration Link (Audio/Visual):** https://www.zoomgov.com/webinar/register/WN_sowH38giRWSSRpuGloXhIA.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; ID: 160 342 4228 #.

• **3/16/26 Registration Link (Audio/Visual):** https://www.zoomgov.com/webinar/register/WN_NOKxQNAXSq63HGfD1d786A.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; ID: 161 612 0085 #.

• **4/7/26 Registration Link (Audio/Visual):** https://www.zoomgov.com/webinar/register/WN_z2eAzP7wQ_StfCzSjdjh-g.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; ID: 161 336 4728 #.

Agendas:

- **2/20/26:** <https://usccr.box.com/s/30gil4kdx44a2iqgoiqlqny4zr8o9bt> (note: a final meeting agenda will be available prior to the meeting date).
- **3/16/26:** <https://usccr.box.com/s/6sd6ltb0rorryxfjod54paxvexgvc4bm> (note: a final meeting agenda will be available prior to the meeting date).
- **4/7/26:** <https://usccr.box.com/s/6tfw9qqbvd7n8wglwanpoc6tuw0pmn9x> (note: a final meeting agenda will be available prior to the meeting date).

FOR FURTHER INFORMATION CONTACT:

Mallory Trachtenberg, Designated Federal Officer, at mtrachtenberg@usccr.gov or 1–202–809–9618.

SUPPLEMENTARY INFORMATION: This Committee meetings are available to the public through the registration link above. Any interested members of the public may attend these meetings. Open comment periods will be provided to allow members of the public to make oral comments as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meetings will include a list of persons who are present at the meetings. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting “CC” in the meeting platform. To request additional accommodations, please email mtrachtenberg@usccr.gov at least 5 business days prior to the meetings.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meetings. Written comments may be emailed to mtrachtenberg@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–809–9618.

Records generated from these meetings may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after each meeting. Records of the meetings will be available via the file sharing website, <https://bit.ly/4g3IB4K>. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at mtrachtenberg@usccr.gov.

Dated: January 5, 2026.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2026–00123 Filed 1–7–26; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Michigan Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Michigan Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of this meeting is to continue the discussion of project topics and potentially selecting a project topic.

DATES: Tuesday, February 10, 2026, from 10:00 a.m. to 11:00 a.m. Eastern Time.

ADDRESSES: This meeting will be held via Zoom.

Registration Link (Audio/Visual):
https://www.zoomgov.com/webinar/register/WN_50qoXC48Rgm8hWtobEJ2Lg.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Webinar ID: 161 989 2921 #.

Agenda: <https://usccr.box.com/s/2odzb2v5dn2227jim2qm7shws5dmomg7> (note: a final meeting agenda will be available prior to the meeting date).

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, Designated Federal Officer, at mtrachtenberg@usccr.gov or 1–202–809–9618.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the registration link above. Any interested members of the public may attend this meeting. An open comment period will be provided to allow members of the public to make oral comments as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers

will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting “CC” in the meeting platform. To request additional accommodations, please email mtrachtenberg@usccr.gov at least 5 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be emailed to mtrachtenberg@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–809–9618.

Records generated from these meetings may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after each meeting. Records of the meetings will be available via the file sharing website, <https://tinyurl.com/24pzv7v4>. Persons interested in the work of this Committee are directed to the Commission’s website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at mtrachtenberg@usccr.gov.

Dated: January 5, 2026.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2026–00102 Filed 1–7–26; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–873]

Fresh Mushrooms From Canada: Initiation of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable January 2, 2026.

FOR FURTHER INFORMATION CONTACT: Kelsie Hohenberger, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2517.

SUPPLEMENTARY INFORMATION:

The Petition

On September 16, 2025, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD)

petition concerning imports of fresh mushrooms from Canada filed in proper form on behalf of the Fresh Mushrooms Fair Trade Coalition and its individual members (collectively, the petitioners), domestic producers of fresh mushrooms.¹ The AD Petition was accompanied by a countervailing duty (CVD) petition concerning imports of fresh mushrooms from Canada.²

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.³ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁴

Between September 18 and September 24, 2025, Commerce requested supplemental information pertaining to certain aspects of the Petition in supplemental questionnaires.⁵ Between September 23 and 26, 2025, the petitioners filed timely responses to these requests for additional information.⁶

¹ See Petitioners’ Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties,” dated September 16, 2025 (Petition). The individual members of the Fresh Mushrooms Fair Trade Coalition are Giorgio Fresh Co. (including Donna Bella Farms LLC and Giorgi Mushroom Co.), J–M Farms LLC, Kennett Square Mushroom Operation LLC, Modern Mushroom Farms, Inc., Needham’s Mushroom Farms, Inc., and Sher-Rockee Mushroom Farms.

² *Id.*

³ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

⁴ See Memorandum, “Tolling of All Case Deadlines,” dated November 24, 2025.

⁵ See Commerce’s Letters, “Supplemental Questions,” dated September 18, 2025 (First General Issues Supplemental Questionnaire); *see also* “Supplemental Questions,” dated September 18, 2025; “Second Supplemental Questions,” dated September 24, 2025; and “Second Supplemental Questions,” dated September 24, 2025 (Second General Issues Supplemental Questionnaire).

⁶ See Petitioners’ Letters, “Petitioners’ Amendment to Volume I Relating to Request for the Imposition of Antidumping and Countervailing Duties on Imports from Canada,” dated September 23, 2025 (First General Issues Supplement); *see also* “Petitioners’ Supplement to Volume II Relating to Request for the Imposition of Antidumping Duties on Imports from Canada,” dated September 23, 2025; “Petitioners’ 2nd Amendment to Volume I Relating to Request for the Imposition of Antidumping and Countervailing Duties on Imports from Canada,” dated September 26, 2025 (Second General Issues Supplement); and “Petitioners’ Second Supplement to Volume II Relating to Request for the Imposition of Antidumping Duties on Imports from Canada,” dated September 26, 2025.

On December 15, 2025, Commerce extended the initiation deadline by 20 days to poll the domestic industry in accordance with section 732(c)(4)(D) of the Tariff Act of 1930, as amended (the Act), because it was “not clear from the Petitions whether the industry support criteria have been met. . . .”⁷

In accordance with section 732(b) of the Act, the petitioners allege that imports of fresh mushrooms from Canada are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that imports of such products are materially injuring, or threatening material injury to, the fresh mushrooms industry in the United States. Consistent with section 732(b)(1) of the Act, the Petition was accompanied by information reasonably available to the petitioners supporting their allegations.

The petitioners filed the Petition as interested parties, as defined in section 771(9)(C), (F), and (G) of the Act.⁸ Commerce finds that the petitioners demonstrated sufficient industry support for the initiation of the requested LTFV investigation and filed the Petition on behalf of the domestic industry.⁹

Period of Investigation (POI)

Because the Petition was filed on September 16, 2025, pursuant to 19 CFR 351.204(b)(1), the POI for the Canada LTFV investigation is July 1, 2024 to June 30, 2025.

Scope of the Investigation

The product covered by this investigation is fresh mushrooms from Canada. For a full description of the scope of this investigation, see the appendix to this notice.

Comments on the Scope of the Investigation

Between September 18 and September 24, 2025, Commerce requested information and clarification from the petitioners regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic

industry is seeking relief.¹⁰ Between September 23 and 26, 2025, the petitioners provided clarifications regarding the scope.¹¹ The description of merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).¹² Commerce will consider all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.¹³ Commerce requests that interested parties provide at the beginning of their scope comments a public executive summary for each comment or issue raised in their submission. Commerce further requests that interested parties limit their public executive summary of each comment or issue to no more than 450 words, not including citations. Commerce intends to use the public executive summaries as the basis of the comment summaries included in the analysis of scope comments. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on January 22, 2026, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, and should also be limited to public information, must be filed by 5:00 p.m. ET on February 2, 2026, which is the next business day after 10 calendar days from the initial comment deadline.¹⁴

Commerce requests that any factual information that parties consider relevant to the scope of this

investigation be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent LTFV and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.¹⁵ An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of fresh mushrooms to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise to report the relevant cost of production (COP) accurately, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe fresh mushrooms, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the

⁷ See *Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping and Countervailing Duty Petitions: Fresh Mushrooms from Canada*, 90 FR 60059 (December 23, 2025) (*Initiation Extension Notice*).

⁸ The Fresh Mushrooms Fair Trade Coalition is an interested party as defined in section 771(9)(F) of the Act. The individual members are interested parties as defined in sections 771(9)(C) and (G) of the Act.

⁹ See section on “Determination of Industry Support for the Petition,” *infra*.

¹⁰ See First General Issues Supplemental Questionnaire; see also Second General Issues Supplemental Questionnaire.

¹¹ See First General Issues Supplement at 2–3; see also Second General Issues Supplement at 2–4.

¹² See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); see also 19 CFR 351.312.

¹³ See 19 CFR 351.102(b)(21) (defining “factual information”).

¹⁴ The deadline for initial scope comments falls on February 1, 2026, which is a Sunday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day (in this instance, February 2, 2026). See 19 CFR 351.303(b)(1) (“For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.”).

¹⁵ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

To consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on January 22, 2026, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. ET on February 2, 2026, which is the next business day after 10 calendar days from the initial comment deadline.¹⁶ All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of the LTFV investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic

like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹⁷ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹⁸

In investigations involving a processed agricultural product that is produced from a raw agricultural product, section 771(4)(E) of the Act provides that the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if: (1) the processed agricultural product is produced from the raw agricultural product through a continuous line of production, and (2) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may include price, added market value, or other economic interrelationships. Thus, to determine whether the petition has the requisite industry support if it involves a processed agricultural product, the statute directs Commerce to look to growers, processors, and workers who produce the domestic like product. The petitioners state that the requirements under section 771(4)(E) of the Act are satisfied.¹⁹

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a

definition of the domestic like product distinct from the scope of the investigation.²⁰ Based on our analysis of the information submitted on the record, we have determined that fresh mushrooms, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.²¹

On September 29, 2025, we received timely filed comments on industry support from the Canadian Mushroom Growers’ Association (CMGA), a trade association comprised of Canadian mushroom growers/exporters.²² In addition, in consultations held by Commerce officials with representatives of the Government of Canada (GOC) on September 29, 2025, the GOC raised industry support concerns relating to both the CVD and AD Petitions.²³ On October 1, 2025, the petitioners responded to the comments from CMGA in a timely filed rebuttal submission.²⁴

On December 15, 2025, Commerce extended the initiation deadline by 20 days to poll the industry in accordance with section 732(c)(4)(D) of the Act, because it was “not clear from the Petitions whether the industry support criteria have been met. . . .”²⁵ On December 18, 2025, we issued polling questionnaires to all known producers identified in the Petitions.²⁶ We requested that the companies complete the polling questionnaire and certify their responses by the due date specified in the cover letter to the questionnaire.²⁷

Our analysis of the data we received in the polling questionnaire responses indicates that the domestic producers

²⁰ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, see Checklist, “Antidumping Duty Investigation Initiation Checklist: Fresh Mushrooms from Canada,” dated concurrently with, and hereby adopted by, this notice (Canada AD Initiation Checklist), at Attachment II, “Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Fresh Mushrooms from Canada” (Attachment II). This checklist is on file electronically via ACCESS.

²¹ For further discussion, see Canada AD Initiation Checklist at Attachment II.

²² See CMGA’s Letter, “Mushrooms Canada’s Industry Support Comments and Request to Postpone Initiation for Lack of Standing and to Poll the Domestic Industry,” dated September 29, 2025.

²³ See Memorandum, “Consultations with the Government of Canada,” dated November 21, 2025; see also GOC’s Letter, “Government of Canada’s Consultations Materials,” dated October 1, 2025.

²⁴ See Petitioners’ Letter, “Petitioners’ Response to Mushrooms Canada’s Industry Support Comments,” dated October 1, 2025 (Petitioners’ Rebuttal).

²⁵ See *Initiation Extension Notice*.

²⁶ See Commerce’s Letter, “Polling Questionnaire,” dated December 18, 2025.

²⁷ *Id.*

¹⁶ The deadline for initial product characteristics comments falls on February 1, 2026, which is a Sunday. Commerce’s practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day (in this instance, February 2, 2026). See 19 CFR 351.303(b)(1) (“For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.”).

¹⁷ See section 771(10) of the Act.

¹⁸ See *USEC, Inc. v. United States*, 132 F.Supp.2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F.Supp. 639, 644 (CIT 1988), *aff’d Algoma Steel Corp., Ltd. v. United States*, 865 F.2d 240 (Fed. Cir. 1989)).

¹⁹ See Petition at Volume I (pages 13–14).

and workers who support the Petition account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.²⁸ Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.²⁹

Allegations and Evidence of Material Injury and Causation

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.³⁰

The petitioners contend that the industry's injured condition is illustrated by a significant increase in the volume of subject imports; increased market share of subject imports; lost sales and revenues; underselling and price depression and/or suppression; declines in production, capacity utilization, and employment variables; and negative impact on financial performance.³¹ We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.³²

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate an LTFV investigation of imports of fresh mushrooms from Canada. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Canada AD Initiation Checklist.

²⁸ See Attachment II of the Canada AD Initiation Checklist.

²⁹ *Id.*

³⁰ For further information regarding negligibility and the injury allegation, see Canada AD Initiation Checklist at Attachment III, "Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Fresh Mushrooms from Canada."

³¹ *Id.*

³² *Id.*

U.S. Price

The petitioners calculated export price (EP) based on pricing information for fresh mushrooms produced in Canada and sold or offered for sale in the U.S. market during the POI.³³ The petitioners made certain adjustments to U.S. price to calculate a net ex-factory U.S. price, where applicable.³⁴

Normal Value³⁵

The petitioners calculated NV on home market pricing information they obtained for fresh mushrooms produced in and sold, or offered for sale, in Canada during the POI.³⁶

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of fresh mushrooms from Canada are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV, in accordance with sections 772 and 773 of the Act, the estimated dumping margins for fresh mushrooms from Canada covered by this initiation range from 26.29 to 38.31 percent.³⁷

Initiation of LTFV Investigation

Based upon the examination of the Petition and supplemental responses, we find that these meet the requirements of section 732 of the Act. Therefore, we are initiating an LTFV investigation to determine whether imports of fresh mushrooms from Canada are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

In the Petition, the petitioners identified 24 companies in Canada as producers and/or exporters of fresh mushrooms.³⁸ Following standard practice in LTFV investigations involving market economy countries, in the event Commerce determines that the number of companies is large, and it cannot individually examine each

company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheading(s) listed in the "Scope of the Investigation," in the appendix.

On November 21, 2025, Commerce released CBP data on imports of fresh mushrooms from Canada under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data and/or respondent selection must do so within three business days of the publication date of this notice in the **Federal Register**.³⁹ Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at <https://www.trade.gov/administrative-protective-orders>.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the Government of Canada via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which the ITC receives notice from Commerce of initiation of the investigation, whether there is a reasonable indication that imports of fresh mushrooms from Canada are materially injuring, or threatening material injury to, a U.S.

³³ See Canada AD Initiation Checklist.

³⁴ *Id.*

³⁵ In accordance with section 773(b)(2) of the Act, for this investigation, Commerce will request information necessary to calculate the constructed value (CV) and COP to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product.

³⁶ See Canada AD Initiation Checklist.

³⁷ *Id.*

³⁸ See Petitions at Volume I (page 10 and Exhibit GEN-6); see also First General Issues Supplement at 5 and Exhibit GEN-SUPP-2.

³⁹ See Memorandum, "Release of U.S. Customs and Border Protection Entry Data," dated November 21, 2025.

industry.⁴⁰ A negative ITC determination will result in the investigation being terminated.⁴¹ Otherwise, this LTFV investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted⁴² and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.⁴³ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Particular Market Situation Allegation

Section 773(e) of the Act addresses the concept of particular market situation (PMS) for purposes of CV, stating that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation, pursuant to section 773(e) of the Act (*i.e.*, a cost-based PMS allegation), the submission must be filed in accordance with the requirements of 19 CFR 351.416(b), and Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds

that a cost-based PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), sets a deadline for the submission of cost-based PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a cost-based PMS allegation and supporting new factual information, pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

We note that a PMS allegation filed pursuant to sections 773(a)(1)(B)(ii)(III) or 773(a)(1)(C)(iii) of the Act (*i.e.*, a sales-based PMS allegation) must be filed within 10 days of submission of a respondent's initial section B questionnaire response, in accordance with 19 CFR 351.301(c)(2)(i) and 19 CFR 351.404(c)(2).

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.⁴⁴ For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations

concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in this investigation.⁴⁵

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.⁴⁶ Parties must use the certification formats provided in 19 CFR 351.303(g).⁴⁷ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.*, by filing the required letter of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).⁴⁸

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: January 2, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is fresh mushrooms of the genus *Agaricus* (fresh mushrooms). This includes, but is not limited to, fresh mushrooms of the species *Agaricus bisporus*, which are commonly referred to as button mushrooms, chestnut mushrooms, cremini or crimini mushrooms, baby bellas, portabella or portobello mushrooms, table mushrooms, or as white or browns. Fresh mushrooms include whole mushrooms, as well as mushrooms that have been sliced, diced, or separated into stems and pieces prior to importation. Fresh mushrooms may also be imported in bulk or loose form, or may be imported in individual containers packaged

⁴⁵ See 19 CFR 351.302; see also, *e.g.*, *Time Limits Final Rule*.

⁴⁶ See section 782(b) of the Act.

⁴⁷ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2023) (*Final Rule*). Additional information regarding the *Final Rule* is available at <https://access.trade.gov/Resources/filing/index.html>.

⁴⁸ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

⁴⁰ See *Fresh Mushrooms from Canada; Revised Schedule for the Subject Proceeding*, 90 FR 52094 (November 19, 2025).

⁴¹ *Id.*

⁴² See 19 CFR 351.301(b).

⁴³ See 19 CFR 351.301(b)(2).

⁴⁴ See 19 CFR 351.301; see also *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

for retail sale. The scope of this investigation includes all fresh mushrooms of the genus *Agaricus*, whether or not organic, and irrespective of age, cut, color, size, species, or packaging.

Subject merchandise may be cleaned, washed, inspected, subjected to metal detection, sliced, diced, or de-stemmed, and/or vacuum cooled prior to importation, but otherwise undergoes minimal further processing. The scope of this investigation covers fresh mushrooms of the genus *Agaricus* regardless of end use, including both mushrooms destined for the fresh market and mushrooms intended for food processing.

Fresh mushrooms of the genus *Agaricus* are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 0709.51.0100. Although the HTSUS statistical reporting number is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2026–00198 Filed 1–7–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–874]

Fresh Mushrooms From Canada: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable January 2, 2026.

FOR FURTHER INFORMATION CONTACT: Gene Calvert, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3586.

SUPPLEMENTARY INFORMATION:

The Petition

On September 16, 2025, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of fresh mushrooms from Canada, filed in proper form on behalf of the Fresh Mushrooms Fair Trade Coalition and its individual members (collectively, the petitioners), domestic producers of fresh mushrooms.¹ The CVD Petition was

¹ See Petitioners' Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties," dated September 16, 2025 (Petitions). The individual members of the Fresh Mushrooms Fair Trade Coalition are Giorgio Fresh Co. (including Donna Bella Farms LLC and Giorgi Mushroom Co.), J–M Farms LLC, Kennett Square Mushroom Operation LLC, Modern Mushroom Farms, Inc., Needham's Mushroom Farms, Inc., and Sher-Rockee Mushroom Farms.

accompanied by an antidumping duty (AD) petition concerning imports of fresh mushrooms from Canada.²

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.³ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁴

Between September 18 and September 24, 2025, Commerce requested supplemental information pertaining to certain aspects of the Petition in supplemental questionnaires.⁵ Between September 23 and 26, 2025, the petitioners filed timely responses to these requests for additional information.⁶

On December 15, 2025, Commerce extended the initiation deadline by 20 days to poll the domestic industry in accordance with section 702(c)(4)(D) of the Tariff Act of 1930, as amended (the Act), because it was "not clear from the Petitions whether the industry support criteria have been met"⁷

In accordance with section 702(b)(1) of the Act, the petitioners allege that the Government of Canada (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of fresh mushrooms from Canada, and that such

² *Id.*

³ See Memorandum, "Deadlines Affected by Shutdown of the Federal Government," dated November 14, 2025.

⁴ See Memorandum, "Tolling of All Case Deadlines," dated November 24, 2025.

⁵ See Commerce's Letters, "Supplemental Questions," dated September 18, 2025 (First General Issues Supplemental Questionnaire); see also "Supplemental Questions," dated September 18, 2025; and "Second Supplemental Questions," dated September 24, 2025 (Second General Issues Supplemental Questionnaire).

⁶ See Petitioners' Letters, "Petitioners' Amendment to Volume I Relating to Request for the Imposition of Antidumping and Countervailing Duties on Imports from Canada," dated September 23, 2025 (First General Issues Supplement); see also "Petitioners' Supplement to Volume III Relating to Request for the Imposition of Countervailing Duties on Imports from Canada," dated September 23, 2025; and "Petitioners' 2nd Amendment to Volume I Relating to Request for the Imposition of Antidumping and Countervailing Duties on Imports from Canada," dated September 26, 2025 (Second General Issues Supplement).

⁷ See Notice of Extension of the Deadline for Determining the Adequacy of the Antidumping and Countervailing Duty Petitions: Fresh Mushrooms from Canada, 90 FR 60059 (December 23, 2025) (Initiation Extension Notice).

imports are materially injuring, or threatening material injury to, the domestic industry producing fresh mushrooms in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition was accompanied by information reasonably available to the petitioners supporting their allegations.

The petitioners filed the Petition as interested parties, as defined in sections 771(9)(C), (F), and (G) of the Act.⁸ Commerce finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation and filed the Petition on behalf of the domestic industry.⁹

Period of Investigation (POI)

Because the Petition was filed on September 16, 2025, the POI is January 1, 2024, through December 31, 2024.¹⁰

Scope of the Investigation

The product covered by this investigation is fresh mushrooms from Canada. For a full description of the scope of this investigation, see the appendix to this notice.

Comments on the Scope of the Investigation

Between September 18 and September 24, 2025, Commerce requested information and clarification from the petitioners regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.¹¹ Between September 23 and 26, 2025, the petitioners provided clarifications regarding the scope.¹² The description of merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).¹³ Commerce will consider

⁸ The Fresh Mushrooms Fair Trade Coalition is an interested party as defined in section 771(9)(F) of the Act. The individual members are interested parties as defined in section 771(9)(C) and (G) of the Act.

⁹ See section on "Determination of Industry Support for the Petition," *infra*.

¹⁰ See 19 CFR 351.204(b)(2).

¹¹ See First General Issues Supplemental Questionnaire; see also Second General Issues Supplemental Questionnaire.

¹² See First General Issues Supplement at 2–3; see also Second General Issues Supplement at 2–4.

¹³ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); see also 19 CFR 351.312.

all scope comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information, all such factual information should be limited to public information.¹⁴ Commerce requests that interested parties provide at the beginning of their scope comments a public executive summary for each comment or issue raised in their submission. Commerce further requests that interested parties limit their public executive summary of each comment or issue to no more than 450 words, not including citations. Commerce intends to use the public executive summaries as the basis of the comment summaries included in the analysis of scope comments. To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on January 22, 2026, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, and should also be limited to public information, must be filed by 5:00 p.m. ET on February 2, 2026, which is the next business day after 10 calendar days from the initial comment deadline.¹⁵

Commerce requests that any factual information that parties consider relevant to the scope of this investigation be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.¹⁶ An

electronically filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOC of the receipt of the Petition and provided an opportunity for consultations with respect to the Petition.¹⁷ Commerce held consultations with the GOC on September 29, 2025.¹⁸

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether

"the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹⁹ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.²⁰

In investigations involving a processed agricultural product that is produced from a raw agricultural product, section 771(4)(E) of the Act provides that the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if: (1) the processed agricultural product is produced from the raw agricultural product through a continuous line of production, and (2) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may include price, added market value, or other economic interrelationships. Thus, to determine whether the petition has the requisite industry support, if it involves a processed agricultural product, the statute directs Commerce to look to growers, processors, and workers who produce the domestic like product. The petitioners state that the requirements under section 771(4)(E) of the Act are satisfied.²¹

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the

¹⁴ See 19 CFR 351.102(b)(21) (defining "factual information").

¹⁵ The deadline for rebuttal scope comments falls on February 1, 2026, which is a Sunday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day (in this instance, February 2, 2026). See 19 CFR 351.303(b)(1) ("For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.")

¹⁶ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures*;

Administrative Protective Order Procedures, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.

¹⁷ See Commerce's Letter, "Invitation for Consultations to Discuss the Countervailing Duty Petition," dated September 16, 2025.

¹⁸ See Memorandum, "Consultations with the Government of Canada," dated November 21, 2025 (GOC Consultations Memo). The GOC submitted its consultations paper on October 1, 2025. See GOC's Letter, "Government of Canada's Consultations Materials," dated October 1, 2025 (GOC's Letter).

¹⁹ See section 771(10) of the Act.

²⁰ See *USEC, Inc. v. United States*, 132 F.Supp.2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F.Supp.639, 644 (CIT 1988), *aff'd Algoma Steel Corp., Ltd. v. United States*, 865 F.2d 240 (Fed. Cir. 1989)).

²¹ See Petition at Volume I (pages 13–14).

investigation.²² Based on our analysis of the information submitted on the record, we have determined that fresh mushrooms, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.²³

On September 29, 2025, we received timely filed comments on industry support from the Canadian Mushroom Growers' Association (CMGA), a trade association comprised of Canadian mushroom growers/exporters.²⁴ In addition, in consultations held by Commerce officials with representatives of the GOC on September 29, 2025, the GOC raised industry support concerns relating to both the CVD and AD Petitions.²⁵ On October 1, 2025, we also received timely filed comments on industry support from the GOC in its consultations paper.²⁶ On October 1, 2025, the petitioners responded to the comments from CMGA in a timely filed rebuttal submission.²⁷

On December 15, 2025, Commerce extended the initiation deadline by 20 days to poll the industry in accordance with section 702(c)(4)(D) of the Act, because it was “not clear from the Petitions whether the industry support criteria have been met”²⁸ On December 18, 2025, we issued polling questionnaires to all known producers identified in the Petitions.²⁹ We requested that the companies complete the polling questionnaire and certify their responses by the due date specified in the cover letter to the questionnaire.³⁰

Our analysis of the data we received in the polling questionnaire responses indicates that the domestic producers

and workers who support the Petition account for at least 25 percent of the total production of the domestic like product and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.³¹ Accordingly, Commerce determines that the industry support requirements of section 702(c)(4)(A) of the Act have been met and that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.³²

Injury Test

Because Canada is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the fresh mushrooms from Canada materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of fresh mushrooms from Canada are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.³³

The petitioners contend that the industry's injured condition is illustrated by a significant increase in the volume of subject imports; increased market share of subject imports; lost sales and revenues; underselling and price depression and/or suppression; declines in production, capacity utilization, and employment variables; and negative impact on financial performance.³⁴ We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.³⁵

Initiation of CVD Investigation

Based upon the examination of the Petition and supplemental responses, we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of fresh mushrooms from Canada benefit from countervailable subsidies conferred by the GOC. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on all 27 programs alleged by the petitioners. For a full discussion of the basis for our decision to initiate on each program, *see* the Canada CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

In the Petition, the petitioners identified 24 companies in Canada as producers and/or exporters of fresh mushrooms.³⁶ Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in the investigation. Following standard practice in CVD investigations, in the event Commerce determines that the number of companies is large, and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheading(s) listed in the “Scope of the Investigation,” in the appendix.

On November 21, 2025, Commerce released CBP data on imports of fresh mushrooms from Canada under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data and/or respondent selection must do so within three days of the publication date of this notice in the **Federal Register**.³⁷ Comments must be filed electronically using ACCESS. An electronically filed document must

²² For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Checklist, “Countervailing Duty Investigation Initiation Checklist: Fresh Mushrooms from Canada,” dated concurrently with, and hereby adopted by, this notice (Canada CVD Initiation Checklist), at Attachment II, “Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Fresh Mushrooms from Canada” (Attachment II). This checklist is on file electronically via ACCESS.

²³ For further discussion, *see* Canada CVD Initiation Checklist at Attachment II.

²⁴ *See* CMGA's Letter, “Mushrooms Canada's Industry Support Comments and Request to Postpone Initiation for Lack of Standing and to Poll the Domestic Industry,” dated September 29, 2025.

²⁵ *See* GOC Consultations Memo; *see also* GOC's Letter.

²⁶ *See* GOC's Letter.

²⁷ *See* Petitioners' Letter, “Petitioners' Response to Mushrooms Canada's Industry Support Comments,” dated October 1, 2025 (Petitioners' Rebuttal).

²⁸ *See* Initiation Extension Notice.

²⁹ *See* Commerce's Letter, “Polling Questionnaire,” dated December 18, 2025.

³⁰ *Id.*

³¹ *See* Attachment II of the Canada CVD Initiation Checklist.

³² *Id.*

³³ For further information regarding negligibility and the injury allegation, *see* Canada CVD Initiation Checklist at Attachment III, “Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty and Countervailing Duty Petitions Covering Fresh Mushrooms from Canada” (Attachment III).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See* Petition at Volume I (page 10 and Exhibit GEN-6); *see also* First General Issues Supplement at 5 and Exhibit GEN-SUPP-2.

³⁷ *See* Memorandum, “Release of U.S. Customs and Border Protection Entry Data,” dated November 21, 2025.

be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at <https://www.trade.gov/administrative-protective-orders>.

Distribution of a Copy of the Petition

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which the ITC receives notice from Commerce of initiation of the investigation, whether there is a reasonable indication that imports of fresh mushrooms from Canada are materially injuring, or threatening material injury to, a U.S. industry.³⁸ A negative ITC determination will result in the investigation being terminated.³⁹ Otherwise, this CVD investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors of production under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)-(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the

information is being submitted⁴⁰ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.⁴¹ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.⁴² For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits, where we determine, based on 19 CFR 351.302, that extraordinary circumstances exist. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in this investigation.⁴³

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy

and completeness of that information.⁴⁴ Parties must use the certification formats provided in 19 CFR 351.303(g).⁴⁵ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (e.g., by filing the required letter of appearance). Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).⁴⁶

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: January 2, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is fresh mushrooms of the genus *Agaricus* (fresh mushrooms). This includes, but is not limited to, fresh mushrooms of the species *Agaricus bisporus*, which are commonly referred to as button mushrooms, chestnut mushrooms, cremini or crimini mushrooms, baby bellas, portabella or portobello mushrooms, table mushrooms, or as white or browns. Fresh mushrooms include whole mushrooms, as well as mushrooms that have been sliced, diced, or separated into stems and pieces prior to importation. Fresh mushrooms may also be imported in bulk or loose form, or may be imported in individual containers packaged for retail sale. The scope of this investigation includes all fresh mushrooms of the genus *Agaricus*, whether or not organic, and irrespective of age, cut, color, size, species, or packaging.

Subject merchandise may be cleaned, washed, inspected, subjected to metal detection, sliced, diced, or de-stemmed, and/or vacuum cooled prior to importation, but otherwise undergoes minimal further processing. The scope of this investigation

⁴⁴ See section 782(b) of the Act.

⁴⁵ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also frequently asked questions regarding the *Final Rule*, available at https://enforcement.trade.gov/lei/notices/factual_info_final_rule_FAQ_07172013.pdf.

⁴⁶ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069 (September 29, 2023).

³⁸ See *Fresh Mushrooms from Canada; Revised Schedule for the Subject Proceeding*, 90 FR 52094 (November 19, 2025).

³⁹ *Id.*

⁴⁰ See 19 CFR 351.301(b).

⁴¹ See 19 CFR 351.301(b)(2).

⁴² See 19 CFR 351.302.

⁴³ See 19 CFR 351.301; see also *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at <https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>.

covers fresh mushrooms of the genus *Agaricus* regardless of end use, including both mushrooms destined for the fresh market and mushrooms intended for food processing.

Fresh mushrooms of the genus *Agaricus* are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting number 0709.51.0100. Although the HTSUS statistical reporting number is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2026–00199 Filed 1–7–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Recission, in Part, of Countervailing Duty Administrative Review; 2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that certain producers/exporters of polyethylene terephthalate film, sheet, and strip (PET film) from India during the period of review (POR) received countervailable subsidies from January 1, 2023, through December 31, 2023. In addition, Commerce is rescinding the review, in part, with respect to seven companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable January 8, 2026.

FOR FURTHER INFORMATION CONTACT: Dusten Hom or Suresh Maniam, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5075 or (202) 482–0176, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, Commerce published in the **Federal Register** the countervailing duty order on PET film from India.¹ On August 14, 2024, Commerce published in the **Federal Register** the notice of initiation of an

administrative review of the *Order*.² On October 10, 2024, Commerce selected Polyplex Corporation, Ltd. (Polyplex) and SRF Limited (SRF) for individual examination as the mandatory respondents in this administrative review.³ On November 7 and 8, 2024, the review requests for Polyplex and SRF were withdrawn, respectively.⁴ Therefore, on November 29, 2024, we selected Cosmo First Limited (Cosmo) and JPFL Films Private Ltd. (JPFL) for individual examination as mandatory respondents in this review.⁵

On December 9, 2024, Commerce tolled the deadline to issue the preliminary results in this administrative review by 90 days.⁶ On June 9, 2025, Commerce extended the deadline for issuing the preliminary results of this review to no later than October 29, 2025.⁷ Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁸ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁹ Accordingly, the deadline for these preliminary results is now January 5, 2026.

For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.¹⁰

² *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 66035 (August 14, 2024).

³ *See* Memorandum, “Respondent Selection Memorandum,” dated October 10, 2024.

⁴ *See* Polyplex's Letter, “Withdrawal of Request for Review for Polyplex USA LLC,” and Petitioners' Letter, “Withdrawal of Request for Countervailing Duty Administrative Review,” both dated November 7, 2024. *See also* SRF's Letter, “Withdrawal of Review Request and Request to Suspend/Excuse to Affiliate Response to the Countervailing Duty Questionnaires POR 2023 and Rescind the Countervailing Duty Admin Review of SRF,” dated November 8, 2024.

⁵ *See* Memorandum, “Selection of Additional Mandatory Respondent,” dated November 29, 2024.

⁶ *See* Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated December 9, 2024.

⁷ *See* Memorandum, “Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,” dated June 9, 2025.

⁸ *See* Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

⁹ *See* Memorandum, “Tolling of all Case Deadlines,” dated November 24, 2025.

¹⁰ *See* Memorandum, “Decision Memorandum for the Preliminary Results and Partial Recission of the Administrative Review of the Countervailing

A list of topics discussed in the Preliminary Decision Memorandum is included in Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The merchandise covered by the *Order* is PET film. For a complete description of the scope of the *Order*, *see* the Preliminary Decision Memorandum.¹¹

Recission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Commerce received timely filed withdrawal requests with respect to seven companies, pursuant to 19 CFR 351.213(d)(1).¹² Because the withdrawal requests were timely filed, and no other parties requested a review of these companies, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the *Order* with respect to the seven companies. For a complete list of companies for which we are rescinding this administrative review, *see* Appendix II.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each subsidy program found countervailable, we preliminarily find that there is a subsidy (*i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific).¹³ For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India; 2023,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

¹¹ *Id.*

¹² *Id.* at 3–4.

¹³ *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

¹ *See Countervailing Duty Order; Polyethylene Terephthalate Film Sheet, and Strip (PET Film) from India*, 67 FR 44179 (July 1, 2002) (*Order*).

Preliminary Results of Review

Commerce preliminary determines that the following net countervailable

subsidy rates exist for the period January 1, 2023, through December 31, 2023:

Company	Subsidy rate (percent <i>ad valorem</i>)
Cosmo First Limited and its cross-owned affiliate Cosmo Specialty Chemicals Private Limited	10.03
JPFL Films Private Ltd. and its cross-owned affiliate Jindal Poly Films Limited	12.41

Disclosure

We intend to disclose the calculations performed for these preliminary results to interested parties within five days of any public announcement, or if there is no public announcement, within five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

We intend to set a deadline for case briefs at a later point. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁴ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁵

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁶ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁷

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement

and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.¹⁸

Assessment Rates

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.221(b)(4)(i), we preliminarily determined subsidy rates in the amounts shown above for the producers/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

For the companies for which this review is rescinded with these preliminary results, we will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2023, through December 31, 2023, in accordance with 19 CFR 351.212(c)(1)(i). Commerce

intends to issue appropriate assessment instructions directly to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, Commerce also intends upon publication of the final results, to instruct CBP to collect cash deposits of the estimated countervailing duties in the amounts calculated in the final results of this review for the respective companies listed above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. If the rate calculated in the final results is zero or *de minimis*, no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Administrative Review

Unless the deadline is extended, Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

¹⁴ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹⁵ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁶ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁷ See *APO and Service Final Rule*.

¹⁸ See 19 CFR 351.310(d).

Dated: January 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Subsidies Valuation Information
- V. Analysis of Programs
- VI. Recommendation

Appendix II

Companies for Which All Review Requests Were Withdrawn

1. Ester Industries Limited
2. Polyplex Corporation, Ltd.
3. SRF Limited
4. Vacmet India Limited
5. Chiripal Poly Films Limited
6. Garware Hi-Tech Films Limited
7. Garware Polyester Ltd.

[FR Doc. 2026–00189 Filed 1–7–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836, A–489–815, A–570–914, A–580–859]

Light-Walled Rectangular Pipe and Tube From the Republic of Korea, Mexico, the Republic of Türkiye, and the People's Republic of China: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on light-walled rectangular pipe and tube (light-walled pipe and tube) from the Republic of Korea (Korea), Mexico, the Republic of Türkiye (Türkiye), and the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping, at the levels indicated in the “Final Results of Sunset Reviews” section of this notice.

DATES: Applicable January 8, 2026.

FOR FURTHER INFORMATION CONTACT: David De Falco, Trade Agreements Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–2178.

SUPPLEMENTARY INFORMATION:

Background

On May 30, 2008, Commerce published the *Türkiye Order* in the **Federal Register**.¹ On August 5, 2008, Commerce published the *Mexico Order*, *China Order*, and *Korea Order* in the **Federal Register**.² On July 1, 2025, Commerce published the notice of initiation of the third sunset review of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).³

On July 16, 2025, Commerce received a timely and complete notice of intent to participate in the sunset review from Bull Moose Company, Maruichi American Corporation, Nucor Tubular Products Inc., Searing Industries, Inc., and Vest LLC, within the deadline specified in the 19 CFR 351.218(d)(1)(i).⁴ On July 16, 2025, Commerce received a second timely and complete notice of intent to participate in the sunset review from Atlas Tube within the deadline specified in the 19 CFR 351.218(d)(1)(i).⁵ The domestic interested parties claimed interested party status under section 771(9)(C) of

the Act as manufacturers, producers, and wholesalers of a domestic like product in the United States. On July 21, 2025, Commerce notified the U.S. International Trade Commission (ITC) that it had received a notice of intent to participate from the domestic interested parties.⁶

On July 31, 2025, pursuant to 19 CFR 351.218(d)(3)(i), domestic interested parties filed timely and adequate substantive responses.⁷ Commerce did not receive a substantive response from any respondent interested party. On August 22, 2025, Commerce notified the ITC that it did not receive substantive response from any respondent interested parties.⁸ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting expedited (120-day) sunset reviews of the *Orders*.

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁹ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.¹⁰ Accordingly, the

⁶ See Commerce's Letter, “Sunset Reviews Initiated on July 1, 2025,” dated July 21, 2025.

⁷ See Letter, “Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Substantive Response to Notice of Initiation,” dated July 31, 2025; Atlas Tube's Letter, “Five-Year (“Sunset”) Review Of Antidumping Duty Order On Light-Walled Rectangular Pipe and Tube from Korea: Substantive Response,” dated July 31, 2025; Letter, “Light-Walled Rectangular Pipe and Tube from Mexico: Domestic Interested Parties' Substantive Response to the Notice of Initiation,” dated July 31, 2025; Atlas Tube's Letter, “Five-Year (“Sunset”) Review Of Antidumping Duty Order On Light-Walled Rectangular Pipe and Tube from Mexico: Substantive Response,” dated July 31, 2025; Letter, “Light-Walled Rectangular Pipe and Tube from the Republic of Turkey: Substantive Response to Notice of Initiation,” dated July 31, 2025; Atlas Tube's Letter, “Five-Year (“Sunset”) Review Of Antidumping Duty Order On Light-Walled Rectangular Pipe and Tube from Turkey: Substantive Response,” dated July 31, 2025; Letter, “Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Substantive Response to Notice of Initiation,” dated July 31, 2025; and Atlas Tube's Letter, “Five-Year (“Sunset”) Review Of Antidumping Duty Order On Light-Walled Rectangular Pipe and Tube from China: Substantive Response,” dated July 31, 2025.

⁸ See Commerce's Letter, “Sunset Reviews Initiated on July 1, 2025,” dated August 22, 2025.

⁹ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

¹⁰ See Memorandum, “Tolling of all Case Deadlines,” dated November 24, 2025.

¹ See *Notice of Antidumping Duty Order: Light-Walled Rectangular Pipe and Tube from Turkey*, 73 FR 31065 (May 30, 2008) (*Türkiye Order*).

² See *Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value*, 73 FR 45403 (August 5, 2008); and *Türkiye Order* (collectively, *Orders*).

³ See *Initiation of Five-Year (Sunset) Reviews*, 90 FR 28722 (July 1, 2025).

⁴ See Letter, “Notice of Intent to Participate in Third Five-Year Review of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from the Republic of Korea,” dated July 16, 2025; Letter, “Notice of Intent to Participate in Third Five-Year Review of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from Mexico,” dated July 16, 2025; Letter “Notice of Intent to Participate in Third Five-Year Review of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from the Republic of Türkiye,” dated July 16, 2025; and Letter, “Notice of Intent to Participate in Third Five-Year Review of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from the People's Republic of China,” dated July 16, 2025.

⁵ See Letter, “Five-Year (“Sunset”) Review Of Antidumping Duty Order On Light-Walled Rectangular Pipe and Tube from Korea: Notice Of Intent To Participate In Sunset Review,” dated July 16, 2025; Letter, “Five-Year (“Sunset”) Review Of Antidumping Duty Order On Light-Walled Rectangular Pipe and Tube from Mexico: Notice Of Intent To Participate In Sunset Review,” dated July 16, 2025; Letter, “Five-Year (“Sunset”) Review Of Antidumping Duty Order On Light-Walled Rectangular Pipe and Tube from Turkey: Notice Of Intent To Participate In Sunset Review,” dated July 16, 2025; and Letter, “Five-Year (“Sunset”) Review Of Antidumping Duty Order On Light-Walled Rectangular Pipe and Tube from China: Notice Of Intent To Participate In Sunset Review,” dated July 16, 2025.

deadline for these final results is now January 5, 2026.

Scope of the Orders

The product covered by these *Orders* is light-walled pipe and tube from Korea, Mexico, Türkiye, and China. For the full description of the scope of the *Orders*, see the Issues and Decisions Memorandum.¹¹

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *Orders* and the magnitude of the margins likely to prevail if the *Orders* were to be revoked, is provided in the accompanying Issues and Decision Memorandum.¹² A list of the topics discussed in the Issues and Decision Memorandum is attached in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be directly accessed at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1), 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Orders* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 30.66 percent for Korea, 11.50 percent for Mexico, 41.71 percent for Türkiye, and 255.07 percent for China.

Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective, orders is hereby requested. Failure to comply with the regulations and terms of an

APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: January 5, 2026.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. History of the *Orders*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margins of Dumping Likely to Prevail
- VII. Final Results of Sunset Reviews
- VIII. Recommendation

[FR Doc. 2026–00183 Filed 1–7–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–939]

Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on tow-behind lawn groomers and certain parts thereof (lawn groomers) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping, at the levels indicated in the “Final Results of Sunset Review” section of this notice.

DATES: Applicable January 8, 2026.

FOR FURTHER INFORMATION CONTACT: David De Falco, Trade Agreements Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2178.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2009, Commerce published the *Order* in the **Federal Register**.¹ On July 1, 2025, Commerce published the notice of initiation of this third sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² On July 11, 2025, Commerce received a timely and complete notice of intent to participate in the sunset review from the domestic interested party³ within the deadline specified in the 19 CFR 351.218(d)(1)(i).⁴ The domestic interested party claimed the interested party status within the meaning of section 771(9)(C) of the Act as a manufacturer of the domestic like product in the United States.⁵ On July 21, 2025, Commerce notified the U.S. International Trade Commission (ITC) that it had received a notice of intent to participate from the domestic interested party.⁶

On July 30, 2025, pursuant to 19 CFR 351.218(d)(3)(i), the domestic interested party filed a timely and adequate substantive response.⁷ Commerce did not receive a substantive response from any respondent interested party. On August 22, 2025, Commerce notified the ITC that it did not receive substantive response from any respondent interested parties.⁸ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting an expedited (120-day) sunset review of the *Order*.

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁹ Additionally, due to a backlog of documents that were electronically filed via Enforcement and

¹ See *Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Antidumping Duty Order*, 74 FR 38395 (August 3, 2009) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 90 FR 28722 (July 1, 2025).

³ The domestic interested party is Agri-Fab, Inc.

⁴ See Domestic Interested Party's Letter, “Third Five-Year (“Sunset”) Review of Antidumping Duty Order on Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from The People's Republic of China; Notice of Intent to Participate,” dated July 11, 2025.

⁵ *Id.* at 2.

⁶ See Commerce's Letter, “Sunset Reviews Initiated on July 1, 2025,” dated July 21, 2025.

⁷ See Domestic Interested Party's Letter, “Third Five-Year (“Sunset”) Review of Antidumping Duty Order on Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China; Agri-Fab's Response to Notice of Initiation,” dated July 30, 2025 (*Substantive Response*).

⁸ See Commerce's Letter, “Sunset Reviews Initiated on July 1, 2025,” dated August 22, 2025.

⁹ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

¹¹ See Memorandum, “Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders on Light-Walled Rectangular Pipe and Tube from the Republic of Korea, Mexico, the Republic of Türkiye, and the People's Republic of China,” dated concurrently with, and hereby adopted by, this notice.

¹² *Id.*

Commerce's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.¹⁰ Accordingly, the deadline for these final results is now January 5, 2026.

Scope of the Order

The product covered by these *Order* is lawn groomers from China. For the full description of the scope of the *Order*, see the Issues and Decisions Memorandum.¹¹

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *Order* and the magnitude of the margins likely to prevail if the *Order* was to be revoked, is provided in the Issues and Decision Memorandum.¹² A list of the topics discussed in the Issues and Decision Memorandum is attached in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be directly accessed at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1), and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 386.28 percent.

Notification Regarding Administrative Protective Orders (APOs)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305.

¹⁰ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

¹¹ See Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order on Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

¹² *Id.*

Timely notification of the return or destruction of APO materials, or conversion to judicial protective, orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: January 5, 2026.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margins of Dumping Likely to Prevail
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2026–00182 Filed 1–7–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that countervailable subsidies were provided to producers and exporters of certain pasta (pasta) from Italy, during the period of review (POR) January 1, 2023, through December 31, 2023. In addition, Commerce is rescinding this review, in part, with respect to one company. Interested parties are invited to comment on these preliminary results.

DATES: Applicable January 8, 2026.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg or Stefan Smith AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of

Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1785 or (202) 482–4342, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 2024, Commerce published in the **Federal Register** the notice of initiation of an administrative review of the *Order*.¹ On September 13, 2024, Commerce selected DeMatteis Agroalimentare S.p.A. (De Matteis) and Gruppo Milo SpA (Gruppo Milo) for individual examination as the mandatory respondents in this review.² On October 16, 2024, Gruppo Milo timely withdrew its request for a review.³ and, on October 22, 2024, we selected Pastificio Attilio Mastromauro-Granoro Srl (Granoro) as a replacement mandatory respondent.⁴

On December 9, 2024, Commerce tolled certain deadlines in this administrative proceeding by an additional 90 days.⁵ On June 12, 2025, Commerce extended the deadline for the preliminary results of this review by 90 days.⁶ Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁷ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁸ Accordingly, the deadline for the preliminary results is now January 5, 2026.

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 66035 (August 14, 2024) (*Initiation Notice*); see also *Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 38544 (July 24, 1996) (*Order*).

² See Memorandum, "Countervailing Duty Administrative Review of Certain Pasta from Italy; Respondent Selection; 2023," dated September 13, 2024.

³ See Gruppo Milo's Letter, "Withdrawal Request," dated October 16, 2024.

⁴ See Memorandum, "Selection of Replacement Mandatory Respondent," dated October 22, 2024.

⁵ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 9, 2024.

⁶ See Memorandum, "Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated June 12, 2025.

⁷ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

⁸ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.⁹ A list of topics included in the Preliminary Decision Memorandum is included in the Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The product covered by the *Order* is pasta from Italy. For a complete description of the scope of the *Order*, *see* the Preliminary Decision Memorandum.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested the review withdraw their requests within 90 days of the date of publication of the notice of initiation. Commerce received a timely-filed withdrawal from Gruppo Milo. Because the withdrawal request was timely filed, and no other parties requested a review of this company, in

accordance with 19 CFR 351.213(d)(1), we are rescinding this review for Gruppo Milo.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy program found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.¹⁰ For a full description of the methodology underlying our conclusions, including our reliance, in part, on facts otherwise available with adverse inferences pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum.

Rate for Non-Selected Companies Under Review

There are two companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross owned with a mandatory respondent. The Act and Commerce's regulations do not address the establishment of a rate to apply to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected

companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation.

Section 705(c)(5)(A)(i) of the Act instructs Commerce, as a general rule, to calculate an all-others rate equal to the weighted average of the countervailable subsidy rates established for exporters and/or producers individually examined, excluding any rates that are zero, *de minimis*, or based entirely on facts available. In this review, the preliminary rates calculated for De Matteis and Granoro were above *de minimis* and not based entirely on facts available. Therefore, we are applying to the non-selected companies the weighted average of the net subsidy rates calculated for De Matteis and Granoro, which we calculated using publicly-ranged sales data.¹¹ This methodology to establish the rate for the non-selected companies uses section 705(c)(5)(A) of the Act, which governs the calculation of the all-others rate in an investigation, as guidance. For further information on the calculation of the non-selected respondent rate, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following net countervailable subsidy rates exist for the POR, January 1, 2023, through December 31, 2023:

Company	Subsidy rate (percent <i>ad valorem</i>)
DeMatteis Agroalimentare S.p.A ¹²	3.04
Pastificio Attilo Mastromauro-Granoro Srl	5.92
Review-Specific Rate For Non-Examined Companies ¹³	
Antiche Tradizioni di Gragnano S.R.L.	3.14
Pastificio Sgambaro	3.14

Disclosure

Commerce intends to disclose its calculations and analysis performed to

interested parties for these preliminary results within five days of any public announcement or, if there is no public

announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

⁹ *See* Memorandum, "Decision Memorandum for the Preliminary Results of the Administrative Review of the Countervailing Duty Order on Pasta from Italy; 2023," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

¹⁰ *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

¹¹ With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the

examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. As complete

publicly ranged sales data were available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, *see* the All-Others Rate Calculation Memorandum.

¹² As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with De Matteis: De Matteis Costruzioni S.r.l., and De Matteis Natural Food Srl.

¹³ This rate is based on the rate for the respondents that were selected for individual review, excluding rates that are zero, *de minimis*, or based entirely on facts available. *See* section 705(c)(5)(A) of the Act.

Verification

As provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied upon in making its final results.

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce no later than seven days after the date of the last verification report issued in this administrative review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁴ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁵ All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁶ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁷

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of

issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce will inform parties of the scheduled date for the hearing.¹⁸

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts calculated in the final results of this review for the respective companies listed above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. If the rate calculated in the final results is zero or *de minimis*, no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate (*i.e.*, 3.85 percent)¹⁹ or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Assessment Rates

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts shown above for the producers/exporters shown above. Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. For the company listed above for which this review is rescinded with these preliminary results, we will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2023, through December 31, 2023, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue rescission instructions to CBP no earlier than 35 days after the date of publication of this rescission in the **Federal Register**.

For the companies remaining in the review, Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Final Results of Administrative Review

Unless extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days after the date of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Notification to Interested Parties

The preliminary results and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: January 5, 2025.

Christopher Abbott,

Deputy Assistance Secretary for Policy and negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Non-Selected Companies Under Review
- V. Use of Facts Otherwise Available and Adverse Inferences
- VI. Subsidies Valuation
- VII. Analysis of Programs
- VIII. Recommendation

[FR Doc. 2026–00188 Filed 1–7–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–867, A–552–825, A–560–833, A–580–902]

Utility Scale Wind Towers From Canada, the Socialist Republic of Vietnam, Indonesia, and the Republic of Korea: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

¹⁴ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

¹⁵ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁶ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁷ See *APO and Service Procedures*.

¹⁸ See 19 CFR 351.310(d).

¹⁹ See *Order*.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on utility scale wind towers from Canada, the Socialist Republic of Vietnam (Vietnam), Indonesia, and the Republic of Korea (Korea) would be likely to lead to continuation or recurrence of dumping, at the levels indicated in the “Final Results of Sunset Reviews” section of this notice.

DATES: Applicable January 8, 2026.

FOR FURTHER INFORMATION CONTACT: David De Falco, Trade Agreements Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202-482-2178.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2020, Commerce published the *Orders* in the **Federal Register**.¹ On July 1, 2025, Commerce published the notice of initiation of these first sunset reviews of the *Orders*, pursuant to section 751(c) of the Act.²

On July 16, 2025, Commerce received timely and complete notices of intent to participate in the sunset review for the domestic interested party within the deadline specified in the 19 CFR 351.218(d)(1)(i).³ The domestic interested party claimed the interested party status within the meaning of section 771(9)(F) of the Act as a coalition of U.S. producers of the domestic like product.⁴ On July 21, 2025, Commerce notified the U.S. International Trade Commission (ITC) that it had received a notice of intent to participate from the domestic interested parties.⁵

On July 30, 2025, pursuant to 19 CFR 351.218(d)(3)(i), domestic interested parties filed a timely and adequate

substantive response.⁶ Commerce did not receive a substantive response from any respondent interested party. On August 22, 2025, Commerce notified the ITC that it did not receive substantive response from any respondent interested parties.⁷ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting expedited (120-day) sunset reviews of the *Orders*.

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁸ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁹ Accordingly, the deadline for these final results is now January 5, 2026.

Scope of the Orders

The product covered by these *Orders* is utility scale wind towers from Canada, Vietnam, Indonesia, and Korea. For the full description of the scope of the *Orders*, see the Issues and Decisions Memorandum.¹⁰

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *Orders* and the magnitude of the margins likely to prevail if the *Orders* were to be revoked, is provided in the accompanying Issues and Decision Memorandum.¹¹ A list of

the topics discussed in the Issues and Decision Memorandum is attached in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be directly accessed at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1), 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Orders* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 4.94 percent for Canada, 65.96 percent for Vietnam, 8.53 percent for Indonesia, and 5.41 percent for Korea.

Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective, orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: January 5, 2026.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. History of the *Orders*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margins of Dumping Likely to Prevail
- VII. Final Results of Sunset Reviews

¹ See *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 85 FR 52546 (August 26, 2020) (*Orders*).

² See *Initiation of Five-Year (Sunset) Reviews*, 90 FR 28722 (July 1, 2025).

³ See Domestic Interested Party’s Letter, “Utility Scale Wind Towers from Canada: Notice of Intent to Participate in Sunset Review,” dated July 16, 2025; Domestic Interested Party’s Letter “Utility Scale Wind Towers from the Socialist Republic of Vietnam: Notice of Intent to Participate in Sunset Review,” dated July 16, 2025; Domestic Interested Party’s Letter, “Utility Scale Wind Towers from Indonesia: Notice of Intent to Participate in Sunset Review,” dated July 16, 2025; and Domestic Interested Party’s Letter, “Utility Scale Wind Towers from the Republic of Korea: Notice of Intent to Participate in Sunset Review,” dated July 16, 2025.

⁴ *Id.*

⁵ See Commerce’s Letter, “Sunset Reviews Initiated on July 1, 2025,” dated July 21, 2025.

⁶ See Domestic Interested Party’s Letter, “Utility Scale Wind Towers from Canada: Substantive Response to Notice of Initiation,” dated July 30, 2025; “Utility Scale Wind Towers from the Socialist Republic of Vietnam: Substantive Response to Notice of Initiation,” dated July 30, 2025; “Utility Scale Wind Towers from Indonesia: Substantive Response to Notice of Initiation,” dated July 30, 2025; and “Utility Scale Wind Towers from the Republic of Korea: Substantive Response to Notice of Initiation,” dated July 30, 2025.

⁷ See Commerce’s Letter, “Sunset Reviews Initiated on July 1, 2025,” dated August 22, 2025.

⁸ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

⁹ See Memorandum, “Tolling of all Case Deadlines,” dated November 24, 2025.

¹⁰ See Memorandum, “Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders on Utility Scale Wind Towers from Canada, the Socialist Republic of Vietnam, Indonesia, and the Republic of Korea,” dated concurrently with, and hereby adopted by, this notice.

¹¹ *Id.*

VIII. Recommendation

[FR Doc. 2026–00196 Filed 1–7–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–878]

Certain Corrosion-Resistant Steel Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain corrosion-resistant steel products (CORE) from the Republic of Korea (Korea) were not sold in the United States at less than normal value (NV) during the period of review (POR), July 1, 2023, through June 30, 2024. Interested parties are invited to comment on these preliminary results.

DATES: Applicable January 8, 2026.

FOR FURTHER INFORMATION CONTACT: Jaron Moore or Noah Wetzel, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640 or (202) 482–7466, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On July 25, 2016, Commerce published in the **Federal Register** the antidumping duty (AD) order on CORE from Korea.¹ On August 14, 2024, Commerce initiated an administrative review of the *Order* covering 13 companies,² in accordance with section

751(a) of the Tariff Act of 1930, as amended (the Act).³

On December 9, 2024, Commerce tolled certain deadlines in this administrative proceeding by ninety days.⁴ On June 17, 2025, we extended the deadline for the preliminary results of this review until October 29, 2025.⁵ Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁶ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁷ Accordingly, the current deadline for the final results of this review is January 5, 2026.

For a detailed description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁸ A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The merchandise covered by the *Order* is CORE. For a complete

information, see *Certain Cold-Rolled Steel Flat Products and Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews*, 87 FR 64013 (October 21, 2022).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 66039 (August 14, 2024).

⁴ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated December 9, 2024.

⁵ See Memorandum, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated June 17, 2025.

⁶ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

⁷ See Memorandum, “Tolling of all Case Deadlines,” dated November 24, 2025.

⁸ See Memorandum, “Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Steel Products from the Republic of Korea; 2023–2024,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1) and (2) of the Act. We calculated constructed export price for both mandatory respondents in accordance with section 772(b) of the Act. We calculated NV in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an antidumping duty investigation, for guidance when calculating the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review.

Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely on the basis of facts available.” Where the rates for the individually examined companies are all zero, *de minimis*, or determined entirely using facts available, section 735(c)(5)(B) of the Act instructs that Commerce “may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.” One such reasonable method is to weight average the zero and *de minimis* rates, and the rates determined entirely pursuant to facts available. In fact, the SAA states that this is the “expected” method in such circumstances.⁹

In this review, we have preliminarily calculated a weighted-average dumping

¹ See *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016) (*Order*); see also *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Notice of Correction to the Antidumping Duty Orders*, 81 FR 58475 (August 25, 2016).

² The 13 companies are: (1) Dongbu Incheon Steel Co., Ltd.; (2) Dongkuk; (3) Dongkuk International, Inc.; (4) Dongkuk Steel Mill Co., Ltd.; (5) Hyundai; (6) KG Steel Corporation; (7) KG Dongbu Steel Co., Ltd.; (8) POSCO; (9) POSCO Coated & Color Steel Co., Ltd.; (10) POSCO International Corporation; (11) POSCO STEELEON Co., Ltd.; (12) SeAH Coated Metal Corporation; and (13) SeAH Steel Corporation. We note that Commerce previously found that KG Steel Corporation is the successor-in-interest to KG Dongbu Steel Co., Ltd. For further

⁹ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, vol. 1 (1994) (SAA) at 873.

margin for each of the mandatory respondents, Dongkuk Coated Metal Co., Ltd. (Dongkuk) and Hyundai Steel Company (Hyundai), that is zero percent. Accordingly, we preliminarily

assign to the non-selected companies a dumping margin of zero percent consistent with section 735(c)(5)(B) of the Act.

Preliminary Results

We preliminarily determine the following weighted-average dumping margins for the period July 1, 2023, through June 30, 2024:

Exporter/producer	Weighted-average dumping margin (percent)
Dongkuk Coated Metal Co., Ltd	0.00
Hyundai Steel Company	0.00
Dongbu Incheon Steel Co., Ltd	0.00
Dongkuk International, Inc	0.00
Dongkuk Steel Mill Co., Ltd	0.00
KG Steel Corporation; KG Dongbu Steel Co., Ltd	0.00
POSCO	0.00
POSCO Coated & Color Steel Co., Ltd	0.00
POSCO International Corporation	0.00
POSCO STEELEON Co., Ltd	0.00
SeAH Coated Metal Corporation	0.00
SeAH Steel Corporation	0.00

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance.¹⁰ Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce no later than 21 days after the date of the publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹¹ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹²

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹³ Further, we request that

interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁴

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing at a time and location to be determined.¹⁵

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate

entries. For any individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.5 percent) in the final results of this review and the respondent reported entered values, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the POR to each importer and the total entered value of those same sales, in accordance with 19 CFR 351.212(b)(1). If the respondent has not reported entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those transactions. To determine whether an importer-specific, per-unit assessment rate is *de minimis*, in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values.

Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If a respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to liquidate the appropriate entries without regard to antidumping duties.¹⁶

¹⁰ See 19 CFR 351.309(c)(1)(ii); see also 19 CFR 351.303 (for general filing requirements).

¹¹ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹² See 19 CFR 351.309(c)(2) and (d)(2).

¹³ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁴ See *APO and Service Final Rule*.

¹⁵ See 19 CFR 351.310.

¹⁶ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8102 (February 14, 2012).

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by any of the above-referenced respondents for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate in the original less-than-fair-value (LTFV) investigation (as amended)¹⁷ if there is no rate for the intermediate company(ies) involved in the transaction.¹⁸

For the companies that were not selected for individual examination, the antidumping duty assessment rate will be equal to the weighted-average dumping margin calculated for each company in the final results of this review.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by one of the companies listed above, the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for an exporter of subject merchandise previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company

participated; (3) if the exporter is not a firm covered in this review, a prior review, or the underlying investigation, but the producer is, then the cash deposit rate will be the rate established for the most recent segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 8.31 percent, the all-others rate established in the LTFV investigation (as amended).¹⁹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in written briefs, no later than 120 days after the date of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213, and 19 CFR 351.221(b)(4).

Dated: January 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

[FR Doc. 2026-00191 Filed 1-7-26; 8:45 am]

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¹⁹ See Order, as amended in *Timken and Amended Final Results*.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-873, A-791-815]

Ferrovanadium From the Republic of South Africa and the People's Republic of China: Final Results of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on ferrovanadium from the Republic of South Africa (South Africa) and the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping, at the levels indicated in the "Final Results of Sunset Review" section of this notice.

DATES: Applicable January 8, 2026.

FOR FURTHER INFORMATION CONTACT: David De Falco, Trade Agreements Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202-482-2178.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 2003, Commerce published the *Orders* in the **Federal Register**.¹ On July 1, 2025, Commerce published the notice of initiation of these Fourth sunset reviews of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).²

On July 16, 2025, Commerce received a timely and complete notice of intent to participate in the sunset reviews for domestic interested parties within the deadline specified in the 19 CFR 351.218(d)(1)(i).³ The Vanadium Producers and Reclaimers Association

¹ See *Notice of Amended Final Antidumping Duty Determination of Sales at Less than Fair Value and Antidumping Duty Order: Ferrovanadium from the People's Republic of China*, 68 FR 4168 (January 28, 2003) (*China Order*) and *Notice of Antidumping Duty Order: Ferrovanadium from the Republic of South Africa*, 68 FR 4169 (January 28, 2003) (*South Africa Order*) (collectively, *Orders*).

² See *Initiation of Five-Year (Sunset) Reviews*, 90 FR 28722 (July 1, 2025).

³ See Domestic Interested Party's Letter, "Ferrovanadium from the Republic of South Africa: Notice of Intent to Participate by Domestic Interested Parties," dated July 16, 2025; see also Domestic Interested Parties' Letter, "Ferrovanadium from the People's Republic of China: Notice of Intent to Participate by Domestic Interested Parties," dated July 16, 2025.

¹⁷ See Order; see also *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination of Investigation and Notice of Amended Final Results*, 83 FR 39054 (August 8, 2018) (*Timken and Amended Final Results*).

¹⁸ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

(VRPA) claimed interested party status within the meaning of section 771(9)(E) of the Act as a trade of business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States.⁴ On July 21, 2025, Commerce notified the U.S. International Trade Commission (ITC) that it had received a notice of intent to participate from the domestic interested parties.⁵

On July 31, 2025, pursuant to 19 CFR 351.218(d)(3)(i), domestic interested parties filed a timely and adequate substantive response.⁶ Commerce did not receive a substantive response from any respondent interested party. On August 22, 2025, Commerce notified the ITC that it did not receive substantive response from any respondent interested parties.⁷ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting an expedited (120-day) sunset review of the *Order*.

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁸ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁹ Accordingly, the deadline for these final results is now January 5, 2026.

Scope of the Orders

The product covered by these *Orders* is ferrovanadium from South Africa and China. For the full description of the scope of the *Orders*, see the Issues and Decisions Memorandum.¹⁰

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *Orders* and the magnitude of the margins likely to prevail if the *Orders* were to be revoked, is provided in the accompanying Issues and Decision Memorandum.¹¹ A list of the topics discussed in the Issues and Decision Memorandum is attached in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be directly accessed at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1), 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Orders* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 116.00 percent for South Africa, and 66.71 percent for China.

Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective, orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Fourth Sunset Reviews of the Antidumping Duty Orders on Ferrovanadium from the Republic of South Africa and the People's Republic of China," dated concurrently with, and hereby adopted by, this notice.

¹¹ *Id.*

Dated: January 5, 2026.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. History of the *Orders*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margins of Dumping Likely to Prevail
- VII. Final Results of Sunset Reviews
- VIII. Recommendation

[FR Doc. 2026–00151 Filed 1–7–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–816]

Certain Steel Nails From Malaysia: Preliminary Results and Rescission, In Part, of Antidumping Duty Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV) during the period of review (POR) is July 1, 2023, through June 30, 2024. Moreover, Commerce is rescinding the review, in part, with respect to certain companies which had no entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Applicable January 8, 2026.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1121.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 2015, Commerce published in the **Federal Register** an antidumping duty order on certain steel nails from Malaysia.¹ On August 14,

¹ See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan*, Continued

⁴ *Id.* at 2.

⁵ See Commerce's Letter, "Sunset Reviews Initiated on July 1, 2025," dated July 21, 2025.

⁶ See Domestic Interested Party's Letter, "Ferrovanadium from the Republic of South Africa: Substantive Response to the Notice of Initiation," dated July 31, 2025 (*Substantive Response—South Africa*); see also Domestic Interested Parties' Letter, "Ferrovanadium from the People's Republic of China: Substantive Response to the Notice of Initiation," dated July 31, 2025 (*Substantive Response—China*).

⁷ See Commerce's Letter, "Sunset Reviews Initiated on July 1, 2025," dated August 22, 2025.

⁸ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

⁹ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

¹⁰ See Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited

2024, based on timely requests for review, Commerce published the notice of initiation of the administrative review of the *Order*, covering 47 companies.²

On December 9, 2024, Commerce tolled certain deadlines in this administrative proceeding by 90 days.³ On June 25, 2025, Commerce extended the time limit for these preliminary results to October 21, 2025, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).⁴ Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁵ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁶ On December 22, 2025, Commerce extended the time limit for these preliminary results in accordance with section 751(a)(3)(A).⁷ Accordingly, the deadline for these preliminary results is now January 5, 2026.

For a complete description of the events that followed the administrative review, see the Preliminary Decision Memorandum.⁸ A list of topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public

document and is on file electronically via Enforcement and Compliance's ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The products covered by the scope of the *Order* are certain steel nails from Malaysia. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.⁹

Rescission of Review, In Part

Pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review of an AD order when there are no viewable entries of subject merchandise during the POR for which liquidation is suspended. Normally, upon completion of an administrative review, the suspended entries are liquidated at the antidumping duty assessment rate calculated for the review period.¹⁰ Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the antidumping duty assessment rate calculated for the review period.¹¹

On December 20, 2024, we issued a memorandum to all interested parties, listing 39 companies for which we initiated this administrative review and for which there was no evidence of any suspended entries during the POR.¹² See Appendix II for a list of these companies. We invited parties to comment, and received no comments. Accordingly, in the absence of suspended entries of subject merchandise during the POR, we are hereby rescinding this administrative review for these 39 companies, in accordance with 19 CFR 351.213(d)(3).

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(2) of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in

accordance with section 773 of the Act. In addition, Commerce has relied on partial facts available under section 776(a)(1), 776 (b)(1)(A), and 776(b)(2)(D) of the Act for Region International Co., Ltd. and Region System Sdn. Bhd. (collectively, Region). In addition, Commerce has relied on total adverse facts available (AFA) under sections 776(a) and (b) of the Act for Madura Fasteners Sdn. Bhd (Madura). For a full description of the methodology underlying the preliminary results, see the Preliminary Decision Memorandum.

Rate for Non-Selected Respondents

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary results Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this administrative review, Commerce preliminarily assigned a margin based entirely on AFA to Madura. Therefore, the only rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Region. Consequently, pursuant to our normal practice, the rate calculated for Region is also assigned as the rate for all other producers and exporters.¹³ Accordingly, the preliminary margin for non-selected respondents is 1.90 percent.¹⁴

Preliminary Results of the Review

We preliminarily determine that the following estimated weighted-average dumping margins exist for the period July 1, 2023, through June 30, 2024:

¹³ See, e.g., *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum (IDM), at Comment 11.

¹⁴ See Appendix III.

¹⁵ Commerce continues to find that Region International Co. Ltd. and Region System Sdn. Bhd. are collapsed as a single entity, in accordance to prior reviews. See *Certain Steel Nails from Malaysia: Final Results of the Antidumping Duty Administrative Review; 2017–2018*, 85 FR 14461 (March 12, 2020), and accompanying PDM.

¹⁶ See Appendix III for the non-selected companies under review receiving a review-specific rate.

and the Socialist Republic of Vietnam: *Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 66035 (August 14, 2024).

³ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 9, 2024.

⁴ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated June 25, 2025.

⁵ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

⁶ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

⁷ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated December 22, 2025.

⁸ See Memorandum, "Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty on Certain Steel Nails from Malaysia" dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁹ *Id.*

¹⁰ See 19 CFR 351.212(b)(1).

¹¹ See 19 CFR 351.213(d)(3).

¹² See Memorandum, "Notice of Intent to Rescind Review, In Part," dated December 20, 2024.

Exporter/producer	Weighted-average dumping margin (percent)
Region International Co. Ltd./Region System Sdn. Bhd. ¹⁵	1.90
Madura Fasteners Sdn. Bhd	39.35
Review-Specific Rate for Non-Selected Companies ¹⁶	1.90

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance.¹⁷ Pursuant to 19 CFR 351.309(c)(1)(ii), the deadline for interested parties to submit case briefs to Commerce is no later than 21 days after the date of the publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁸ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁹

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.²⁰ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).²¹

¹⁷ See 19 CFR 351.309(c)(1)(ii); see also 19 CFR 351.303 (for general filing requirements).

¹⁸ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

¹⁹ See 19 CFR 351.309(c)(2) and (d)(2).

²⁰ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

²¹ See *APO and Service Procedures*.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants, whether any participant is a foreign national; and (3) a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.²² Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed via ACCESS.²³ An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Final Results of Review

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of this administrative review, pursuant to section 751(a)(2)(A) of the Act, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.²⁴ If the weighted-average dumping margin for a mandatory respondent is not zero or *de minimis* (i.e., less than 0.5 percent) in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total

entered value of such sales in accordance with 19 CFR 351.212(b)(1).²⁵ If the weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific assessment rate is zero or *de minimis*, Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.²⁶ For entries of subject merchandise during the POR produced by the respondents for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate companies involved in the transaction.²⁷ The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.

For the listed companies in Appendix II, for which we are rescinding this administrative review, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period of review, in accordance with 19 CFR 351.212(c)(1)(i). For the listed companies in Appendix II, Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these preliminary results in the **Federal Register**.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication). The final results of this administrative review

²⁵ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

²⁶ *Id.* 77 FR at 8102–03; see also 19 CFR 351.106(c)(2).

²⁷ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

²² See 19 CFR 351.310(d).

²³ See 19 CFR 351.303.

²⁴ *Id.*

shall be the basis for the assessment of Antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.²⁸

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the producer is, then the cash deposit rate will be the rate established in the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 2.66 percent, the all-others rate established in the less-than-fair-value investigation.²⁹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: January 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy Assistant Secretary, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Application of Facts Available and Use of Adverse Inference
- V. Discussion of the Methodology
- VI. Currency Conversion
- VII. Recommendation

Appendix II

Companies Rescinded From Review

1. Alsons Manufacturing India, LLP.
2. Asia Bolts & Nuts Sdn. Bhd.
3. Astrotech Steels Pvt. Ltd.
4. Atlantic Marine Group Ltd.
5. AV Fastener (M) Sdn. Bhd.
6. Best Staples Sdn. Bhd.
7. Chia Pao Metal Co., Ltd.
8. Chin Lai Hardware Sdn. Bhd.
9. Chin Well Fasteners Co.
10. Chuan Heng Hardware Paints and Building Materials Sdn. Bhd.
11. Come Best (Thailand) Co., Ltd.
12. Fastenal Malaysia Sdn. Bhd.
13. Fuji Fastener Manufacturing Sdn. Bhd.
14. Gbo Fastening Systems AB
15. Geekay Wires Limited
16. Gripwell Fastening (M) Sdn. Bhd.
17. Impress Steel Wire Industries Sdn. Bhd.
18. Kerry-Apex (Thailand) Co., Ltd.
19. Kimmu Trading Sdn., Bhd.
20. Modern Factory for Steel Industries Co., Ltd.
21. Multi Venture Resources Sdn. Bhd.
22. Oman Fasteners LLC
23. PrimeSource Building Products Inc.
24. RM Wire Industries Sdn. Bhd.
25. S.H. Chooi Fasteners
26. SK Bolts & Fasteners Sdn. Bhd.
27. Soon Shing Building Materials Sdn. Bhd.
28. Storeit Services LLP
29. Sunmat Industries Sdn., Bhd.
30. Tag Staples Sdn., Bhd.
31. Top Remac Industries
32. Trinity Steel Private Limited
33. UD Industries Sdn., Bhd.
34. Vien Group Sdn., Bhd.
35. Watasan Industries Sdn., Bhd.
36. Wing Tai Fastener Manufacturer
37. Winston Mayer Sdn. Bhd.
38. WWL India Private Ltd.
39. Yew Siong Industrial Supplies Sdn. Bhd.

Appendix III

Non-Selected Companies Receiving the Review-Specific Rate

1. Foison Hardware Inc.
2. Inmax Industries Sdn. Bhd. and Inmax Sdn. Bhd.
3. Kimmu Industries Sdn. Bhd.
4. Tag Fasteners Sdn. Bhd.

5. Tampin Sin Yong Wai Industry Sdn. Bhd.

[FR Doc. 2026–00184 Filed 1–7–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–883]

Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Preliminary Results and Rescission, In Part, of Antidumping Duty Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea) were sold in the United States at less than normal value during the period of review (POR) October 1, 2023, through September 30, 2024. Additionally, Commerce is rescinding the review, in part, with respect to 46 companies that had no entries of subject merchandise during the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable January 8, 2026.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3683 or (202) 482–0410, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2016, Commerce published in the **Federal Register** an antidumping duty order on hot-rolled steel from Korea.¹ On October 1, 2024, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order* for the POR.² On November 14, 2024, based on timely requests for an administrative review, Commerce

¹ See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Australia, the Republic of Korea, and the Republic of Turkey and Antidumping Duty Orders*, 81 FR 67962 (October 3, 2016) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List*, 89 FR 79894, 79895 (October 1, 2024).

²⁸ See section 751(a)(2)(C) of the Act.

²⁹ *Certain Steel Nails from Malaysia: Final Determination of Sales at Less Than Fair Value*, 80 FR 28969 (May 20, 2015).

initiated this administrative review of the *Order* with respect to 48 companies.³

On December 9, 2024, Commerce tolled the deadline for these preliminary results of this administrative review by 90 days.⁴ On September 26, 2025, pursuant to 19 CFR 351.213(h)(2), we extended the deadline to issue these preliminary results to no later than October 29, 2025.⁵

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁶ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁷ Accordingly, the deadline for these preliminary results is now January 5, 2026.

Scope of the Order

The products covered by this *Order* are hot-rolled steel from Korea. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.⁸

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review when there are no reviewable suspended entries. Based on our analysis of U.S. Customs and Border Protection (CBP) information, we preliminarily determine that 46 companies had no entries of subject merchandise during the POR.⁹ On April 15, 2025, we notified interested parties

of our intent to rescind this administrative review with respect to the 46 companies, listed in Appendix II of this notice, that had no reviewable suspended entries during the POR.¹⁰ No parties commented on our intent to rescind the review for these companies. As a result, we are rescinding this review, in part, with respect to the 46 companies listed in Appendix II of this notice.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). We calculated export price and constructed export price in accordance with section 772 of the Act and we calculated normal value in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Preliminary Results of Review

We preliminarily determine that the following estimated weighted-average dumping margins exist for the period October 1, 2023, through September 30, 2024:

Producer/exporter	Weighted-average dumping margin (percent)
Hyundai Steel Company	1.49
POSCO; POSCO International Corporation ¹¹	1.22

Disclosure

Commerce intends to disclose its calculations performed to interested parties in the preliminary results of this administrative review within five days of any public announcement or, if there

is no public announcement, within five days after the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance.¹² Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce to no later than 21 days after the date of the publication of this notice.¹³ Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁴ Interested parties who submit case briefs or rebuttal briefs in this administrative review must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁵

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁶ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results of this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice in the **Federal Register**. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of issues to be discussed. Oral

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 89955, 89958–59 (November 14, 2024).

⁴ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 9, 2024.

⁵ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2023–2024," dated September 26, 2025.

⁶ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

⁷ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

⁸ See Memorandum, "Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea; 2023–2024," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum), at 3–5.

⁹ See Memorandum, "Respondent Selection Memorandum," dated December 16, 2024.

¹⁰ See Memorandum, "Intent to Rescind Review, in Part," dated April 15, 2025.

¹¹ As we did in previous segments of this proceeding, we continue to treat these two companies as a single entity for the preliminary results of this review. See, e.g., *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2019–2020*, 87 FR 12660, 12661 n.2 (March 7, 2022).

¹² See 19 CFR 351.309(c)(1)(ii); see also 19 CFR 351.303 (for general filing requirements).

¹³ See 19 CFR 351.309.

¹⁴ See 19 CFR 351.309(d)(1); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹⁵ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁶ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

presentations at the hearing will be limited to issues raised in the case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the date, time, and location of the hearing.¹⁷ Parties should confirm the date, time, and location of the hearing two days before the scheduled hearing date.

All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed via ACCESS.¹⁸ An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁹

Final Results of Review

Unless the deadline is extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in written briefs, no later than 120 days after the date of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of the final results of this administrative review, in accordance with section 751(a)(2)(A) of the Act, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.²⁰ If a respondent's weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.50 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate for antidumping duties based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).²¹ If the respondent's weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of this review, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.²²

For entries of subject merchandise during the POR produced by either of the individually examined respondents for which they did not know that the merchandise was destined to the United States, we will instruct CBP to liquidate these entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.²³ For the 46 companies identified in Appendix II for which we are rescinding the review with these preliminary results, we will instruct CBP to assess antidumping duties on all appropriate entries at rates equal to the cash deposit of antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the POR in accordance with 19 CFR

351.212(c)(1)(i). For these 46 companies, Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these preliminary results of review in the **Federal Register**.

The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.²⁴ Commerce intends to issue assessment instructions regarding the individually examined respondents to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of the final results of this administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the individually examined respondents will be equal to the weighted-average dumping margins established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19

CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the investigation but the producer is, then the cash deposit rate will be the rate established in the most recently completed segment for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 6.05 percent, the all-others rate established in the investigation.²⁵ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of countervailing duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of this administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(d)(3), 19 CFR 351.213(h)(2), and 19 CFR 351.221(b)(4).

Dated: January 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

²⁵ See *Order*, 81 FR at 67965.

¹⁷ See 19 CFR 351.310(d).

¹⁸ See 19 CFR 351.303.

¹⁹ See *APO and Service Final Rule*, 88 FR at 67069.

²⁰ See 19 CFR 351.212(b)(1).

²¹ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

²² *Id.*, 77 FR at 8102–03; see also 19 CFR 351.106(c)(2).

²³ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

²⁴ See section 751(a)(2)(C) of the Act.

Appendix II

Companies Rescinded From the Administrative Review

1. Aekyung Chemical
2. AJU Besteel Co., Ltd.
3. Ameri Source Korea
4. Chemaven Co., Ltd.
5. Cj Cheiljedang Corp.
6. Cj Global Logistics Service Inc.
7. Dongkuk Industries Co., Ltd.
8. Dongkuk Steel Mill Co., Ltd.
9. Geco Industries Co., Ltd.
10. Geumok Tech. Co., Ltd.
11. Goi Tech Industries Co., Ltd.
12. Golden State Corporation
13. Gs Global Corp.
14. Gs Holdings Corp.
15. Hanawell Co., Ltd.
16. Hanjin Gls Co., Ltd.
17. Hankook Steel Co., Ltd.
18. HISTEEL
19. Hyosung Corporation
20. Hyosung Tnc Corporation
21. Hyundai Glovis Co., Ltd.
22. Hyundai Rb Co., Ltd.
23. Il Jin Nts Co., Ltd.
24. Inchang Electronics Co., Ltd.
25. J&K Korea Co., Ltd.
26. Jeil Industries Co., Ltd.
27. Jeil Metal Co., Ltd.
28. Jin Young Metal
29. Jun Il Co., Ltd.
30. KG Dongbu Steel Co., Ltd.
31. KG Steel Corporation
32. Kumkang Kind Co., Ltd.
33. Lg Electronics Inc.
34. Maxflex Corp.
35. Mitsubishi Corp. Korea
36. Mitsui Chemicals & Skc Polyurethane
37. Nexteel Co., Ltd.
38. Samsung Electronics Co., Ltd.
39. SeAH Steel Corporation
40. Sja Inc. (Korea)
41. Solvay Silica Korea
42. Soon Ho Co., Ltd.
43. Sumitomo Corp. Korea Ltd.
44. Sungjin Precision
45. Wintec Korea Inc.
46. Wonbangtech Co., Ltd.

[FR Doc. 2026–00181 Filed 1–7–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–879]

Certain Corrosion-Resistant Steel Products From the Republic of Korea: Preliminary Results and Rescission, In Part, of Countervailing Duty Administrative Review; 2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies were provided to producers and exporters of certain corrosion-resistant steel products (CORE) from the

Republic of Korea (Korea). The period of review (POR) is January 1, 2023, through December 31, 2023. In addition, Commerce is rescinding this review, in part, with respect to two companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable January 8, 2026.

FOR FURTHER INFORMATION CONTACT:

Shane Subler, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6241.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 2024, based on timely requests for review, Commerce initiated this administrative review of the countervailing duty order on CORE from Korea.¹ On September 23, 2024, Commerce selected Hyundai Steel Company (Hyundai Steel) and KG Dongbu Steel Co., Ltd. (KG Dongbu Steel) as the mandatory respondents in this review.²

On December 9, 2024, Commerce tolled the deadline to issue the preliminary results in this administrative review by 90 days.³ On May 30, 2025, Commerce extended the deadline for the preliminary results of this review by 120 days, in accordance with section 751(a)(3)(A) of Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2).⁴ Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁵ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines

in administrative proceedings by an additional 21 days.⁶ Accordingly, the deadline for these preliminary results is now January 5, 2026.

For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁷ A list of topics included in the Preliminary Decision Memorandum is provided as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The product covered by the *Order* is CORE from Korea. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Rescission of Administrative Review, In Part

In accordance with 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if all parties that requested the review withdraw their requests within 90 days of the date of publication of the notice of initiation of the requested review. Commerce received timely-filed withdrawal requests with respect to NS BlueScope Steel Vietnam Ltd. and Dongkuk Coated Metal Co., Ltd. pursuant to 19 CFR 351.213(d)(1). Because the withdrawal requests were timely filed, and no other parties requested a review of these companies, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the *Order* with respect to these two companies.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 66035, 66047 (August 14, 2024) (*Initiation Notice*); see also *Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea and the People's Republic of China: Countervailing Duty Order*, 81 FR 48387 (July 25, 2016) (*Order*).

² See Memorandum, “Respondent Selection,” dated September 23, 2024 (Respondent Selection Memorandum).

³ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated December 9, 2024.

⁴ See Memorandum, “Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,” dated May 30, 2025.

⁵ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

⁶ See Memorandum, “Tolling of all Case Deadlines,” dated November 24, 2025.

⁷ See Memorandum, “Decision Memorandum for the Preliminary Results and Partial Rescission of the Administrative Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel Products from the Republic of Korea; 2023,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

subsidy is specific.⁸ For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

Rate for Non-Selected Companies Under Review

The Act and Commerce's regulations do not address the establishment of a rate to apply to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 777A(e)(2) of the Act provides that "the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5) {of the Act}." Section 705(c)(5)(A) of the Act states that for companies not investigated, in general, we will determine an all-others rate by weight averaging the countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based entirely on facts available. Accordingly, to determine the rate for companies not selected for individual examination, Commerce's practice is to weight average the net subsidy rates for the selected mandatory respondents, excluding rates that are zero, *de minimis*, or based entirely on facts available.

In this review, Commerce calculated preliminary individual countervailable subsidy rates for Hyundai Steel and KG Dongbu Steel that are not zero, *de minimis*, or based entirely on facts otherwise available. Accordingly, Commerce calculated the rate assigned to the companies under review that were not selected for individual examination using a weighted average of the individual subsidy rates calculated for the examined respondents, using each company's publicly-ranged values for the merchandise under consideration.⁹

⁸ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁹ With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale values for the

Preliminary Results of Review

As a result of this review, we preliminarily determine the following net countervailable subsidy rates exist for the POR, January 1, 2023, through December 31, 2023:

Company	Subsidy rate (percent <i>ad valorem</i>)
Hyundai Steel Company ¹⁰ ...	1.28
KG Dongbu Steel Co., Ltd.; KG Steel Corporation ¹¹	4.11
POSCO	2.39
POSCO Coated & Color Steel Co., Ltd	2.39
POSCO International	2.39
POSCO Steeleon Co., Ltd ...	2.39
SeAH Coated Metal	2.39
SeAH Steel Corporation	2.39

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(3) of the Act, from July 21 through 24, 2025, Commerce conducted a verification of Hyundai Steel's questionnaire

merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. As complete publicly ranged sales data were available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, see Memorandum, "Calculation of the Non-Selected Company Rate for the Preliminary Results," dated concurrently with this notice.

¹⁰ We treated Hyundai Steel, Hyundai Steel Company, and Hyundai Steel Co., Ltd. as minor variations of the same name at respondent selection. See Respondent Selection Memorandum at 4 and Attachment; see also *Initiation Notice*, 88 FR at 62333. Further, as discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Hyundai Steel: Hyundai Green Power and Hyundai ITC. See Preliminary Decision Memorandum at 8–9.

¹¹ KG Dongbu Steel's official name in English is KG Dongbu Steel Co., Ltd. Its name in Korean is KG Steel Corporation. See *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results and Rescission, in Part, of the Countervailing Duty Administrative Review*; 2022, 90 FR 21002–21003 (May 16, 2025); see also KG Dongbu Steel's Letter, "KG Dongbu Steel's Affiliated Companies Response," dated October 23, 2024, at Exhibit 1.

responses.¹² Commerce intends to verify the information in KG Dongbu Steel's questionnaire responses after these preliminary results.

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce no later than seven days after the date of the last verification report issued in this administrative review.¹³ Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁴ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁵ All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁶ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁷

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests

¹² See Memorandum, "Verification of the Questionnaire Responses of Hyundai Steel Company and Its Cross-owned Companies," dated August 4, 2025.

¹³ See 19 CFR 351.303 for general filing requirements.

¹⁴ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

¹⁵ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁶ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁷ See *APO and Service Procedures*.

should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce will inform parties of the scheduled date for the hearing.¹⁸

Assessment Rates

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review.

For the companies listed above for which the review is being rescinded, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2023, through December 31, 2023, in accordance with 19 CFR

351.212(c)(1)(i). Commerce intends to issue rescission instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

For the companies remaining in the review, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at the subsidy rates calculated in the final results of this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**.

If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate

applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless the deadline is extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: January 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Partial Rescission of Review
- IV. Scope of the Order
- V. Diversification of Korea's Economy
- VI. Subsidies Valuation Information
- VII. Analysis of Programs
- VIII. Recommendation

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-856]

Certain Corrosion-Resistant Steel Products From Taiwan: Preliminary Results and Rescission, In Part, of Antidumping Duty Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain corrosion-resistant steel products (CORE) from Taiwan are not being sold in the United States at below normal value during the period of review (POR), July 1, 2023, through June 30, 2024. We invite interested parties to comment on these preliminary results.

DATES: Applicable January 8, 2026.

FOR FURTHER INFORMATION CONTACT:

Deborah Cohen or Anjali Mehindiratta, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4521 or (202) 482-9127, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2024, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the AD order¹ on CORE from Taiwan.² In July 2024, Commerce received timely requests to conduct an administrative review of entries of CORE from Taiwan during the POR from Prosperity Tieh Enterprise, Co., Ltd. (Prosperity),³ and the petitioners.⁴ On August 14, 2024, we published a notice initiating an AD administrative review of CORE from Taiwan with respect to nine companies.⁵

On December 9, 2024, Commerce tolled certain deadlines in this administrative proceeding by 90 days.⁶ On June 2, 2024, Commerce extended the deadline for these preliminary results until August 29, 2025.⁷ Additionally, due to the lapse in appropriations and Federal Government shutdown, Commerce tolled all deadlines in administrative proceedings

¹ See *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 25, 2016) (Order).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List*, 89 FR 54437 (July 1, 2024).

³ See Prosperity's Letter, "Request for Administrative Review," dated July 31, 2024.

⁴ The petitioners are Cleveland-Cliffs Inc., Steel Dynamics Inc. (SDI), Nucor Corporation, and United States Steel Corporation, manufacturers of the domestic like product in the United States and are therefore interested parties within the meaning of section 771(9)(C) of the Tariff Act of 1930, as amended (the Act). See Petitioners' Letter, "Request for Administrative Review," dated July 31, 2024 (Petitioners' Review Request).

⁵ These companies are: (1) China Steel Corporation; (2) Chung Hung Steel Corporation; (3) Great Fortune Steel Co., Ltd.; (4) Great Grandeur Steel Co., Ltd.; (5) Great Grandeur Steel Company Limited (Samoa) (Great Grandeur Samoa); (6) Great Grandeur Steel Corporation; (7) Prosperity; (8) Sheng Yu Steel Co., Ltd. (SYSCO); and (9) Xxentria Technology Materials Company Ltd. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 66035, 66042 (August 14, 2024) (*Initiation Notice*).

⁶ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 9, 2024.

⁷ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated June 2, 2025.

¹⁸ See 19 CFR 351.310(d).

by 47 days.⁸ Further, due to a backlog of documents that were electronically filed via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁹ Accordingly, the deadline for these preliminary results is now January 5, 2026.

For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.¹⁰ A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The products covered by this *Order* are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

Rescission of Review, In Part

As noted above, we initiated this review with respect to nine companies.¹¹ During the course of the review, we selected two mandatory respondents: Prosperity and SYSCO.¹² As a consequence, there are seven companies upon which a review was requested and which were not selected for individual examination.

Pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an

administrative review when there are no reviewable suspended entries. Based on our analysis of U.S. Customs and Border Protection (CBP) entry data, six of the companies identified in the *Initiation Notice* had no entries of subject merchandise during the POR.¹³ On September 18, 2024, Commerce released CBP data for U.S. imports of subject merchandise from Taiwan from the firms identified in the *Initiation Notice* during the POR, and provided notice to interested parties of Commerce’s intent to rescind this instant review with respect to companies with no entries listed in the CBP data.¹⁴ Commerce received no comments on its intent to rescind this review with respect to these six companies. As a result, we are rescinding this review, in part, with respect to the six companies which had no entries during the POR.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. Export price was calculated in accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

Rate for Non-Examined Company

The Act and Commerce’s regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value (LFTV) investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins

determined entirely {on the basis of facts available}.”

Where the dumping margin for individually examined respondents are all zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use “any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.”

In this administrative review, we preliminarily calculated a dumping margin of zero percent for both Prosperity and SYSCO. Thus, in accordance with the expected method, and consistent with the U.S. Court of Appeals for the Federal Circuit’s decision in *Albemarle*,¹⁵ and Commerce’s practice,¹⁶ we preliminarily assigned to the non-selected company, Great Grandeul Samoa, a zero percent rate, based on the rates calculated for the two mandatory respondents.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following estimated weighted-average dumping margins exist for the period July 1, 2023, through June 30, 2024:

Producer/exporter	Weighted-average dumping margin (percent)
Prosperity Tieh Enterprises Co., Ltd	0.00
Sheng Yu Steel Co	0.00
Great Grandeul Steel Company Limited (Samoa)	0.00

Disclosure

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).¹⁷

⁸ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.
⁹ See Memorandum, “Tolling of all Case Deadlines,” dated November 24, 2025.
¹⁰ See Memorandum, “Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order for Corrosion-Resistant Steel Products from Taiwan; 2023–2024,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).
¹¹ See *Initiation Notice*, 89 FR at 66042.
¹² See Memorandum, “Respondent Selection,” dated October 9, 2024.

¹³ These companies are: 1) China Steel Corporation; 2) Chung Hung Steel Corporation; 3) Great Fortune Steel Co., Ltd.; 4) Great Grandeul Steel Co., Ltd.; 5) Great Grandeul Steel Corporation; and 6) Xxentria Technology Materials Company Ltd. See Memorandum, “Release of Customs Data from U.S. Customs and Border Protection & Notice of Intent to Rescind Review, In Part,” dated September 18, 2024 (CBP Data Release Memorandum) at 1 and Attachment 2.
¹⁴ *Id.*

¹⁵ See *Albemarle Corp. v. United States*, 821 F.3d 1345, 1352 (Fed. Cir. 2016) (*Albemarle*) (holding that Commerce may only use “other reasonable methods” if it reasonably concludes that the expected method is “not feasible” or “would not be reasonably reflective of potential dumping margins”).
¹⁶ See, e.g., *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021*, 87 FR 60989 (October 7, 2022), unchanged in *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2020–2021*, 88 FR 20218 (April 5, 2023).
¹⁷ See 19 CFR 351.224(b).

Public Comment

Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce to no later than 21 days after the date of the publication of this notice.¹⁸ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.¹⁹ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.²⁰

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.²¹ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).²²

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.²³ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing at a time and location to be

determined.²⁴ Parties should confirm by telephone the date, time, and location of the hearing no fewer than two days before the scheduled date.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in written briefs, no later than 120 days after the date of publication of this notice in the **Federal Register**, pursuant to 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.²⁵ Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

If the respective weighted-average dumping margins are above *de minimis* (*i.e.*, 0.50 percent) in the final results of this review, we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).²⁶ If the respondent has not reported entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate

calculated in the final results of this review is above *de minimis* (*i.e.*, 0.50 percent). Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by the respondents for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate entries not reviewed at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the company which was not selected for individual examination, we will instruct CBP to assess antidumping duties at an *ad valorem* assessment rate equal to the company-specific weighted-average dumping margin determined in the final results.

For the six companies rescinded from review, antidumping duties shall be assessed at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue rescission instructions to CBP no earlier than 35 days after the publication of these preliminary results in the **Federal Register**.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of the final results of the administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results, as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for each company listed above will be equal to the dumping margins established in the final results of this review, except if the ultimate rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rates will be zero; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation but the producer is, then

¹⁸ Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs. See 19 CFR 351.309(c)(1)(ii).

¹⁹ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

²⁰ See 19 CFR 351.309(c)(2) and (d)(2).

²¹ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

²² See *APO and Service Procedures*.

²³ See 19 CFR 351.310(c).

²⁴ See 19 CFR 351.310.

²⁵ See section 751(a)(2)(C) of the Act.

²⁶ In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 11.04 percent, the all-others rate established in the *Third Amended Final Determination*.²⁷ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(h)(2), and 19 CFR 351.221(b)(4).

Dated: January 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

[FR Doc. 2026-00193 Filed 1-7-26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-908]

Passenger Vehicle and Light Truck Tires From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminary determines that Hankook Tire & Technology Co. Ltd. (Hankook) and Nexen Tire Corporation (Nexen) made sales of passenger vehicle and light truck tires (passenger tires) from the Republic of Korea (Korea) at prices below normal value (NV) during the period of review (POR), July 1, 2023, through June 30, 2024. We invite interested parties to comment on these preliminary results of review.

DATES: Applicable January 8, 2026.

FOR FURTHER INFORMATION CONTACT: Charles DeFilippo and Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3797 and (202) 482-1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 2021, Commerce published in the **Federal Register** the antidumping duty order on passenger tires from Korea.¹ On July 1, 2024, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the Order.² On August 14, 2024, based on timely requests for review and in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the Order.³ On December 9, 2024, Commerce tolled the deadlines of certain antidumping and countervailing duty proceedings by 90

days.⁴ On June 26, 2025, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(h)(2), Commerce extended the due date for the preliminary results by 120 days until October 29, 2025.⁵

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁶ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁷ Accordingly, the deadline for these preliminary results is now January 5, 2026.

For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁸ A list of the topics included in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The products covered by the Order are passenger tires from Korea. For a full description of the scope of the Order, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Export price is calculated in

⁴ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 9, 2025.

⁵ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2023–2024," dated June 26, 2025.

⁶ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

⁷ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

⁸ See Memorandum, "Decision Memorandum for the Preliminary Results of Administrative Review of the Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from the Republic of Korea; 2021–2022" dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

²⁷ See *Corrosion-Resistant Steel Products from Taiwan: Notice of Third Amended Final Determination of Sales at Less than Fair Value Pursuant to Court Decision and Partial Exclusion from Antidumping Duty Order*, 88 FR 58245, 58247 (August 25, 2023).

¹ See *Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, and Thailand: Antidumping Duty Orders and Amended Final Affirmative Antidumping Duty Determination for Thailand*, 86 FR 38011 (July 19, 2021) (Order).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List*, 89 FR 54437 (July 1, 2024).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Review*, 89 FR 66035 (August 14, 2024).

accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum.

Rate for Non-Examined Companies

The Act and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be determined for companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value investigation, for guidance when determining the weighted-average dumping margin for

companies which were not selected for individual examination in an administrative review.

Section 735(c)(5)(A) of the Act provides that Commerce will base the all-others rate on the weighted average of the estimated weighted-average dumping margins calculated for the individually examined respondents, excluding rates that are zero, *de minimis*, or based entirely on facts available. Where the estimated weighted-average dumping margin for each of the individually examined companies is zero, *de minimis*, or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use "any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined

for the exporters and producers individually investigated."

In this review, the preliminary weighted-average dumping margins for Hankook and Nexen are not zero, *de minimis*, or based entirely on facts otherwise available. Therefore, we have preliminarily assigned a weighted-average dumping margin to the non-examined company, Kumho Tire Co., Inc., that is equal to the weighted average of the weighted-average dumping margins calculated for Hankook and Nexen, consistent with the guidance in section 735(c)(5)(A) of the Act.⁹

Preliminary Results of Review

As a result of this review, Commerce preliminarily determines that the following estimated weighted-average dumping margins exist for the period July 1, 2023, through June 30, 2024:

Producer/exporter	Weighted-average dumping margin (percent)
Hankook Tire & Technology Co., Ltd., Hankook Tire Mfg Co. Ltd., and Hankook Tire Co., Ltd. ¹⁰	9.10
Nexen Tire Corporation	5.57
Kumho Tire Co., Inc	7.34

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce to no later than 21 days after the date of the publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹¹ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing

each issue; and (2) a table of authorities.¹² All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹³ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements

pertaining to the service of documents in 19 CFR 351.303(f).¹⁴

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.¹⁵

Final Results of Review

Commerce intends to issue the final results of this administrative review,

⁹ See Memorandum, "Preliminary Results of the Antidumping Duty Administrative Review of Passenger Vehicles and Light Truck Tires from the Republic of Korea: Rate for Non-Examined Companies," dated concurrently with this notice.

¹⁰ In the LTFV investigation, Commerce determined that Hankook Tire Mfg. Co., Ltd. and Hankook Tire Co., Ltd. are alternative names for Hankook Tire & Technology Co. Ltd. See *Passenger Vehicle and Light Truck Tires from the Republic of*

Korea: Preliminary Affirmative Determination of Sales at Less than Fair Value, Postponement of Final Determination and Extension of Provisional Measures, 86 FR 501 (January 6, 2021), and accompanying Preliminary Decision Memorandum at 2 (n. 9).

¹¹ See 19 CFR 351.309(d)(1); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing*

Duty Proceedings, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹² See 19 CFR 351.309(c)(2) and (d)(2).

¹³ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁴ See *APO and Service Final Rule*.

¹⁵ See 19 CFR 351.310(c).

including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b). If a respondent's weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.5 percent) in the final results of this review, we will calculate importer-specific assessment rate on the basis of the ratio of the total amount of dumping calculated for an importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1).¹⁶ If the weighted-average dumping margin is zero or *de minimis* in the final results of review, or an importer-specific rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.¹⁷

For entries of subject merchandise during the POR produced by an individually examined respondent for which it did not know its merchandise was destined for the United States, we intend to instruct CBP to liquidate such entries at the all-others rate (i.e., 21.74 percent)¹⁸ if there is no rate for the intermediate company(ies) involved in the transaction.¹⁹

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication). The

final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the exporters listed above will be the rate established in the final results of this review (except, if the rate is zero or *de minimis*, then no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair value investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 21.74 percent, the all-others rate established in the less-than-fair value investigation.²⁰ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4) and 19 CFR 351.213(h)(2).

²⁰ See Order.

Dated: January 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

[FR Doc. 2026–00190 Filed 1–7–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–487–002, A–729–805, A–552–853]

Steel Concrete Reinforcing Bar From Bulgaria, Egypt, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable January 8, 2026.

FOR FURTHER INFORMATION CONTACT:

Hermes Pinilla at (202) 482–3477 (Bulgaria); Anne Entz at (202) 482–3845 (Egypt); Kate Fracke at (202) 482–3299 (the Socialist Republic of Vietnam (Vietnam)), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2025, the U.S. Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of steel concrete reinforcing bar (rebar) from Bulgaria, Egypt, and Vietnam.¹ Currently, the preliminary determinations are due no later than January 20, 2026.²

¹ See *Steel Concrete Reinforcing Bar from Algeria, Bulgaria, Egypt, and the Socialist Republic of Vietnam*, 90 FR 27846 (June 30, 2025) (*Initiation Notice*).

² Commerce's practice dictates that, where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. Because the preliminary determination deadline falls on January 18, the appropriate deadline becomes January 20. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant*

¹⁶ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

¹⁷ See section 751(a)(2)(C) of the Act.

¹⁸ See Order, 86 FR at 38012.

¹⁹ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1)(A)(b)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) the petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On December 18, 2025, the petitioner³ submitted a timely request that Commerce postpone the preliminary determinations in these LTFV investigations.⁴ The petitioner stated that it requests postponement because “these investigations cover steel concrete reinforcing bar from multiple countries and thus require a significant amount of resources to fully investigate.”⁵ Further, the petitioner noted that Commerce has only recently received responses to the initial questionnaires in these investigations, and thus Commerce needs additional time to analyze those responses and potentially issue supplemental questionnaires.⁶

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations by 50 days (*i.e.*, 190 days after the date on which these investigations were initiated). As a result, Commerce will issue its preliminary determinations no later than March 9, 2026.⁷ In accordance

with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: January 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2026–00152 Filed 1–7–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–858, C–489–817]

Certain Oil Country Tubular Goods From India and the Republic of Türkiye: Final Results of the Expedited Second Sunset Reviews of the Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) orders on certain oil country tubular goods (OCTG) from India and the Republic of Türkiye (Türkiye) would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the “Final Results of Sunset Reviews” section of this notice.

DATES: Applicable January 8, 2026.

FOR FURTHER INFORMATION CONTACT: David De Falco, Trade Agreements Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2178.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2014, Commerce published the *Orders* on OCTG from India and Türkiye.¹ On July 1, 2025,

for a total of 68 days. *See* Memoranda, “Deadlines Affected by the Shutdown of Federal Government,” dated November 14, 2025; *see also* “Tolling of all Case Deadlines,” dated November 24, 2025.

¹ *See Certain Oil Country Tubular Goods from India and the Republic of Turkey: Countervailing Duty Orders and Amended Affirmative Final Countervailing Duty Determination for India*, 79 FR

Commerce published the notice of initiation of the sunset reviews of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(c).²

On July 16, 2025, Commerce received timely and complete notices of intent to participate in this review from the domestic interested parties,³ within the deadline specified in 19 CFR 351.218(d)(1)(i).⁴ U.S. Steel claims that it has interested party status within the meaning of section 771(9)(C) of the Act and 19 CFR 351.102(b)(29)(v) as a U.S. producer of the domestic like product; USOMA claims that it has interested party status within the meaning of 771(9)(E) of the Act and 19 CFR 351.102(b)(17) as a trade or business association in which all of its members produce the domestic like product in the United States.⁵

On July 31, 2025, Commerce received an adequate substantive response from the domestic interested parties, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁶ Commerce did not receive a substantive response from the Government of India, the Government of Türkiye, nor a respondent interested party to this proceeding. On August 22, 2025, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁷ As a result,

53688 (September 10, 2014) (*India Order*; and *Türkiye Order*) (collectively, *Orders*).

² *See Initiation of Five-Year (Sunset) Reviews*, 90 FR 28722 (July 1, 2025).

³ The domestic interested parties are the U.S. OCTG Manufacturers Association (USOMA) and United States Steel Corporation (U.S. Steel).

⁴ *See* USOMA’s Letter, “Five-Year (“Sunset”) Review of the Countervailing Duty Order on Certain Oil Country Tubular Goods from India: Domestic Interested Parties’ Notice of Intent to Participate,” dated July 16, 2025; U.S. Steel’s Letter, “Second Five-Year (“Sunset”) Review of Antidumping and Countervailing Duty Orders on Oil Country Tubular Goods from India: Notice of Intent to Participate,” dated July 16, 2025; USOMA’s Letter, “Five-Year (“Sunset”) Review of the Countervailing Duty Order on Certain Oil Country Tubular Goods from the Republic of Türkiye: Domestic Interested Parties’ Notice of Intent to Participate,” dated July 16, 2025; and U.S. Steel’s Letter, “Second Five-Year (“Sunset”) Review of Antidumping and Countervailing Duty Orders on Oil Country Tubular Goods from Turkey: Notice of Intent to Participate,” dated July 16, 2025.

⁵ *Id.*

⁶ *See* Domestic Interested Parties’ Letter, “Oil-Country Tubular Goods from India: Substantive Response of the Domestic Industry to Commerce’s Notice of Initiation of Five-Year (“Sunset”) Reviews,” dated July 31, 2025; and Domestic Interested Parties’ Letter, “Oil-Country Tubular Goods from Türkiye: Substantive Response of the Domestic Industry to Commerce’s Notice of Initiation of Five-Year (“Sunset”) Reviews,” dated July 31, 2025.

⁷ *See* Commerce’s Letter, “Sunset Review Initiated on July 1, 2025,” dated August 22, 2025.

to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

³ The petitioner is the Rebar Trade Action Coalition (RTAC) and its individual members.

⁴ *See* Petitioner’s Letter, “Request for Extension of Preliminary Determination Deadline,” dated December 18, 2025.

⁵ *Id.*

⁶ *Id.*

⁷ Commerce has twice tolled deadlines for the preliminary determinations of these investigations,

Commerce conducted expedited (120-day) sunset reviews of the *Orders*, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2).

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁸ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁹ Accordingly, the

deadline for these final results is now January 5, 2026.

Scope of the Orders

The product covered by these *Orders* is OCTG from India and Türkiye. For the full description of the scope of the *Orders*, see the Issues and Decisions Memorandum.¹⁰

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews, including the likelihood of continuation or recurrence of subsidization and the countervailable subsidy rates likely to prevail if the *Orders* were to be revoked, is contained in the accompanying Issues and Decision Memorandum.¹¹ A list of the topics discussed in the Issues and

Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via ACCESS, which is available to registered users at <https://access.trade.gov>. In addition, complete versions of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Reviews

Pursuant to sections 751(c) and 752(b) of the Act, Commerce determines that revocation of the *India Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

Producers	Net countervailable subsidy rate (percent <i>ad valorem</i>)
Jindal SAW Ltd	27.77
GVN Fuels Limited/Maharashtra Seamless Limited/Jindal Pipes Limited	13.87
All Others	20.82

Pursuant to sections 751(c) and 752(b) of the Act, Commerce determines that revocation of the *Türkiye Order* would

be likely to lead to continuation or recurrence of countervailable subsidies

at the following net countervailable subsidy rates:

Producers	Net countervailable subsidy rate (percent <i>ad valorem</i>)
Borusan Mannesmann Boru Sanayi ve Ticaret A.S., and cross-owned affiliates Borusan Istikbal Ticaret, Borusan Mannesmann Boru Yatirim Holding A.S., Borusan Holding A.S.	2.87
All Others	2.87

Notification Regarding Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective, orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

⁸ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

⁹ See Memorandum, “Tolling of all Case Deadlines,” dated November 24, 2025.

Dated: January 5, 2026.

Abdelali Elouaradia,
Deputy Assistant Secretary for Enforcement and Compliance.

- Appendix**
- List of Topics Discussed in the Issues and Decision Memorandum**
- I. Summary
 - II. Background
 - III. Scope of the *Orders*
 - IV. History of the *Orders*
 - V. Legal Framework
 - VI. Discussion of the Issues
 - 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
 - 2. Net Countervailable Subsidy Rates Likely to Prevail
 - 3. Nature of the Subsidies
 - VII. Final Results of Sunset Reviews

¹⁰ See Memorandum, “Issue and Decision Memorandum for the Final Results of the Expedited Sunset Reviews of the Countervailing Duty Orders on Certain Oil Country Tubular Goods from India and the Republic of Türkiye,” dated concurrently

VIII. Recommendation

[FR Doc. 2026–00185 Filed 1–7–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

XRIN 0693–XA002

Request for Information Regarding Security Considerations for Artificial Intelligence Agents

AGENCY: Center for AI Standards and Innovation (CAISI), National Institute of Standards and Technology (NIST), U.S. Department of Commerce.

ACTION: Notice; request for information (RFI).

with, and hereby adopted by, this notice (Issues and Decision Memorandum).

¹¹ *Id.*

SUMMARY: The Center for AI Standards and Innovation (CAISI), housed within the National Institute of Standards and Technology (NIST) at the Department of Commerce, is seeking information and insights from stakeholders on practices and methodologies for measuring and improving the secure development and deployment of artificial intelligence (AI) agent systems. AI agent systems are capable of taking autonomous actions that impact real-world systems or environments, and may be susceptible to hijacking, backdoor attacks, and other exploits. If left unchecked, these security risks may impact public safety, undermine consumer confidence, and curb adoption of the latest AI innovations. We encourage respondents to provide concrete examples, best practices, case studies, and actionable recommendations based on their experience developing and deploying AI agent systems and managing and anticipating their attendant risks. Responses may inform CAISI's work evaluating the security risks associated with various AI capabilities, assessing security vulnerabilities of AI systems, developing evaluation and assessment measurements and methods, generating technical guidelines and best practices to measure and improve the security of AI systems, and other activities related to the security of AI agent systems.

DATES: Comments containing information in response to this notice must be received on or before March 9, 2026, at 11:59 p.m. Eastern Time. Submissions received after that date may not be considered.

ADDRESSES: Comments must be submitted electronically via the Federal e-Rulemaking Portal.

1. Go to www.regulations.gov and enter NIST–2025–0035 in the search field;

2. Click the “Comment Now!” icon, complete the required fields, including the relevant document number and title in the subject field; and

3. Enter or attach your comments.

Additional information on the use of regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket is available at:

www.regulations.gov/faq. If you require an accommodation or cannot otherwise submit your comments via regulations.gov, please contact NIST using the information in the **FOR FURTHER INFORMATION CONTACT** section below.

NIST will not accept comments for this notice by postal mail, fax, or email. To ensure that NIST does not receive duplicate copies, please submit your

comments only once. Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials.

All relevant comments received by the deadline will be posted at: <https://www.regulations.gov> under docket number NIST–2025–0035 without change or redaction, so commenters should not include information they do not wish to be posted publicly (e.g., personal or confidential business information).

FOR FURTHER INFORMATION CONTACT: For questions about this Request for Information (RFI) contact: Peter Cihon, Senior Advisor, Center for AI Standards and Innovation ((202) 695–5661; peter.cihon@nist.gov). Direct media inquiries to NIST's Office of Public Affairs at (301) 975–2762. Users of telecommunication devices for the deaf, or a text telephone may call the Federal Relay Service toll free at 1–800–877–8339. NIST will make the RFI available in alternate formats, such as Braille or large print, upon request by persons with disabilities.

SUPPLEMENTARY INFORMATION:

Authority

This RFI advances NIST's activities to support measurement research and development of best practices for artificial intelligence systems, including their safety and robustness to adversarial attacks (15 U.S.C. 278h–1(b)). It is consistent with NIST's functions to, *inter alia*, compile data, provide a clearinghouse of scientific information, and assist industry in improving product quality (15 U.S.C. 272(b–c)).

Background

AI agent systems are capable of planning and taking autonomous actions that impact real-world systems or environments. AI agent systems consist of at least one generative AI model and scaffolding software that equips the model with tools to take a range of discretionary actions. These systems may be more expansive, containing multiple sub-agents with software that orchestrates their interactions. They can be deployed with little to no human oversight. Other terms used to refer to AI agent systems include AI agents and agentic AI. Challenges to the security of AI agent systems may undermine their reliability and lessen their utility, stymieing widespread adoption that would otherwise advance U.S. economic competitiveness. Further, security vulnerabilities may pose future risks to

critical infrastructure or catastrophic harms to public safety (*i.e.*, through chemical, biological, radiological, nuclear, and explosive (CBRNE) weapons development and use or other analogous threats).

Deployed AI agent systems may face a range of security threats and risks. Some of these risks are shared with other kinds of software systems, such as exploitable vulnerabilities in authentication mechanisms or memory management processes. This Request for Information, however, focuses instead on the novel risks that arise from the use of machine learning models embedded within AI agent systems. Within this category are: (1) security risks that arise from adversarial attacks at either training or inference time, when models may interact with potentially adversarial data (e.g., indirect prompt injection) or may be compromised by data poisoning; (2) security risks posed by models with intentionally placed backdoors; and (3) the risk that the behavior of uncompromised models may nonetheless pose a threat to confidentiality, availability, or integrity (e.g., models that exhibit specification gaming or otherwise pursue misaligned objectives). Organizations have begun to implement technical controls, processes, and other mitigations for the security risks posed by their AI agent systems. In some cases, mitigations draw on cybersecurity best practices, including implementing systems according to the principle of least privilege and designing systems with a zero trust architecture. In other cases, risks are addressed with novel approaches, including instruction hierarchy and agent design patterns with trusted models.

NIST conducts research and develops guidelines to promote safe and secure AI innovation and adoption. Research by CAISI technical staff^[1] has demonstrated risks of agent hijacking. NIST has also produced resources on this topic including NIST AI 100–2e2025^[2] that provides a taxonomy of attacks and mitigations in adversarial machine learning generally; the NIST AI Risk Management Framework,^[3] which describes and discusses “secure and resilient” AI and includes subcategories for security assessment within the Measure function; NIST's companion Risk Management Framework: Generative AI Profile,^[4] which provides further context and considerations for “information security” and associated risks with generative AI, applicable to this RFI; and NIST AI 800–1^[5] that provides guidelines for AI developers to manage risks including the misuse of AI agent systems for offensive

cybersecurity operations. In addition, NIST SP 800–218A^[6] provides a profile for the secure development of generative AI, and NIST SP 800–53^[7] provides a glossary of relevant terms and a catalog of security and privacy controls for information systems generally.

Request for Information

This RFI seeks information that can support secure innovation and adoption of AI agent systems. It invites stakeholders—particularly AI agent developers, deployers, and computer security researchers—to share insights on the secure development and deployment of AI agent systems. Such information should be scoped to the security of AI agent systems capable of taking actions that affect external state, *i.e.*, persistent changes outside of the AI agent system itself. Unless contextualized to impact the security of agent systems directly, this RFI does not seek general information on generative AI security, insights on practices for AI chatbots or retrieval-augmented generation systems that are not orchestrated to act autonomously, or feedback on the misuse of AI agent systems to carry out cyberattacks.

NIST is requesting that respondents provide information on the topics below. NIST has provided this non-exhaustive list of topics and accompanying questions to guide respondents, and the submission of any relevant information germane to the subject but that is not included in the list of topics below is also encouraged. NIST will consider all relevant comments received during the public comment period. Respondents need not address all questions in this RFI, though all responses should specify which questions are being answered. For respondents with limited bandwidth, please prioritize questions 1(a), 1(d), 2(a), 2(e), 3(a), 3(b), 4(a), 4(b), and 4(d). All relevant responses that comply with the requirements listed in the **DATES** and **ADDRESSES** sections of this RFI will be considered.

1. Security Threats, Risks, and Vulnerabilities Affecting AI Agent Systems

(a) What are the unique security threats, risks, or vulnerabilities currently affecting AI agent systems, distinct from those affecting traditional software systems?

(b) How do security threats, risks, or vulnerabilities vary by model capability, agent scaffold software, tool use, deployment method (including internal vs. external deployment), hosting context (including components on

premises, in the cloud, or at the edge), use case, and otherwise?

(c) To what extent are security threats, risks, or vulnerabilities affecting AI agent systems creating barriers to wider adoption or use of AI agent systems?

(d) How have these threats, risks, or vulnerabilities changed over time? How are they likely to evolve in the future?

(e) What unique security threats, risks, or vulnerabilities currently affect multi-agent systems, distinct from those affecting singular AI agent systems?

2. Security Practices for AI Agent Systems

(a) What technical controls, processes, and other practices could ensure or improve the security of AI agent systems in development and deployment? What is the maturity of these methods in research and in practice? Categories may include:

i. Model-level controls, such as measures to enhance model robustness to prompt injections;

ii. Agent system-level controls, such as prompt engineering, data or tool restrictions, and continuous monitoring methods;

iii. Human oversight controls, such as approvals for consequential actions, management of sensitive and untrusted data, network access permissions, or other controls.

(b) To what degree, if any, could the effectiveness of technical controls, processes, and other practices vary with changes to model capability, agent scaffold software, tool use, deployment method (including internal vs. external deployment), use case, use in multi-agent systems, and otherwise?

(c) How might technical controls, processes, and other practices need to change, in response to the likely future evolution of AI agent system capabilities or of the threats, risks, or vulnerabilities facing them?

(d) What are the methods, risks, and other considerations relevant for patching or updating AI agent systems throughout the lifecycle, as distinct from those affecting both traditional software systems and non-agentic AI?

(e) Which cybersecurity guidelines, frameworks, and best practices are most relevant to the security of AI agent systems?

i. What is the extent of adoption by AI agent system developers and deployers of these relevant guidelines, frameworks, and best practices?

ii. What are impediments, challenges, or misconceptions about adopting these kinds of guidelines, frameworks, or best practices?

iii. Are there ways in which existing cybersecurity best practices may not be

appropriate for the security of AI agent systems?

3. Assessing the Security of AI Agent Systems

(a) What methods could be used during AI agent systems development to anticipate, identify, and assess security threats, risks, or vulnerabilities?

i. What methods could be used to detect security incidents after an AI agent system has been deployed?

ii. How do these align (or differ) from traditional information security practices, including supply chain security?

iii. What is the maturity of these methods in research and applied use?

iv. What resources or information would be useful for anticipating, identifying, and assessing security threats, risks, or vulnerabilities?

(b) Not all security threats, risks, or vulnerabilities are necessarily applicable to every AI agent system; how could the security of a particular AI agent system be assessed and what types of information could help with that assessment?

(c) What documentation or data from upstream developers of AI models and their associated components might aid downstream providers of AI agent systems in assessing, anticipating, and managing security threats, risks, or vulnerabilities in deployed AI agent systems?

i. Does this data or documentation vary between open-source and closed-source AI models and AI agent systems, and if so, how?

ii. What kinds of disclosures (if made mandatory or public) could potentially create new vulnerabilities?

iii. How should such, if any, disclosures be kept secure between parties to protect system integrity?

(d) What is the state of practice for user-facing documentation of AI agent systems that support secure deployment?

4. Limiting, Modifying, and Monitoring Deployment Environments

(a) AI agent systems may be deployed in a variety of environments, *i.e.*, locations where the system's actions take place. In what manner and by what technical means could the access to or extent of an AI agent system's deployment environment be constrained?

(b) How could virtual or physical environments be modified to mitigate security threats, risks, or vulnerabilities affecting AI agent systems? What is the state of applied use in implementing undoes, rollbacks, or negations for unwanted actions or trajectories

(sequences of actions) of a deployed AI agent system?

(c) What is the state of managing risks associated with interactions between AI agent systems and counterparties? Practices, their adoption, and their relative maturity may differ according to the counterparty in the interaction, including:

- i. Interactions with humans who are not using the AI agent system directly;
- ii. Interactions with digital resources, including web services, servers, and legacy systems;
- iii. Interactions with mechanical systems, machinery, or Internet-of-Things (IoT);
- iv. Interactions with authentication mechanisms, operating system access, source code access, or similar network-level access vectors;
- v. Interactions with other AI agent systems.

(d) What methods could be used to monitor deployment environments for security threats, risks, or vulnerabilities?

- i. What challenges exist to deploying traditional methods of monitoring threats, risks, or vulnerabilities?
- ii. Are there legal and/or privacy challenges to monitoring deployment environments for security threats, risks, or vulnerabilities?
- iii. What is the maturity of these methods in research and practice?

(e) Are current AI agent systems widely deployed on the open internet, or in otherwise unbounded environments? How could the volume of traffic be tracked on the open internet or in otherwise unbounded environments over time?

5. Additional Considerations

(a) What methods, guidelines, resources, information, or tools would aid the AI ecosystem in the rapid adoption of security practices affecting AI agent systems and promoting the ecosystem of AI agent system security innovation?

(b) In which policy or practice areas is government collaboration with the AI ecosystem most urgent or most likely to lead to improvements in the state of security of AI agent systems today and into the future?

(c) In which critical areas should research be focused to improve the current state of security practices affecting AI agent systems?

- i. Where should future research be directed in order to unlock the benefits of adoption of secure and resilient AI agent systems?
- ii. Which research approaches should be prioritized to advance the scientific understanding and mitigation of security threats, risks, and

vulnerabilities affecting AI agent systems?

(d) How are other countries addressing these challenges and what are the benefits and drawbacks of their approaches?

(e) Are there practices, norms, or empirical insights from fields outside of artificial intelligence and cybersecurity that might benefit our understanding or assessments of the security of AI agent systems?

Footnotes

1. *Technical Blog: Strengthening AI Agent Hijacking Evaluations*, <https://www.nist.gov/news-events/news/2025/01/technical-blog-strengthening-ai-agent-hijacking-evaluations>.

2. *Adversarial Machine Learning: A Taxonomy and Terminology of Attacks and Mitigations (NIST AI 100-2e2025)*, <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-2e2025.pdf>.

3. *Artificial Intelligence Risk Management Framework (NIST AI 100-1)*, <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.100-1.pdf>.

4. *Artificial Intelligence Risk Management Framework: Generative Artificial Intelligence Profile (NIST AI 600-1)*, <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.600-1.pdf>.

5. *Managing Misuse Risk for Dual-Use Foundation Models (NIST AI 800-1 2pd)*, <https://nvlpubs.nist.gov/nistpubs/ai/NIST.AI.800-1.ipd2.pdf>.

6. *Secure Software Development Practices for Generative AI and Dual-Use Foundation Models: An SSDF Community Profile (NIST SP 800-218)*, <https://csrc.nist.gov/pubs/sp/800/218/a/final>.

7. *Security and Privacy Controls for Information Systems and Organizations (NIST SP 800-53 Rev. 5)*, <https://csrc.nist.gov/pubs/sp/800/53/r5/upd1/final>.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2026-00206 Filed 1-7-26; 8:45 am]

BILLING CODE 3510-13-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds product(s) and 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: February 08, 2026.

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:

Addition

On December 4, 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 55857). This final notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3. The Committee has determined that the product listed below is suitable for procurement by the Federal Government and has added this product to the Procurement List as a mandatory purchase for Federal entities. In accordance with 41 CFR 51-5.2, the Committee has authorized the qualified nonprofit agencies described with the product as the authorized source of supply.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and impact of the additions on the current or most recent contractors, the Committee has determined that the product listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

End of Certification

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product 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 addition of the product to the Procurement List.

End of Certification

Accordingly, the following product is added to the Procurement List:

NSN(s)—Product Name(s): 5110-00-204-2685—File Set, Hand, Swiss Pattern, 12 Piece with Storage Case

Authorized Source of Supply: South Texas Lighthouse for the Blind, Corpus Christi, TX

Mandatory For: Total Government Requirement

Contracting Activity: GENERAL SERVICES ADMINISTRATION, FAS HEARTLAND REGIONAL ADMINISTRATO

On December 4, 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 55857). The Committee determined that the service listed below is suitable for procurement by the Federal Government and has added this service to the Procurement List as a mandatory purchase for contracting activity listed. In accordance with 41 CFR 51–5.3(b), the mandatory purchase requirement is limited to the contracting activity at the listed location, and in accordance with 41 CFR 51–5.2, the Committee has authorized the nonprofit agency as the authorized source of supply.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and impact of the additions on the current or most recent contractors, the Committee has determined that the product listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification End of Certification

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the service 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 addition of the service to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Services

Service Type: Grounds Maintenance

Mandatory for: US Air Force, Wright Patterson AFB, Area B, Wright-Patterson AFB, OH, 2380 Memorial Road, Wright-Patterson AFB, OH

Authorized Source of Supply: CW Resources, Inc., New Britain, CT

Contracting Activity: DEPT OF THE AIR FORCE, FA8601 AFLCMC PZIO

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2026–00161 Filed 1–7–26; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket No. AFIT JOA 2025–02]

Notice of Intent To Grant a Joint Ownership Agreement With an Exclusive Patent License

AGENCY: Department of The Air Force, Department of Defense.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant a joint ownership agreement with an Exclusive Patent License to the Regents of the University of Michigan, a State Controlled Institution of Higher Learning having a place of business at 1600 Huron Pkwy., 2nd Floor, Ann Arbor, MI 48109–2590.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to Karleine M. Justice, AFIT Office of Research and Technology Applications (ORTA), 2950 Hobson Way, Bldg. 641, Rm 101C, Wright-Patterson AFB, OH 45433–7765; Phone: (937) 656–0754; or Email: karleine.justice.1@us.af.mil. Include Docket No. AFIT JOA 2025–02 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT:

Karleine M. Justice, AFIT Office of Research and Technology Applications (ORTA), 2950 Hobson Way, Bldg. 641, Rm. 101C, Wright-Patterson AFB, OH 45433–7765; Phone: (937) 656–0754; or Email: karleine.justice.1@us.af.mil.

Abstract of Patent Application(s)

A multi-pass cavity-based optical pulse contrast enhancement device is disclosed which selectively attenuates prepulses and other undesired low-power pulse features. The device may include two or more optical mirrors, an intracavity nonlinear medium, and a spatial filtration arrangement that may be inside or outside of the cavity. The nonlinear medium enables a cavity configuration where low-power pulse features may be cavity-unstable and/or mode-mismatched whereas the high-power region may be cavity-stable and/or mode-matched. Propagation through the cavity distinguishes the low-power and high-power pulse regions in their spatial beam characteristics, enabling low-power suppression via diffraction losses, beam distortion, or spatial filtration. This improves upon prior solutions in that it improves pulse

contrast by several orders of magnitude at high main pulse transmission efficiency, preserves near-diffraction limited beam quality, is compatible with high laser average powers and pulse repetition rates, and is configurable to accommodate high, e.g., multi-joule pulse energies.

Intellectual Property

Patent Cooperation Treaty Application Serial No. PCT/US2025/038649, filed on July 22, 2025, and entitled “Nonlinear Multi-Pass Cavity Based Devices for Enhancing Optical Pulse Contrast”.

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Authority: 35 U.S.C. 209; 37 CFR 404.

Crystle C. Poge,

Air Force Federal Register Liaison Officer.

[FR Doc. 2026–00145 Filed 1–7–26; 8:45 am]

BILLING CODE 3911–44–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for Joint Pacific Alaska Range Complex Regional Special Activity Airspace Optimization Program

AGENCY: Department of Defense, Department of the Air Force.

ACTION: Notice of Intent.

SUMMARY: The Department of the Air Force (DAF), in cooperation with the Federal Aviation Administration, is issuing this Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) to assess the potential social, economic, and environmental impacts associated with optimization of the Joint Pacific Alaska Range Complex (JPARC). The Department of the Army and Department of the Navy are also cooperating agencies. The DAF is requesting the public participate in the National Environmental Policy Act (NEPA) review process by providing comments on the alternatives and information, studies, or analysis relevant to the Proposed Action. The

Unique Identification Number for this EIS is EISX-007-57-UAF-1756971595.

DATES: A public scoping period of 30 days will take place starting from the date of publication of this NOI in the **Federal Register**. Comments will be accepted at any time during the environmental impact analysis process; however, to ensure DAF has sufficient time to consider public scoping comments during preparation of the Draft EIS, please submit comments within the defined scoping period. A schedule is provided on the project website (www.JPARCAirspaceEIS.com) and will be updated as the NEPA process progresses. At this time, the Draft EIS is expected to be released early 2027 and the Final EIS and Record of Decision are expected to be released in 2028.

DAF invites the public, stakeholders, other interested parties, and applicable Federal State, Tribal, and local agencies and governments to participate in a public scoping meeting. Four (4) virtual scoping meetings are being held on the following dates and times (Alaska Time):

- Saturday, January 24, 2026, 10:00 a.m.
- Monday, January 26, 2026, 6:00 p.m.
- Wednesday, January 28, 2026, 6:00 p.m.
- Thursday, January 29, 2026, 10:00 a.m.

The meetings are being advertised in 10 regional and local newspapers and Public Notices are being sent to public schools and post offices beneath proposed JPARC Special Activity Airspace (SAA). Please see the project website for details on how to participate in the virtual meetings and to view informational materials (www.JPARCAirspaceEIS.com).

ADDRESSES: Written scoping comments can be submitted via the project website (www.JPARCAirspaceEIS.com) or via postal mail to JPARC Airspace EIS, c/o Stantec, 501 Butler Farm Rd., Suite H, Hampton, VA 23666.

FOR FURTHER INFORMATION CONTACT: For inquiries regarding accommodations under the Americans with Disabilities Act or questions regarding the Proposed Action, scoping, and EIS development please contact Victoria Hernandez, NEPA Project Manager at AFCEC.CIE.AirspaceWorkflow@us.af.mil, or by phone at 380-458-0359.

SUPPLEMENTARY INFORMATION: The EIS will analyze the potential impacts from optimizing the regional training environment necessary for 4th and 5th Generation aircrews to accomplish current and future Tactics, Techniques, and Procedures (TTPs) within JPARC

SAA by addressing critical deficiencies in the size, dimensions, and attributes of the SAA; spatial discontinuities between adjacent SAA sections; and inability to perform uninterrupted flight at low altitude. The purpose of the Proposed Action is to facilitate training that ensures increased aircrew survivability and combat effectiveness. The need for the Proposed Action is to address the lack of required SAA at JPARC to accomplish current and future TTPs driven by evolving adversary threats.

To address the critical deficiencies and support required training, the following actions are necessary: redesign SAA in the existing northern JPARC, establish new SAA in the Gulf of Alaska, and establish two new large areas of SAA in the western area of Alaska to replace the existing, smaller fragmented SAA. DAF is considering three alternatives to implement the Proposed Action and the No Action Alternative. All of the action alternatives include several specific actions to expand and redesign the North JPARC SAA and establish new SAA over the Gulf of Alaska to include two Warning Areas and two Military Operations Areas (MOAs) along with associated Air Traffic Control Assigned Airspace (ATCAAs). Each action alternative also includes establishing two new large West complexes that would each include an MOA and associated ATCAAs, but they vary by location: Neacola and Yeti (Alternative 1), Bettles and Yeti (Alternative 2), and Neacola and Tanana (Alternative 3).

For the No Action Alternative, DAF would not implement changes to the current JPARC airspace structure. Use of the JPARC for day-to-day training and MFEs would continue as it does currently.

The DAF and Cooperating Agencies will consider comments on alternatives or effects and on relevant information, studies, or analyses with respect to the Proposed Action. The Draft EIS will include an analysis of the potential impacts to the human environment such as ecological, aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects, to include noise, airspace management, air quality, and biological resources.

Crystle C. Poge,

Air Force Federal Register Liaison Officer.

[FR Doc. 2026-00146 Filed 1-7-26; 8:45 am]

BILLING CODE 3911-44-P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Federal Advisory Committee Meeting

AGENCY: Board of Visitors of the U.S. Air Force Academy (BoV AFA), Department of the Air Force.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal advisory committee meeting of the Board of Visitors of the U.S. Air Force Academy (BoV AFA) will take place.

DATES: The meeting is open to the public Thursday, February 5, 2026, from approximately 1 p.m. to 4 p.m. (Eastern Time). Those wishing to attend in person are requested to submit their name, affiliation, and phone number to USAFA.HQ.BOV@us.af.mil by January 30, 2026. The meeting will be handicap accessible. Seating is available on a first come, first served basis.

ADDRESSES: The meeting will be held at the U.S. Capitol Visitor Center, 1st St. SE, Washington, DC 20515 in Room HVC-201. All members of the public are subject to security screening. The Department of the Air Force will escort members of the public to HVC-201. Information on visiting the U.S. Capitol Visitor Center including guidelines, travel, and emergency information is available at <https://www.visitthecapitol.gov/visit/know-before-you-go>.

FOR FURTHER INFORMATION CONTACT:

Designated Federal Officer: Dr. Raquel Rimpola, USAFA.HQ.BOV@us.af.mil, 703-693-2767, 1660 Air Force Pentagon, Washington, DC 20330-1660.

Alternate Designated Federal Officer: Ms. Blaire Brush, USAFA.HQ.BOV@us.af.mil, 2304 Cadet Drive, Suite 3200, USAF Academy, CO 80840-5025.

USAFA BoV Website: <https://www.usafa.edu/about/bov/>. It contains information on the Board of Visitors, link to the meeting, and approved meeting agenda.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001 *et seq.*), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102-3.140 and 102-3.150. Pursuant to 41 CFR 102-3.140d, the committee is not obligated to allow a member of the public to speak or otherwise address the committee during the meeting and members of the public attending the committee meeting will not be permitted to present questions from the

floor or speak to any issue under consideration of the committee.

Purpose of the Meeting: In accordance with 10 U.S.C. 9455(e)(1), the BoV AFA provides independent advice and recommendations to the Secretary of Defense, through the Secretary of the Air Force, on matters relating to the U.S. Air Force Academy (USAFA), including morale, discipline, and social climate, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the USAFA that the BoV AFA decides to consider. This is the 2026 Organizational Meeting of the BoV AFA.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and section 102–3.140 and section 1009(a)(3) of FACA, any member of the public wishing to provide input to the BoV AFA may submit a written statement. The public or interested organizations may submit written comments or statements to the Board about its mission and/or the topics to be addressed in the open sessions of this public meeting. Written comments or statements should be submitted to the Alternate Designated Federal Officer via electronic mail, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat and/or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received at least five (5) business days prior to the meeting. Please note that because the BoV AFA operates under FACA, all written comments will be treated as public documents and will be made available for public inspection.

Disability and Language

Accommodations: Please direct any requests for disability or language accommodations to the Alternate Designated Federal Officer in the **FOR FURTHER INFORMATION CONTACT** section above.

Crystle C. Poge,

Air Force Federal Register Liaison Officer.

[FR Doc. 2026–00135 Filed 1–7–26; 8:45 am]

BILLING CODE 3911–44–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2025–SCC–0778]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Independent Living Services for Older Individuals Who Are Blind Annual Report (7–OB)

AGENCY: Office of Special Education and Rehabilitative Services, 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 February 9, 2026.

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 Nicole Jeffords, 202–245–6459.

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: Independent Living Services for Older Individuals Who are Blind Annual Report (7–OB).
OMB Control Number: 1820–0608.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 280.

Abstract: RSA uses this form to meet the specific data collection requirements of Section 752 of the Rehabilitation Act, as amended by the Workforce Innovation and Opportunity Act (WIOA) and implementing regulations at 34 CFR 367.31(c). Each Designated State Agency (DSA) that administers the ILOIB program is required to submit the RSA–7–OB report annually to the RSA Commissioner within 120 days of the end of the reported fiscal year.

Brian Fu,

Program and Management Analyst, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2026–00170 Filed 1–7–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a revised collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. The revised collection relates to DOE's recognition for 50001 Ready and ISO 50001 certification.

DATES: Comments regarding this proposed information collection must be received on or before February 9, 2026. 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) 395–4718.

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:

Anne Hampson, EE-5A/Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585; telephone: (240) 780-6132; email at anne.hampson@ee.doe.gov.

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.*: 1910–5177;

(2) *Information Collection Request Titled*: Department of Energy Recognition for 50001 Ready and ISO 50001 Certification Information Collection Request. This information collection request was formerly titled “Department of Energy Superior Energy Performance 50001 Program Certification and 50001 Ready Recognition Information Collection Request” and is being retitled to reflect updated DOE recognition pathways for energy management systems implementation;

(3) *Type of Review*: Revision;

(4) *Purpose*: This Information Collection Request applies to the Department of Energy (DOE) voluntary recognition pathways for 50001 Ready and ISO 50001 certification for industrial companies, commercial and institutional organizations. 50001 Ready recognition is provided to facilities that self-attest their implementation of an energy management system based on the ISO 50001 international energy management system standard. DOE also recognizes organizations and facilities that achieved third-party certification to the ISO 50001 standard. Respondents include industrial, commercial, and institutional facilities.

(5) *Annual Estimated Number of Respondents*: 400;

(6) *Annual Estimated Number of Total Responses*: 400;

(7) *Annual Estimated Number of Burden Hours*: 300;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden*: \$20,425.
Statutory Authority: Accelerating Investment in Industrial Energy Efficiency, Executive Order 13624, 77 FR 54779 (Aug. 30, 2012); 42 U.S.C. 16191.

Signing Authority

This document of the Department of Energy was signed on January 5, 2026, by Abraham Shultz, Director, Industrial Technologies Office, 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 January 5, 2026.

Treena V. Garrett,

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

[FR Doc. 2026–00153 Filed 1–7–26; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15407–000]

Nightfall Renewables Inc.; Notice of Effectiveness of Withdrawal of Preliminary Permit Application

On June 24, 2025, Nightfall Renewables Inc. (Nightfall Renewables) filed a preliminary permit application for the Juniper Pumped Storage Project No. 15407 (Juniper Project). On November 17, 2025, Nightfall Renewables filed a notice of withdrawal of the preliminary permit application.

No motion in opposition to the notice of withdrawal has been filed, and the Commission has taken no action to disallow the withdrawal. Pursuant to Rule 216(b) of the Commission’s Rules of Practice and Procedure,¹ the withdrawal of the application became effective on December 2, 2025, and this proceeding is hereby terminated.

(Authority: 18 CFR 2.1)

¹ 18 CFR 385.216(b) (2025).

Dated: January 5, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–00139 Filed 1–7–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26–19–000]

Columbia Gas Transmission, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed NKY Gate Enhancement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the NKY Gate Enhancement Project (Project) involving construction and operation of facilities by Columbia Gas Transmission, LLC (Columbia) in Mason, Nicholas, Bracken, Pendleton and Campbell Counties, Kentucky, and Hamilton County, Ohio. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as “scoping.” The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission’s NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on February 4, 2026. Comments may be

submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on November 10, 2025, you will need to file those comments in Docket No. CP26–19–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Columbia provided landowners with a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (www.ferc.gov) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. 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; a comment on a particular project is considered a "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP26–19–000) on your letter. 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.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Summary of the Proposed Project

Columbia proposes to abandon four existing natural gas pipelines (totaling 48.54 miles) and construct and operate two new natural gas pipelines and three new natural gas connecting pipelines (totaling 30.16 miles) and associated auxiliary and appurtenant facilities. According to Columbia, the Project would replace vintage pipeline infrastructure originally installed in the 1950s with modern pipeline facilities in order to proactively address aging infrastructure, reduce potential safety and reliability risks, and ensure continued compliance with evolving federal and state regulations, including those administered by the Pipeline and Hazardous Materials Safety Administration.

The Project would consist of the following:

Abandonment In-Place and by Removal

- Line AM04—22.48 total miles of existing 24-inch natural gas pipeline, from the existing Foster Launcher Receiver, terminating before the Ohio River crossing east of Mary Ingles Highway (State Highway 445) in Bracken County, Kentucky;
- Line AM09 Abandonment—20.50 total miles of existing 26-inch natural gas pipeline, from the existing Foster Regulator Station, terminating at the existing Cold Spring Meter Station in Bracken County, Kentucky;
- Line EKY Abandonment—4.99 total miles of existing 14-inch natural gas pipeline; and
- E-Loop Abandonment¹—0.57 total miles of existing 20-inch diameter natural gas pipeline.

New Construction

- Line AM36—24.62 miles of new 36-inch-diameter natural gas pipeline, from the existing Foster Regulator Station in Bracken County, Kentucky, primarily paralleling the existing Line AM04 and Line AM09 pipelines, terminating south of Interstate 275 in Hamilton County, Ohio;
- Line EM–7—5.02 miles of new 30-inch-diameter natural gas pipeline, from the existing Moorefield Site, primarily paralleling the existing Line EKY pipeline, terminating at the existing Carlisle Meter Station in Nicholas County, Kentucky;
- Black River Lateral—0.10 mile of new 8-inch-diameter natural gas pipeline in Bracken County, Kentucky;
- Cold Spring Lateral—0.36 mile of new 24-inch-diameter natural gas pipeline in Campbell County, Kentucky;

¹ A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

- Kellogg Station Lateral—0.06 mile of new 24-inch-diameter natural gas pipeline in Hamilton County, OH;
- Four new meter and regulator stations—Bracken Meter Station in Bracken County, Kentucky and the Gubsur Mill, Parkview, and UL47 Meter Stations in Campbell County, Kentucky.
- Six new “pig” launcher/receiver facilities;² and
- Five new mainline valves and other associated auxiliary and appurtenant facilities.

The general location of the project facilities is shown in appendix 1.³

Land Requirements for Construction

Constructing and abandoning the proposed facilities would disturb about 565.68 acres of land. Following construction, Columbia would permanently maintain about 125.67 acres of land to operate the proposed facilities. The remaining acreage would be restored and allowed to revert to former uses. About 57 percent (14.04 miles) of the proposed Line AM36 and 100 percent (5.02 miles) of the proposed Line EM-7 parallels existing pipeline, utility, or road rights-of-way.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- socioeconomics;
- land use including nearby residences, recreation, and other resources;
- air quality and noise; and
- reliability and safety.

Commission staff have already identified several issues that deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Columbia. This preliminary list of issues may change based on your comments and our analysis:

- residential construction;
- traffic;
- socioeconomics;
- public safety; and
- pipeline route alternatives.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary⁴ and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.⁵ Agencies that would like to request cooperating agency status should follow the instructions for filing comments

provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁶ The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

- (1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number CP26-19-000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct

² A “pig” is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

³ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called “eLibrary.” For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (886) 208-3676 or TTY (202) 502-8659.

⁴ For instructions on connecting to eLibrary, refer to the last page of this notice.

⁵ Cooperating agency responsibilities are addressed in Section 107(a)(3) of NEPA (42 U.S.C. 4336(a)(3)).

⁶ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. *This email address is unable to accept comments.*

OR

(2) Return the attached "Mailing List Update Form" (appendix 2).

Additional Information

Additional information about the project is available from the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at <https://www.ferc.gov/news-events/events> along with other related information.

(Authority: 18 CFR 2.1)

Dated: January 5, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-00144 Filed 1-7-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR26-24-000.

Applicants: Bridgeline Holdings, L.P.

Description: 284.123(g) Rate Filing: Bridgeline Cost of Service Rate Filing to be effective 1/2/2026.

Filed Date: 1/2/26.

Accession Number: 20260102-5233.

Comment Date: 5 p.m. ET 1/23/26.

284.123(g) Protest: 5 p.m. ET 3/3/26.

Docket Numbers: RP26-350-000.

Applicants: Gulf South Pipeline Company, LLC.

Description: 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Osaka 46428 to Sequent 60134) to be effective 1/1/2026.

Filed Date: 1/2/26.

Accession Number: 20260102-5236.

Comment Date: 5 p.m. ET 1/14/26.

Docket Numbers: RP26-351-000.

Applicants: Rover Pipeline LLC.

Description: 4(d) Rate Filing:

Summary of Negotiated Rate Capacity Release Agreements 1-5-2026 to be effective 1/1/2026.

Filed Date: 1/5/26.

Accession Number: 20260105-5071.

Comment Date: 5 p.m. ET 1/20/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: January 5, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-00143 Filed 1-7-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14552-004]

St. Anthony Hydro LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 14552-004.

c. *Date Filed:* December 23, 2025.

d. *Applicant:* St. Anthony Hydro LLC.
e. *Name of Project:* St. Anthony Hydroelectric Project.

f. *Location:* On the Henry's Fork of the Snake River, in the city of St. Anthony, Fremont County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Peter Josten, GeoSense, LLC, 2742 Saint Charles Ave., Idaho Falls, ID 83404; telephone at (208) 339-3542; email at peter.gsense@gmail.com.

i. *FERC Contact:* Amy Chang, Project Coordinator, Northwest Branch, Division of Hydropower Licensing; telephone at (202) 502-6154; email at amy.chang@ferc.gov.

j. *Cooperating Agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* on or before 5:00 p.m. Eastern Time on February 23, 2026.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at <https://ferconline.ferc.gov/FEROnline.aspx>. 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, MD 20852. All filings must clearly identify the project name and docket number on the first page: St. Anthony Hydroelectric Project (P-14552-004).

m. The application is not ready for environmental analysis at this time.

n. *The project consists of:* (1) a 375.2-foot-long, 6.5-foot-high concrete overflow diversion dam with a crest elevation of 4,952 feet mean sea level; (2) a 41-foot-wide reinforced concrete intake structure; (3) a 35-foot-wide, 1,350-foot-long irrigation canal; (4) a 37-foot-wide, 24-foot-long trash rack with an automated debris removal rake system over the turbine bay; (5) a 38-foot-wide, 25-foot-long, 13.5-foot-high reinforced concrete turbine bay containing two Francis camelback turbine units; (6) a 36.5-foot-wide, 23-foot-long, 26.5-foot-high reinforced concrete powerhouse containing a 500-kilowatt generating unit; (7) a tailrace; (8) a 100-foot-long, 12.5-kilovolt overhead transmission line; and (9) appurtenant facilities.

o. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (e.g., license application) via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document (P-14552). For assistance, contact FERC at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

You may also register online at <https://ferconline.ferc.gov/> [ferconline.aspx](https://ferconline.ferc.gov/ferconline.aspx) to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

q. *Procedural Schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter and Request Additional Information: February 2026.
Issue Notice of Application Accepted for Filing: June 2026.

Issue Notice of Scoping: June 2026.

Comments on Scoping: July 2026.
Issue Notice of Ready for Environmental Analysis: August 2026.
r. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

(Authority: 18 CFR 2.1)

Dated: January 5, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-00141 Filed 1-7-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21-630-008; ER15-2224-010.

Applicants: Solar Star Colorado III, LLC, 325MK 8ME LLC.

Description: Triennial Market Power Analysis for Northwest Region of 325MK 8ME LLC, et al.

Filed Date: 12/29/25.

Accession Number: 20251229-5562.

Comment Date: 5 p.m. ET 2/27/26.

Docket Numbers: ER26-941-000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 4578 Red Barn Solar GIA to be effective 12/12/2025.

Filed Date: 1/5/26.

Accession Number: 20260105-5020.

Comment Date: 5 p.m. ET 1/26/26.

Docket Numbers: ER26-942-000.

Applicants: American Electric Power Service Corporation, Indiana Michigan Power Company.

Description: 205(d) Rate Filing: Indiana Michigan Power Company submits tariff filing per 35.13(a)(2)(iii): AEPSC submits I&M and NIPSCO Amended CIAC SA No. 7262 to be effective 12/10/2025.

Filed Date: 1/5/26.

Accession Number: 20260105-5023.

Comment Date: 5 p.m. ET 1/26/26.

Docket Numbers: ER26-943-000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 4579 NEER Interconnection Holdings GIA to be effective 12/12/2025.

Filed Date: 1/5/26.

Accession Number: 20260105-5024.

Comment Date: 5 p.m. ET 1/26/26.

Docket Numbers: ER26-944-000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 4580 Brantley Branch GIA to be effective 12/12/2025.

Filed Date: 1/5/26.

Accession Number: 20260105-5026.

Comment Date: 5 p.m. ET 1/26/26.

Docket Numbers: ER26-945-000.

Applicants: Cape Generating Station 5 LLC.

Description: Initial Rate Filing: Cape Project Shared Facilities Agreement to be effective 3/6/2026.

Filed Date: 1/5/26.

Accession Number: 20260105-5057.

Comment Date: 5 p.m. ET 1/26/26.

Docket Numbers: ER26-946-000.

Applicants: Horizon West Transmission, LLC.

Description: Informational Filing of Formula Rate Annual Update of Horizon West Transmission, LLC.

Filed Date: 12/23/25.

Accession Number: 20251223-5481.

Comment Date: 5 p.m. ET 1/13/26.

Docket Numbers: ER26-947-000.

Applicants: Panoche Energy Center, LLC.

Description: Compliance filing: Notice of Change in Category Status to be effective 1/6/2026.

Filed Date: 1/5/26.

Accession Number: 20260105-5153.

Comment Date: 5 p.m. ET 1/26/26.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF26-401-000.

Applicants: Generate DG Fuel Cell IV, LLC.

Description: Form 556 of Generate DG Fuel Cell IV, LLC.

Filed Date: 12/29/25.

Accession Number: 20251229-5563.

Comment Date: 5 p.m. ET 1/20/26.

Docket Numbers: QF26-406-000.

Applicants: Broadwing Energy, LLC.

Description: Form 556 of Broadwing Energy, LLC.

Filed Date: 12/30/25.

Accession Number: 20251230-5486.

Comment Date: 5 p.m. ET 1/20/26.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is

necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

Dated: January 5, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-00140 Filed 1-7-26; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2025-0077; FRL-12476-10-OCSPP]

Certain New Chemicals or Significant New Uses; Statements of Findings—October 2025

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of certain TSCA submissions when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from October 1, 2025, to October 31, 2025.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2025-0077, is available online at <https://www.regulations.gov>. Additional information about dockets generally, along with instructions for visiting the docket in-person, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For technical information: Rebecca Edelstein, New Chemical Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection

Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-1667 email address: edelstein.rebecca@epa.gov.

For general information: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of submissions under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the applicable period.

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

TSCA section 5(a)(3) requires EPA to review a submission under TSCA section 5(a) and make specific findings pertaining to whether the substance may present unreasonable risk of injury to health or the environment. Among those potential findings is that the chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment per TSCA Section 5(a)(3)(C).

TSCA section 5(g) requires EPA to publish in the **Federal Register** a statement of its findings after its review of a submission under TSCA section 5(a) when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of “not likely to present an unreasonable risk of injury to health or the environment”

may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

II. Statements of Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA identifies the PMNs, MCANs and SNUNs for which EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. For the findings made during this period, the following list provides the EPA case number assigned to the TSCA section 5(a) submission and the chemical identity (generic name if the specific name is claimed as confidential).

- J-25-0014, Modified yeast, with chromosomal modifications to improve fermentation characteristics (Generic Name).

To access EPA's decision document describing the basis of the “not likely to present an unreasonable risk” finding made by EPA under TSCA section 5(a)(3)(C), lookup the specific case number at <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/determined-not-likely>.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: January 5, 2026.

Shari Z. Barash,

Director, New Chemicals Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2026-00136 Filed 1-7-26; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064-NEW]

Agency Information Collection Activities: Proposed New Information Collection; Survey of the Costs of AML/CFT Compliance; Comment Request

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice and request for comment.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC), as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection, a Survey of the Costs of Anti-Money Laundering (AML) and Countering the Financing of Terrorism

(CFT) Compliance. The instrument for the information collection is a survey. The survey seeks to gather information on the direct compliance costs incurred by FDIC-supervised insured depository institutions and, to the extent these expenses overlap with those of other activities (such as fraud and credit card monitoring), the amount attributable to AML/CFT compliance. The FDIC is seeking a new OMB Control Number for this information collection. The FDIC expects to submit this information collection as a common form so that the Federal banking regulators and the National Credit Union Association may use the information collection to survey the entirety of the banking and credit union industry. On September 12, 2025, the FDIC requested public comment for 60 days on the proposed information collection. The comment period for the September notice expired on November 12, 2025. As described in the **SUPPLEMENTARY INFORMATION** section of this document, the FDIC will proceed with the information collection as proposed.

DATES: Comments must be submitted on or before February 9, 2026.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- **Agency Website:** <https://www.fdic.gov/federal-register-publications>.
- **Email:** comments@fdic.gov. Include the name and number of the collection in the subject line of the message.
- **Mail:** Robert Meiers (571) 761–3062, Senior Attorney, MB–3013, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- **Hand Delivery:** Comments may be hand delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find 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: Robert Meiers, Attorney, (571) 761–3062, romeiers@fdic.gov, MB–3013, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: In response to the 60-day notice, the FDIC

received two relevant comments, one from industry associations and one from an FDIC-supervised institution. Both comments were supportive of the FDIC’s effort to use the information from the survey to inform and support rulemakings that reduce compliance burden without compromising the effectiveness of current AML/CFT frameworks.

Both comments also offered suggestions to improve the survey. Both comments requested that the FDIC amend the survey questions to be more specific and granular, and clearly define cost categories, suggesting, for example, that the survey should break out different categories of Suspicious Activity Reports (SARS) (such as structuring). Both commenters also recommended that the survey allow respondents to report data for multiple years rather than limiting responses to a single year to account for highly variable AML/CFT compliance costs.

One commenter raised concerns about the confidentiality of responses and sought explicit assurances that the responses will be treated as Confidential Supervisory Information and exempt from disclosure under the Freedom of Information Act. The commenter also requested that the responses be kept anonymized.

The FDIC appreciates the suggestions to change the survey to include more specific questions and seek more granular information. However, after careful consideration, the FDIC has concluded that for this survey the broader categories and questions better support the survey’s purpose of producing consistent and comparable information on institutions’ AML/CFT compliance cost. More detailed questions and categories could also increase the cost and time of responding to the survey and reduce comparability. The FDIC may consider additional surveys to focus more specifically on certain categories of AML/CFT compliance, such as SARS. However, for this survey, the FDIC concludes that the questions, as proposed, successfully balance its desire for easily comparable information with the costs of response and the value of more granular information.

Similarly, the FDIC recognizes AML/CFT costs can be highly variable and that a single year may not sufficiently capture the breadth and depth of compliance costs for a specific institution. However, the FDIC believes that the expected high number of responses across institutions will mitigate the issue of highly variable costs without further burdening respondents.

Regarding confidentiality of survey responses, survey responses are confidential supervisory information and protected from disclosure. To support interagency efforts to reduce burden associated with AML/CFT compliance, the FDIC intends to share response data with other agencies only in anonymized and aggregated form.

The FDIC is requesting OMB approval for the following collection of information:

Title: Cost of AML/CFT Compliance Survey.

OMB Number: 3064–NEW.

Frequency of Response: Once.

Affected Public: FDIC-supervised banks and savings associations.

Estimated Annual Burden: The FDIC estimates a total burden for OMB No. 3064–NEW of 12,211 hours. The FDIC expects 1,928 respondents for the survey and each respondent will take 6 hours and 20 minutes to complete the survey.

General Description of Collection:

This information collection will seek information on AML/CFT compliance costs and related topics via survey. The survey is voluntary. The purpose of the survey is to better understand the cost of AML/CFT compliance for FDIC-supervised insured depository institutions. The information gathered will help assess the cumulative impact of AML/CFT regulations and may inform efforts to adjust regulatory obligations in accordance with safety and soundness principles and advance deregulatory proposals consistent with the executive orders of the Trump Administration. The data may also support the development of deregulatory rulemakings or guidance to reduce compliance burden without compromising the effectiveness of current AML/CFT frameworks. Responses will not be used for examination or enforcement and will be kept confidential.

Interested members of the public may obtain a copy of the proposed survey questionnaire on the following web page: <https://www.fdic.gov/federal-register-publications/survey-costs-amlcft-compliance>.

Request for Comment

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the FDIC’s functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on January 5, 2026.

Jennifer M. Jones,

Deputy Executive Secretary.

[FR Doc. 2026-00105 Filed 1-7-26; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at Secretary@fmc.gov, or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of the agreements are available through the Commission's website (www.fmc.gov) or by contacting the Office of General Counsel at (202) 523-5740 or GeneralCounsel@fmc.gov.

Agreement No.: 201175-009.

Agreement Name: Port of NY/NJ Sustainable Services Agreement.

Parties: APM Terminals Elizabeth, LLC; Port Liberty Bayonne, LLC; Port Liberty New York LLC; Port Newark Container Terminal LLC; Red Hook Container Terminal, LLC.

Filing Party: Carol Lambos, The Lambos Firm LLP.

Synopsis: The Amendment would add Maher Terminals, LLC as a party to the Agreement. The Parties have requested expedited review.

Proposed Effective Date: 2/2/2026.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/90637>.

Agreement No.: 201210-005.

Agreement Name: Port of NY/NJ—Port Authority/Marine Terminal Operators Agreement.

Parties: APM Terminals Elizabeth, LLC; Port Liberty Bayonne, LLC; Port Newark Container Terminal LLC; Red Hook Container Terminal, LLC.

Filing Party: Carol Lambos, The Lambos Firm LLP.

Synopsis: The Amendment would add Maher Terminals, LLC as a party to the Agreement. The Parties have requested expedited review.

Proposed Effective Date: 2/6/2026.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/90640>.

Agreement No.: 201462.

Agreement Name: ONE to COSCO AL5 Slot Charter Agreement.

Parties: Ocean Network Express Pte. Ltd.; and COSCO SHIPPING Lines Co., Ltd.

Filing Party: Joshua Stein, Cozen O'Connor.

Synopsis: The Agreement authorizes ONE to charter space to COSCO on its services in the trade between ports on the U.S. East Coast/Gulf and the U.S. West Coast on the one hand and ports in the United Kingdom, Germany, France, the Netherlands, Belgium, Colombia, Dominican Republic, and Panama on the other hand.

Proposed Effective Date: 12/18/2026.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/89638>.

Agreement No.: 201463.

Agreement Name: ZIM/SVL Space Charter Agreement.

Parties: Serviport Marine Line—SVL LLC; and ZIM Integrated Shipping Services Limited.

Filing Party: Wayne Rohde, Cozen O'Connor.

Synopsis: The agreement authorizes SVL to charter space to ZIM in the trade between the US East Coast and Puerto Cortes, Honduras.

Proposed Effective Date: 12/23/2026.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/90639>.

Dated: January 6, 2026.

Jennifer Everling,

Assistant Secretary.

[FR Doc. 2026-00166 Filed 1-7-26; 8:45 am]

BILLING CODE 6730-02-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the

banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Deputy Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than February 9, 2026.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *FNA Holding Inc., Weston, Florida, and FACEBANK International Corporation, Guaynabo, Puerto Rico*; to become bank holding companies by acquiring Eastern National Bank, Miami, Florida.

2. *CBS Banc-Corp., Russellville, Alabama*; to acquire TAG Bancshares Inc., and thereby indirectly acquire Citizens Bank and Trust, Inc., both of Trenton, Georgia.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026-00148 Filed 1-7-26; 8:45 am]

BILLING CODE 6210-01-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: Bureau of Health Workforce Performance Data Collection, OMB No. 0906–0086–Revision**

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

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 March 9, 2026.

ADDRESSES: Submit your comments to paperwork@hrsa.gov or mail the HRSA Information Collection Clearance Officer, Room 13N82, 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 request collection title for reference.

Information Collection Request Title: Bureau of Health Workforce

Performance Data Collection, OMB No. 0906–0086–Revision.

Abstract: Over 50 Bureau of Health Workforce programs award grants to health professions schools and training programs across the United States to develop, expand, and enhance training, and to strengthen the distribution of the health workforce. These programs are governed by Titles III, VII, and VIII of the Public Health Service Act. Performance information is collected in the HRSA Performance Report for Grants and Cooperative Agreements. Data collection activities consisting of an annual progress report and an annual performance report satisfy statutory and programmatic requirements for performance measurement and evaluation (including specific Titles III, VII and VIII requirements), as well as the Government Performance and Results Modernization Act of 2010 and the Foundations for Evidence-Based Policymaking Act of 2018 requirements. The performance measures were last revised in 2023 to ensure they addressed programmatic changes, met evolving program management needs, and responded to emerging workforce concerns. Measures were then updated in 2025 to better reflect agency priorities. HRSA will continue with its current performance management strategy and make additional changes that reduce burden, simplify reporting, reflect new legislative or Department of Health and Human Services priorities, and enable longitudinal analysis of program performance. To reduce reporting burden, HRSA will remove four complex interrelated forms and 50 questions that are no longer needed. To simplify reporting on the individual characteristics form, four questions will be consolidated into two. HRSA will also amend four training and employment questions to ensure consistent reporting across forms and key outcomes measures are captured. Additionally, the data collection forms will be revised for compliance with OMB's Statistical Policy Directive No. 15. Lastly, the progress report will be

updated to include a new summary information section with five questions to capture outcomes at project closeout.

Need and Proposed Use of the Information: The purpose of the proposed data collection is to continue analysis and reporting of grantee training activities and education, identify details about the practice locations where trainees work after program completion, and report outcomes of funded initiatives. Data collected from these grant programs will also provide a description of the program activities of approximately 1,968 reporting grantees to inform policymakers on the barriers, opportunities, and outcomes involved in health care workforce development. The proposed measures focus on four key outcomes: (1) increasing the workforce supply of well-educated practitioners in needed professions, (2) increasing the number of practitioners that practice in underserved and rural areas, (3) enhancing the quality of education, and (4) supporting educational infrastructure to increase the capacity to train more health professionals in high demand areas.

Likely Respondents: Respondents are grantees of Bureau of Health Workforce health professions grant programs.

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
Direct Financial Support Program	602	1	602	2.7	1,625.4
Infrastructure Program	159	1	159	4.1	651.9
Multipurpose or Hybrid Program	1,207	1	1,207	2.8	3,379.6
Total	1,968		1,968		5,656.9

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.

Amy P. McNulty,

Deputy Director, Executive Secretariat.

[FR Doc. 2026-00104 Filed 1-7-26; 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 Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for

review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than February 9, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the HRSA Information Collection Clearance Officer, at paperwork@hrsa.gov or call (301) 443-3983.

SUPPLEMENTARY INFORMATION: 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.

A 60-day notice published in the **Federal Register** on August 7, 2025, vol. 90, No. 150; pp. 38167–38169. There were 14 public comments.

Issue	Summary of comments	Actions to address comments
Shipping Address Clarifications.	Some covered entities disagree with the additional clarifying questions identifying wholly owned pharmacies and health care service delivery sites.	HRSA developed the new shipping address submission process to streamline communication with covered entities and improve efficiency. The policy on what qualifies as a shipping address remains unchanged.
New documentation requirements for Sexually Transmitted Disease (STD) entities.	Some covered entities are concerned that the proposed documentation to support STD eligibility will strain small and community-based STD clinics with limited administrative staff and funding.	The new requirements for STD covered entities are intended to improve transparency, program integrity, and enable HRSA to more effectively confirm and maintain eligibility for all stakeholders.
Request for technical assistance to implement STD written agreements.	Some entities are concerned about the timeline and support needed to comply with the STD written agreements. Therefore, they request that technical assistance be provided by the Office of Pharmacy Affairs and/or Apexus to help implement these new requirements and an implementation period to execute the changes.	HRSA understands the operational challenges described in the comments and will take these concerns into account; however, this documentation is necessary for HRSA to provide oversight. HRSA will continue to provide outreach and technical assistance to ensure covered entities understand documentation requirements and can comply with them in a timely manner.
Trial Balance Language.	Some stakeholders are concerned with the language update regarding entities that should submit a trial balance that clearly indicates unique and separate reimbursable outpatient costs and charges for each service being requested. They are concerned this will create a burden or result in inappropriate modification or termination.	HRSA is clarifying the required elements of a trial balance for hospitals registering a child site to ensure compliance with program requirements. The criteria for what qualifies as a child site remain unchanged.

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 340B 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 340B

Program and, at least annually, 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 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, 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 (Title X):* HRSA is requesting to collect the time period that assistance was received for Family Planning (Title X) 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 (Title X) 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 Indian Health Service (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	221
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		139,251		74,248

* 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.

Amy P. McNulty,

Deputy Director, Executive Secretariat.

[FR Doc. 2026-00179 Filed 1-7-26; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The 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: Center for Scientific Review Special Emphasis Panel; Immunological Mechanisms of Autoimmunity.

Date: January 20, 2026.

Time: 9:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Maria Chiara G. Monacokushner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892, (301) 555-1212, monaco@csr.nih.gov.

Late Notice Text: This notice is being published less than 15 days from the meeting date due to exceptional circumstances. As a result of the 43-day government shutdown, due to lapsed appropriations, the above meeting was canceled. This meeting was to

assess the scientific and technical merit of NIH grant applications, required by statute to disburse NIH funds. The meeting must take place urgently so that evaluations of biomedical research applications addressing multiple major public health priorities can be submitted to the national advisory councils for timely funding recommendations.

Dated: January 6, 2026.

Sterlyn H. Gibson,

Program Specialist, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-00205 Filed 1-7-26; 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 Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The 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: Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Cardiovascular and Respiratory Systems.

Date: January 21, 2026.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Yuanyi Feng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-1180, fengy7@csr.nih.gov.

Late Notice Text: This notice is being published less than 15 days from the meeting date due to exceptional circumstances. As a result of the 43-day government shutdown, due to lapsed appropriations, the above meeting was canceled. This meeting was to assess the scientific and technical merit of NIH grant applications, required by statute to disburse NIH funds. The meeting must take place urgently so that evaluations of

biomedical research applications addressing multiple major public health priorities can be submitted to the national advisory councils for timely funding recommendations.

Dated: January 6, 2026.

Rosalind M Niamke,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-00204 Filed 1-7-26; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

Departure Notification Record

AGENCY: U.S. Immigration and Customs Enforcement.

ACTION: 60-Day notice.

SUMMARY: The information collection Departure Notification Record (DNR), OMB Control Number 1653-0057, was reinstated on December 22, 2025. In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) to extend this currently approved collection. DHS is soliciting comments for this collection.

DATES: Comments are encouraged and must be submitted March 9, 2026 to be assured of consideration.

ADDRESSES: All submissions received must include the OMB Control Number 1653-0057 in the body of the correspondence, the agency name and Docket ID ICEB-XXXX-XXXX. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Submit comments via the Federal eRulemaking Portal website at <http://www.regulations.gov> under e-Docket ID number ICEB XXXX-XXXX.

FOR FURTHER INFORMATION CONTACT: If you have questions related to this collection please contact: Omar Charris, 202-200-1988, Omar.A.Charris@ice.dhs.gov, U.S. Immigration and Customs Enforcement. (This is not a toll-free number. Comments are not accepted via telephone message.)

SUPPLEMENTARY INFORMATION:

Comment

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering ICEB-XXXX-XXXX in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. 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;
2. 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;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension without Change of a Previously Approved Collection.
2. *Title of Form/Collection:* Departure Notification Record.
3. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* N/A, U.S. Immigration and Customs Enforcement.
4. *Affected public who will be asked or required to respond, as well as a brief*

abstract: Individuals. DHS, including CBP and ICE, will use this information to identify those aliens geographically located in the United States who want to voluntarily depart the United States. Those aliens will be able to report biographic data and biometric data, as well as information about their intended departure. With this information, DHS can assist aliens to depart from the United States to their destination country. DHS will use a mobile application, currently CBP Home, to collect this information.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 16,800,000 responses at 5 minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* 1,394,400 annual burden hours.

Sharon Hageman,

Deputy Assistant Director, Office of Regulatory Affairs and Policy, U.S. Immigration and Customs Enforcement.

[FR Doc. 2026-00118 Filed 1-7-26; 8:45 am]

BILLING CODE 9111-28-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[25XD4523WS; DS67010000; DWSN00000.000000; DP67012; OMB Control Number 1093-0013]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Access and Consent Forms

AGENCY: Office of the Secretary, Office of the Chief Information Officer, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of the Secretary, Office of the Chief Information Officer are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 9, 2026.

ADDRESSES: All written comments and recommendations for the proposed information collection must be submitted electronically within 30 days of publication of this notice at www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. Please

provide a copy of your comments to Jeffrey Parrillo, Departmental Information Collection Clearance Officer, U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240, or by email at DOI_PRA@ios.doi.gov. Please reference Office of Management and Budget (OMB) Control Number 1093-0013 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Parrillo, Departmental Information Collection Clearance Officer, U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240, by email at DOI_PRA@ios.doi.gov, or by telephone at 202-208-7072. 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 Information Collection Request (ICR) at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 30, 2025 (90 FR 17950). One comment was received but it did not address the information collection.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of

information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personally identifiable information (PII)—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The Department of the Interior (DOI) developed the DI-4016, Request for Individual Access to Records Protected under the Privacy Act, and DI-4017, Consent for Disclosure of Records Protected under the Privacy Act, forms for individuals to submit requests for accessing, and consenting to the disclosure of, records protected under the Privacy Act of 1974, as amended, 5 U.S.C. 552a. The DI-4016, Request for Individual Access to Records Protected under the Privacy Act, form is used by individuals seeking access to their records and any information pertaining to them that are maintained in DOI's systems of records. The DI-4017, Consent for Disclosure of Records Protected under the Privacy Act, form provides written consent of the individual to whom the record pertains when disclosing records to another person or an agency. The Privacy Act provides that "the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual." Therefore, these forms may also be used by a parent or legal guardian.

These forms were based on the templates provided in the OMB Memorandum M-21-04, Modernizing Access to and Consent for Disclosure of Records Subject to the Privacy Act, issued on November 12, 2020, which implements the requirements of the Creating Advanced Streamlined Electronic Services for Constituents Act

of 2019 ("CASES Act"). The CASES Act was issued in an effort to modernize the Privacy Act request process by requiring agencies to accept access and consent forms from individuals properly identity-proofed and authenticated remotely through a digital service option in addition to an agency's existing process. The CASES Act also requires the forms to be posted on the agency website's privacy program page and the website updated to include instructions on how individuals may submit requests digitally.

Title of Collection: Access and Consent Forms.

OMB Control Number: 1093-0013.

Form Number: DI-4016 and DI-4017.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals/households.

Total Estimated Number of Annual Respondents: 1,325.

Total Estimated Number of Annual Responses: 1,325.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 331 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jeffrey Parrillo,

Departmental Information Collection Clearance Officer.

[FR Doc. 2026-00186 Filed 1-7-26; 8:45 am]

BILLING CODE 4334-63-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

**[OMB Control Number 1006-0002;
RR85672300, 19XR0680A2,
RX.31480001.0010000]**

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Recreation Use Data Reports

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we,

the Bureau of Reclamation (Reclamation) are proposing to reinstate an information collection without change.

DATES: Interested persons are invited to submit comments on or before February 9, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted at 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. Please provide a copy of your comments to Ronnie Baca, Asset Management Office, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225-0007; or by email to rbaca@usbr.gov. Please reference Office of Management and Budget (OMB) Control Number 1006-0002 in the subject line of your comments. You may also view the information collection request (ICR) at <http://www.reginfo.gov/public/do/PRAMain>.

FOR FURTHER INFORMATION CONTACT:

Ronnie Baca by email at rbaca@usbr.gov, or by telephone at (303) 445-3257. 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 service offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A *Federal Register* notice with a 60-day public comment period soliciting comments on this collection of information was published on September 30, 2025 (90 FR 46918). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are

especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be 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: Reclamation collects bureau-wide recreation and concession information to fulfill congressional reporting requirements pursuant to current public laws, including the Federal Water Project Recreation Act (16 U.S.C. 460I), and the Federal Lands Recreation Enhancement Act (16 U.S.C. 87). In addition, collected information will permit relevant program assessments of resources managed by Reclamation, its recreation managing partners, and/or concessionaires for the purpose of contributing to the implementation of Reclamation's mission.

Specifically, the collected information enables Reclamation to (1) evaluate the effectiveness of program management based on existing recreation and concessionaire resources and facilities, and (2) validate the efficiency of resources for public use within partner managed recreation resources, located on Reclamation project lands in the 17 Western States. In addition to using an on-line data collection platform, we have streamlined the form used in this ICR by removing two sections that can be collected and maintained by

Reclamation employees which lessens the public burden.

Title of Collection: Recreation Use Data Report.

OMB Control Number: 1006–0002.

Form Number: Web-based Form 7–2534—Recreation Use Data Report.

Type of Review: Reinstatement of a currently approved collection.

Respondents/Affected Public: State, local, or tribal governments; agencies who manage Reclamation's recreation resources and facilities; and commercial concessions, subconcessionaires, and nonprofit organizations located on Reclamation lands with associated recreation services.

Total Estimated Number of Annual Respondents: 212.

Total Estimated Number of Annual Responses: 212.

Estimated Completion Time per Response: 25 minutes.

Total Estimated Number of Annual Burden Hours: 88 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: 0.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Stephanie McPhee,

Acting Information Collection Clearance Officer, Bureau of Reclamation.

[FR Doc. 2026–00134 Filed 1–7–26; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1476]

Certain Glycerol Esters of Rosin and Packaging Thereof; 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 December 4, 2025, under section 337 of the Tariff Act of 1930, as amended, on behalf of T&R Chemicals, Inc. of Clint, Texas. The complaint alleges violations of section 337 based upon the importation into the United States and the sale of certain glycerol esters of rosin and packing thereof by reason of unfair competition through false

advertising and tortious interference, the threat or effect of which is to destroy or substantially injure an industry in the United States or to prevent the establishment of an industry in the United States.

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 January 5, 2026, *ordered that—*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States and the sale of certain products identified in paragraph (2) by reason of unfair competition through false advertising and tortious interference, the threat or effect of which is to destroy or substantially injure an industry in the United States or to prevent the establishment of an industry in the United States;

(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 “glycerol ester of gum rosin purported to be glycerol ester of wood rosin, and packaging thereof”;

(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:

T&R Chemicals, Inc., 700 Celum Rd.,
Clint, TX 79836

(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:

Caragum International, Zac Les
Pielettes, Chemin De La Cride, 13740
Le Rove, France

Kemi Pine Rosins Portugal S.A., Zona
Industrial de Cantanhede, Lote 122,
3060-197 Cantanhede, Portugal

(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: January 6, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-00168 Filed 1-7-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-451 and 731-TA-1126 (Third Review)]

Lightweight Thermal Paper From China; Determinations

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that revocation of the countervailing and antidumping duty orders on lightweight thermal paper from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on June 2, 2025 (90 FR 23370, June 2, 2025) and determined on September 5, 2025 that it would conduct expedited reviews (90 FR 45809, September 23, 2025).²

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on January 6, 2026. The views of the Commission are contained in USITC Publication 5967 (January 2026), entitled *Lightweight Thermal Paper from China: Investigation Nos. 701-TA-451 and 731-TA-1126 (Third Review)*.

By order of the Commission.

Issued: January 6, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-00177 Filed 1-7-26; 8:45 am]

BILLING CODE 7020-02-P

¹ The record is defined in § 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

² Due to the lapse in appropriations and ensuing cessation of Commission operations, the Commission tolled its schedule for this proceeding. The schedule was revised in a subsequent notice published in the **Federal Register** on November 28, 2025 (90 FR 54745).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1378]

Certain Organic Light-Emitting Diode Display Modules and Components Thereof; Notice of a Commission Determination To Grant a Joint Motion To Terminate the Investigation in Its Entirety Based on Settlement; Termination of the Investigation

AGENCY: U.S. International Trade
Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to grant a joint motion to terminate the investigation in its entirety based on settlement. The investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT:
Namo Kim, Esq., Office of the General
Counsel, U.S. International Trade
Commission, 500 E Street SW,
Washington, DC 20436, telephone (202)
205-3459. Copies of non-confidential
documents filed in connection with this
investigation may be viewed on the
Commission’s electronic docket (EDIS)
at <https://edis.usitc.gov>. For help
accessing EDIS, please email
EDIS3Help@usitc.gov. General
information concerning the Commission
may also be obtained by accessing its
internet server at <https://www.usitc.gov>.
Hearing-impaired persons are advised
that information on this matter can be
obtained by contacting the
Commission’s TDD terminal on (202)
205-1810.

SUPPLEMENTARY INFORMATION: The
Commission instituted this investigation
on December 6, 2023, based on a
complaint filed by Samsung Display
Company, Ltd. of the Republic of Korea
(“SDC”). 88 FR 84829 (Dec. 6, 2023).
The complaint, as supplemented,
alleges violations of section 337 of the
Tariff Act of 1930, as amended (19
U.S.C. 1337) (“section 337”), in the
importation into the United States, or in
the sale of certain organic light-emitting
diode display modules and components
thereof by reason of misappropriation of
trade secrets, the threat or effect of
which is to destroy or substantially
injure a domestic industry (“DI”) or to
prevent the establishment of an industry
in the United States. *Id.* The
Commission’s notice of investigation
named the following as respondents:
BOE Technology Group Co., Ltd. of
Beijing, China; Mianyang BOE
Optoelectronics Technology Co., Ltd. of
Mianyang, China; Ordos Yuansheng

Optoelectronics Co., Ltd. of Inner Mongolia Autonomous Region, China; Chengdu BOE Optoelectronics Technology Co., Ltd. of Chengdu, China; Chongqing BOE Optoelectronics Technology Co., Ltd. of Chongqing, China; Wuhan BOE Optoelectronics Technology Co., Ltd. of Wuhan, China; BMOT f/k/a Kunming BOE Display Technology of Yunnan Dianzhong New Area, China; and BOE Technology America Inc. of Santa Clara, California (collectively, “Respondents”). *Id.* The Office of Unfair Import Investigations (“OUII”) is participating in the investigation. *Id.*

On June 17, 2025, the Commission amended the complaint and notice of investigation to reflect the change in the name of respondent BMOT to Yunnan Insight Optoelectronics Technology Co., Ltd. Order No. 63 (May 27, 2025); *unreviewed by* Notice (June 17, 2025).

On October 23, 2024, the ALJ granted in part SDC’s motion *in limine* 1, precluding Respondents from introducing any argument or evidence that the manufacturing processes for Respondents’ micro-OLED products materially differ from their main OLED lines. That same day, the ALJ also granted in part SDC’s motion for sanctions based on spoliation of evidence, imposing certain non-monetary sanctions against Respondents (collectively, “the ALJ’s Sanctions Orders”).

On July 11, 2025, the ALJ issued the FID finding a violation of section 337. Specifically, the FID found that Respondents misappropriated the asserted trade secrets under the category of TS I, TS II, TS IV, and TS VII, but that Respondents did not misappropriate the asserted trade secret under the category TS III. The FID also found that the statute of limitations provision in the Defense Trade Secret Act, 35 U.S.C. 1836(d), (“DTSA SOL”) is inapplicable to section 337 investigations and, even if applicable, Respondents failed to show that the DTSA SOL would time-bar SDC’s claims of trade secrets misappropriation. Lastly, the FID found that a DI exists, and that the threat or effect of Respondents’ trade secrets misappropriation is to substantially injure that DI or to prevent the establishment of such an industry in the United States.

On September 11, 2025, the Commission issued a notice determining to review the FID in part and requesting written submissions on the issues under review, and on remedy, the public interest, and bonding. 90 FR 45959 (Sept. 24, 2025). Specifically, the Commission determined to review (1)

the ALJ’s Sanctions Orders, (2) the FID’s findings with respect to the applicability of the DTSA SOL, and (3) the FID’s findings with respect to the existence of a DI and injury or threat of injury thereto and the prevention of the establishment of such an industry in the United States. The Commission determined not to review the remainder of the FID.

On November 17, 2025, SDC and Respondents filed a joint motion to stay and terminate the investigation based on settlement pursuant to Commission Rule 210.21(b), 19 CFR 210.21(b). The motion included as an attachment a confidential settlement agreement. The motion also stated that there are no other agreements, written or oral, express or implied, between the parties, and that it is in the interest of the public and administrative economy to grant the motion.

On November 25, 2025, SDC and Respondents filed a revised joint motion. The revised motion includes as attachments the same confidential settlement agreement included with the earlier filed motion on November 17, 2025, as well as a redacted public version of the settlement agreement. The revised motion likewise states that there are no other agreements, written or oral, express or implied, between the parties, and that it is in the interest of the public and administrative economy to grant the motion.

On November 28, 2025, OUII filed its response supporting the joint motion to terminate the investigation, as revised. OUII states that the settlement agreement appears to fully resolve the dispute between SDC and Respondents concerning the subject matter of this investigation, and the motion complies with the requirements of Commission Rule 210.21(b), 19 CFR 210.21(b). OUII also states that it is not aware of any information that terminating this investigation would be contrary to the public interest, and “[t]he public interest generally favors termination of an investigation when it will avoid needless litigation and conserve public and private resources,” as is the case here. OUII response at 5.

Having reviewed the record of the investigation, including the FID and the parties’ submissions, the Commission has determined to grant the joint motion to terminate the investigation based on settlement. The Commission has determined to take no position with respect to the FID’s findings under review. *See Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984). The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on January 5, 2026.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 5, 2026.

Susan Orndoff,

Supervisory Attorney.

[FR Doc. 2026–00099 Filed 1–7–26; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Bankruptcy Rules; Hearing of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Bankruptcy Rules; notice of cancellation of open hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Bankruptcy Procedure has been canceled: Bankruptcy Rules Hearing on January 30, 2026.

DATES: January 30, 2026.

FOR FURTHER INFORMATION CONTACT:

Carolyn A. Dubay, Esq., Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, RulesCommittee_Secretary@ao.uscourts.gov.

SUPPLEMENTARY INFORMATION:

The announcement for this hearing was previously published in the **Federal Register** on July 14, 2025 at 90 FR 31242.

(Authority: 28 U.S.C. 2073.)

Dated: January 6, 2026.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2026–00159 Filed 1–7–26; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Criminal Rules; Hearing of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Criminal Rules; notice of cancellation of open hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Criminal Procedure has been canceled: Criminal Rules Hearing on February 5, 2026.

DATES: February 5, 2026.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Dubay, Esq., Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7-300, Washington, DC 20544, Phone (202) 502-1820, RulesCommittee_Secretary@ao.uscourts.gov.

SUPPLEMENTARY INFORMATION: The announcement for this hearing was previously published in the **Federal Register** on July 14, 2025 at 90 FR 31242.

(Authority: 28 U.S.C. 2073.)

Dated: January 6, 2026.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2026-00160 Filed 1-7-26; 8:45 am]

BILLING CODE 2210-55-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1605]

Importer of Controlled Substances Application: Curium US LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Curium US LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before February 9, 2026. Such persons may also file a written request for a hearing on the application on or before February 9, 2026.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to

<https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on August 18, 2025, Curium US LLC, 2703 Wagner Place, Maryland Heights, Missouri 63043-3421, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Ecgonine	9180	II

The company plans to import small quantities of a derivative form of the listed controlled substance to be used for manufacturing purposes. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Thomas Prevoznik,

Deputy Assistant Administrator.

[FR Doc. 2026-00129 Filed 1-7-26; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1626]

Importer of Controlled Substances Application: Mylan Technologies Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Mylan Technologies Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before February 9, 2026. Such persons may also file a written request for a hearing on the application on or before February 9, 2026.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on October 7, 2025, Mylan Technologies Inc., 110 Lake Street, Saint Albans, Vermont 05478-2266, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II
Fentanyl	9801	II

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically manufactured FDF for foreign markets. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Thomas Prevostnik,

Deputy Assistant Administrator.

[FR Doc. 2026-00130 Filed 1-7-26; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1639]

Importer of Controlled Substances Application: Janssen Pharmaceuticals Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Janssen Pharmaceuticals Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before February 9, 2026. Such persons may also file a written request for a hearing on the application on or before February 9, 2026.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for

lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on November 10, 2025, Janssen Pharmaceuticals Inc., 1440 Olympic Drive, Buildings 1-5 & 7-14, Athens, Georgia 30601-1645, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Ethylphenidate (ethyl 2-phenyl-2-(piperidin-2-yl)acetate)	1727	I
Methylphenidate	1724	II

The company plans to import the listed controlled substances for analytical purposes. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Thomas Prevostnik,

Deputy Assistant Administrator.

[FR Doc. 2026-00128 Filed 1-7-26; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1638]

Importer of Controlled Substances Application: AndersonBrecon, Inc. DBA PCI Pharma Services

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: AndersonBrecon, Inc. DBA PCI Pharma Services has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before February 9, 2026. Such

persons may also file a written request for a hearing on the application on or before February 9, 2026.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701

Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on December 5, 2025, AndersonBrecon, Inc. DBA PCI Pharma Services, 5775 Logistics Parkway, Rockford, Illinois 61109-3608, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Lysergic acid diethylamide.	7315	I

The company plans to import the listed controlled substance for clinical trials. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Thomas Prevoznik,
Deputy Assistant Administrator.

[FR Doc. 2026-00127 Filed 1-7-26; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Meeting of the Religious Liberty Commission

AGENCY: Office of the Associate Attorney General, United States Department of Justice (DOJ).

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The DOJ is publishing this notice to announce the sixth Federal advisory committee meeting of the Religious Liberty Commission (Commission).

DATES: Open to the public March 16, 2026, from 8:30 a.m. to 2:30 p.m.

ADDRESSES: The meeting will be held at the World Stage Theatre at the museum of the Bible in Washington, DC. The meeting will be recorded and broadcast at justice.gov/live.

FOR FURTHER INFORMATION CONTACT:

Mary Margaret Bush, Religious Liberty Commission Director and Designated Federal Officer, RLC@usdoj.gov, 202-514-2046. Mrs. Bush can also be contacted to request a reasonable accommodation to attend the meeting.

Registration Information: Registration is required for in-person attendance. In-person attendance is limited to venue capacity. Members of the public may register on the Religious Liberty Commission website, <https://www.justice.gov/religious-liberty-commission>. Members of the public who attend in-person will be required to present identification and go through security screening.

We ask guests from the media to register through the Department of Justice Office of Public Affairs by March 12, 2026 at 5 p.m. Media should be prepared to go through security checks and present government-issued photo I.D. and valid media credentials.

SUPPLEMENTARY INFORMATION: The Religious Liberty Commission is a federal advisory committee established by the President through Executive Order 14291. The Commission is composed of a chair, a vice chair, and eleven members appointed by the President, including representatives from the private sector, employers, educational institutions, religious communities and States, and three ex-officio members. The Commission advises the Domestic Policy Council and the White House Faith Office on religious liberty policies of the United States, and will produce a comprehensive report to the President on the foundations of religious liberty in America, the impact of religious liberty on American society, current threats to domestic religious liberty, strategies to preserve and enhance religious liberty protections for future generations, and programs to increase awareness of and celebrate America's peaceful religious pluralism.

Agenda: During its sixth meeting on March 16, 2026, the Commission will discuss religious liberty issues related to healthcare and humanitarian and social services.

Public Comment: Written comments may be sent by email to RLC@usdoj.gov or by mail to U.S. Department of Justice, Office of the Associate Attorney General, ATTN: Religious Liberty Commission, 950 Pennsylvania Avenue NW, Room 5706 Washington, DC 20530. The deadline for comments is March 8, 2026.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*).

Dated: January 6, 2026.

Mary Margaret Bush,

Designated Federal Officer, Religious Liberty Commission.

[FR Doc. 2026-00195 Filed 1-7-26; 8:45 am]

BILLING CODE 4410-21-P

DEPARTMENT OF JUSTICE

Meeting of the Religious Liberty Commission

AGENCY: Office of the Associate Attorney General, United States Department of Justice (DOJ).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DOJ is publishing this notice to announce the fifth Federal advisory committee meeting of the Religious Liberty Commission (Commission).

DATES: Open to the public February 9, 2026, from 8:30 a.m. to 2:30 p.m.

ADDRESSES: The meeting will be held at the World Stage Theatre at the museum of the Bible in Washington, DC. The meeting will be recorded and broadcast at justice.gov/live.

FOR FURTHER INFORMATION CONTACT:

Mary Margaret Bush, Religious Liberty Commission Director and Designated Federal Officer, RLC@usdoj.gov, 202-514-2046. Mrs. Bush can also be contacted to request a reasonable accommodation to attend the meeting.

Registration Information: Registration is required for in-person attendance. In-person attendance is limited to venue capacity. Members of the public may register on the Religious Liberty Commission website, <https://www.justice.gov/religious-liberty-commission>. Members of the public who attend in-person will be required to present identification and go through security screening.

We ask guests from the media to register through the Office of Public Affairs by February 5, 2026 at 5 p.m. Media should be prepared to go through security checks and present government-issued photo I.D. and valid media credentials.

SUPPLEMENTARY INFORMATION: The Religious Liberty Commission is a federal advisory committee established by the President through Executive Order 14291. The Commission is composed of a chair, a vice chair, and eleven members appointed by the President, including representatives from the private sector, employers, educational institutions, religious communities and States, and three ex-officio members. The Commission

advises the Domestic Policy Council and the White House Faith Office on religious liberty policies of the United States, and will produce a comprehensive report to the President on the foundations of religious liberty in America, the impact of religious liberty on American society, current threats to domestic religious liberty, strategies to preserve and enhance religious liberty protections for future generations, and programs to increase awareness of and celebrate America's peaceful religious pluralism.

Agenda: During its fifth meeting on February 09, 2026, the Commission will discuss religious liberty issues related to anti-Semitism as well as religious liberty issues arising in the private sector.

Public Comment: Written comments may be sent by email to RLC@usdoj.gov or by mail to U.S. Department of Justice, Office of the Associate Attorney General, ATTN: Religious Liberty Commission, 950 Pennsylvania Avenue NW, Room 5706, Washington, DC 20530. The deadline for comments is February 1, 2026.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*).

Dated: January 6, 2026.

Mary Margaret Bush,

Designated Federal Officer, Religious Liberty Commission.

[FR Doc. 2026–00187 Filed 1–7–26; 8:45 am]

BILLING CODE 4410–21–P

DEPARTMENT OF LABOR

Office of the Secretary

Notification of Rescission of the 2022 Interpretation of Section 188 of the Workforce Innovation and Opportunity Act

AGENCY: Office of the Secretary, Labor.

ACTION: Notification of rescission.

SUMMARY: This notice rescinds guidance that defines the term “sex” for purposes of the Department of Labor’s anti-discrimination provisions of its workforce funding and development programs. Specifically, the guidance that is the subject of this notice construed the term “because of . . . sex” to include transgender status and gender identity, based on the Supreme Court case *Bostock v. Clayton County*. The Department of Labor now rescinds this guidance because later court cases found that the term “sex”, as it is used in the context of education funding in Title IX, does not include transgender status or gender identity, and that the

holding in *Bostock v. Clayton County*, which was about Title VII, does not apply to Title IX. This rule is effective immediately and rescinds the former guidance in its entirety.

DATES: This rescission is effective January 8, 2026.

FOR FURTHER INFORMATION CONTACT:

Naomi Barry-Pérez, Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–4123, Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Section 188(a)(1) of the Workforce Innovation and Opportunity Act (WIOA) WIOA states that programs funded or otherwise financially assisted in whole or in part under WIOA are federal assistance programs subject to the prohibition against discrimination, *inter alia*, “on the basis of sex under title IX of the Education Amendments of 1972.”¹ Separately, WIOA also provides at section 188(a)(2) that no individual “shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of . . . sex (except as otherwise permitted under title IX of the Education Amendments of 1972)[.]”² Finally, section 188(e) commands that the Department of Labor (DOL or the Department) “shall adopt standards for determining discrimination . . . that are consistent with the Acts referred to in subsection (a)(1).” For sex discrimination, this means the standards under Title IX.

On April 7, 2022, the Department published a “Notification of interpretation” construing section 188(a)(2) to encompass discrimination based on sexual orientation and gender identity.³ The notice announced that the Department’s Civil Rights Center would process complaints, conduct investigations, and carry out compliance reviews under section 188 on that basis. In reaching this interpretation, the Department relied principally on the Supreme Court’s decision in *Bostock v. Clayton County*, 590 U.S. 644 (2020), which held that Title VII’s prohibition on discrimination “because of sex” necessarily encompasses sexual orientation and gender identity, and on the Fourth Circuit’s decision in *Grimm v. Gloucester County School Board*, 972 F.3d 586, 616 (4th Cir. 2020), which extended *Bostock*’s reasoning to Title IX’s prohibition on discrimination “on the basis of sex” in the context of access

to school bathrooms.⁴ DOL reasoned that, because section 188 of WIOA expressly incorporates Title IX’s prohibition on sex discrimination, which is governed by *Bostock*’s reasoning, section 188 must also prohibit discrimination based on sexual orientation and gender identity.⁵

Since that time, however, additional courts have considered the issue and determined that *Bostock*’s reasoning does not extend to Title IX.

Notably, on December 30, 2022, the Eleventh Circuit in *Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791 (11th Cir. 2022) subjected the term “sex” as used in Title IX to a thorough statutory analysis. After clarifying that *Bostock* did not resolve how the term “sex” is defined under Title IX in light of Title IX’s statutory and regulatory carveouts, the Eleventh Circuit found that the ordinary meaning of the term “sex” as of 1972 (when Title IX was enacted) was “biological sex,” and reversed a judgment in favor of a transgender student regarding a high school’s bathroom policy. In particular, the Eleventh Circuit explained that Title IX should be interpreted to give full effect to the statute’s exceptions, which include “explicitly permit[ing] differentiating between the sexes in certain instances, including school bathrooms, locker rooms, and showers, under various carve-outs.” *Adams*, 57 F.4th at 814. The Eleventh Circuit concluded that, based on these carveouts, as well as the dictionary definition of the term “sex” in existence at the time that Title IX was enacted, that extending the term “sex” under Title IX to gender identity “cannot comport with the plain meaning of ‘sex’ at the time of Title IX’s enactment and the purpose of Title IX and its implementing regulations, as derived from their text.” *Id.*

Then, in April 2024, the Department of Education promulgated a comprehensive Title IX rule redefining prohibited “discrimination on the basis of sex” to include “discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.”⁶ The Department of Education relied principally on extending *Bostock* to Title IX for this rulemaking.⁷

That rule was promptly challenged. Every court presented with a challenge indicated that the rule was unlawful

¹ 29 U.S.C. 3248(a)(1).

² 29 U.S.C. 3248(a)(2).

³ 87 FR 20321 (Apr. 7, 2022).

⁴ *Id.* at 20321–22.

⁵ 87 FR 20322.

⁶ 89 FR 33886 (Apr. 29, 2024).

⁷ *Id.* at 33806–07.

and enjoined it.⁸ These courts found that the Department of Education's rule exceeded statutory authority because Title IX's text, history, and structure establish that "sex" refers to the biological distinction between male and female.⁹ They also universally rejected the Federal government's position that *Bostock*'s reasoning applies to Title IX. As Sixth Circuit Chief Judge Sutton explained when affirming the preliminary injunction granted by the Eastern District of Kentucky, "Title VII's definition of sex discrimination under *Bostock* simply does not mean the same thing for other anti-discrimination mandates, whether under the Equal Protection Clause, Title VI, or Title IX." ¹⁰ Judge Sutton reasoned that Title VII and Title IX have "materially different language" and "serve different goals and have distinct defenses." Judge Sutton also observed that "Congress enacted Title IX as an exercise of its Spending Clause Power, which means that Congress must speak with a clear voice before it imposes new mandates on the states. The same is not true of Title VII." Based on these findings, Judge Sutton rejected the notion that "principles announced in the Title VII context automatically apply in the Title IX context" and concluded that, based on this statutory analysis, that courts should be "skeptical of attempts to export Title VII's expansive meaning of sex discrimination to other settings." ¹¹

The federal government sought emergency relief from the Supreme Court to stay injunctions issued by the district courts in Louisiana and Kentucky. In denying relief, "all Members of the Court . . . accept[ed] that the plaintiffs were entitled to preliminary injunctive relief as to . . . the central provision that newly defines sex discrimination to include discrimination on the basis of sexual orientation and gender identity." ¹² The Eastern District of Kentucky thereafter

vacated the Department of Education's Title IX rule.¹³

Taken together, these decisions do not support reliance on *Bostock* in cases arising under Title IX because it would extend Title IX beyond its statutory bounds. And because section 188(a)(2) of WIOA expressly incorporates Title IX's exceptions to sex discrimination, and section 188(e) further states the Department "shall adopt standards for determining [sex] discrimination" that are consistent with Title IX, it necessarily follows that sex discrimination prohibited under section 188(a)(2) should be construed consistently with Title IX not to encompass sexual orientation and gender identity. To interpret section 188(a)(2) otherwise would give it broader coverage than Title IX itself and exceed statutory authority. Accordingly, the Department rescinds the 2022 interpretation.

The Department further recognizes that its regulations implementing WIOA section 188's prohibition against sex discrimination currently state that "[t]he term sex includes, but is not limited to, pregnancy, childbirth, and related medical conditions, transgender status, and gender identity." ¹⁴ The Department will consider rulemaking and related subregulatory guidance to ensure its regulations and enforcement practices are aligned with recent judicial developments.

Authority: WIOA Section 188, 29 U.S.C. 3248; Secretary's Order 04–2000 (November 7, 2000).

Signed in Washington, DC, January 5, 2026.

Lori Chavez-DeRemer,
Secretary of Labor.

[FR Doc. 2026–00150 Filed 1–7–26; 8:45 am]

BILLING CODE 4510–HL–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 3 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

¹³ *Tennessee v. Cardona*, 762 F. Supp. 3d 615 (E.D. Ky. 2025).

¹⁴ 29 CFR 38.7(a).

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC, 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Daniel Beattie, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *ogpo@arts.gov*, or call 202–682–5688.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chair of March 11, 2022, these sessions will be closed to the public pursuant to 5 U.S.C. 10.

The upcoming meetings are:
NEA Jazz Masters Fellowships A & B (review of nominations): These meetings will be closed.

Date and time: February 5, 2026; 2:00 p.m. to 3:00 p.m. and 3:00 p.m. to 4:00 p.m.

Mayors' Institute on City Design (review of applications): This meeting will be closed.

Date and time: February 12, 2026; 1:00 p.m. to 3:00 p.m.

Dated: January 6, 2026.

Daniel Beattie,
Director, Guidelines & Panel Operations,
National Endowment for the Arts.

[FR Doc. 2026–00203 Filed 1–7–26; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255; NRC–2026–0034]

Palisades Energy, LLC; Palisades Nuclear Plant; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a request dated December 12, 2025, as supplemented by letters dated December 26, 2025, December 31, 2025, and January 5, 2026, from Palisades Energy, LLC. The exemption authorizes

⁸ *Alabama v. U.S. Sec. of Educ.*, No. 24–12444, 2024 WL 3981994 (11th Cir. Aug. 22, 2024); *Tennessee v. Cardona*, No. 24–5588, 2024 WL 3453880, at *1 (6th Cir. July 17, 2024); *Oklahoma v. Cardona*, 743 F.Supp.3d 1314 (W.D. Okla. July 31, 2024); *Arkansas v. Dept. of Educ.*, 742 F.Supp.3d 919 (E.D. Mo. July 24, 2024); *Texas v. United States*, 740 F.Supp.3d 537 (N.D. Tex. July 11, 2024); *Kansas v. Dept. of Educ.*, 739 F.Supp.3d 902 (D. Kan. July 2, 2024); *Louisiana v. Dept. of Educ.*, 737 F.Supp.3d 377 (W.D. La. 2024).

⁹ See, e.g., *Texas*, 743 F. Supp. at 872–74.

¹⁰ *Tennessee*, 2024 WL 3453880, at *2–3 (internal citations and quotation marks omitted).

¹¹ *Id.*

¹² *Dep't of Educ. v. Louisiana*, 603 U.S. 866, 867 (2024). Four Justices would have narrowed the injunctions to exclude other parts of the rule. *Louisiana*, 603 U.S. at 869 (Sotomayer, J., dissenting in part from the application for stays).

a one-time exemption for the Palisades Nuclear Plant to allow the use of the less restrictive work hour limitations described in the NRC regulations for a 60-day period starting on January 6, 2026.

DATES: The exemption was issued on January 5, 2026.

ADDRESSES: Please refer to Docket ID NRC–2026–0034 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2026–0034. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301–415–1003; email: Bridget.Curran@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION**

CONTACT section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. The exemption request to authorize a one-time exemption for the Palisades Nuclear Plant to allow the use of the less restrictive work hour limitations is available in ADAMS under Accession No. ML25346A199. The supplements are available under Accession Nos. ML25360A002, ML25365A936, and ML26005A056, respectively.

- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marlayna V. Doell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3178; email: Marlayna.Doell@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: January 6, 2026.

For the Nuclear Regulatory Commission.

Marlayna Doell,

*Project Manager, Plant Licensing Branch III,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.*

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

**Docket No. 50–255; Palisades Energy, LLC;
Palisades Nuclear Plant; Exemption**

I. Background

Palisades Energy, LLC. (Palisades Energy, the licensee), is the holder of Renewed Facility Operating License No. DPR–20, which authorizes operation of the Palisades Nuclear Plant (Palisades). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. The facility consists of one pressurized-water reactor located in Van Buren County, Michigan.

I. Request/Action

By letter dated December 12, 2025 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML25346A199), as supplemented by letters dated December 26, 2025 (ML25360A002), December 31, 2025 (ML25365A936), and January 5, 2026 (ML2626005A056), and pursuant to 10 CFR 26.9, "Specific exemptions," the licensee requested a one-time exemption from the work hour requirements in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, "Fitness for Duty Programs," Paragraph 26.205(d), "Work hour controls." Specifically, the licensee requested to use the work hour requirements in 10 CFR 26.205(d)(4) in lieu of the non-outage work hour controls described in 10 CFR 26.205(d)(3) and (d)(7) for a period of no more than 60 days, or until Palisades is connected to the electrical grid, whichever occurs first, for individuals specified in 10 CFR 26.4(a)(2) and 10 CFR 26.4(a)(4) starting on January 6, 2026. This request follows the licensee's previously approved exemption period from the same work hour requirements that started on November 3, 2025, and expired on January 1, 2026.

Section 26.205(d)(3) of 10 CFR, requires licensees to comply with the requirements for individuals to have a minimum number of days off per week depending on the duration of shift schedules, averaged over the shift cycle, and the duties being performed. Individuals working 8-hour shift schedules shall have at least 1 day off per week, and individuals who are working 10-hour shift schedules shall have at least 2 days off per week. Individuals working 12-hour shift schedules while performing the duties described in 10 CFR 26.4(a)(1) through (a)(3) shall have at least 2.5 days off per week and individuals working 12-hour shift schedules while performing duties described in 10 CFR 26.4(a)(4) shall have at least 2 days off per week. Section 26.205(d)(7) of 10 CFR, requires licensees to comply with the requirements for maximum average work hours wherein individuals may not work

more than a weekly average of 54 hours, calculated using an averaging period of up to 6 weeks, which advances by 7 consecutive calendar days at the finish of every averaging period. The licensee seeks a one-time exemption from the requirements of 10 CFR 26.205(d)(3) and (d)(7).

The requirements in 10 CFR 26.205(d)(4) provide that during the first 60 days of a unit outage, licensees need not meet the requirements of 10 CFR 26.205(d)(3) or (d)(7) for individuals specified in 10 CFR 26.4(a)(1) through (a)(4), while those individuals are working on outage activities. However, 10 CFR 26.205(d)(4) does require the licensee to ensure individuals specified in 10 CFR 26.4(a)(1) through (a)(3) have at least 3 days off in each successive (*i.e.* non-rolling) 15-day period, and that the individuals specified in 10 CFR 26.4(a)(4) have at least 1 day off in any 7-day period. This is collectively known as the outage minimum days off (MDO) requirement.

On July 24, 2025, the NRC issued a series of licensing and regulatory actions approving the licensee's request to reauthorize power operations at Palisades and return the plant to an operational status, including the Power Operations Technical Specifications (ML25157A127). The licensee implemented the power operations license, the final safety analysis report (FSAR), and the Power Operations Technical Specifications on August 25, 2025. Further, on August 25, 2025, Palisades transitioned directly into an outage under the Power Operations Technical Specifications to restore the plant for restart.

On October 24, 2025, the NRC approved a previous request by Palisades Energy, LLC, for an exemption from the same work hour requirements in 10 CFR 26.205 for Palisades (ML25293A007) to support plant restart activities. With consideration of the additional mitigating actions proposed by the licensee, the NRC approved Palisades for an exemption to support the extended use of the less restrictive outage work hour limits for a 60-day period from November 3, 2025, through January 1, 2026, following the initial usage of the outage work hour limits starting from entry of the outage period on August 25, 2025, through the 60-day period permitted by 10 CFR 26.205(d)(4), which ended on October 23, 2025.

The licensee stated this subsequent one-time exemption will allow for more flexibility for the scheduling of covered work tasks and individual work hours to better manage cumulative fatigue as the Palisades restart effort continues. The licensee proposed mitigating actions discussed in the "Mitigating Strategy" section of the Enclosure to the December 12, 2025, submittal letter.

In the letters dated December 26 and 31, 2025, the licensee submitted supplements to the proposed request for exemption. In the supplements, the licensee proposed additional mitigating actions to address cumulative fatigue for members of the affected groups and establish dates for when personnel working on specific projects would return to non-outage, maximum averaging work controls. In addition, in the letter dated January 5, 2026, the licensee stated that the

start date of the proposed exemption period of 60 days is being changed from January 2, 2026, to January 6, 2026.

II. Discussion

Pursuant to 10 CFR 26.9, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 26 when the exemptions are authorized by law and will not endanger life or property or the common defense and security; and are otherwise in the public interest.

A. The Exemption Is Authorized by Law

The proposed exemption would authorize a one-time exemption from the requirements of 10 CFR 26.205(d)(3) and (d)(7) to allow the use of the less restrictive work hour controls in 10 CFR 26.205(d)(4) for up to an additional 60 days, starting on January 6, 2026, to allow the completion of plant restart activities without violating NRC regulations. As stated, 10 CFR 26.9 allows the NRC to grant exemptions from the requirements of 10 CFR part 26. The NRC staff has determined that granting the proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, other laws, or the Commission's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Will Not Endanger Life or Property

The purpose of Subpart I, "Managing Fatigue," of 10 CFR part 26 is to ensure that worker fatigue does not compromise the abilities of individuals to perform their duties safely and competently. The purpose of 10 CFR 26.205(d)(4) is to provide licensees flexibility for a limited period in scheduling required days off while accommodating more intense work schedules associated with a unit outage.

During the proposed exemption period, personnel as described in 10 CFR 26.4(a)(2) and (a)(4) would be permitted to work in accordance with the outage MDO requirements in 10 CFR 26.205(d)(4) for a 60-day period. In its December 12, 2025, submittal, the licensee's mitigating strategy consisted of three actions for the individuals affected by this proposed exemption. The first proposed mitigating action is maintaining work hours compliant with the requirements in 10 CFR 26.205(d)(1), (d)(2), and (d)(4). The second proposed mitigating action is assessment for fatigue; the licensee states that the cognizant supervisors will assess each assigned supervised employee for fatigue and mental alertness during the proposed exemption period. The third proposed mitigating action was a commitment to limit the number of hours worked by individuals in 10 CFR 26.4(a)(2) and (a)(4) averaged over a two-week period to 50 hours per week from December 19, 2025, through January 1, 2026.

The NRC staff evaluated the proposed mitigating actions and concluded that they were not sufficient to prevent or mitigate cumulative fatigue for those individuals specified in 10 CFR 26.4(a)(2) and (a)(4) during the exemption period for extended use of outage work hour controls. By letter dated December 22, 2025 (ML25357A221), the NRC staff issued a request for additional

information (RAI) to request the licensee provide an explanation of how the current actions will mitigate cumulative fatigue and what other actions will be taken to address and mitigate fatigue during the subsequent 60-day exemption period of less restrictive work hour limitations.

The licensee submitted responses to the RAIs on December 26, 2025 (ML25360A002). In the proposed exemption, the licensee reassessed restart activities resulting in the need for a subsequent exemption. In the RAI responses, the licensee further states that, during the plant restart project, the licensee identified additional scope which required expansion of the required maintenance activities. The proposed subsequent exemption would provide the licensee additional flexibility to schedule personnel, which allows more opportunity to identify and address issues during the plant restart-related activities.

The licensee completed an audit of the work hours for the affected groups from November 3, 2025, through December 18, 2025, during which the initial exemption was in place. The licensee found that chemistry personnel completing duties under 10 CFR 26.4(a)(2) maintained a schedule pursuant to 10 CFR 26.205(d)(1), (d)(2), and (d)(7), and averaged significantly less than the maximum average of 54 hours per week. Health physics personnel completing duties under 10 CFR 26.4(a)(2) maintained a schedule pursuant to 10 CFR 26.205(d)(1), (d)(2), and (d)(4), and averaged slightly below the maximum allowable 72 hours per week. Maintenance personnel completing duties under 10 CFR 26.4(a)(4) maintained a schedule pursuant to 10 CFR 26.205(d)(1), (d)(2), and (d)(4). However, some individuals in several maintenance positions worked near the maximum allowable 72 hours per week.

In the proposed exemption, the licensee provided a commitment that stated the affected groups would work no more than 50 hours per week, averaged over the two-week period from December 19, 2025, to January 1, 2026. The licensee modified the commitment in the response to the RAIs to ensure that the affected groups would work no more than 48 hours per week, averaged over the two-week period above. In addition, the licensee added another commitment to "enhance the Human Performance Program error prevention tools to include self-awareness of fatigue as a potential proficiency obstacle that will be assessed during pre-job briefings." This commitment would be added to their Human Performance Program prior the proposed subsequent exemption period starting on January 6, 2026. For the affected groups, prior to starting work, the licensee would provide pre-job briefings to address proficiency concerns.

During the initial 60-day outage from August 24, 2025, to October 23, 2025, and the exemption period from November 3, 2025, to January 1, 2026, the licensee stated that no waivers were required for individuals performing duties in 10 CFR 26.4(a). The licensee noted that three fitness for duty fatigue assessments were performed for cause during the period above. However, none of the assessments concluded that individual fatigue was a factor.

The NRC staff evaluated the subsequent exemption, work schedules, mitigating strategy, and the information provided in the RAI response. Personnel performing duties in 10 CFR 26.4(a)(2) and (a)(4) have complied with, at a minimum, the outage work controls specified in 10 CFR 26.205(d)(4). Of the thirteen different positions specified in the proposed subsequent exemption, eight positions will have worked normal or near-normal schedules and averaged below or slightly above the maximum average non-outage work-hour requirement specified in 10 CFR 26.205(d)(7). The remaining five positions include Health Physics, Framatome Projects, Alloy 600 Mitigation Project, Fuel Handling Equipment Upgrade Project, and Tesco Projects, which have worked near the maximum allowable 72 hours per week. Individuals in these positions are at the highest risk of cumulative fatigue during this subsequent exemption period as they have continued to work near the maximum average outage work hour controls during the previous exemption period.

Due to the nature of the Palisades restart project and the usage of outage work controls during the initial outage, first exemption, and the proposed subsequent exemption in close succession, the NRC staff determined that compliance with only the outage MDO requirements and rest breaks would not be sufficient to manage cumulative fatigue. However, the NRC staff considered the mitigating strategy above in conjunction with the addition of one modified licensee commitment and the addition of a second licensee commitment. The modified licensee commitment provided a rest period for all affected personnel to work no more than 48 hours per week, averaged over a two-week period from December 19, 2025, to January 1, 2026. A work schedule of no more than 48 hours per week provides at least 3 days off each week, or 10 equivalent days off including rest breaks, to ensure an adequate rest and reset period before transitioning into the subsequent exemption period. In addition, the licensee has committed to enhance their Human Performance Program error prevention tools by adding fatigue as a potential proficiency obstacle that will be assessed during pre-jobs briefings.

The NRC staff considered additional mitigating factors that ensure the effects of cumulative fatigue are properly managed. The NRC staff noted that the licensee's first exemption would have continued through January 1, 2025. However, the licensee stopped using the flexibility provided by the exemption to implement the less restrictive outage work hour controls on December 18, 2025, and therefore did not utilize the flexibility provided by the exemption for the full 60-day period approved on October 23, 2025. The less restrictive outage work hour controls under the previous exemption were implemented for approximately 46 days, after which the two-week rest period commitment started. The NRC staff also notes that a significant portion of the work being performed involves maintenance activities that are subject to verification through nondestructive examination or post-maintenance testing, which provides additional assurance that the work will be

completed in accordance with the performance objectives of 10 CFR 26.23(e).

On December 30, 2025, the NRC staff and representatives of Palisades Energy held a clarification call to discuss the RAI response. Palisades submitted a supplement to the RAI response on December 31, 2025 (ML25365A936), which provided additional descriptions and provisions for managing and bounding cumulative fatigue for the affected groups. The supplement contains three new commitments for Palisades work hour controls during the subsequent exemption period. From the start of the previous exemption period on November 3, 2025, through December 30, 2025, which includes the rest period, personnel performing chemistry duties have worked hours significantly below the outage work hour controls, while personnel performing health physics duties have worked slightly above the 54 maximum average work hours over a shift cycle. For personnel performing maintenance duties in 10 CFR 26.4(a)(4), the licensee has provided additional commitments for specific positions to transition back to normal work hour controls at a specified point during the exemption. Personnel performing Framatome Projects duties have completed their scope of work and are no longer considered in the proposed subsequent exemption. The licensee has committed to transitioning to the maximum average weekly work-hour requirement in 10 CFR 26.205(d)(7) on January 25, 2026, for personnel performing Alloy 600 Mitigation project duties, February 8, 2026, for personnel performing Fuel Handling Equipment Upgrade Project duties, and February 15, 2026, for personnel performing Tesco Projects duties.

The NRC staff have re-evaluated the proposed subsequent exemption with the addition of the supplemental information including work schedules, work hours, and the new commitments. The NRC staff noted earlier that the five positions above were working near the maximum allowable 72-hours in 7-day requirement. However, based on information provided in the supplement to the RAI response, these individuals have either completed their work or will only work pursuant to the less restrictive outage work hour controls for a limited duration during this subsequent exemption. In addition, because these individuals have been in a rest period which started on December 19, 2025, they have received an adequate rest and reset period to return to a work schedule pursuant to the less restrictive outage work hour controls for a short period with a predetermined length. The limited duration that the licensee has committed to for these five positions lowers the risk of cumulative fatigue for these five positions that have been working near the maximum allowable 72-hours in a 7-day period prior to the rest and reset period. The NRC staff have determined that the new administrative controls in the supplement to the RAI response described above, in conjunction with the licensee's mitigating strategy in the initial submittal and RAI response, will provide reasonable assurance that cumulative fatigue will be effectively managed and bounded for the duration of the subsequent exemption period.

The NRC staff determined that the proposed mitigating strategy, in combination with a two-week rest period for all affected personnel and the revised commitments in the supplement to the RAI response, will allow the licensee to adequately manage cumulative fatigue during the proposed 60-day subsequent exemption period. Acute fatigue will be managed through the rest breaks in 10 CFR 26.205(d)(2). Cumulative fatigue will be managed through the outage MDO requirements in 10 CFR 26.205(d)(4). In addition, the licensee committed to provide the affected individuals a two-week rest period, which took place from December 19, 2025, through January 1, 2026. Further, given the timing of the approval and issuance of this exemption, the affected individuals have been subject to non-outage work hour controls since January 1, 2026, which provides additional fatigue management. Finally, the licensee will incorporate fatigue as an enhancement to their Human Performance Program error prevention tools in pre-job briefings, and will transition certain personnel back to normal work hour controls at a pre-defined date as described above. The NRC staff determined that the proposed mitigating strategy will adequately manage acute and cumulative fatigue. Therefore, the exemption will not endanger life or property.

C. The Exemption Will Not Endanger the Common Defense and Security

The proposed exemption would authorize a one-time exemption from the requirements of 10 CFR 26.205(d)(3) and (d)(7) to allow use of the less restrictive work hour controls described in 10 CFR 26.205(d)(4) for up to an additional 60-days. The proposed exemption is not applicable to security personnel, nor does it have any relation to or impact on security issues. Therefore, the exemption will not endanger the common defense and security.

D. The Exemption Is Otherwise in the Public Interest

The proposed exemption would authorize a one-time exemption from the requirements of 10 CFR 26.205(d)(3) and (d)(7) to allow use of the less restrictive work hour controls described in 10 CFR 26.205(d)(4) for up to an additional 60 days. In considering whether the requested exemptions would be in the public interest, the NRC staff considered several factors, including:

- the nature of the licensee's unique situation transitioning from decommissioning back to a power operations licensing basis, which requires restoration of safety-related equipment, among other plant restart activities; and
- the public health and safety interests of the communities that are impacted by the safe restart of the plant.

The NRC staff considered the unique situation of Palisades, which was previously in a decommissioning status; however, Palisades Energy has transitioned to a power operations licensing basis and is currently restoring safety-related equipment in addition to other restart-related inspections and repair activities during the ongoing outage to ensure the plant will be safe prior

to restarting. The NRC issued RAIs to obtain additional information on the status of the Palisades restart and to identify why a subsequent exemption would be necessary. The licensee stated that during the plant restart project additional scope was identified which required expansion of the required maintenance activities. The approval of the proposed subsequent exemption would provide more flexibility for scheduling of personnel, which will provide ample opportunity to identify and address issues during plant restart that will ensure safety and reliability.

The NRC staff considered the balance of public interest considerations, including the potential impacts of not granting the subsequent exemption, which could result in the delay of restarting the Palisades Nuclear Plant and could potentially delay the amount of energy available to the surrounding area. The NRC staff also considered the potential impacts resulting from an increase in overall cumulative fatigue due to personnel working longer work hours for a subsequent 60-day period almost directly following the expiration of the initial 60-day outage, which ended on October 23, 2025, and the 60-day previous exemption period, which ended on January 1, 2026. However, the licensee committed to and provided the affected individuals with a two-week rest period working no more than 48 hours maximum per week averaged over the two weeks between December 19, 2025 and January 1, 2026. In addition, there have been several days worked by all personnel under non-outage work hour requirements in accordance with 10 CFR 26.205 between the expiration of the previous exemption on January 1, 2026, and the issuance of the current exemption. Furthermore, the licensee has provided additional administrative controls in a supplement to the RAI response which states that personnel have either completed their work or will transition to normal work hour controls at pre-defined dates, thereby reducing the potential for cumulative fatigue.

The NRC staff evaluated the proposed exemption, mitigating strategy, RAI response, and supplement against the balance of public interest considerations. The licensee's mitigating strategy includes adhering to the rest break requirements, MDO requirements, supervisory fatigue assessments, a two-week rest period, the additional days worked by all personnel under the non-outage work hour requirements, an enhancement to their Human Performance Program, and a commitment to transition to normal work hour controls for certain personnel. Through these mitigating actions, the licensee will adequately manage fatigue for personnel identified in 10 CFR 26.4(a)(2) and (a)(4) during the proposed subsequent exemption period. Based on these considerations, the NRC staff concluded that there are no expectations for a significant impact on public health and safety as a result of the increase in cumulative fatigue for the 60-day subsequent exemption period. Therefore, the NRC staff finds that approval of the requested exemption is otherwise in the public interest.

E. Environmental Considerations

The Commission has determined that granting the proposed one-time exemption from the requirements of 10 CFR 26.205(d)(3) and (d)(7) involves (1) no significant hazards consideration, (2) no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, (3) no significant increase in individual or cumulative public or occupational radiation exposure, (4) no significant construction impact, and (5) no significant increase in the potential for or consequences from radiological accidents.

(1) Under 10 CFR 50.92(c), there is no significant hazards consideration if the action does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed exemption is administrative in nature because it provides an additional period when less restrictive hours can be worked for personnel identified in 10 CFR 26.4(a)(2) and (a)(4). The proposed exemption has no effect on systems, structures, and components (SSCs) and no effect on the capability of the SSCs to perform their design function. The proposed exemption does not make any changes to the facility or operating procedures and does not alter the design, function, or operation of any plant equipment. Therefore, the exemption does not increase the probability or consequences of an accident previously evaluated.

The proposed exemption does not make any changes to the facility or operating procedures and does not alter the design, function, or operation of any plant equipment. Similarly, the proposed exemption does not authorize any physical changes to any SSCs involved in the mitigation of any accidents. Therefore, the exemption does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed exemption does not authorize alteration of the design basis or any safety limits for the plant. The exemption would not impact station operation or any SSC that is relied upon for accident mitigation. Therefore, the exemption does not involve a significant reduction in a margin of safety.

For these reasons, the NRC has determined that approval of the exemption requested involves no significant hazards consideration.

(2) The proposed exemption does not authorize any changes to the design basis requirements for the SSCs at Palisades that function to limit the release of non-radiological effluents, radiological liquid effluents, or radiological gaseous effluents during and following postulated accidents. Additionally, the exemption does not change any requirements with respect to the conduct of radiation surveys and monitoring. Therefore, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

(3) The proposed exemption does not affect the limits on the release of any radioactive material or the limits provided in 10 CFR part 20, "Standards for Protection Against Radiation," for radiation exposure to workers or members of the public. Additionally, the exemption will not increase or decrease the amount of work activities that must be completed in order to connect the reactor unit to the electrical grid. Therefore, there is no significant increase in individual or cumulative public or occupational radiation exposure.

(4) The proposed exemption does not involve any changes to a construction permit. Therefore, there is no significant construction impact.

(5) The proposed exemption does not alter any of the assumptions or limits in the licensee's accident analyses. Therefore, there is no significant increase in the potential for or consequences from radiological accidents.

In addition, the requirements from which the exemption are sought involve other requirements of an administrative, managerial, or organizational nature. Accordingly, the exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25)(vi)(I). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's consideration of the exemption request.

III. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 26.9, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Palisades Energy, LLC a one-time exemption from 10 CFR 26.205(d)(3) and (d)(7) for personnel identified in 10 CFR 26.4(a)(2) and (a)(4) to allow the use of the outage MDO requirements described in 10 CFR 26.205(d)(4) for a 60-day period starting January 6, 2026. While the exemption is in effect, Palisades Energy, LLC will ensure that individuals specified in 10 CFR 26.4(a)(2) have at least 3 days off in each successive (*i.e.*, non-rolling) 15-day period; and that individuals specified in 10 CFR 26.4(a)(4) have at least 1 day off in any 7-day period. Additionally, Palisades Energy, LLC will use the outage MDO requirements, rest break requirements, the two-week rest period which started on December 19, 2025, enhancements to their Human Performance Program, and commitments to transition personnel back to normal non-outage work hour controls at the defined dates in the supplement to the RAI response to adequately manage acute and cumulative fatigue for personnel performing duties in 10 CFR 26.4(a)(2) and (a)(4) during the subsequent exemption period. Accordingly, the exemption shall not cover those personnel that Palisades Energy has committed to transitioning back to non-outage work hour controls at the dates specified in the supplement to the RAI response as the supporting bases for this exemption for those personnel will no longer be met.

If the Palisades Nuclear Plant is connected to the electrical grid prior to the end of the approved 60-day exemption period, the supporting bases for this exemption are no longer met. Accordingly, the exemption shall end either at the end of the approved 60-day period, which is March 6, 2026, or at the time when the Palisades Nuclear Plant is connected to the electrical grid, whichever occurs first.

The Palisades restart project is a first-of-a-kind activity where a nuclear power plant in decommissioning status is being returned to operational status. Palisades, as a plant in decommissioning was not subject to the fatigue management requirements in 10 CFR part 26 Subpart I. However, on August 25, 2025, Palisades implemented the Power Operations licensing basis, including the Final Safety Analysis Report and the Power Operations Technical Specifications, and transitioned into an outage under the Power Operations Technical Specifications to restore the plant for restart and as a result became subject to the work hour control requirements in 10 CFR 26.205. This subsequent exemption and the prior exemption from the work hour controls directly support restart activities unique to the Palisades restart project for specific groups of personnel, with specific consideration of the hours worked by each group prior to the issuance of this exemption, to support the numerous activities necessary to return the plant to an operational status. Further, any subsequent exemption request will be evaluated on a case-by-case basis and is specific to the circumstances of the facility, the mitigating strategy put in place to manage cumulative fatigue, the timing between a subsequent request and the previous exemption, and the hours worked by individuals.

Dated: January 5, 2026.

For the Nuclear Regulatory Commission.

/RA/

Hipolito Gonzalez,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104543; File No. SR-NYSE-2025-50]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule 5310

January 5, 2026.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934

¹ 15 U.S.C. 78s(b)(1).

(“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that on December 22, 2025, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a new Rule 5310 governing member organization’s best execution obligations based on Nasdaq PHLX Rule General 9, Section 11. The proposed rule change is available on the Exchange’s website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes a new Rule 5310 that would govern member organization’s best execution obligations. Proposed Rule 5310 is based on Nasdaq PHLX Rule General 9, Section 11 (Best Execution and Interpositioning). The purpose of the proposed rule is to enhance customer order protection by helping customers to receive efficient executions of their transactions at the best market prices.

Background and Proposed Rule Change

Nasdaq PHLX Rule General 9, Section 11, adopted in 2010, was based on NASD Rule 2320.⁴ In 2011, the

Financial Industry Regulatory Authority (“FINRA”) adopted NASD Rule 2320 as FINRA Rule 5310.⁵ Both rules require broker-dealers to use “reasonable diligence” to ascertain the best market for a security and execute trades in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Other self-regulatory organizations have similar best execution rules.⁶

The Exchange proposes to adopt a new Rule 5310 that would govern the best execution obligations applicable to member organizations and persons associated with member organizations based on the Nasdaq PHLX rule.

Proposed Rule 5310(a)(1) would provide that, in any transaction for or with a customer or a customer of another broker-dealer, a member organization and persons associated with a member organization shall use “reasonable diligence” to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. The proposed Rule would identify five factors among those to be considered in determining whether a member organization has used reasonable diligence:

- (1) the character of the market for the security, *e.g.*, price, volatility, relative liquidity, and pressure on available communications;
- (2) the size and type of transaction;
- (3) the number of markets checked;
- (4) accessibility of the quotation; and
- (5) the terms and conditions of the order which result in the transaction, as communicated to the member organization and persons associated with the member organization.⁷

Proposed Rule 5310(a)(1) is based on Nasdaq PHLX Rule General 9, Section 11(a)(1)(A)–(E) without change.

Proposed Rule 5310(a)(2) would prohibit a member organization or person associated with a member organization, in any transaction for or with a customer or a customer of another broker-dealer, from interjecting a third party between the member organization or associated person and

the best market for the subject security in a manner inconsistent with paragraph (a)(1) of the proposed Rule. Proposed Rule 5310(a)(2) is based on Nasdaq PHLX Rule General 9, Section 11(a)(2) without change.

Proposed paragraph (b) would provide when a member organization cannot execute directly with a market maker but must employ a broker’s broker or some other means in order to insure an execution advantageous to the customer, the burden of showing the acceptable circumstances for doing so would be on the retail firm. The proposed Rule would further provide that examples of acceptable circumstances would be where a customer’s order is “crossed” with another retail firm which has a corresponding order on the other side, or where the identity of the retail firm, if known, would likely cause undue price movements adversely affecting the cost or proceeds to the customer. Proposed Rule 5310(b) is based on Nasdaq PHLX Rule General 9, Section 11(b) without change.

Proposed paragraph (c) would provide that failure to maintain or adequately staff a department assigned to execute customers’ orders cannot be considered justification for executing away from the best available market; nor can channeling orders through a third party as described above as reciprocation for service or business serve to relieve a member organization of its obligations. The proposed Rule would further provide that channeling of customers’ orders through a broker’s broker or third party pursuant to established correspondent relationships under which executions are confirmed directly to the member organization acting as agent for the customer, such as where the third party gives up the name of the retail firm, would not be prohibited if the cost of such service is not borne by the customer. Proposed Rule 5310(c) is based on Nasdaq PHLX Rule General 9, Section 11(c) without change.

Proposed paragraph (d) would provide that a member organization through which a retail order is channeled, as described in the proposed Rule, and which knowingly is a party to an arrangement whereby the initiating member organization has not fulfilled its obligations under the proposed Rule, will also be deemed to have violated the proposed Rule. Except for replacing “his” with “it” before “obligations” in the proposed Rule, proposed Rule 5310(d) is identical to Nasdaq PHLX Rule General 9, Section 11(d).

Proposed paragraph (e) provides that the obligations in paragraphs (a) through (d) of the proposed Rule exist where the

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ See Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16,

2010) (SR–PHLX–2010–79) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Establishment of NASDAQ OMX PSX as a Platform for Trading NMS Stocks).

⁵ See Securities Exchange Act Release No. 65895 (December 5, 2011), 76 FR 77042 (December 9, 2011) (SR–FINRA–2011–052) (Order Granting Approval of Proposed Rule Change To Adopt NASD Rule 2320 (Best Execution and Interpositioning) and Interpretive Material (“IM”) 2320 as FINRA Rule 5310 in the Consolidated Rulebook).

⁶ See, *e.g.*, Municipal Securities Rulemaking Board (MSRB) Rule G–18 (Best Execution).

⁷ See proposed Rule 5310(a)(1)(A)–(E).

member organization acts as agent for the account of its customer but also where retail transactions are executed as principal and contemporaneously offset. Except for replacing “his” with “it” before “customer” in the proposed Rule, proposed Rule 5310(d) is identical to Nasdaq PHLX Rule General 9, Section 11(e).

Proposed Rule 5310 includes Supplementary Material based on Nasdaq PHLX Rule General 9, Section 11(f) and one section based on FINRA Rule 5310.08 to provide additional guidance and clarity regarding the obligations of member organizations and persons associated with member organizations with respect to best execution requirements.

First, the Exchange would include an introductory paragraph that provides that proposed Rule 5310(a) requires, among other things, that a member organization or person associated with a member organization comply with paragraph (a) when customer orders are routed to it from another broker/dealer for execution, and that the proposed Supplementary Material addresses certain interpretive questions concerning the applicability of the best execution rule. The proposed text is based on the first full paragraph of Nasdaq PHLX Rule General 9, Section 11(f) without change.

Proposed Supplementary Material .01 titled “Definition of Market” would define “market” and provides that the singular or plural term should be construed broadly, and it encompasses a variety of different venues, including, but not limited to, market centers that are trading a particular security. Proposed Supplementary Material .01 further provides that the expansive interpretation is meant to both inform broker-dealers as to the breadth of the scope of venues that must be considered in the furtherance of their best execution obligations and to promote fair competition among broker-dealers, exchange markets, and markets other than exchange markets, as well as any other venue that may emerge, by not mandating that certain trading venues have less relevance than others in the course of determining a firm’s best execution obligations. Proposed Supplementary Material .01 is based on the second full paragraph of Nasdaq PHLX Rule General 9, Section 11(f) without change.

Proposed Supplementary Material .02, titled “Best Execution and Executing Brokers,” clarifies that a member organization’s duty to provide best execution in any transaction “for or with a customer of another broker-dealer” does not apply in instances

when another broker-dealer is simply executing a customer order against the member organization’s quote or, stated in another manner, the duty to provide best execution to customer orders received from other broker-dealers arises only when an order is routed from the broker-dealer to the member organization for the purpose of order handling and execution. As proposed Supplementary Material .02 further provides, the clarification is intended to draw a distinction between those situations in which the member organization is acting solely as the buyer or seller in connection with orders presented by a broker-dealer against the member organization’s quote, as opposed to those circumstances in which the member organization is accepting order flow from another broker-dealer for the purpose of facilitating the handling and execution of such orders. Proposed Supplementary Material .02 is based on the third full paragraph of Nasdaq PHLX Rule General 9, Section 11(f) without change.

Finally, Supplementary Material .03, titled “Customer Instructions Regarding Order Handling,” would specify that if a member organization receives an unsolicited instruction from a customer to route that customer’s order to a particular market for execution, the member organization is not required to make a best execution determination beyond the customer’s specific instruction. However, member organizations are still required to process that customer’s order promptly and in accordance with the terms of the order. Further, where a customer has directed that an order be routed to another specific broker-dealer that is also a member organization, the receiving broker-dealer to which the order was directed would be required to meet the requirements of proposed Rule 5310 with respect to its handling of the order. Proposed Supplementary Material .03 is based on FINRA Rule 5310.08 without change except for conforming changes to reflect the Exchange’s membership.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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. In addition, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that adopting best execution and interpositioning standards based on Nasdaq PHLX Rule General 9, Section 11 will promote just and equitable principles of trade and protect investors and the public interest by imposing consistent order execution standards that member organizations must observe when handling customer orders that directly serve investor protection. Moreover, the Exchange believes that incorporating the proposed Supplementary Material containing additional guidance and clarification of the obligations of member organizations and their associated persons under the proposed Rule based on Nasdaq PHLX Rule General 9, Section 11 with an additional provision containing important clarifications about the interaction between a broker-dealer’s best execution obligations and their obligations with respect to specific customer instructions based on FINRA Rule 5310.08 will potentially enhance compliance with those obligations, thus furthering the prevention of manipulative acts and practices and the protection of investors and the public interest.

As discussed in the Purpose section, proposed Rule 5310 is substantially similar to Nasdaq PHLX Rule General 9, Section 11, thus promoting the application of consistent regulatory standards for customer order execution across self-regulatory organizations. As such, the proposed rule change would facilitate rule harmonization among self-regulatory organizations with respect to customer order execution, thereby fostering cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule change will maintain the necessary protection of customer orders designed to prevent fraudulent and manipulative acts, without imposing any undue regulatory costs on industry participants. Finally, the Exchange

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(5).

believes that the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers and dealers, consistent with Section 6(b)(5) of the Act¹¹ because the proposed rule change will impose the same requirements on all member organizations on an equal basis.

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 believes the proposed rule change will reduce the burdens on member organizations that result from their having to comply with varying rules related to best execution, thus reducing the complexity of customer order protection rules, particularly for those member organizations subject to the rules of multiple trading venues. Overall, the Exchange believes the proposed rule change will enhance customer order handling rules by harmonizing best execution and interpositioning standards across self-regulatory organizations, which ultimately benefits market participants and does not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2025-50 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NYSE-2025-50. 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-NYSE-2025-50 and should be submitted on or before January 29, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026-00113 Filed 1-7-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104539; File No. SR-CboeEDGA-2025-035]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Cboe One Fees

January 5, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 22, 2025, Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") proposes to amend its fee schedule as it relates to Cboe One Summary and Cboe One Premium External Distribution Fees. The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/equities/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to clarify how User³ Fees are credited to Cboe One Summary and Cboe One Premium External Distribution⁴ Fees.⁵ By way of background, the Exchange's Cboe One Feed⁶ is a market data product that provides cost-effective, high-quality reference quotes and trade data for market participants looking for comprehensive, real time market data. The Cboe One Feed provides market participants a comprehensive, unified view of the market from all four Cboe equities exchanges: Cboe BYX Exchange, Incorporated ("BYX"), Cboe BZX Exchange, Incorporated ("BZX"), Cboe EDGA Exchange, Incorporated (the "Exchange," or "EDGA"), and Cboe EDGX Exchange, Incorporated ("EDGX") (collectively, "Affiliates" and together with the Exchange, "Cboe Equities Exchanges").

Two versions of the Cboe One Feed are offered—Cboe One Summary and Cboe One Premium—allowing subscribers to select their preferred level of depth. Both versions provide subscribers with aggregated quote and trade updates for the Cboe Equities Exchanges. In addition to aggregated quote and trade data, the Cboe One Premium Feed also includes five levels of aggregate depth information for all four exchanges.

Currently, the Exchange charges External Distributors a monthly fee of

\$5,000⁷ for Cboe One Summary, and a monthly fee of \$12,500⁸ for Cboe One Premium. The Exchange's fee schedule also currently provides External Distributors the ability to receive a credit against their External Distribution fees. Specifically, the fee schedule states, "Each External Distributor will be eligible to receive a credit against its monthly Distributor Fee for the Cboe One Feed equal to the amount of its monthly User Fees up to a maximum of the Distributor Fee for the Cboe One Feed."

However, as currently codified, it is unclear to subscribers and potential subscribers that their Cboe One Summary User Fees can be applied to either their Cboe One Summary or Cboe One Premium External Distribution Fees. Accordingly, in order clarify the fee schedule the Exchange now wishes to amend the fee schedule to provide that: (i) Cboe One User Summary Fees can be applied to both Cboe One Summary and Cboe One Premium External Distribution Fees; and (ii) Cboe One Premium User Fees can only be applied to Cboe One Premium External Distribution Fees. By way of illustration, an External Distributor of Cboe One Summary who has \$4,500 in Cboe One Summary User Fees would be able to credit those User Fees against their Cboe One Summary External Distribution Fee, and pay a net fee of \$500—i.e., Cboe One Summary External Distribution Fee (\$5,000) Less the Cboe One Summary User Fees (\$4,500) = \$500. Similarly, an External Distributor that subscribes to both Cboe One Summary and Cboe One Premium that has Cboe One Summary User Fees totaling \$4,500 could also deduct their User Fees against their Cboe One Premium External Distribution Fee and pay a net fee of \$8,000—i.e., \$12,500 (Cboe One Premium External Distribution Fee) minus \$4,500 (Cboe One Summary User Fees) = \$8,000. Finally, an External Distributor of Cboe One Premium who has Cboe One Premium User Fees totaling \$10,000 could deduct such User Fees from their Cboe One Premium External Distribution Fee and pay a net fee of \$2,500—i.e., \$12,500 (Cboe One Premium External Distribution Fee) minus \$10,000 (Cboe One Premium User Fees) = \$2,500.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the

Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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,¹² 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.

The Exchange believes these proposed amendments to its fee schedule are reasonable because it will now be clearer to subscribers of a Cboe One Feed how their User Fees may be applied to their External Distribution Fees. As noted above, External Distributors of Cboe One Summary could end up paying reduced costs, or no costs at all, by applying their Cboe One Summary User Fees to their Cboe One Summary or Cboe One Premium External Distribution Fees. Similarly, a Distributor that receives the Cboe One Premium Feed for External Distribution could end up paying reduced fees, or no fee at all, by applying their Cboe One Premium User Fees, or Cboe One Summary User Fees, to their Cboe One Premium External Distribution Fees. As such, subscribers to Cboe One Summary may now be further incentivized to upgrade their Cboe One Summary subscriptions to Cboe One Premium, thereby benefiting their Users with the provision of not just aggregated trade and quotation information, but aggregated depth. Overall, the Exchange believes this clarifying change to its fee

³ A User of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data. See Cboe U.S. Equities Fee Schedules, EDGA Equities, Market Data Fees, available at https://www.cboe.com/us/equities/membership/fee_schedule/edga/.

⁴ 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. *Id.*

⁵ The proposed fee changes will take effect on December 22, 2025.

⁶ See "Cboe One Feed," available at: https://www.cboe.com/market_data_services/us/equities/cboe_one/.

⁷ See Cboe U.S. Equities Fee Schedules, EDGA Equities, Market Data Fees, available at: https://www.cboe.com/us/equities/membership/fee_schedule/edga/.

⁸ *Id.*

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ *Id.*

¹² 15 U.S.C. 78f(b)(4).

schedule will help to make high quality market data for the Cboe Equities Exchanges more readily available to a wider range of market participants.

Furthermore, the Exchange believes it is also equitable and not unfairly discriminatory to apply the credit to External Distributors only because, like the free 3-month credit, it is also intended to incentivize new External Distributors to enlist Users, including Non-Professional Users¹³ such as retail investors, to subscribe to the Cboe One Summary or Cboe One Premium Feed, in an effort to broaden the products' distribution.

While this incentive is not available for Internal Distribution¹⁴ of a Cboe One Feed, the Exchange believe it is appropriate as Internal Distributor have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside of their own firms. For these reasons, the Exchange believes it is appropriate to provide this incentive to only External Distributors. The Exchange also notes that the External Distributor Fee credit for the Cboe One Feed also helps to ensure that the proposed credit for the Cboe One Feed will not cause the combined cost of subscribing to the each of the top, depth, and summary data feeds offered by the Cboe Equities Exchanges to be greater than the amount that would be charged to subscribed to the Cboe One Feed, thereby ensuring that vendors can.

Moreover, the proposed External Distribution Fee credit would not permit unfair discrimination because all of the Exchange's subscribers and market data vendors are eligible to qualify for such credit. Further, the

Cboe One Feeds are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make these data products available. Accordingly, Distributors (including vendors) and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the External Distribution Fee credit will enhance competition because doing so will better enable the Exchange to not incentivize subscriptions to equities data that is competitive with similar products offered by other exchanges, but will also provide pricing that is competitive as well. Namely, the Cboe One Feeds provide investors with an alternative for receiving market data that competes directly with similar market data products currently offered by the New York Stock Exchange¹⁵ and the Nasdaq Stock Market, LLC.¹⁶ In this regard, the fees for the Cboe One Feeds are constrained by competition, and the existence of alternatives to the Cboe One Feeds makes the External Distribution Fee credit essential a critical tool in enabling the Exchange to offer attractive pricing for its equities data.

Although the Cboe Equities Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Feeds, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that comprise the Cboe One Feed. Any entity that receives, or elects to receive, the underlying data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Feed. Moreover, the current Distribution Fees that the Exchanges charges for the Cboe One

Feed are not less than the combined fee of subscribing to each individual data feed. In this regard, by enabling a vendor to apply their Cboe One Summary User Fees to their External Distribution Fees for their Cboe One Summary or Cboe One Premium subscription, the Exchange will be better positioned to make its Cboe One Feed more attractive to market participants that have available to them a variety of similar, and competitively priced products.

Moreover, the proposed External Distributor Fee credit will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, all of the Exchange's subscribers and market data vendors are eligible to qualify for such credit, and the Cboe One Feeds are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make these data products available. Distributors (including vendors) and Users can discontinue use at any time. Additionally, as also noted, while the credit applies only to External Distributors, the Exchange believes such distinction is appropriate because this pricing mechanism is designed to help incentivize and broaden external usage, and Internal Distributors only have internal users.

Overall, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to the Cboe One Feed, including the existing underlying feeds, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

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.

¹³ A "Non-Professional User" of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States. *Supra* note 7.

¹⁴ 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. *Supra* note 7.

¹⁵ See NYSE Best Quote & Trades, available at: <https://www.nyse.com/data-products/catalog/nyse-bqt>.

¹⁶ See Nasdaq Basic, available at: <https://www.nasdaq.com/solutions/data/equities/nasdaq-basic>.

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 Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ 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-2025-035 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-2025-035. 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-

035 and should be submitted on or before January 29, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2026-00110 Filed 1-7-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104541; File No. SR-IEX-2025-39]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Fee Schedule To Modify the Required Criteria for Certain Transaction Fee Tiers Applicable to Executions Priced at or Above \$1.00 Per Share and To Introduce Two Options for Applying the Incremental Fee Tiers, in Order To Comply With Amended Rule 610(d) of Regulation NMS

January 5, 2026.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 23, 2025, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,⁴ and Rule 19b-4 thereunder,⁵ the Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members⁶ (the "Fee Schedule")⁷ pursuant to IEX Rule 15.110(a) and (c) to modify the required criteria for certain transaction fee tiers applicable to executions priced at or

above \$1.00 per share and to introduce two options for applying the Incremental Fee tiers, in order to comply with amended Rule 610(d) of Regulation NMS.⁸ Changes to the Fee Schedule pursuant to this proposal are effective upon filing,⁹ and will be operative on February 2, 2026.

The text of the proposed rule change is available at the Exchange's website at <https://www.iexexchange.io/resources/regulation/rule-filings> and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its Fee Schedule, so that starting on February 2, 2026,¹⁰ all transaction fees and rebates will be determinable at the time of execution, in compliance with Rule 610(d) of Regulation NMS.¹¹ As detailed below, any transaction fees or rebates that are currently based upon a Member's trading or quoting activity in the current month will, starting in February 2026, be based upon that Member's trading or quoting activity in the immediately preceding month.¹² Additionally, as discussed below, IEX proposes to offer Members two options for how the Exchange will calculate a

¹⁷ 17 CFR 242.610(d).

¹⁵ U.S.C. 78s(b)(3)(A)(ii).

¹⁰ See Securities Exchange Act Release No. 104172 (October 31, 2025), 90 FR 51418 (November 17, 2025) (extending the compliance date for changes to Rule 610(d) to the first business day of February 2026, *i.e.* February 2, 2026).

¹¹ See 17 CFR 242.610(d) ("Transparency of fees. A national securities exchange shall not impose, nor permit to be imposed, any fee or fees, or provide, or permit to be provided, any rebate or other remuneration, for the execution of an order in an NMS stock that cannot be determined at the time of execution.")

¹² All of the fee changes in this proposal relate to executions at or above \$1.00, because, as described below, the only incentive fee that applies to executions priced below \$1.00 is already determinable at the time of the execution.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ See IEX Rule 1.160(s).

⁷ See Investors Exchange Fee Schedule, available at <https://www.iexexchange.io/resources/trading/fee-schedule>.

Member's Incremental Fee Tier based upon the Member's trading activity in the prior month.

On September 18, 2024, the Commission adopted a final rule titled "Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders."¹³ As part of the NMS Amendments Final Rule, the Commission amended Rule 610 to add a new subsection (d) "Transparency of Fees," that:

prohibits a national securities exchange from imposing, or permitting to be imposed, any fee or fees, or providing, or permitting to be provided, any rebate or other remuneration (e.g., discounted fees, other credits, or forms of linked pricing) for the execution of an order in an NMS stock unless such fee, rebate or other remuneration can be determined by the market participant at the time of execution. . . . any national securities exchange that imposes a fee or provides a rebate that is based on a certain volume threshold, or establishes tier requirements or tiered rates based on minimum volume thresholds, would be required to set such volume thresholds or tiers using volume achieved during a stated period prior to the assessment of the fee or rebate so that market participants are able to determine what fee or rebate level will be applied to any submitted order at the time of execution."¹⁴

The NMS Amendments Final Rule set the compliance date for the changes to Rule 610(d) as "the first business day of November 2025," which was November 3, 2025.¹⁵ As noted above, the SEC subsequently extended the compliance date to February 2, 2026.¹⁶ Thus, IEX is now proposing to modify its Fee Schedule so that it will comply with Rule 610(d) of Regulation NMS, as amended, as of February 2, 2026.

As reflected in the Transaction Fees section of the Fee Schedule, IEX currently uses volume-based pricing structures (both rebates and fees) (collectively "Fee Tiers") that are designed to improve market quality on the Exchange by incentivizing Members to send more displayed and non-

displayed liquidity adding and removing orders to the Exchange. Several of IEX's Fee Tiers use a Member's "Average Daily Volume" ("ADV") as the primary criteria for evaluating eligibility for the volume-based fees or rebates. The Fee Schedule defines ADV as "average daily volume calculated as the number of shares added or removed (as applicable) that execute at or above \$1.00 per share, per day. ADV is calculated on a monthly basis."¹⁷ In calculating a Member's ADV, the numerator is the share volume of applicable transactions (i.e., adding, removing, displayed, non-displayed, as applicable) during the month for which the fee or rebate tier applies. Similarly, the denominator of a Member's ADV is the total number of eligible trading days in the month for which the fee or rebate tier applies. Accordingly, the rebate or fee tiers in the Fee Schedule are currently determined by the Member's ADV during the same month for which the fees or rebates apply.

To comply with the Rule 610(d) of Regulation NMS, as amended, IEX is proposing to modify the definition of ADV in its fee schedule to state that the ADV is calculated "on a monthly basis, based on trading activity in the immediately preceding month, unless otherwise indicated in the Fee Schedule."¹⁸ Consistent with that change, where appropriate, IEX proposes to modify any references to ADV calculations in the Fee Schedule that are in the present tense to instead be in the past tense (e.g., instead of saying "Member: (1) adds at least 30,000,000 ADV of displayed liquidity; or (2) adds at least 25,000,000 ADV of displayed liquidity and trades at least 30,000,000 non-displayed ADV" to qualify for Displayed Liquidity Adding Rebate Tier 7, the Fee Schedule would now say "Member: (1) added at least 30,000,000 ADV of displayed liquidity; or (2) added at least 25,000,000 ADV of displayed liquidity and traded at least 30,000,000 non-displayed ADV").

IEX notes that several of its current transaction fees, including some rebates, will remain unchanged by this fee filing because they are already determinable at the time of execution. For example, executions below \$1.00 per share ("sub-dollar trades") that add displayed volume receive a rebate of 0.15% of the Total Dollar Value ("TDV") of the trade. Because the TDV is known at the time

of the execution, the rebate is also determinable at the time of the execution. For example, an execution of a displayed order to sell 1,000 shares of a security for \$0.50 per share has a total dollar value of \$500, and will earn a rebate of \$0.75 cents for the transaction.

The IEX fees and rebates affected by this fee filing¹⁹ fall into three categories: (1) the Displayed Liquidity Adding Rebate Tiers; (2) the Displayed Liquidity Removing Fee Tiers; and (3) the Incremental Fee Tiers.

Displayed Liquidity Adding Rebate Tiers²⁰

There are three general ways in which a Member can qualify for one or more of IEX's Displayed Liquidity Adding Rebate Tiers: (1) through displayed liquidity adding executions; (2) through non-displayed executions (adding and removing), and (3) by satisfying quoting requirements in a minimum amount of ETPs. To the extent these tiers are based on volume-based transaction activity or quoting activity, the Exchange's proposed changes would make the reference period used to determine eligibility the immediately preceding month. The impact of the proposed changes in this filing on the Displayed Liquidity Adding Rebate Tiers is discussed below.

Displayed Liquidity Adding Executions

Using Displayed Liquidity Adding Rebate Tier 7 as an example, under the proposed changes, if a Member either: (1) added at least 30,000,000 ADV of displayed liquidity or (2) added at least 25,000,000 ADV of displayed liquidity and traded at least 30,000,000 non-displayed ADV in January 2026, at the end of January 2026 that Member will know that it has qualified for Tier 7 in both January and February 2026.²¹

¹⁹ The Exchange also offers incentive payments for quoting activity in certain securities through the Supplemental Market Quality Program ("SMQ"). The SMQ—which is distinct from the ETP quoting activity contained in the Displayed Liquidity Adding Rebate Tiers, described in more detail below—is unaffected by amended Rule 610(d) because the SMQ payments are based on quoting activity rather than on volume of executions achieved during a certain time period, and have no effect on transaction fees or rebates. See Rule 610(d) of Reg NMS (describing its applicability to fees, rebates, or other remuneration "for the execution of an order in an NMS stock"); see also Fee Schedule, Transaction Fees—Supplemental Market Quality Program.

²⁰ See Fee Schedule, Transaction Fees, Fee Code Combinations and Associated Fees, fn. 4.

²¹ On September 30, 2025, and October 31, 2025, IEX informed its Members, via two Trading Alerts, of IEX's general plans for compliance with amended Reg NMS Rule 610(d)'s fee determinism requirement. See Trading Alert #2025-031, available at <https://iextrading.com/alerts/#/316> and Trading Alert #2025-032, available at <https://iextrading.com/alerts/#/317>. And IEX will send a

¹³ See Securities Exchange Act Release No. 101070 (September 18, 2024), 89 FR 81620 (October 8, 2024) (File No. S7-30-22) ("NMS Amendments Final Rule").

¹⁴ *Id.*, 89 FR at 81663.

¹⁵ See NMS Amendments Final Rule, *supra* note 13, 89 FR at 81680. At the request of other national securities exchanges, the Commission stayed the compliance dates of parts of the NMS Amendments Final Rule, however the Commission did not stay the effective date of the changes to Reg NMS Rule 610(d), finding "no reason to delay the benefits to investors, including the additional certainty, transparency, and clarity of the exchange fee schedules, of [] amendments to Rule 610(d)." See In the Matter of the Motion by Nasdaq, Inc., et al., Securities Exchange Act Release No. 101899, File No. S7-30-22, at *2 (December 12, 2024) (Order Granting Partial Stay).

¹⁶ See *supra* note 10.

¹⁷ See IEX Fee Schedule, Transaction Fees, Definitions.

¹⁸ As discussed below, the base fee rates will apply to new members during their first month of membership as no prior month activity will be available as the basis for volume-based fees or rebates.

Thus, before the start of February, the Member will know that any displayed liquidity adding trades made on IEX in February 2026 would receive the applicable rebate of \$0.0022 per share. If that same Member had 29,000,000 ADV of displayed liquidity adding trades in the month of February 2026, at the end of February the Member would know that it had qualified for Displayed Liquidity Adding Rebate Tier 6 for the month of March 2026, because Tier 6 has as one of its eligibility criteria that the Member added at least 20,000,000 ADV of displayed liquidity and less than 30,000,000 ADV of displayed liquidity. Thus, at the end of February, the Member would know that it would be eligible to receive the applicable rebate of \$0.0020 per share for any displayed liquidity adding trades in March.

Non-Displayed Executions

Displayed Liquidity Adding Rebate Tiers 2, 3, 5, 6, and 7 all have eligibility criteria related to a Member's "non-displayed ADV."²² For example, a Member that trades at least 15,000,000 non-displayed ADV qualifies for Displayed Liquidity Adding Rebate Tier 5 (if the Member traded at least 20,000,000 non-displayed ADV, the Member would qualify for the next higher rebate tier, Displayed Liquidity Adding Rebate Tier 6). Thus, currently if a Member had 16,000,000 non-displayed ADV in the month of January 2026, that Member would qualify for Displayed Liquidity Adding Rebate Tier 5 and receive a rebate of \$0.0018 per share on all of its displayed liquidity adding trades in the month of January 2026.

Under this proposed fee change, at the end of January, the Member would know that it qualified for Displayed Liquidity Adding Rebate Tier 5 for the month of February 2026 based upon its non-displayed execution activity in January 2026, and again the Member would receive a rebate of \$0.0018 per share on all of its displayed liquidity adding trades in the month of February 2026.

ETP Quoting

Displayed Liquidity Adding Rebate Tiers 3 and 4 also have eligibility criteria related to the Member's quoting activity in ETPs. Specifically, a Member

may qualify for Displayed Liquidity Adding Rebate Tier 3 if its "NBBO Time"²³ is at least 50% in at least 250 ETPs and may qualify for Displayed Liquidity Adding Rebate Tier 4 if its NBBO Time is at least 50% in at least 750 ETPs.

Currently, for the month of January 2026, a Member with an NBBO Time of at least 50% in at least 250 (but less than 750) ETPs would qualify for Displayed Liquidity Adding Rebate Tier 3 and receive a rebate of \$0.0014 per share for all displayed liquidity adding executions priced at or above \$1.00.

Because amended Rule 610(d) requires that transaction fees and rebates must be determinable at the time of the execution, IEX proposes to modify the definitions of Percent Time at NBB, Percent Time at NBO, and NBBO Time to reflect that when these terms are applied to any transaction fees or rebates, they will be calculated using the Member's quoting activity for the immediately preceding month.²⁴

Thus, as proposed, the above Member with an NBBO Time of at least 50% in at least 250 (but less than 750) ETPs in the month of January 2026 would know, at the end of October [sic], that it had qualified for Displayed Liquidity Adding Rebate Tier 3 for the month of February 2026, and would receive a rebate of \$0.0014 per share for all displayed liquidity adding executions priced at or above \$1.00 during February 2026. If that Member had an NBBO Time of at least 50% in at least 750 ETPs in the month of February 2026, the Member would know, at the end of February, that it had qualified for Displayed Liquidity Adding Rebate Tier 4 for the month of March 2026, and receive a rebate of \$0.0016 per share for all displayed liquidity adding executions during March 2026.

Displayed Liquidity Removing Fee Tiers

IEX also has two fee tiers for Displayed Liquidity Removing orders.

Currently, a Member that adds less than 25,000 ADV of displayed liquidity pays a fee of \$0.0030 for all displayed liquidity removing orders, while a Member that adds at least 25,000 ADV of displayed liquidity pays a fee of \$0.0022 for all displayed liquidity removing executions.

Thus, a Member that adds less than 25,000 ADV of displayed liquidity in January 2026 will be charged \$0.0030 per share for all executions that remove displayed liquidity. Under this proposed fee change, at the end of January 2026 that same Member will know that it will be charged \$0.0030 per share for all executions that remove displayed liquidity in the month of February 2026, based on its January displayed liquidity adding orders. Similarly, under the proposed fee change, if the Member adds at least 25,000 ADV of displayed liquidity in the month of February 2026, then at the end of the month it will know that it will be charged \$0.0022 per share for all displayed liquidity removing executions in the next month, March 2026.

Incremental Fee Tiers

IEX's Incremental Fee Tiers²⁵ are a volume-based fee incentive designed to incentivize Members to increase their non-displayed volume on the Exchange. Currently, Members who increase their non-displayed volume from August 2025 ("the Baseline Month"²⁶) by at least 10,000,000 non-displayed shares per day qualify for a reduced fee of \$0.0001 per share for certain executions of non-displayed orders.²⁷ Specifically, to qualify for the reduced fee (*i.e.*, Incremental Fee Tier 2), a Member must have an "Incremental non-displayed ADV"²⁸ that is at least 10,000,000 greater than its "Baseline non-displayed ADV."²⁹ Once a Member's Incremental non-displayed ADV is at least 10,000,000 greater than its Baseline non-displayed ADV, the Member is charged

²³ The Fee Schedule defines "NBBO Time" as the Member's "Percent Time at NBB" plus the Member's "Percent Time at NBO." "Percent Time at NBB (NBO)" is defined as the aggregate of the percentage of time during Regular Market Hours where a Member has a displayed order of at least one round lot at the NBB (NBO). For example, for a particular security, if a Member's Percent Time at NBB is 25% and Percent Time at NBO is 15%, its NBBO Time would be 40%. Alternatively, if a Member's Percent Time at NBB is 20% and concurrently, the Member's Percent Time at NBO is also 20%, then that Member's NBBO Time would be 40%.

²⁴ IEX also proposes to amend the definitions of these terms to clarify that these terms continue to refer to quoting activity for the current month when they are applied to the SMQ Program, an incentive payment for quoting in certain stocks that has no effect on transaction fees and rebates. See *supra* note 19.

²⁵ See Footnote 6 to the Transaction Fees section of the Fee Schedule.

²⁶ As noted in the Fee Schedule, the criteria to qualify for the Incremental Fee Tier will expire no later than February 28, 2026.

²⁷ The fee codes to which the Incremental Fee Tiers apply are "MI" (Adds non-displayed liquidity); "MIB" (Adds non-displayed liquidity in Tape B securities); "TIY" (Post Only order removes non-displayed liquidity); "TIYB" (Post Only order removes non-displayed liquidity in Tape B securities); "TI" (Removes non-displayed liquidity); and "TIB" (Removes non-displayed liquidity in Tape B securities).

²⁸ "Incremental non-displayed ADV" means executions with any of the Fee Code Combinations MI, MIB, TI, TIB, TIY, or TIYB that exceed the Baseline non-displayed ADV.

²⁹ "Baseline non-displayed ADV" means executions with any of the Fee Code Combinations MI, MIB, TI, TIB, TIY, or TIYB in August 2025.

Trading Alert to all Members providing more detail about these pending changes to its Fee Schedule in advance of the February 2, 2026, implementation date of these fees.

²² As set forth in the Fee Schedule, "non-displayed ADV" refers to executions with the following Fee Code Combinations: MI, MIB, TI, TIB, TIY, TIYB, TIR, TLW, TLWB, and MIA.

the reduced fee of \$0.0001 per share for the applicable non-displayed executions.

The reduced fee of \$0.0001 per share for Incremental Fee eligible ADV in excess of the Baseline non-displayed ADV is capped at a Member's Baseline non-displayed ADV, and any additional volume is charged the regular fee of \$0.0010 per share for either adding or removing non-displayed liquidity.

By way of example, currently if a Member's Baseline non-displayed ADV is 20,000,000, and its Incremental Fee eligible ADV³⁰ for January 2026 is 30,000,000, then the Member's Incremental non-displayed ADV would be 10,000,000 for January 2026. For that month, the Member would pay the reduced \$0.0001 fee for 10,000,000 of its Incremental Fee eligible executions and would pay the regular fee of \$0.0010 for 20,000,000 of its Incremental Fee eligible executions. If the Member's Incremental Fee eligible ADV for January 2026 was 40,000,000, then the Member's Incremental non-displayed ADV would be 20,000,000 for January 2026. For that month, the Member would pay the reduced \$0.0001 fee for 20,000,000 of its Incremental Fee eligible executions and would pay the regular fee of \$0.0010 for 20,000,000 of its Incremental Fee eligible executions.

IEX proposes to modify the definition of Incremental non-displayed ADV so that starting on February 2, 2026, it will refer to "executions in the immediately preceding month of Incremental Fee eligible ADV that exceed the Baseline non-displayed ADV" (emphasis added). Thus, starting with the month of February, Members will know that they qualified for Incremental Fee Tier 2 in that month if they exceeded their Baseline non-displayed ADV by at least 10,000,000 in the immediately preceding month.

Referring to the same example above, at the end of January, the Member would know that for February 2026, the Member qualified for Incremental Fee Tier 2 based upon its January trading activity. As described above, starting in February 2026, Members will need to be

able to determine the fees charged for an execution at the time of the execution.

To satisfy the requirements of Rule 610(d) of Regulation NMS, and as noted above, IEX proposes to offer Members two options for how the Exchange will charge for Incremental Fee eligible executions for a given month, both of which will allow Members to determine the fees at the time of applicable executions.

Proposed Changes

A. Explanatory Bullets

IEX proposes to add the following explanatory bullets to the beginning of the Incremental Fee Tiers section of the Fee Schedule (above the existing table listing the two Incremental Fee Tiers):

- IEX's Incremental Fee Tiers provide Members an opportunity to pay a reduced fee of \$0.0001 per share (the "Incremental Fee") for Incremental Fee eligible ADV in the current month.

- A Member qualifies for the Incremental Fee (*i.e.*, Incremental Fee Tier 2) in the current month if its Incremental non-displayed ADV exceeded its Baseline non-displayed ADV by at least 10,000,000.

- Incremental Fee eligible ADV that does not qualify for Incremental Fee Tier 2 is charged the base rate of \$0.0010 per share.

- The current month's Incremental Fee eligible ADV will determine the Member's qualification for Incremental Fee Tier 2 for the next month.

- IEX offers Members two options for calculating trading fees for the Incremental Fee Tier, each of which achieves fee determinism.

- Members shall notify IEX of which Incremental Fee option the Member wants applied to its Incremental Fee eligible ADV, in such manner as specified by the Exchange, in advance of the beginning of a new calendar month. If the Member does not select an option (and has not previously selected an option), the default option for calculating the Member's Incremental Fee will be Option 1.

These bullets provide an overview of the two Incremental Fee options and inform Members that they can qualify for Incremental Fee Tier 2 in the current month if their Incremental non-displayed ADV in the prior month exceeded their Baseline non-displayed ADV by at least 10,000,000.

Additionally, the explanatory bullets note that Incremental Fee eligible ADV that does not qualify for Incremental Fee

Tier 2 is charged the base rate of \$0.0010 per share.

B. Changes to Incremental Fee Tier Table

IEX also proposes to make the following changes to the Incremental Fee Tier table:

- Add as a title for the table: "Incremental Fee Tier Fee Calculation Table (used by both Options 1 and 2)";
- Revise the language in the "Required Criteria" cells to change "is" to "was", because Incremental non-displayed ADV has been redefined to be based on the prior month's activity;
- Remove the second and third sentences in "footnote a" to the table, because they no longer reflect the manner in which Incremental Fees are calculated.

C. Option 1

Under Option 1, a Member's Incremental Fee eligible ADV in the current month will incur a fee representing a blended average rate of their fee-eligible activity in the prior month (starting in February 2026).³¹

To effect these changes, IEX proposes to add a section describing "Incremental Fee Tier Option 1" immediately following the Incremental Fee Tier Calculation Table. Under the section header, IEX proposes to add the following text:

- For Option 1, IEX will apply the Incremental Fee Tier Calculation Table to the Member's Incremental Fee eligible ADV in the prior month to calculate the blended rate based on the fees charged to the Member for its prior month activity (rounded to five decimal places). The blended rate will be applied to all Incremental Fee eligible ADV in the current month.

- The following examples demonstrate how this fee is determinable at the time of execution (in the examples, millions are abbreviated as "mm", *e.g.*, "20,000,000" is written as "20mm"):

In order to demonstrate how the fee works, IEX proposes to include this set of examples, with three explanatory footnotes, under the text described above:

³⁰ IEX proposes to introduce a new defined term, "Incremental Fee eligible ADV" to the Definitions subsection of the Transaction Fees section of the IEX Fee Schedule. IEX proposes to define the term as "executions with any of the Fee Code Combinations MI, MIB, TI, TIB, TIY, or TIYB." IEX also proposes to modify the definition of "Baseline non-displayed ADV" to replace "executions with any of the Fee Code Combinations MI, MIB, TI, TIB, TIY, or TIYB" with "executions of Incremental Fee eligible ADV."

³¹ For example, if a Member's Baseline non-displayed ADV is 20,000,000, and its Incremental Fee eligible ADV for January 2026 is 30,000,000 (*i.e.*, an Incremental non-displayed ADV of 10,000,000), the Member's blended rate for February would be \$0.0007 per share (because 20,000,000 would be charged \$0.0010 and 10,000,000 would be charged \$0.0001).

Ex.	Aug. 2025 vol. (baseline non-displayed ADV) (mm)	Jan. 2026 ADV* (mm)	Feb. 2026 ADV* (mm)	Mar. 2026 ADV* (mm)	January fees	February fees	March fees
1	20	30	35	25	• \$0.0007/share**	• \$0.0007/share**	• \$0.00061/share.***
2	20	40	25	35	• \$0.00055/share	• \$0.00055/share	• \$0.0010/share.
3	20	40	50	10	• \$0.00055/share	• \$0.00055/share	• \$0.00064/share.

* Incremental Fee eligible ADV.

** A Member with a Baseline non-displayed ADV of 20,000,000 that has Incremental Fee eligible ADV of 30,000,000 in January will pay \$0.0007 for all Incremental Fee eligible ADV in both January and February, because that is the blended average of the Member's January trading fees (\$0.0010/share fee for 20,000,000 and \$0.0001/share fee for 10,000,000).

*** A Member with a Baseline non-displayed ADV of 20,000,000 that has an Incremental Fee eligible ADV of 30,000,000 in January and 35,000,000 in February will pay \$0.00061 for all Incremental Fee eligible ADV in March, because that is the blended average of the Member's February trading fees (\$0.0010/share fee for 20,000,000 and \$0.0001/share fee for 15,000,000). Since the prior month's blended rate is used, the fact that the Member's March 2026 volumes did not exceed the baseline would not be taken into account until April 2026 billing.

D. Option 2

Under proposed Option 2, Incremental Fees are calculated based on total shares traded in the current month, not a blended rate of the prior month's Incremental Fee eligible ADV (like in Option 1). Thus, Option 2 introduces the following terms:

○ “Baseline non-displayed TAV” is calculated by multiplying the Baseline non-displayed ADV times the number of trading days in the current month.

○ “Incremental Fee eligible TAV” is calculated by multiplying the current month's Incremental Fee eligible ADV times the number of trading days in the current month.

○ “Incremental non-displayed TAV” is the amount by which the current month's Incremental Fee eligible TAV exceeds the Baseline non-displayed TAV. If the Baseline non-displayed TAV is greater than the Incremental Fee eligible TAV, this value is 0. If this value exceeds the Baseline non-

displayed TAV, the number of shares eligible for the reduced Incremental Fee is capped at Baseline non-displayed TAV.

In order to demonstrate how Option 2 works and how the fee is determinable at the time of execution, IEX proposes to include in the Fee Schedule this set of examples under the text described above, and text explaining that in the examples, millions are abbreviated as “mm”, e.g., “20,000,000” is written as “20mm”:

	Aug. 2025 ADV* (mm)	Jan. 2026 ADV* (mm)	February 2026 (19 trading days)				February 2026 fees
			ADV* (mm)	Total volume** (mm)	Baseline volume***	Incremental volume****	
1	20	30	35	665	380mm	285mm	• \$0.0010/share on first 380mm shares. • \$0.0001/share on remaining 285mm shares.
2	20	40	25	475	380mm	95mm	• \$0.0010/share on first 380mm shares. • \$0.0001/share on remaining 95mm shares.
3	20	40	50	950	380mm	570mm (only 380mm eligible for \$0.0001 fee).	• \$0.0010/share on first 380mm shares. • \$0.0001/share on next 380mm shares. • \$0.0010/share on remaining 190mm shares.
	Aug. 2025 ADV* (mm)	Feb. 2026 ADV* (mm)	March 2026 (22 trading days)				March 2026 fees
			ADV* (mm)	Total volume** (mm)	Baseline volume***	Incremental volume****	
1	20	35	25	550	440mm	110mm	• \$0.0010/share on first 440mm shares. • \$0.0001/share on remaining 110mm shares.
2	20	25	35	770	N/A (Feb 2026 ADV did not exceed Aug 2025 ADV by at least 10mm).	N/A	• \$0.0010/share on all 770mm shares.
3	20	50	10	220	440mm	0 (Baseline Vol. > Total Vol.).	• \$0.0010/share on all 220mm shares.

* Incremental Fee eligible ADV.

** Incremental Fee eligible TAV.

*** Baseline non-displayed TAV.

**** Incremental non-displayed TAV.

As shown in the above examples, the fees for Incremental Fee eligible executions under Option 2 will change during the month in which they are billed, but in a manner in which the fees for any executions are determinable at the time of the execution. IEX introduced the Incremental Fee Tiers in September 2025,³² and based upon the past several months of trading activity, believes that its Members' trading systems are able to accommodate such pricing, recognizing when their Incremental Fee eligible executions have crossed the first threshold that qualifies the next executions for the \$0.0001 per share discounted fee, as well as if they reached the cap on the executions eligible for the discounted fee, meaning any additional Incremental Fee eligible executions for that month will be charged \$0.0010 per share. Additionally, upon request, IEX will provide a tally of month-to-date executions to any Member that qualified for the Incremental Fee based upon its prior month activity, in order to facilitate the Member's ability to know the fee charged at the time of execution. Further, IEX will continue to bill Members at the end of the month, and the total amount billed will reflect this pricing.

The Exchange is not proposing to change the amounts of any rebates or fees specified in the transaction fee tiers, nor the fees applicable to executions below \$1.00 per share. The Exchange is also not proposing to make any changes to the fees applicable to the execution of Retail orders that add or remove displayed or non-displayed liquidity.

The Exchange plans to implement the proposed fee change on February 2, 2026, subject to the filing and effectiveness of this proposed rule change.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)³³ of the Act in general, and furthers the objectives of Section 6(b)(4)³⁴ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that the proposed fee change is reasonable, fair and equitable, and non-discriminatory.

As described in the Purpose section, all of these proposed fee changes are being made in response to the amendments to Rule 610(d) of Regulation NMS, which the Commission has determined have a compliance date of February 2, 2026. As noted by the Commission in the NMS Amendments Final Rule, these proposed fee changes are designed to make the Exchange's transaction fees and rebates determinable at the time of the execution and thereby protect investors through more fee transparency, as required by the Act.

Further, IEX believes that the proposed introduction of two options for applying the Incremental Fee in a deterministic manner is consistent with Rule 610(d) of Regulation NMS, as well as the provisions of Section 6(b)³⁵ of the Act in general, and furthers the objectives of Section 6(b)(4)³⁶ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. First, as discussed in the Purpose section, Members applying either option will be able to determine the fee for any executions at the time of the execution. Second, the Exchange understands that different firms, using different trading strategies, might prefer one of the Incremental Fee options over the other. And third, Members will always be free to change the Incremental Fee option applied to their Incremental Fee eligible executions before the beginning of trading in the next month. For these reasons, the Exchange believes that the proposed fee change is reasonable, fair and equitable, and non-discriminatory. Additionally, IEX believes that setting a fixed decimal point to which blended rate fees will be rounded, and communicating that decimal point to Members, is consistent with the Act in that it supports each Member's ability to determine the exact fee charged for any execution at the time of the transaction. This transparency around how the average blended rates will be applied to a Member's activity will allow Members to more precisely calculate their blended rate fees, thereby ensuring equitable allocation of fees while reducing the potential for confusion about the fees that IEX will charge under Incremental Fee Tier Option 1.

Accordingly, IEX has designed the proposed changes to its Fee Schedule to allow for a continued transparent and equitable distribution of its fees that is consistent with the goals and

requirements of the NMS Amendments Final Rule. IEX notes that all other national securities exchanges that offer transaction fee incentives based upon a Member's trading or quoting activity will be similarly changing their fee schedules to comply with the February 2, 2026 compliance deadline.

As discussed above, IEX does not believe that any aspect of this proposal raises new or novel issues not already considered by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Because these changes are being made in response to a regulatory requirement set forth by the Commission, these changes are not designed to serve any competitive purpose, let alone create any burden on competition. Rather, they are designed to ensure that the Commission's requirements for exchange transaction fees apply on the Exchange just as they do on any other national securities exchange. Thus, the Exchange does not believe that the proposed rule change will impose any burden on intermarket competition, let alone a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Moreover, as noted in the Statutory Basis section, the Exchange does not believe that the proposed changes raise any new or novel issues not already considered by the Commission.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because these changes are being made in response to a Commission rule and will apply equally to all Members of the Exchange.

The Exchange further notes that the proposed rule change is designed to align the Exchange's Fee Schedule with amended Rule 610(d) by providing certainty as to the Exchange's transaction fees at the time of execution. The Exchange also notes that all Industry Members that offer tiered fees and rebates based on trading volume in NMS Securities will be required to comply with amended Rule 610(d). To the extent that competing exchanges are proposing or will propose similar amendments to their Fee Schedules, this proposed rule change does not impose a burden on competition.

³² See Trading Alert # 2025-024, available at <https://iextrading.com/alerts/#/308>.

³³ 15 U.S.C. 78f.

³⁴ 15 U.S.C. 78f(b)(4).

³⁵ 15 U.S.C. 78f.

³⁶ 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)³⁷ of the Act.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)³⁸ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2025-39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-IEX-2025-39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish

to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-IEX-2025-39 and should be submitted on or before January 29, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026-00114 Filed 1-7-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104538; File No. SR-CboeEDGX-2025-087]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Cboe One Fees

January 5, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 22, 2025, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") proposes to amend its fee schedule as it relates to Cboe One Summary and Cboe One Premium External Distribution Fees. The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/equities/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

³⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to clarify how User³ Fees are credited to Cboe One Summary and Cboe One Premium External Distribution⁴ Fees.⁵ By way of background, the Exchange's Cboe One Feed⁶ is a market data product that provides cost-effective, high-quality reference quotes and trade data for market participants looking for comprehensive, real time market data. The Cboe One Feed provides market participants a comprehensive, unified view of the market from all four Cboe equities exchanges: Cboe BYX Exchange, Incorporated ("BYX"), Cboe BZX Exchange, Incorporated ("BZX"), Cboe EDGA Exchange, Incorporated ("EDGA"), and Cboe EDGX Exchange, Incorporated (the "Exchange," or "EDGX") (collectively, "Affiliates" and together with the Exchange, "Cboe Equities Exchanges").

Two versions of the Cboe One Feed are offered—Cboe One Summary and Cboe One Premium—allowing subscribers to select their preferred level of depth. Both versions provide subscribers with aggregated quote and trade updates for the Cboe Equities

³ A User of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data. See Cboe U.S. Equities Fee Schedules, EDGA Equities, Market Data Fees, available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/.

⁴ 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. *Id.*

⁵ The proposed fee changes will take effect on December 22, 2025.

⁶ See "Cboe One Feed," available at: https://www.cboe.com/market_data_services/us/equities/cboe_one/.

³⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁸ 15 U.S.C. 78s(b)(2)(B).

Exchanges. In addition to aggregated quote and trade data, the Cboe One Premium Feed also includes five levels of aggregate depth information for all four exchanges.

Currently, the Exchange charges External Distributors a monthly fee of \$5,000⁷ for Cboe One Summary, and a monthly fee of \$12,500⁸ for Cboe One Premium. The Exchange's fee schedule also currently provides External Distributors the ability to receive a credit against their External Distribution fees. Specifically, the fee schedule states, "Each External Distributor will be eligible to receive a credit against its monthly Distributor Fee for the Cboe One Feed equal to the amount of its monthly User Fees up to a maximum of the Distributor Fee for the Cboe One Feed."

However, as currently codified, it is unclear to subscribers and potential subscribers that their Cboe One Summary User Fees can be applied to either their Cboe One Summary or Cboe One Premium External Distribution Fees. Accordingly, in order clarify the fee schedule the Exchange now wishes to amend the fee schedule to provide that: (i) Cboe One User Summary Fees can be applied to both Cboe One Summary and Cboe One Premium External Distribution Fees; and (ii) Cboe One Premium User Fees can only be applied to Cboe One Premium External Distribution Fees. By way of illustration, an External Distributor of Cboe One Summary who has \$4,500 in Cboe One Summary User Fees would be able to credit those User Fees against their Cboe One Summary External Distribution Fee, and pay a net fee of \$500—*i.e.*, Cboe One Summary External Distribution Fee (\$5000) Less the Cboe One Summary User Fees (\$4500) = \$500. Similarly, an External Distributor that subscribes to both Cboe One Summary and Cboe One Depth that has Cboe One Summary User Fees totaling \$4,500 could also deduct their User Fees against their Cboe One Premium External Distribution Fee and pay a net fee of \$8,000—*i.e.*, \$12,500 (Cboe One Premium External Distribution Fee) minus \$4,500 (Cboe One Summary User Fees) = \$8,000. Finally, an External Distributor of Cboe One Premium who has Cboe One Premium User Fees totaling \$10,000 could deduct such User Fees from their Cboe One Premium External Distribution Fee and pay a net fee of \$2,500—*i.e.*, \$12,500 (Cboe One

Premium External Distribution Fee) minus \$10,000 (Cboe One Premium User Fees) = \$2,500.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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,¹² 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.

The Exchange believes these proposed amendments to its fee schedule are reasonable because it will now be clearer to subscribers of a Cboe One Feed how their User Fees may be applied to their External Distribution Fees. As noted above, External Distributors of Cboe One Summary could end up paying reduced costs, or no costs at all, by applying their Cboe One Summary User Fees to their Cboe One Summary or Cboe One Premium External Distribution Fees. Similarly, a Distributor that receives the Cboe One Premium Feed for External Distribution could end up paying reduced fees, or no fee at all, by applying their Cboe One Premium User Fees to their Cboe One Premium External Distribution Fees. As such, subscribers to both Cboe One Summary may now be further incentivized to upgrade their Cboe One

Summary subscriptions to Cboe One Premium, thereby benefiting their Users with the provision of not just aggregated trade and quotation information, but aggregated depth. Overall, the Exchange believes this clarifying change to its fee schedule will help to make high quality market data for the Cboe Equities Exchanges more readily available to a wider range of market participants.

Furthermore, the Exchange believes it is also equitable and not unfairly discriminatory to apply the credit to External Distributors only because, like the free 3-month credit, it is also intended to incentivize new External Distributors to enlist Users, including Non-Professional Users¹³ such as retail investors, to subscribe to the Cboe One Summary or Cboe One Premium Feed, in an effort to broaden the products' distribution.

While this incentive is not available for Internal Distribution¹⁴ of a Cboe One Feed, the Exchange believe it is appropriate as Internal Distributor have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside of their own firms. For these reasons, the Exchange believes it is appropriate to provide this incentive to only External Distributors. The Exchange also notes that the External Distributor Fee credit for the Cboe One Feed also helps to ensure that the proposed credit for the Cboe One Feed will not cause the combined cost of subscribing to the each of the top, depth, and summary data feeds offered by the Cboe Equities Exchanges to be greater than the amount that would be

¹³ A "Non-Professional User" of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States. *Supra* note 7.

¹⁴ 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. *Supra* note 7.

⁷ See Cboe U.S. Equities Fee Schedules, EDGA Equities, Market Data Fees, available at: https://www.cboe.com/us/equities/membership/fee_schedule/edgx/.

⁸ *Id.*

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ *Id.*

¹² 15 U.S.C. 78f(b)(4).

charged to subscribers to the Cboe One Feed, thereby ensuring that vendors can.

Moreover, the proposed External Distribution Fee credit would not permit unfair discrimination because all of the Exchange's subscribers and market data vendors are eligible to qualify for such credit. Further, the Cboe One Feeds are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make these data products available. Accordingly, Distributors (including vendors) and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the External Distribution Fee credit will enhance competition because doing so will better enable the Exchange to not incentivize subscriptions to equities data that is competitive with similar products offered by other exchanges, but will also provide pricing that is competitive as well. Namely, the Cboe One Feeds provide investors with an alternative for receiving market data that competes directly with similar market data products currently offered by the New York Stock Exchange¹⁵ and the Nasdaq Stock Market, LLC.¹⁶ In this regard, the fees for the Cboe One Feeds are constrained by competition, and the existence of alternatives to the Cboe One Feeds makes the External Distribution Fee credit essential a critical tool in enabling the Exchange to offer attractive pricing for its equities data.

Although the Cboe Equities Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Feeds, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that comprise the Cboe One Feed. Any entity that receives, or elects to receive, the underlying data feeds would be able to,

if it so chooses, to create a data feed with the same information included in the Cboe One Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Feed. Moreover, the current Distribution Fees that the Exchanges charges for the Cboe One Feed are not less than the combined fee of subscribing to each individual data feed. In this regard, by enabling a vendor to apply their Cboe One Summary User Fees to their External Distribution Fees for their Cboe One Summary or Cboe One Premium subscription, the Exchange will be better positioned to make its Cboe One Feed more attractive to market participants that have available to them a variety of similar, and competitively priced products.

Moreover, the proposed External Distributor Fee credit will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, all of the Exchange's subscribers and market data vendors are eligible to qualify for such credit, and the Cboe One Feeds are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make these data products available. Distributors (including vendors) and Users can discontinue use at any time. Additionally, as also noted, while the credit applies only to External Distributors, the Exchange believes such distinction is appropriate because this pricing mechanism is designed to help incentivize and broaden external usage, and Internal Distributors only have internal users.

Overall, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to the Cboe One Feed, including the existing underlying feeds, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

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 Act¹⁷ and paragraph (f) of Rule 19b-4¹⁸ 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-2025-087 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-2025-087. 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

¹⁵ See NYSE Best Quote & Trades, available at: <https://www.nyse.com/data-products/catalog/nyse-bqt>.

¹⁶ See Nasdaq Basic, available at: <https://www.nasdaq.com/solutions/data/equities/nasdaq-basic>.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

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–2025–087 and should be submitted on or before January 29, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2026–00112 Filed 1–7–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35858; 812–15930]

Denali Structured Return Strategy Fund, et al.

January 5, 2026.

AGENCY: Securities and Exchange Commission (“Commission” or “SEC”).

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees and early withdrawal charges.

APPLICANTS: Denali Structured Return Strategy Fund, Niagara Income Opportunities Fund, and Liquid Strategies, LLC.

FILING DATE: The application was filed on October 28, 2025, and amended on December 30, 2025.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC’s Secretary at Secretaries-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant

Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on January 30, 2026, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary.

ADDRESSES: The Commission: Secretaries-Office@sec.gov. Applicants: JoAnn M. Strasser, Esq., Thompson Hine LLP, 41 South High Street, Suite 1700, Columbus, Ohio 43215–6101, JoAnn.Strasser@thompsonhine.com, and Megan W. Clement, Esq., Thompson Hine LLP, 1919 M Street NW, Suite 700, Washington, DC 20036–3537, Megan.Clement@thompsonhine.com, with copies to: Agent for Service, The Corporate Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801.

FOR FURTHER INFORMATION CONTACT: Rachel Loko, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: For Applicants’ representations, legal analysis, and conditions, please refer to Applicants’ application, dated December 30, 2025, which may be obtained via the Commission’s website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC’s EDGAR system.

The SEC’s EDGAR system may be searched at <https://www.sec.gov/edgar/search/>. You may also call the SEC’s Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2026–00122 Filed 1–7–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104545; File No. SR–24X–2025–17]

Self-Regulatory Organizations; 24X National Exchange LLC; Notice of Filing of a Proposed Rule Change To Further Extend the Temporary Exemption From the Ownership and Voting Limitations in the Limited Liability Agreement of 24X Bermuda Holdings LLC

January 6, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on December 23, 2025, 24X National Exchange LLC (“24X” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b–4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to revise the Limited Liability Company Operating Agreement of 24X Bermuda Holdings LLC (the “24X Bermuda Holdco Agreement”) to extend the temporary exemption from the ownership and voting limitations set forth in Section 9.2(g) of the 24X Bermuda Holdco LLC Agreement with respect to Dmitri Galinov and his Related Persons until December 14, 2030. 24X Bermuda Holdings LLC (“24X Bermuda Holdco”) wholly owns 24X US Holdings LLC, which, in turn, wholly owns the Exchange. The text of the proposed rule change is available on the Exchange’s website (<https://equities.24exchange.com/regulation>) and at the principal office of the Exchange.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b–4(f)(6).

¹⁹ 17 CFR 200.30–3(a)(12).

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 is filing with the Commission a proposed rule change to revise the Third Amended and Restated Limited Liability Company Operating Agreement of 24X Bermuda Holdings LLC (the "24X Bermuda Holdco Agreement") to extend the temporary exemption from the ownership and voting limitations set forth in Section 9.2(g) of the 24X Bermuda Holdco LLC Agreement with respect to Dmitri Galinov and his Related Persons until December 14, 2030. 24X Bermuda Holdings LLC ("24X Bermuda Holdco") wholly owns 24X US Holdings LLC, which, in turn, wholly owns the Exchange.

a. Background

i. Temporary Exemption From Ownership and Voting Limitations

The 24X Bermuda Holdco LLC Agreement includes restrictions on the ability to own and vote units in 24X Bermuda Holdco ("Units").⁵ As the SEC stated in its approval order for the registration of the Exchange, "[t]hese limitations are designed to prevent any party to the 24X Bermuda LLC Agreement from exercising undue control over the operation of the Exchange and to ensure that the Exchange and the Commission are able to carry out their regulatory obligations under the Exchange Act."⁶

The relevant ownership limitation in the 24X Bermuda Holdco LLC Agreement provides that, for so long as 24X Bermuda Holdco shall control, directly or indirectly, 24X, no Person,

either alone or together with its Related Persons,⁷ are permitted to own, directly or indirectly, of record or beneficially, more than forty percent of the then issued and outstanding Units.⁸

In addition, with regard to the voting limitation, the 24X Bermuda Holdco LLC Agreement provides that no Person, alone or together with its Related Persons, may, directly, indirectly, or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of Units or give any consent or proxy with respect to Units representing more than 20% of the voting power of the then issued and outstanding Units.⁹ Nor may any Person, either alone or together with its Related Persons, enter into any agreement, plan or other arrangement with any other Person, either alone or together with its Related Persons, under circumstances that would result in the Units that are subject to such agreement, plan or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote, or cause the voting of Units that would represent more than 20% of such voting power.¹⁰

As set forth in Section 9.2(g)(i) of the 24X Bermuda Holdco LLC Agreement, Dmitri Galinov and his Related Persons have a temporary exemption from the ownership limitation set forth in Section 9.2 of the 24X Bermuda Holdco LLC Agreement until nine months after the Commission grants 24X's application for registration as a national securities exchange or until two months after 24X commences operation, if later than nine months.¹¹ Further, the 24X Bermuda Holdco LLC Agreement states

⁷ For the definition of a Related Person, see Section 1.49 of the 24X Bermuda Holdco LLC Agreement.

⁸ Section 9.2(a)(i) of the 24X Bermuda Holdco LLC Agreement. While Section 9.2(a)(ii) of the 24X Bermuda Holdco LLC Agreement also sets forth an ownership restriction that applies to 24X Exchange Members, this provision does not apply to Dmitri Galinov; the ownership limitation that does apply to Dmitri Galinov and his Related Persons is set forth in Section 9.2(a)(i) of the 24X Bermuda Holdco LLC Agreement.

⁹ Section 9.2(a)(iii) of the 24X Bermuda Holdco LLC Agreement.

¹⁰ *Id.*

¹¹ Section 9.2(g)(i) of the 24X Bermuda Holdco LLC Agreement. On September 25, 2025, this exemption was extended until two months after the Exchange commenced operations. See Securities Exchange Act Release No. 10453 (September 25, 2025), 90 FR 47111 (September 30, 2025) ("Two-Month Extension Release"). The Exchange commenced operations on October 14, 2025. Therefore, the exemption was extended until December 14, 2025.

that if Dmitri Galinov and his Related Persons do not comply with the ownership limitation in Section 9.2 of the 24X Bermuda Holdco LLC Agreement within the applicable time period, then 24X Bermuda shall redeem all of the Units the holding of which by Dmitri Galinov and/or his Related Persons results in a violation of Section 9.2 for a price per Unit, as applicable, equal to the lesser of (a) book value or (b) Fair Market Value of such Units.¹²

Dmitri Galinov and his Related Persons also have a temporary exemption from the voting limitation set forth in Section 9.2 of the 24X Bermuda Holdco LLC Agreement until nine months after the Commission grants 24X's application for registration as a national securities exchange or until two months after 24X commences operation, if later than nine months, but only with respect to any vote regarding any merger, consolidation or dissolution of the 24X Bermuda or any sale of all or substantially all of the assets of the 24X Bermuda.¹³

When the Commission approved the original limited temporary exemption in Section 9.2(g) of the 24X Bermuda Holdco LLC Agreement from the ownership limitation and voting limitations set forth in Section 9.2 of the 24X Bermuda Holdco LLC Agreement for Dmitri Galinov and his Related Persons as consistent with the Exchange Act, the Commission determined that the limited, defined period time in which the exemption would be in place would prevent Dmitri Galinov and his Related Persons from exercising undue control over 24X and minimize the possibility that 24X's ability to carry out its self-regulatory responsibilities under the Exchange Act could be impaired.¹⁴ In addition, the Commission noted that, because the exemption from the voting limitation applies only with respect to the limited situations involving any merger, consolidation or dissolution of 24X Bermuda Holdco or any sale of all or substantially all of the assets of the 24X Bermuda Holdco, the exemption would not permit undue control over 24X or impair the regulatory responsibilities of 24X.¹⁵ The Commission further noted that the "temporary exemption is designed to afford Dmitri Galinov and his Related Persons the ability to protect the investment they have already made in the establishment of 24X that is over the current ownership limitation,

¹² *Id.*

¹³ Section 9.2(g)(ii) of the 24X Bermuda Holdco LLC Agreement.

¹⁴ 24X Registration Approval Order at 97098.

¹⁵ *Id.*

⁵ See Section 9.2 of the 24X Bermuda Holdco LLC Agreement.

⁶ See Securities Exchange Act Rel. No. 101777 (Nov. 27, 2024), 89 FR 97092, 97095 (Dec. 6, 2024) ("24X Registration Approval Order").

represented by 24X to be 3.29% of the Units of all outstanding Units.”¹⁶ Finally, the Commission noted that the Commission has approved other temporary exemptions from the ownership or voting limitations included in the governance documents of owners of a national securities exchange.¹⁷

ii. Ownership by Dmitri Galinov and His Related Persons

Exhibit K of 24X’s Form 1 describes Dmitri Galinov and his Related Person’s 43.07% ownership of 24X Bermuda Holdco. Absent the exemption, such ownership would exceed the 40% ownership limitation set forth in the 24X Bermuda Holdco LLC Agreement. Specifically, Exhibit K of 24X’s Form 1 describes their ownership as follows:

Dmitri Galinov owns 7,000,000 Common Units and 179,215 Seed-3 Preferred Units, for a total of 7,179,215 Units for all classes outstanding. Dmitri Galinov is a Related Person of KNG CAPITAL LLC, Tanya Nazarov-Kenneally, and Vladimir Nazarov. KNG CAPITAL LLC owns 320,616 Seed-1 Preferred Units, which represents 1.84% of all classes of outstanding Units. Tanya Nazarov-Kenneally owns 1,794 Seed-3 Preferred Units, which represents 0.01% of all classes of outstanding Units. Vladimir Nazarov owns 7,176 Seed-3 Preferred Units, which represents 0.04% of all classes of outstanding Units. Accordingly, on an aggregate basis, Dmitri Galinov, together with his Related Persons, owns 43.07% of the Units of all classes of outstanding Units.¹⁸

iii. Expiration of Temporary Exemption

The Commission granted 24X’s application for registration as a national securities exchange on November 27, 2024; therefore, nine months after such date was August 27, 2025. 24X commenced operation on October 14, 2025. Two months after October 14, 2025 is December 14, 2025, which is the later of the two dates. Therefore, the

temporary exemption expired on December 14, 2025.

b. Extension of Temporary Exemption From Ownership and Voting Limitations

The Exchange proposes to revise the 24X Bermuda Holdco LLC Agreement to extend the temporary exemption from the ownership and voting limitations set forth in Section 9.2(g) of the 24X Bermuda Holdco LLC Agreement with respect to Dmitri Galinov and his Related Persons until December 14, 2030, which will be the fifth anniversary of the date on which 24X commenced operation. Accordingly, with these changes, the temporary exemption would be in place until December 14, 2030, rather than December 14, 2025. In addition, the Exchange proposes to amend Sections 9.2(g)(i) and (ii) of the 24X Bermuda Holdco LLC Agreement to state that the temporary exemptions would only remain in place provided Dmitri Galinov and his Related Persons ownership percentage in 24X Bermuda Holdco does not exceed the current ownership level of 43.07% of 24X Bermuda Holdco LLC. This five-year extension would allow the Exchange to dilute Dmitri Galinov and his Related Person’s ownership in Bermuda Holdco LLC, make any necessary rule filings to implement any dilution transaction(s), and for the Commission to consider such filing(s).

The first sentence of Section 9.2(g)(i) of the 24X Bermuda LLC Agreement currently states the following:

Dmitri Galinov and his Related Persons shall have a temporary exemption from the limitation on ownership set forth in Section 9.2 above until nine (9) months after the date of approval by the SEC of 24X National Exchange’s Form 1 application to register as a national securities exchange or until two months after commencement of the operation of the national securities exchange, if later than nine (9) months.

The Exchange proposes to replace this sentence with the following sentence:

Dmitri Galinov and his Related Persons shall have a temporary exemption from the limitation on ownership set forth in Section 9.2 above until December 14, 2030 so long as the ownership percentage of Dmitri Galinov and his Related Persons in the Company does not exceed 43.07% during such period.

Similarly, Section 9.2(g)(ii) of the 24X Bermuda LLC Agreement currently states the following:

Dmitri Galinov and his Related Persons shall have a temporary

exemption from the voting limitations set forth in Section 9.2 above until nine (9) months after the date of approval by the SEC of 24X National Exchange’s Form 1 application to register as a national securities exchange or until two months after commencement of the operation of the national securities exchange, if later than nine (9) months, but only with respect to any vote regarding any merger, consolidation or dissolution of the Company or any sale of all or substantially all of the assets of the Company.

The Exchange proposes to revise this provision to state the following:

Dmitri Galinov and his Related Persons shall have a temporary exemption from the voting limitations set forth in Section 9.2 above until December 14, 2030 so long as the ownership percentage of Dmitri Galinov and his Related Persons in the Company does not exceed 43.07% during such exemption, but only with respect to any vote regarding any merger, consolidation or dissolution of the Company or any sale of all or substantially all of the assets of the Company.

The proposed five-year extension of the temporary exemption would provide a reasonable accommodation to a new entrant in the exchange market by allowing 24X Bermuda Holdco to avoid the expense of redeeming all of the Units the holding of which by Dmitri Galinov and/or his Related Persons results in a violation of Section 9.2 for a price per Unit, as applicable, equal to the lesser of (a) book value or (b) Fair Market Value of such Units. Such funds instead may be used with regard to the operation and regulation of the Exchange.

Furthermore, the reasons that the Commission cited for approving the temporary exemption in Section 9.2(g) of the 24X Bermuda Holdco LLC Agreement as consistent with the Exchange Act also support the approval of the extension of the exemption. First, the limited, defined period of time in which the extension would be in place and the limited amount by which the ownership interest may exceed 40% would serve to prevent Dmitri Galinov and his Related Persons from exercising undue control over 24X and minimize the possibility that 24X’s ability to carry out its self-regulatory responsibilities under the Exchange Act could be impaired. Second, because the exemption from the voting limitation would continue to apply only with respect to the limited situations involving any merger, consolidation or dissolution of 24X Bermuda Holdco or any sale of all or substantially all of the

¹⁶ *Id.* The excess percentage is now 3.07% of the Units of all outstanding Units.

¹⁷ See Securities Exchange Act Release No. 49067 (Jan. 13, 2004), 69 FR 2761 (Jan. 20, 2004) (order granting approval to a proposed rule change by the Boston Stock Exchange Inc. Relating to the LLC Operating Agreement of the Proposed New Exchange Facility to be Operated by the Boston Options Exchange Group LLC) (approval of an exemption from a voting limitation for a period of 10 years for an owner of the BOX facility). See also Securities Exchange Act Release No. 42455 (Feb. 24, 2000), 65 FR 11388 (Mar. 2, 2000) (order granting registration of the International Securities Exchange LLC) (approval of an exemption from an ownership limitation for period of 10 years for certain founders of the exchange).

¹⁸ Exhibit K of 24X Form 1 at footnote 2.

assets of the 24X Bermuda Holdco, it would not permit undue control over 24X or impair the regulatory responsibilities of 24X. Third, the extension of the temporary exemption is designed to afford Dmitri Galinov and his Related Persons the ability to protect the investment they have already made in the establishment of 24X that is over the current ownership limitation, which is by only 3.07% of the Units of all outstanding Units. Fourth, as the Commission previously noted, the Commission has approved other temporary exemptions from the ownership or voting limitations included in the governance documents of owners of a national securities exchange, including exemptions that last longer than five years.¹⁹

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Exchange Act²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act²¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act²² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change would further the objectives of Section 6(b)(1) of the Act,²³ in particular, in that such amendments enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to

comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed five-year extension of the temporary exemption would provide a reasonable accommodation to a new entrant in the exchange market by allowing the avoidance of the expense of redeeming all of the Units in excess of the ownership limitations of Dmitri Galinov and/or his Related Persons. Such funds instead may be used with regard to the operation and regulation of the Exchange. The defined period of time in which the extension would be in place and the limited amount by which the ownership interest may exceed 40% would serve to prevent Dmitri Galinov and his Related Persons from exercising undue control over 24X and minimize the possibility that 24X's ability to carry out its self-regulatory responsibilities under the Exchange Act could be impaired. The proposed five-year extension would provide the Exchange more time to accomplish the required dilution.

Furthermore, the extension of the exemption would not undermine the goals of the ownership and voting limitations. Because the exemption from the voting limitation would continue to apply only with respect to the limited situations involving any merger, consolidation or dissolution of 24X Bermuda Holdco or any sale of all or substantially all of the assets of the 24X Bermuda Holdco, it would not permit undue control over 24X or impair the regulatory responsibilities of 24X. The extension of the temporary exemption is designed to afford Dmitri Galinov and his Related Persons the ability to protect the investment they have already made in the establishment of 24X that is over the current ownership limitation, which is by only 3.07% of the Units of all outstanding Units of 24X Bermuda Holdco. The temporary exemption is consistent with other temporary exemptions from the ownership or voting limitations approved by the Commission with regard to other national securities exchanges, including exemptions that last longer than five years.²⁴

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 Exchange Act. The Exchange believes that the proposed extension of the temporary exemption from the ownership and

voting limitations would enhance competition. By providing 24X, a new entrant to the exchange market, with additional time to address the regulatory requirements regarding the dilution of the indirect ownership interest of Dmitri Galinov and his Related Persons in the Exchange, the Exchange may avoid the expense of redeeming all of the Units in excess of the ownership limitations of Dmitri Galinov and/or his Related Persons, and instead may use such funds with regard to the operation and regulation of the Exchange. In addition, the proposed rule change would enhance competition by allowing additional time for the Exchange to seek to increase the diversity of indirect ownership of the Exchange. Furthermore, the temporary exemption is consistent with other temporary exemptions from the ownership or voting limitations approved by the Commission with regard to other national securities exchanges.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁵ and Rule 19b-4(f)(6)²⁶ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that

¹⁹ See Securities Exchange Act Release No. 49067 (Jan. 13, 2004), 69 FR 2761 (Jan. 20, 2004) (order granting approval to a proposed rule change by the Boston Stock Exchange Inc. Relating to the LLC Operating Agreement of the Proposed New Exchange Facility to be Operated by the Boston Options Exchange Group LLC) (approval of an exemption from a voting limitation for a period of 10 years for an owner of the BOX facility). See also Securities Exchange Act Release No. 42455 (Feb. 24, 2000), 65 FR 11388 (Mar. 2, 2000) (File No. 10-127) (order granting registration of the International Securities Exchange LLC) (approval of an exemption from an ownership limitation for period of 10 years for certain founders of the exchange).

²⁰ 15 U.S.C. 78f.

²¹ 15 U.S.C. 78f(b)(5).

²² See *id.*

²³ 15 U.S.C. 78f(b)(1).

²⁴ See note 17, *supra*.

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4. In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁷ 17 CFR 240.19b-4(f)(6).

²⁸ 17 CFR 240.19b-4(f)(6)(iii).

the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission has approved other temporary exemptions from the ownership or voting limitations included in exchange governance documents,²⁹ and the proposal does not raise any novel regulatory issues. Accordingly, the Commission designates the proposed rule change to be operative upon filing.³⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-24X-2025-17 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-24X-2025-17. 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-24X-2025-17 and should be submitted on or before January 29, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-00142 Filed 1-7-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104542; File No. SR-ISE-2025-26]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend the Position and Exercise Limits for IBIT Options and FLEX Trading

January 5, 2026.

On November 13, 2025, Nasdaq ISE, LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to increase the position and exercise limits for options on iShares Bitcoin Trust ETF ("IBIT") and to amend Options 3A, Section 18, Position Limits, related to FLEX Trading in options on IBIT. The proposed rule change was published for comment in the **Federal Register** on November 26, 2025.³ On November 24, 2025, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ Amendment No. 1 superseded the original proposed rule change in its entirety. The Commission has received no comments regarding the proposed rule change.

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 104235 (Nov. 21, 2025), 90 FR 54414.

⁴ The full text of Amendment No. 1 is available on the Commission's website at <https://www.sec.gov/comments/sr-ise-2025-26/srise202526.htm>. Amendment No. 1 proposes to remove the proposed changes to the Options 3A, FLEX Options trading rules.

Section 19(b)(2) of the Act⁵ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 10, 2026. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁶ designates February 24, 2026, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-ISE-2025-26).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Vanessa A. Countryman,
Secretary.

[FR Doc. 2026-00116 Filed 1-7-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35857; 812-15901]

Elevation Series Trust and Truemark Investments LLC

January 5, 2026.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6-

⁵ 15 U.S.C. 78s(b)(2).

⁶ *Id.*

⁷ 17 CFR 200.30-3(a)(31).

²⁹ See *supra* note 17.

³⁰ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

07(2)(a), (b), and (c) of Regulation S-X (“Disclosure Requirements”).

SUMMARY OF APPLICATION: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

APPLICANTS: Elevation Series Trust and Truemark Investments LLC.

FILING DATES: The application was filed on September 23, 2025, and amended on December 30, 2025.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC’s Secretary at Secretarys-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on January 30, 2026, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicants: JoAnn M. Strasser, Thompson Hine LLP, 41 S. High Street, Suite 1700, Columbus, Ohio 43215, JoAnn.Strasser@thompsonhine.com, with a copy to Nicholas Adams, Elevation Series Trust, c/o TrueMark Investments, LLC, 1700 Broadway, Suite 1850, Denver, CO 80290.

FOR FURTHER INFORMATION CONTACT: Rachel Loko, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: For Applicants’ representations, legal analysis, and conditions, please refer to Applicants’ application, dated December 30, 2025, which may be obtained via the Commission’s website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC’s EDGAR system. The SEC’s EDGAR system may

be searched at <https://www.sec.gov/edgar/search/>. You may also call the SEC’s Office of Investor Education and Advocacy at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2026–00126 Filed 1–7–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104537; File No. SR–DTC–2025–020]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Guide to the DTC Fee Schedule and Operational Arrangements Relating to Rapid Issuance

January 5, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder, ² notice is hereby given that on December 23, 2025, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change ³ as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act ⁴ and Rule 19b–4(f)(6) thereunder. ⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to (i) amend the Guide to the DTC Fee Schedule (“Fee Guide”) ⁶ to add a fee for the new Rapid Issuance process ⁷ and expand the application of two existing fees (*i.e.*, the Eligibility Fee

and Later Surcharge, as defined below) to cover Rapid Issuance; (ii) amend the OA to not require securities issued through UWC be confirmed by the Agent in the Asset Services Central portal but, instead, by email; and (iii) set a new implementation date for Rapid Issuance.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to (i) amend the Guide to the Fee Guide to add a fee for the new Rapid Issuance process and expand the application of two existing fees (*i.e.*, the Eligibility Fee and Later Surcharge, as defined below) to cover Rapid Issuance; (ii) amend the OA to not require securities issued through UWC be confirmed by the Agent in the Asset Services Central portal but, instead, by email; and (iii) set a new implementation date for Rapid Issuance.

Background

Rapid Issuance, a newly established issuance process at DTC, ⁸ is designed to simplify and streamline the process by which structured notes are made eligible at and issued through DTC. The process applies to structured note offerings that share a single base prospectus ⁹ but require on-demand creation of new issuances, similar to that used for Money Market Instruments (“MMI”) today. More specifically, eligibility may be requested for a block of 979 structured note CUSIPs ¹⁰ under

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (“DTC Rules”), the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services) (“OA”) each available at www.dtcc.com/legal/rules-and-procedures.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b–4(f)(6).

⁶ www.dtcc.com/-/media/Files/Downloads/legal/fee-guides/DTC-Fee-Schedule.pdf.

⁷ Securities Exchange Act Release No. 104095 (Sept. 26, 2025), 90 FR 47068 (Sept. 30, 2025) (SR–DTC–2025–015) (“Rapid Issuance Proposal”).

⁸ *Id.*

⁹ A base prospectus is a legal document that provides detailed information about a securities offering, including the terms, issuer, and risks involved. It serves as a foundational document for multiple securities issuances over time allowing issuers to offer new securities without having to file a new prospectus for each issuance.

¹⁰ A CUSIP number is the identification number created by the American Banking Association’s Committee on Uniform Security Identification Procedures (“CUSIP”) to uniquely identify issuers

the same base prospectus, which facilitates a more “rapid issuance” of CUSIPs through DTC than if each CUSIP were made eligible individually.

Participation in Rapid Issuance is voluntary, and issuers retain access to existing paths for structured note eligibility, such as the UW SOURCE system and the MMI system.

Proposed Changes

With this proposed rule change, DTC is establishing a fee of \$180 per CUSIP issued through Rapid Issuance (“Rapid Issuance Fee”). The fee will apply to a CUSIP when the applicable security is issued, separate from when the applicable CUSIPs are made eligible at DTC.

DTC also proposes to extend two existing eligibility-related fees, previously only applicable to onboarding MMI CUSIPs, to Rapid Issuance. First, a \$250 eligibility fee (“Eligibility Fee”)—currently charged when a block of MMI CUSIPs under a single base prospectus becomes eligible—will now apply when a block of CUSIPs is made eligible (separate from when issued) for Rapid Issuance. Second, a \$300 late surcharge (“Late Surcharge”)—currently assessed when an MMI eligibility request is submitted on the same day as an issuance—will now apply to Rapid Issuance eligibility requests when a Rapid Issuance eligibility request is submitted the same day as an issuance.

When determining these fees and their structure, DTC accounted for several key considerations. First, DTC followed its pricing policy, which sets fees based on actual costs, with a modest margin added to cover development and ongoing operational expenses. By following this policy, the fees for Rapid Issuance help ensure a reasonable return on investment for DTC’s development efforts and maintain the process over time. Second, DTC chose a per-issuance model for the Rapid Issuance Fee to help ensure costs are fairly distributed among users according to their usage of the process, while the Eligibility Fee and Late Surcharge apply equally to every group of CUSIPs made eligible. Third, the Eligibility Fee and Late Surcharge will be applied in the same way and in the same amount to Rapid Issuance as they currently are for MMI because the respective processes are very similar.

Changes to the Fee Guide

In connection with the above, DTC will make several changes to the Fee Guide. First, to effectuate the Rapid Issuance Fee, the Underwriting section of the Fee Guide will be updated to include the Rapid Issuance Fee of \$180, per issuance per CUSIP. This fee will be listed under a new heading titled “Rapid Issuance.”

Second, to apply the Eligibility Fee and Late Surcharge to Rapid Issuance, those fees will be modified in the Fee Guide to remove references to them applying only to MMI. Specifically, references to MMI will be deleted from the fee names themselves (*i.e.*, the Eligibility Fee will be renamed from “Submission of MMI for eligibility” to “Submission for eligibility,” and the Late Surcharge Fee will be renamed from “Late filing of MMI (surcharge)” to “Late filing (surcharge)”). Additionally, the heading to the fees, as it appears in the Underwriting section of the Fee Guide, will be updated from “Money Market Instruments” to “Money Market Instruments and Rapid Issuance.”

Third, text in the Fee Guide describing conditions that apply to the Late Surcharge will be updated to better reflect both current practice and the fee’s expanded application to Rapid Issuance. Specifically, the description will be updated from “Per program, applies when the eligibility form was received the same day as the first issuance of the MMI”¹¹ to “Per program; applies when the eligibility request is received on the same day as the issue’s effective date, and DTC eligibility is approved on that effective date.” This updated language does two things: one, updating “form” to “request” better represents DTC’s systemic eligibility process, and, two, updating “first issuance of the MMI” to “is received on the same day as the issue’s effective date” removes the exclusive reference to MMI and clarifies that DTC tracks the effective date of an issue rather than monitoring the initial issuance date of the program for purposes of applying the fee. Additionally, specifying “and DTC eligibility is approved on that effective date” ensures that the Late Surcharge will not apply if eligibility is not granted by DTC on the effective date.

Changes to the OA

In the Rapid Issuance Proposal,¹² a requirement was added as part of the proposal that securities issued through

UWC had to be confirmed by the Agent in the Asset Services Central portal. However, due to internal business and resourcing decisions, development and launch of the Asset Services Central portal has been delayed. As such, the requirement that securities issued through UWC be confirmed by the Agent in the Asset Services Central portal is now being removed. Instead, such confirmations will need to be supplied by the Agent to DTC’s Underwriting Department by email, as is the case today for securities issued via UW SOURCE.

Implementation Timeframe

In the Rapid Issuance Proposal,¹³ the implementation date for Rapid Issuance had been set for November 3, 2025. However, due to the government shutdown, DTC was unable to file and implement the associated fee changes described in this proposal prior to November 3, 2025. As such, DTC suspended the implementation of Rapid Issuance, pursuant to Rule 18 (Extension, Waiver or Suspension of Rules and Procedures) of the DTC Rules,¹⁴ until this filing could be made and a new implementation date set. Therefore, pursuant to this filing, all of the above changes now will be implemented by March 31, 2026, with the specific implementation date being announced by Important Notice no less than 30 days prior to the implementation date. Accordingly, the associated “implementation legends” to the DTC Rules that will be changed under the Rapid Issuance Proposal will be updated to state the new implementation timing.

2. Statutory Basis

Fee Changes

Section 17A(b)(3)(D) of the Act requires that DTC’s Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Participants.¹⁵ DTC believes that the Rapid Issuance Fee, and the expansion of the Eligibility Fee and Late Surcharge to Rapid Issuance, are consistent with this provision of the Act.

As described above, DTC is establishing a Rapid Issuance Fee of \$180 per CUSIP issued, as well as applying the existing Eligibility Fee and Late Surcharge to Rapid Issuance eligibility. DTC believes these proposed changes are an equitable allocation of the fees because each Participant that effects an issuance under Rapid Issuance will be charged the same Rapid

and issues of securities and financial instruments. Committee on Uniform Securities Identification Procedures, available at www.aba.com/about-us/our-story/cusip-securities-identification. See Underwriting Guide, at 6 and 9, available at www.dtcc.com/legal/rules-and-procedures.

¹¹ In this context, “program” means securities made eligible as part of the same base prospectus.

¹² Rapid Issuance Proposal, *supra* note 7.

¹³ *Id.*

¹⁴ DTC Rules, *supra* note 3.

¹⁵ 15 U.S.C. 78q–1(b)(3)(D).

Issuance Fee per CUSIP, while eligibility under Rapid Issuance will be subject to the same Eligibility Fee and Later Surcharge as the existing, parallel MMI eligibility process.

DTC also believes these fees are reasonable because, as described above, they are (i) consistent with DTC's pricing policy; (ii) structured so that parties issuing CUSIPs or making CUSIPs eligible pay the same amount per issuance or eligibility request, respectively; and (iii) structured to align with actual usage of the service.

Therefore, by establishing fees that align with the cost of the service and charging those fees only to the Participants that use the service, based on their usage, DTC believes the proposed rule change would provide for the equitable allocation of reasonable dues, fees and other charges among its Participants consistent with the requirements of Section 17A(b)(3)(D) of the Act.¹⁶

Portal Usage and Implementation Changes

Section 17A(b)(3)(F) of the Act requires, in part, that DTC's Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.¹⁷ DTC believes the proposed change in usage of the Asset Services Central portal and the new implementation date are consistent with that requirement.

As described above, DTC will amend the OA to not require securities issued through UWC to be confirmed by the Agent in the Asset Services Central portal but, instead, by email, since the portal will not be active. Additionally, DTC is setting a new implementation date for Rapid Issuance to be in the first quarter of 2026, to be announced by Important Notice no later than 30 days prior to implementation. By updating the OA to no longer require usage of the Asset Services Central portal but instead require confirmations by email, as are done today for UW SOURCE issuances, and by setting a new implementation date that provides sufficient advance notice, Participants and issuers will be well informed on how and when to use Rapid Issuance, which will help promote the prompt and accurate clearance and settlement of their issuances through DTC, consistent with Section 17A(b)(3)(F) of the Act.¹⁸

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed changes to (i) establish the Rapid Issuance Fee and expand the application of the existing Eligibility Fee and Late Surcharge, (ii) remove the requirement to use the Asset Services Central portal, or (iii) set a new implementation date will have any impact on competition.

As described above, DTC believes that the proposed fees are equitable and reasonable. As such, DTC does not expect that the fees will cause any competitive advantages or disadvantages among Participants. Moreover, Rapid Issuance is a voluntary service. If Participants prefer to issue their structured notes through DTC's other methods, they can do so. Regarding the Asset Services Central portal, since the portal was never live, there should be no impact on Participants or issuers, who would simply confirm issuances via email, like is already done for UW SOURCE issuances. Similarly, since Rapid Issuance was never implemented, there should be no competitive advantage or disadvantage with the later implementation date.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting written comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on How to Submit Comments, available at www.sec.gov/rules-regulations/how-submit-comment. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

DTC reserves the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)¹⁹ of the Act and Rule 19b-4(f)(6)²⁰ 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.

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-regulations/self-regulatory-organization-rulemaking>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-DTC-2025-020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-DTC-2025-020. 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-regulations/self-regulatory-organization-rulemaking>). Copies of the filing will be available for inspection and copying at the principal office of DTC and on DTCC's website (www.dtcc.com/legal/sec-rule-filings). Do not include personal identifiable information in submissions; you should submit only information that you wish

¹⁶ *Id.*

¹⁷ 15 U.S.C. 78q-1(b)(3)(F).

¹⁸ *Id.*

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6).

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–DTC–2025–020 and should be submitted on or before January 29, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2026–00115 Filed 1–7–26; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2025–0006]

Privacy Act of 1974; System of Records

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, we are issuing public notice of our intent to modify an existing system of records entitled, Hearings and Appeals Case Control System (60–0009), last published on October 13, 1982. This notice publishes details of the modified system as set forth under the caption, **SUPPLEMENTARY INFORMATION.**

DATES: The system of records notice (SORN) is applicable upon its publication in today's **Federal Register**, with the exception of the new routine uses, which are effective February 9, 2026.

We invite public comment on the routine uses or other aspects of this SORN. In accordance with the Privacy Act of 1974, the public is given a 30-day period in which to submit comments. Therefore, please submit any comments by February 9, 2026.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Head of Privacy and Disclosure Policy, Law and Policy, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, or through the Federal e-Rulemaking Portal at <https://www.regulations.gov>. Please reference docket number SSA–2025–0006. All comments we receive will be available for public inspection at the above address and we will post them to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Tristin Dorsey, Government Information Specialist, Privacy Implementation Division, Privacy and Disclosure Policy, Law and Policy, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 966–5855, email: OGC.OPD.SORN@ssa.gov.

SUPPLEMENTARY INFORMATION: We are modifying the system of records name from “Hearings and Appeals Case Control System, HHS/SSA/OHA” to “Hearings and Appeals Case Control System” to remove references to Health and Human Services (HHS) and accurately reflect the name of the system. We are modifying the system location to clarify where the agency will maintain records. We are modifying the system manager to clarify the offices responsible for maintaining the system. We are also expanding the purpose of the system to include tracking hearings and appeals office workloads from the receipt of a request for hearing until the final Appeals Council-level disposition, as well as certain specialized Appeals Council level workloads including Federal court required actions, quality review, and attorney fee actions. We are clarifying the categories of individuals covered by the system for easier reading.

We are expanding the categories of records to include the name and Social Security number of potential claimants and beneficiaries, information about the Administrative Appeals Judge and/or Appeals Officer assigned to the case, and appeals issue types. We are expanding the record source categories to include appointed representatives, representative payees, and existing SSA systems of records. We are clarifying the language in routine use Nos. 1, 2, 3, 4, and 6 for easier reading.

In addition, we are adding 13 new routine uses to permit disclosures to the following:

- The Secretary of HHS or to any State, the Commissioner shall disclose any record or information requested in writing by the Secretary for the purpose of administering any program administered by the Secretary, if records or information of such type were so disclosed under applicable rules, regulations and procedures in effect before the date of enactment of the Social Security Independence and Program Improvements Act of 1994.
- The Office of the President, in response to an inquiry received from that office made on behalf of, and at the request of, the subject of the record or a third party acting on the subject's behalf;
- Federal, State, and local law enforcement agencies and private

contractors, to enable them to protect the safety of SSA employees and customers, the security of the SSA workplace, and the operation of our facilities, or to assist investigations or prosecutions with respect to activities that affect such safety and security, or activities that disrupt the operation of our facilities;

- third party contacts, (e.g., employers and private pension plans) in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage their benefits or payments, or their eligibility for or entitlement to benefits or eligibility for payments, under the Social Security program;

- third party contacts, where necessary, to establish or verify information provided by a representative payee or representative payee applicant;

- a Social Security beneficiary or claimant, when a claim is filed by an individual on the same record that is adverse to the beneficiary, only information concerning the facts relevant to the interests of each party in a claim;

- private medical and vocational consultants for consultative medical examinations and vocational assessments;

- claimants, prospective claimants (other than the data subject), and their appointed representatives and those working with such representatives (including, but not limited to, partners, associates, and contractors) when the information pertains to the individuals whom the appointed representative is representing; and to representative payees, when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting us in administering representative payment responsibilities under the Social Security Act, to the extent necessary to pursue Social Security claims, and for the purpose of assisting them in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees;

- contractors, cooperative agreement awardees, Federal and State agencies, and Federal congressional support agencies for research and statistical activities that are designed to increase knowledge about present or alternative Social Security programs; are of importance to the Social Security program or the Social Security beneficiaries; or are for an epidemiological project that relates to

²¹ 17 CFR 200.30–3(a)(12).

the Social Security program or beneficiaries;

- State and local government agencies, in situations involving suspected abuse, neglect, or exploitation of minor children or vulnerable adults, to report suspected abuse or determine a victim's eligibility for services;

- a representative (current or former), the executor of a deceased representative's estate or individual recognized by the State as the representative of the estate, an individual who provided representational services, the entity with which the representative or individual is or was affiliated through registration, or an individual or entity to which the agency disbursed a fee payment, to the extent necessary to dispose of a fee petition or fee agreement or resolve other fee-related issues in claims-related matters, but not to include pre-decisional deliberative documents, such as analyses and recommendations prepared for the decision-maker;

- third parties, limited information, as necessary, to reach claimants, beneficiaries, and others SSA has a business need to reach related to records in this system; and

- third parties when an individual involved with a request needs assistance to communicate because of a hearing impairment or a language barrier (*e.g.*, to interpreters, telecommunications relay system operators).

Lastly, we are modifying the policies and practices for the storage of records to reflect that we will maintain records in paper and in electronic form. We are expanding the policies and practices for the retrieval of records to include name and folder number. We are clarifying the policies and practices for the retention and disposal of records to reflect accurate records schedules. We are modifying the administrative, technical, and physical safeguards for easier reading. We are modifying the notice throughout to correct miscellaneous stylistic formatting and typographical errors of the previously published notice, and to ensure the language reads consistently across multiple systems. We are republishing the entire notice for ease of reference.

In accordance with 5 U.S.C. 552a(r), we provided a report to OMB and

Congress on this modified system of records.

Matthew Ramsey,

Head of Privacy and Disclosure, Law and Policy.

SYSTEM NAME AND NUMBER:

Hearings and Appeals Case Control System, 60–0009.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Social Security Administration, Disability Adjudication, Appellate Operations, 6401 Security Boulevard, Baltimore, MD 21235.

Social Security Administration, Disability Adjudication, Hearings Operations, 6401 Security Boulevard, Baltimore, MD 21235.

SSA Program Service Centers in receipt of claims (See Appendix A at https://www.ssa.gov/privacy/sorn/app_a.htm).

Appellate Operations and Hearings Operations organizations in receipt of cases awaiting action by the Appeals Council or cases awaiting hearings or decisions by Administrative Law Judges (See Appendix F at https://www.ssa.gov/privacy/sorn/app_f.htm for more information).

Information is also located in additional locations in connection with cloud-based services and kept at an additional location as backup for business continuity purposes.

SYSTEM MANAGER(S):

Social Security Administration, Chief of Disability Adjudication, Disability Adjudication, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–5855.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205, 1631(d)(1), and 1872 of the Social Security Act, as amended, and section 413(b) of the Federal Coal Mine Health and Safety Act, as amended.

PURPOSE(S) OF THE SYSTEM:

We will use the information in this system of records to develop claims and management information about title II (Retirement, Survivor's, and Disability Insurance), title XVI (Supplemental Security Income), and title XVIII (Health Insurance). We will use the information to perform certain post-entitlement actions for Black Lung benefits, pursuant to the Federal Coal Mine Health and Safety Act. We will also use the information to track hearings and appeals office workloads, from the receipt of a request for hearing until the

final Appeals Council-level disposition, as well as certain specialized Appeals Council-level workloads including Federal court required actions, quality review, and attorney fee actions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information about claimants who file for title II (Retirement, Survivor's, and Disability Insurance), title XVI (Supplemental Security Income), title XVIII (Health Insurance), and Black Lung benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains records that include, but are not limited to, the name and Social Security number (SSN) of the claimant, potential claimant, or beneficiary; type of claim; hearing request receipt date; last action on the case and date of action; case location, *e.g.*, pre-hearing, scheduling, hearing, post-hearing, disposition date, routing, and transfer; date of filing; scheduled hearing date; information about the administrative law judge assigned to the case; date of request for review; information about the Administrative Appeals Judge and/or Appeals Officer assigned to the case; cross reference SSN; appeals issue types (disability, non-disability, overpayments, and continuing disability reviews).

RECORD SOURCE CATEGORIES:

We obtain information in this system from claimants; beneficiaries; recipients; appropriate members of the public, including third parties that may have information relevant to the claim; local, State, and Federal agencies; appointed representatives; representative payees; contractors; and existing SSA systems of records such as the Claims Folders System, 60–0089; Electronic Disability Claim File, 60–0320; and Appointed Representative File, 60–0325.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We will disclose records pursuant to the following routine uses; however, we will not disclose any information defined as “return or return information” under 26 U.S.C. 6103 of the Internal Revenue Code (IRC), unless authorized by statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To a congressional office in response to an inquiry from that office made on behalf of, and at the request of, the subject of the record.

2. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal, when:

- (a) SSA, or any component thereof; or

(b) any SSA employee in the employee's official capacity; or

(c) any SSA employee in the employee's individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof, where SSA determines the litigation is likely to affect SSA or any of its components, is a party to the litigation or has an interest in such litigation, and we determine that the use of such records by DOJ, a court or other tribunal, or another party before the tribunal is relevant and necessary to the litigation, provided, however, that in each case, we determine that such disclosure is compatible with the purpose for which the records were collected.

3. To contractors and other Federal agencies, as necessary, for assisting SSA in the efficient administration of its programs. We will disclose information under this routine use only in situations in which we may enter into a contractual or similar agreement to obtain assistance in accomplishing an agency function relating to this system of records.

4. To the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906.

5. To student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for us, as authorized by law, and they need access to personally identifiable information (PII) in our records in order to perform their assigned agency functions.

6. To appropriate agencies, entities, and persons when:

(a) SSA suspects or has confirmed that there has been a breach of the system of records;

(b) SSA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, SSA (including its information systems, programs, and operations), the Federal Government, or national security; and

(c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with SSA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7. To another Federal agency or Federal entity, when we determine that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(a) responding to a suspected or confirmed breach; or

(b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

8. To the Secretary of Health and Human Services or to any State, the Commissioner shall disclose any record or information requested in writing by the Secretary for the purpose of administering any program administered by the Secretary, if records or information of such type were so disclosed under applicable rules, regulations and procedures in effect before the date of enactment of the Social Security Independence and Program Improvements Act of 1994.

9. To the Office of the President, in response to an inquiry received from that office made on behalf of, and at the request of, the subject of the record or a third party acting on the subject's behalf.

10. To Federal, State, and local law enforcement agencies and private security contractors as appropriate, if necessary:

(a) to enable them to protect the safety of SSA employees and customers, the security of the SSA workplace, and the operation of our facilities, or

(b) to assist investigations or prosecutions with respect to activities that affect such safety and security, or activities that disrupt the operation of our facilities.

11. To third party contacts (e.g., employers and private pension plans) in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage their benefits or payments, or their eligibility for or entitlement to benefits or eligibility for payments, under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

i. The individual is incapable or of questionable mental capability;

ii. The individual cannot read or write;

iii. The individual cannot afford the cost of obtaining the information;

iv. The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) the data is necessary to establish the validity of evidence or to verify the accuracy of information presented by

the individual, and it concerns one or more of the following:

i. The individual's entitlement to or eligibility for benefits under the Social Security program;

ii. The amount of the individual's benefit or payment; or

iii. Any case in which the evidence is being reviewed, as a result of suspected abuse or fraud, or concern for program integrity, quality appraisal, or evaluation and measurement activities.

12. To third party contacts, where necessary, to establish or verify information provided by representative payees or representative payee applicants.

13. To a Social Security beneficiary or claimant, when a claim is filed by an individual on the same record adverse to the beneficiary, only information concerning the facts relevant to the interests of each party in a claim, *i.e.*,

(a) an award of benefits to a new claimant precludes an award to a prior claimant; or

(b) an award of benefits to a new claimant will reduce benefit payments to the individual(s) on the rolls, but only for information concerning the facts relevant to the interests of each party in a claim.

14. To private medical and vocational consultants, for use in preparing for, or evaluating the results of, consultative medical examinations or vocational assessments which they were engaged to perform by SSA or a State agency, in accordance with sections 221 or 1633 of the Social Security Act.

15. To claimants, prospective claimants (other than the data subject), and their appointed representatives and those working with such representatives (including, but not limited to, partners, associates, and contractors) when the information pertains to the individuals whom the appointed representative is representing; and to representative payees, when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting us in administering representative payment responsibilities under the Social Security Act, to the extent necessary to pursue Social Security claims, and for the purpose of assisting them in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

16. To contractors, cooperative agreement awardees, State agencies, Federal agencies, and Federal congressional support agencies for research and statistical activities that are designed to increase knowledge about present or alternative Social Security

programs; are of importance to the Social Security program or the Social Security beneficiaries; or are for an epidemiological project that relates to the Social Security program or beneficiaries. We will disclose information under this routine use pursuant only to a written agreement with us.

17. To State and local government agencies, in situations involving suspected abuse, neglect, or exploitation of minor children or vulnerable adults, to report suspected abuse or determine a victim's eligibility for services.

18. To a representative (current or former), the executor of a deceased representative's estate or individual recognized by the State as the representative of the estate, an individual who provided representational services, the entity with which the representative or individual is or was affiliated through registration, or an individual or entity to which the agency disbursed a fee payment, to the extent necessary to dispose of a fee petition or fee agreement or resolve other fee-related issues in claims-related matters, but not to include pre-decisional deliberative documents, such as analyses and recommendations prepared for the decision-maker.

19. Limited information to third parties as necessary to reach claimants, beneficiaries, and others SSA has a business need to reach related to records in this system.

20. To third parties when an individual involved with a request needs assistance to communicate because of a hearing impairment or a language barrier (*e.g.*, to interpreters, telecommunications relay system operators).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

We will maintain records in this system in paper and electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

We will retrieve records by SSN, name, and folder number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with NARA rules codified at 36 CFR 1225.16, we maintain records in accordance with agency-wide Leadership Bucket, DAA-0047-2024-0001, and agency-wide Legal Bucket, DAA-0047-2022-0003.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

We retain electronic files containing personal identifiers in secure storage

areas accessible only by authorized individuals, including our employees and contractors, who have a need for the information when performing their official duties. Security measures include, but are not limited to, the use of codes and profiles, personal identification numbers and passwords, and personal identification verification cards. We restrict access to specific correspondence within the system based on assigned roles and authorized users. We use audit mechanisms to record sensitive transactions as an additional measure to protect information from unauthorized disclosure or modification. We keep paper records in cabinets within secure areas, with access limited to only those employees who have an official need for access in order to perform their duties.

We annually provide authorized individuals, including our employees and contractors, with appropriate security awareness training that includes reminders about the need to protect PII and the criminal penalties that apply to unauthorized access to, or disclosure of, PII (5 U.S.C. 552a(i)(1)). Furthermore, authorized individuals with access to databases maintaining PII must annually sign a sanctions document that acknowledges their accountability for inappropriately accessing or disclosing such information.

RECORD ACCESS PROCEDURES:

Individuals may submit requests for information about whether this system contains a record about them by submitting a written request to the system manager at the above address, which includes their name, SSN, or other information that may be in this system of records that will identify them. Individuals requesting notification of, or access to, a record by mail must include: (1) a notarized statement to us to verify their identity; or (2) must certify in the request that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

Individuals requesting notification of, or access to, records in person must provide their name, SSN, or other information that may be in this system of records that will identify them, as well as provide an identity document, preferably with a photograph, such as a driver's license. Individuals lacking identification documents sufficient to establish their identity must certify in writing that they are the individual they claim to be and that they understand

that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

These procedures are in accordance with our regulations at 20 CFR 401.40, 401.45, and 401.55.

CONTESTING RECORD PROCEDURES:

Same as record access procedures. Individuals should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with our regulations at 20 CFR 401.65(a).

NOTIFICATION PROCEDURES:

Same as record access procedures. These procedures are in accordance with our regulations at 20 CFR 401.40, 401.45, and 401.55.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

47 FR 45589 (October 13, 1982), Hearings and Appeals Case Control System.

48 FR 37526 (August 18, 1983), Hearings and Appeals Case Control System.

51 FR 8243 (March 10, 1986), Hearings and Appeals Case Control System.

52 FR 12084 (April 14, 1987), Hearings and Appeals Case Control System.

59 FR 46439 (September 8, 1994), Hearings and Appeals Case Control System.

65 FR 46997 (August 1, 2000), Hearings and Appeals Case Control System.

72 FR 69723 (December 10, 2007), Hearings and Appeals Case Control System.

83 FR 54969 (November 1, 2018), Hearings and Appeals Case Control System.

[FR Doc. 2026-00132 Filed 1-7-26; 8:45 am]

BILLING CODE 4191-02-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36901]

Smoky Ridge Railroad, L.L.C.— Acquisition and Operation Exemption—EnergySolutions, LLC

Smoky Ridge Railroad, L.L.C. (SMO), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to

acquire a perpetual easement over and to operate approximately 7.07 miles of railroad track, extending from milepost 0, located at a switch on a main line of the Norfolk Southern Railway, near Blair, Tenn., to milepost 7.07, near Oak Ridge, Tenn., in Anderson and Roane Counties, Tenn (the Line).¹

This transaction is related to a verified notice of exemption concurrently filed in *Watco Holdings, Inc.—Continuance in Control Exemption—Smoky Ridge Railroad, L.L.C.*, Docket No. FD 36902, in which Watco Holdings, Inc., seeks to continue in control of SMO upon SMO's becoming a Class III rail carrier.

According to SMO, the U.S. Army Corps of Engineers built the Line and later conveyed it to the U.S. Department of Energy (USDOE). SMO states that, in 2003, USDOE granted Heritage Railroad Corporation (HRRC) an easement to provide railroad freight service over the Line, and in 2009, EnergySolutions, LLC (EnergySolutions), acquired HRRC's easement. *See Heritage R.R.—Lease & Operation Exemption—Rail Line of U.S. Dep't of Energy*, FD 34372 (STB served July 23, 2003); *Energy Solutions, LLC—Acquis. & Operation Exemption—Heritage R.R.*, FD 35288 (STB served Sep. 3, 2009). SMO further states that EnergySolutions and SMO have reached an agreement, subject to the approval of USDOE, whereby EnergySolutions will convey its common carrier easement interest in the Line to SMO. According to the verified notice, upon consummation of the proposed transaction, SMO will provide all common carrier freight service on the Line, and EnergySolutions will have no further rights on the Line.

SMO certifies that the proposed transaction does not involve an interchange commitment. SMO also certifies that its projected annual revenues are not expected to exceed \$5 million and that the proposed transaction will not result in SMO becoming a Class I or Class II rail carrier.

The earliest this transaction may be consummated is January 22, 2026, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 15, 2026

(at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36901, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on SMO's representative, Stephen J. Foland, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to SMO, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: January 5, 2026.

By the Board, Anika S. Cooper, Chief Counsel, Office of Chief Counsel.

Tammy Lowery,
Clearance Clerk.

[FR Doc. 2026-00124 Filed 1-7-26; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36902]

Watco Holdings, Inc.—Continuance in Control Exemption—Smoky Ridge Railroad, L.L.C.

Watco Holdings, Inc. (Watco), a noncarrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Smoky Ridge Railroad, L.L.C. (SMO), upon SMO's becoming a Class III rail carrier.

This transaction is related to a verified notice of exemption filed concurrently in *Smoky Ridge Railroad, L.L.C.—Acquisition & Operation Exemption—EnergySolutions, LLC*, Docket No. FD 36901, in which SMO seeks to acquire and operate as a common carrier over approximately 7.07 miles of railroad track (the Line), together with approximately 6.63 miles of spur track, in Anderson and Roane Counties, Tenn.

According to the verified notice, Watco currently controls 44 Class III rail carriers and one Class II rail carrier, collectively operating in 28 states and one Canadian province. For a complete list of these rail carriers and the states in which they operate, see the Appendix to Watco's December 23, 2025 verified notice of exemption, available at www.stb.gov.

The verified notice indicates that: (1) the Line does not connect with the rail lines of any of Watco's 45 existing rail

carriers; (2) this transaction is not part of a series of anticipated transactions that would result in such a connection; and (3) the proposed transaction does not involve a Class I rail carrier. The proposed transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

The transaction may be consummated on or after January 22, 2026, the effective date of the exemption (30 days after the verified notice was filed).

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. Because the transaction involves the control of one Class II and one or more Class III rail carriers, the transaction is subject to the labor protection requirements of 49 U.S.C. 11326(b) and *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad*, 2 S.T.B. 218 (1997).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than January 15, 2026.

All pleadings, referring to Docket No. FD 36902, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Watco's representative, Stephen J. Foland, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to the verified notice, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: January 5, 2026.

By the Board, Anika S. Cooper, Chief Counsel, Office of Chief Counsel.

Tammy Lowery,
Clearance Clerk.

[FR Doc. 2026-00125 Filed 1-7-26; 8:45 am]

BILLING CODE 4915-01-P

¹ SMO will also operate over approximately 6.63 miles of spur track that connects to the Line.

SURFACE TRANSPORTATION BOARD**[Docket No. FD 36891]****Northern Lines Railway, LLC—
Amended Lease and Operation
Exemption Containing Interchange
Commitment—BNSF Railway Company**

Northern Lines Railway, LLC (NLR), a Class III railroad, has filed a verified notice of exemption pursuant to 49 CFR 1150.41 to continue to lease from BNSF Railway Company (BNSF) and operate approximately 14.13 miles of rail line in Stearns, Sherburne, and Benton Counties, Minn. (the Line). The Line extends (a) from the 33rd Avenue North crossing, approximately milepost 76.03, in St. Cloud, Minn., exclusive of the actual crossing, approximately one-half mile west of the St. Cloud Yard, to milepost 80.66 in St. Joseph, Minn.; and (b) from Rice Junction in St. Cloud, Minn., approximately milepost 0.0 of the Cold Spring line to approximately milepost 9.16 at Rockville, Minn.

NLR states that it has leased the Line from BNSF since 2004.¹ See *N. Lines Ry.—Lease & Operation Exemption—Burlington N. & Santa Fe Ry.*, FD 34627 (STB served Jan. 6, 2005); see also *See N. Lines Ry.—Lease & Operation Exemption—Burlington N. & Santa Fe Ry.*, FD 34627 (STB served June 3, 2005) (clarifying incidental trackage rights). According to NLR, the original lease agreement “has been amended from time to time” since 2004.² (Notice 4.) NLR now seeks authority for a new amendment, which “modifies various provisions of the lease, including extending its term.” (*Id.* at 5.)

According to the verified notice, the lease contains an existing interchange commitment. NLR has provided additional information regarding the interchange commitment, as required by 49 CFR 1150.43(h).³

¹ NLR notes that the Board’s original decision authorized NLR to lease and operate approximately 22.4 miles of line from BNSF, but NLR received authority to discontinue service over various portions of the original line in later decisions. See *N. Lines Ry.—Discont. of Serv. Exemption—in Stearns Cnty., Minn.*, AB 1011X (STB served June 6, 2007); *N. Lines Ry.—Discont. of Serv. Exemption—in Stearns Cnty., Minn.*, AB 1011 (Sub-No. 1X) (STB served May 20, 2011); *N. Lines Ry.—Discont. of Serv. Exemption—in Stearns Cnty., Minn.*, AB 1011 (Sub-No. 2X) (STB served Mar. 4, 2016); *N. Lines Ry.—Discont. of Serv. Exemption—in Stearns Cnty., Minn.*, AB 1011 (Sub-No. 3X) (STB served Sept. 27, 2016).

² NLR states that it did not seek authority from the Board for the previous amendments because it “was unclear at the time” of their execution that they required Board authority. (Notice 4 n.5.) The class exemption invoked by NLR does not provide for retroactive effectiveness. See *San Pedro R.R.—Lease & Operation Exemption—Union Pac. R.R.*, FD 35968, slip op. at 1 n.1 (STB served Nov. 6, 2015).

³ Accompanying the verified notice, and as supplemented in two confidential submissions on

NLR certifies that its projected annual revenues as a result of this transaction will not exceed \$5 million annually and will not result the creation of a Class II or Class I carrier.

The transaction may be consummated on or after January 22, 2026, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 15, 2026 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36891, must be filed with the Surface Transportation Board either via e-filing on the Board’s website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on NLR’s representative, Rose-Michele Nardi, Mullins Law Group PLLC, 2001 L Street NW, Suite 720, Washington, DC 20036.

According to NLR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: January 6, 2026.

By the Board, Anika S. Cooper, Chief Counsel, Office of Chief Counsel.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2026–00169 Filed 1–7–26; 8:45 am]

BILLING CODE 4915–01–P

December 9 and 23, 2025, NLR submitted under seal a copy of the lease agreement as amended. See 49 CFR 1150.43(h)(1) (providing that certain information related to interchange commitments, such as copies of agreements, will be kept confidential without an accompanying motion for a protective order). Because submission of the amended lease was not complete until the December 23, 2025 supplement, that is deemed the filed date of the verified notice.

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration**

[Docket No. FRA–2001–11213, Notice No. 30]

**Drug and Alcohol Testing:
Determination of Minimum Random
Testing Rates for 2026**

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

ACTION: Notification of determination.

SUMMARY: This notification of determination announces FRA’s minimum annual random drug and minimum annual random alcohol testing rates for covered service, maintenance-of-way (MOW), and mechanical (MECH) employees for calendar year 2026.

DATES: This determination takes effect January 8, 2026.

FOR FURTHER INFORMATION CONTACT: Gerald Powers, FRA Drug and Alcohol Program Manager, by email: gerald.powers@dot.gov or by telephone: 202–493–6313; or Melissa Van Dermeir, FRA Drug and Alcohol Program Specialist, by email: melissavandermeir@dot.gov or by telephone: 312–720–9491.

SUPPLEMENTARY INFORMATION: Each year, FRA sets its minimum annual random testing rates after considering the last two complete calendar years of railroad industry drug and alcohol program data submitted to its Management Information System (MIS). FRA, however, reserves the right to consider factors other than MIS-reported data before deciding whether to lower annual minimum random testing rates. See 85 FR 81265 (Dec. 15, 2020).

To summarize, FRA is announcing its minimum annual random drug and alcohol testing rates for calendar year 2026 as follows:

—Covered service employee rates will remain at 25 percent for drugs and 10 percent for alcohol.

—MOW employee rates will remain at 25 percent for drugs and 10 percent for alcohol.

—MECH employee rates will remain at 50 percent for drugs but will be lowered to 10 percent for alcohol.

These rates are minimums, and railroad carriers and railroad contractors may conduct FRA random testing at higher rates.

Discussion**Random Testing Rates for Covered
Service Employees**

The industry-wide random drug testing positive rate for covered service

employees remained below 1.0 percent for 2023 and 2024. The Administrator has therefore determined the minimum annual random drug testing rate for covered service employees will remain at 25 percent for the period January 1, 2026, through December 31, 2026.

The industry-wide random alcohol testing violation rate for covered service employees remained below 0.5 percent for 2023 and 2024. The Administrator has therefore determined the minimum random annual alcohol testing rate for covered service employees will remain at 10 percent for the period January 1, 2026, through December 31, 2026.

Random Testing Rates for MOW Employees

The industry-wide random drug testing positive rate for MOW employees remained below 1.0 percent for 2023 and 2024. The Administrator has therefore determined the minimum annual random drug testing rate for MOW employees will remain at 25 percent for the period January 1, 2026, through December 31, 2026.

The industry-wide random alcohol testing violation rate for MOW employees remained below 0.5 percent for 2023 and 2024. The Administrator has therefore determined the minimum random alcohol testing rate for MOW employees will remain at 10 percent for the period January 1, 2026, through December 31, 2026.

Random Testing Rates for MECH Employees

FRA now has industry-wide MIS data from two full consecutive calendar years for MECH employees, who became subject to FRA random drug and alcohol testing in 2022. See 87 FR 5719 (Feb. 2, 2022).

The industry-wide random drug testing positive rate for MECH employees was above 1.0 percent for 2023 and 2024. The Administrator has therefore determined the minimum annual random drug testing rate for MECH employees will remain at 50 percent for the period January 1, 2026, through December 31, 2026.

The industry-wide random alcohol testing violation rate for MECH employees was below 0.5 percent for 2023 and 2024. The Administrator has therefore determined the minimum annual random alcohol testing rate for MECH employees will be lowered from 25 percent to 10 percent for the period January 1, 2026, through December 31, 2026.

Issued in Washington, DC.

David A. Fink,

Administrator.

[FR Doc. 2026–00167 Filed 1–7–26; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2025–1060]

Request Notice: Use of Foreign-Built Small Passenger Vessel in United States Coastwise Trade, M/V ODYSSEY

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The Secretary of Transportation, as represented by MARAD, is authorized to make determinations regarding the coastwise use of foreign built; certain U.S. built; and U.S. and foreign rebuilt vessels that solely carry no more than twelve passengers for hire. MARAD has received such a determination request and is publishing this notice to solicit comments to assist with determining whether the proposed use of the vessel set forth in the request would have an adverse effect on U.S. vessel builders or U.S. coastwise trade businesses that use U.S.-built vessels in those businesses. Information about the requestor's vessel, including a description of the proposed service, is in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before February 9, 2026.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2025–1060 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Search the above DOT Docket Number and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include the DOT Docket Number, your name and a mailing address, an email address or a

telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific DOT Docket Number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Mail Stop 2, MAR–620, Washington, DC 20590. Telephone: (202) 366–5400. Email: smallvessels@dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 12121(b), the U.S. Coast Guard may issue a certificate of documentation with a coastwise trade endorsement for eligible, small passenger vessels authorized to carry no more than 12 passengers for hire if MARAD, after notice and an opportunity for public comment, determines the use of the small passenger vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person that employs vessels built in the United States in that business.¹

MARAD has received an eligibility determination request. Further details about the requester's vessel and its proposed operations may be found in the determination request posted in the DOT Docket Number listed in the **ADDRESSES** section above at <https://www.regulations.gov>. Interested parties may comment on the undue adverse effect this action may have on U.S. vessel builders or coastwise trade businesses in the U.S. that employ U.S.-built vessels in those businesses. Comments should refer to the vessel name, state the commenter's interest in the request, and demonstrate, with supporting documentation, the undue adverse effect on U.S. vessel builders and coastwise trade businesses.

Public Participation

How do I submit comments?

Please submit comments, including the attachments, following the

¹ The U.S. Coast Guard and MARAD have authority under 46 U.S.C. 12121(b) through the Secretary of the Department of Homeland Security and the Secretary of the Department of Transportation, respectively.

instructions provided under the above heading entitled **ADDRESSES**. It may take a few hours or even days for comments to be reflected on the docket. Comments must be written in English. Provide concise comments and attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

The docket online is located at <https://www.regulations.gov>, keyword search the DOT Docket Number list in the **ADDRESSES** section above or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). Please periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

You may request that MARAD treat your comments as commercially confidential by submitting them to SmallVessels@dot.gov. Include in the email subject heading "Contains Confidential Commercial Information" or "Contains CCI" and state in your submission, with specificity, the basis for any such confidential treatment highlighting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

If MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 46 U.S.C. 12121, 49 CFR 1.93(a).)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2026-00156 Filed 1-7-26; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2025-1061]

Request Notice: Use of Foreign-Built Small Passenger Vessel in United States Coastwise Trade, S/V CAY MICHELE

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The Secretary of Transportation, as represented by MARAD, is authorized to make determinations regarding the coastwise use of foreign built; certain U.S. built; and U.S. and foreign rebuilt vessels that solely carry no more than twelve passengers for hire. MARAD has received such a determination request and is publishing this notice to solicit comments to assist with determining whether the proposed use of the vessel set forth in the request would have an adverse effect on U.S. vessel builders or U.S. coastwise trade businesses that use U.S.-built vessels in those businesses. Information about the requestor's vessel, including a description of the proposed service, is in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before February 9, 2026.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2025-1061 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Search the above DOT Docket Number and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include the DOT Docket Number, your name and a mailing address, an email address or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific DOT Docket Number. All

comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Mail Stop 2, MAR-620, Washington, DC 20590. Telephone: (202) 366-5400. Email: smallvessels@dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 12121(b), the U.S. Coast Guard may issue a certificate of documentation with a coastwise trade endorsement for eligible, small passenger vessels authorized to carry no more than 12 passengers for hire if MARAD, after notice and an opportunity for public comment, determines the use of the small passenger vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person that employs vessels built in the United States in that business.¹

MARAD has received an eligibility determination request. Further details about the requester's vessel and its proposed operations may be found in the determination request posted in the DOT Docket Number listed in the **ADDRESSES** section above at <https://www.regulations.gov>. Interested parties may comment on the undue adverse effect this action may have on U.S. vessel builders or coastwise trade businesses in the U.S. that employ U.S.-built vessels in those businesses. Comments should refer to the vessel name, state the commenter's interest in the request, and demonstrate, with supporting documentation, the undue adverse effect on U.S. vessel builders and coastwise trade businesses.

Public Participation

How do I submit comments?

Please submit comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. It may take a few hours or even days for comments to be reflected on the docket. Comments must be written in English. Provide concise comments and attach additional

¹ The U.S. Coast Guard and MARAD have authority under 46 U.S.C. 12121(b) through the Secretary of the Department of Homeland Security and the Secretary of the Department of Transportation, respectively.

documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

The docket online is located at <https://www.regulations.gov>, keyword search the DOT Docket Number list in the **ADDRESSES** section above or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). Please periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

You may request that MARAD treat your comments as commercially confidential by submitting them to SmallVessels@dot.gov. Include in the email subject heading "Contains Confidential Commercial Information" or "Contains CCI" and state in your submission, with specificity, the basis for any such confidential treatment highlighting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

If MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 46 U.S.C. 12121, 49 CFR 1.93(a))

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2026-00158 Filed 1-7-26; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2025-1225]

Request Notice: Use of Foreign-Built Small Passenger Vessel in United States Coastwise Trade, M/V AARLUK

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The Secretary of Transportation, as represented by MARAD, is authorized to make determinations regarding the coastwise use of foreign built; certain U.S. built; and U.S. and foreign rebuilt vessels that solely carry no more than twelve passengers for hire. MARAD has received such a determination request and is publishing this notice to solicit comments to assist with determining whether the proposed use of the vessel set forth in the request would have an adverse effect on U.S. vessel builders or U.S. coastwise trade businesses that use U.S.-built vessels in those businesses. Information about the requester's vessel, including a description of the proposed service, is in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before February 9, 2026.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD-2025-1225 by any one of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Search the above DOT Docket Number and follow the instructions for submitting comments.

- **Mail or Hand Delivery:** Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include the DOT Docket Number, your name and a mailing address, an email address or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific DOT Docket Number. All comments received will be posted

without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Mail Stop 2, MAR-620, Washington, DC 20590. Telephone: (202) 366-5400. Email: smallvessels@dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 12121(b), the U.S. Coast Guard may issue a certificate of documentation with a coastwise trade endorsement for eligible, small passenger vessels authorized to carry no more than 12 passengers for hire if MARAD, after notice and an opportunity for public comment, determines the use of the small passenger vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person that employs vessels built in the United States in that business.¹

MARAD has received an eligibility determination request. Further details about the requester's vessel and its proposed operations may be found in the determination request posted in the DOT Docket Number listed in the **ADDRESSES** section above at <https://www.regulations.gov>. Interested parties may comment on the undue adverse effect this action may have on U.S. vessel builders or coastwise trade businesses in the U.S. that employ U.S.-built vessels in those businesses. Comments should refer to the vessel name, state the commenter's interest in the request, and demonstrate, with supporting documentation, the undue adverse effect on U.S. vessel builders and coastwise trade businesses.

Public Participation

How do I submit comments?

Please submit comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. It may take a few hours or even days for comments to be reflected on the docket. Comments must be written in English. Provide concise comments and attach additional documents as necessary. There is no limit on the length of the attachments.

¹ The U.S. Coast Guard and MARAD have authority under 46 U.S.C. 12121(b) through the Secretary of the Department of Homeland Security and the Secretary of the Department of Transportation, respectively.

Where do I go to read public comments, and find supporting information?

The docket online is located at <https://www.regulations.gov>, keyword search the DOT Docket Number list in the **ADDRESSES** section above or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). Please periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

You may request that MARAD treat your comments as commercially confidential by submitting them to SmallVessels@dot.gov. Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential treatment highlighting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

If MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department’s FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT’s compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 46 U.S.C. 12121, 49 CFR 1.93(a))

By Order of the Maritime Administration.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2026-00111 Filed 1-7-26; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2025–1059]

Request Notice: Use of Foreign-Built Small Passenger Vessel in United States Coastwise Trade, M/V VADA

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The Secretary of Transportation, as represented by MARAD, is authorized to make determinations regarding the coastwise use of foreign built; certain U.S. built; and U.S. and foreign rebuilt vessels that solely carry no more than twelve passengers for hire. MARAD has received such a determination request and is publishing this notice to solicit comments to assist with determining whether the proposed use of the vessel set forth in the request would have an adverse effect on U.S. vessel builders or U.S. coastwise trade businesses that use U.S.-built vessels in those businesses. Information about the requestor’s vessel, including a description of the proposed service, is in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before February 9, 2026.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2025–1059 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Search the above DOT Docket Number and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include the DOT Docket Number, your name and a mailing address, an email address or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific DOT Docket Number. All comments received will be posted

without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT:

Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Mail Stop 2, MAR–620, Washington, DC 20590. Telephone: (202) 366–5400. Email: smallvessels@dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 12121(b), the U.S. Coast Guard may issue a certificate of documentation with a coastwise trade endorsement for eligible, small passenger vessels authorized to carry no more than 12 passengers for hire if MARAD, after notice and an opportunity for public comment, determines the use of the small passenger vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person that employs vessels built in the United States in that business.¹

MARAD has received an eligibility determination request. Further details about the requester’s vessel and its proposed operations may be found in the determination request posted in the DOT Docket Number listed in the **ADDRESSES** section above at <https://www.regulations.gov>. Interested parties may comment on the undue adverse effect this action may have on U.S. vessel builders or coastwise trade businesses in the U.S. that employ U.S.-built vessels in those businesses. Comments should refer to the vessel name, state the commenter’s interest in the request, and demonstrate, with supporting documentation, the undue adverse effect on U.S. vessel builders and coastwise trade businesses.

Public Participation

How do I submit comments?

Please submit comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. It may take a few hours or even days for comments to be reflected on the docket. Comments must be written in English. Provide concise comments and attach additional documents as necessary. There is no limit on the length of the attachments.

¹ The U.S. Coast Guard and MARAD have authority under 46 U.S.C. 12121(b) through the Secretary of the Department of Homeland Security and the Secretary of the Department of Transportation, respectively.

Where do I go to read public comments, and find supporting information?

The docket online is located at <https://www.regulations.gov>, keyword search the DOT Docket Number list in the **ADDRESSES** section above or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). Please periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

You may request that MARAD treat your comments as commercially confidential by submitting them to SmallVessels@dot.gov. Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential treatment highlighting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

If MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department’s FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT’s compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 46 U.S.C. 12121, 49 CFR 1.93(a).)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2026–00157 Filed 1–7–26; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activities; Comment Request on U.S. Departing Alien Income Tax Statement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the IRS is inviting comments on the information collection request outlined in this notice.

DATES: Written comments should be received on or before March 9, 2026 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include “OMB Control No. 1545–0138” in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Kerry Dennis, (202) 317–5751.

SUPPLEMENTARY INFORMATION: The IRS, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the IRS assess the impact and minimize the burden of its information collection requirements. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record, and viewable on relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up

costs and costs of operation, maintenance, and purchase of services to provide information.

Title: U.S. Departing Alien Income Tax Statement.

OMB Control Number: 1545–0138.

Form Number: 2063.

Abstract: Form 2063 is used by a departing resident alien against whom a termination assessment has not been made, or a departing nonresident alien who has no taxable income from United States sources, to certify that they have satisfied all U.S. income tax obligations. The data is used by the IRS to certify that departing aliens have complied with U.S. income tax laws.

Current Actions: There is no change to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 20,540.

Estimated Time per Response: 50 minutes.

Estimated Total Annual Burden Hours: 17,049 hours.

Dated: January 5, 2026.

Kerry Dennis,

Tax Analyst.

[FR Doc. 2026–00100 Filed 1–7–26; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activities; Comment Request on Fines, Penalties, and Other Amounts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Information Collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the IRS is inviting comments on the information collection request outlined in this notice.

DATES: Written comments should be received on or before March 9, 2026 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include “OMB Control No. 1545–2284” in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: View the latest drafts of the tax forms related to the information collection

listed in this notice at <https://www.irs.gov/draft-tax-forms>. Requests for additional information or copies of this collection should be directed to Kerry Dennis, (202) 317-5751.

SUPPLEMENTARY INFORMATION: The IRS, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the IRS assess the impact and minimize the burden of its information collection requirements. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record, and viewable on relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Title: Fines, Penalties, and Other Amounts.

OMB Control Number: 1545-2284.

Form Number: 1098-F.

Abstract: Public Law 115-97, Tax Cuts and Jobs Act of 2017 (TCJA), amended Internal Revenue Code (IRC) section 162(f) regarding allowable deductions of fines, penalties, and other amounts paid to, or at the direction of, a government or governmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law. The TCJA also added IRC section 6050X, requiring the official of any government or entity described in IRC section 162(f)(5) to file an information return with respect to certain fines, penalties, and other amounts paid. Treasury Decision (TD) 9946 contains final regulations providing guidance on IRC sections 162(f) and 6050X. Treasury Regulations section 1.6050X-1 provides guidance on

the information reporting requirements of IRC section 6050X and names Form 1098-F as the return to report the information. Form 1098-F is used to report the amounts paid as required by IRC section 6050X to the IRS and provide a statement to the payer.

Current Actions: There is no change in burden at this time. However, the number of responses has decreased due to better estimates.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal government, State, Local, or Tribal Government.

Estimated Number of Responses: 41,300.

Estimated Time per Response: 33 minutes.

Estimated Total Annual Burden Hours: 22,715 hours.

Dated: January 5, 2025.

Kerry Dennis,

Tax Analyst.

[FR Doc. 2026-00109 Filed 1-7-26; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0029]

Agency Information Collection Activity: Offer To Purchase and Contract of Sale, Credit Statement of Prospective Purchase, Addendum To Offer To Purchase (Virginia)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 9, 2026.

ADDRESSES: Comments must be submitted through www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Program-Specific information: Kendra McCleave, 202-461-9760, Kendra.McCleave@va.gov.

VA PRA information: Dorothy Glasgow, 202-461-1084, VAPRA@va.gov.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Offer to Purchase and Contract of Sale (VA Form 26-6705), Credit Statement of Prospective Purchaser (VA Form 26-6705b), Addendum to Offer to Purchase (Virginia) (VA Form 26-6705d).

OMB Control Number: 2900-0029. <https://www.reginfo.gov/public/do/PRASearch> (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

Type of Review: Revision of a currently approved collection.

Abstract: Under the authority of 38 U.S.C. 3720(a)(5) and (6) the Department of Veterans Affairs (VA) acquires properties for sale to the general public utilizing a private Contractor. Without this collection, a determination of the best offer for a property and the highest net return/cash equivalent value HNR/CEV could not be made to determine the most financially advantageous purchase offer to VA (VA Form 26-6705); the creditworthiness of a prospective buyer could not be determined and the offer to purchase could not be accepted (VA Form 26-6705b or FNMA1003; and, proper acknowledgment of State law by the buyer at or prior to closing would not be made (VA Form 26-6705d)). This is a revision due to VA adding Nine (9) new forms that are used in connection with the sale of VA-acquired properties. Each form has a new estimated burden. The information collected through these forms is necessary to identify the property, document, buyer and seller

acknowledgements, support financing and contract actions, and complete the real estate transactions.

Affected Public: Individuals and households.

Estimated Annual Burden: 4572 hours.

Estimated Average Burden per Respondent: 7.91 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 38,040 annually.

Authority: 44 U.S.C. 3501 *et seq.*

Dorothy Glasgow,
Acting, VA PRA Clearance Officer, Office of Information Technology/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2026-00133 Filed 1-7-26; 8:45 am]

BILLING CODE 8320-01-P



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Part II

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Chapter II

Reissuance and Modification of Nationwide Permits; Final Action

DEPARTMENT OF DEFENSE**Department of the Army, Corps of Engineers****33 CFR Chapter II****[Docket Number: COE–2025–0002]****RIN 0710–AB56****Reissuance and Modification of Nationwide Permits****AGENCY:** Corps of Engineers, Army, DoD.**ACTION:** Final action.

SUMMARY: Nationwide Permits (NWP) authorize activities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 that have no more than minimal individual and cumulative adverse environmental effects. The NWPs help protect the aquatic environment and the public interest by providing incentives to reduce impacts to jurisdictional waters. In this final action, the U.S. Army Corps of Engineers (Corps) is reissuing 56 existing nationwide permits (NWPs), general conditions, and definitions, with some modifications. The Corps is also issuing one new NWP.

DATES: The 57 NWPs, the general conditions, and the associated definitions will go into effect on March 15, 2026. The NWPs will expire on March 15, 2031.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO–R, 441 G Street NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine McCafferty at 513–310–4196 or access the U.S. Army Corps of Engineers Regulatory Home Page at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/>.

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List of Acronyms

- CWA Clean Water Act
- DA Department of the Army
- EFH Essential Fish Habitat
- ESA Endangered Species Act
- FWS U.S. Fish and Wildlife Service
- FY Fiscal Year
- GC General Condition
- NEPA National Environmental Policy Act
- NHPA National Historic Preservation Act
- NMFS National Marine Fisheries Service
- NWP Nationwide Permit
- PCN Pre-Construction Notification
- RHA Rivers and Harbors Act of 1899
- USCG U.S. Coast Guard

List of Nationwide Permits and General Conditions Issued in This Final Action*Nationwide Permits (NWPs)*

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas

10. Mooring Buoys
11. Temporary Recreational Structures
12. Oil or Natural Gas Pipeline Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage and Irrigation Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Mariculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams
54. Living Shorelines
55. Seaweed Mariculture Activities
56. [Reserved]
57. Electric Utility Line and Telecommunications Activities
58. Utility Line Activities for Water and Other Substances
59. Water Reclamation and Reuse Facilities
 - A. Activities To Improve Passage of Fish and Other Aquatic Organisms

Nationwide Permit General Conditions

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material

7. Water Supply Intakes
8. Adverse Effects From Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Single and Complete Project
16. Wild and Scenic Rivers
17. Tribal Rights
18. Endangered Species
19. Migratory Birds and Bald and Golden Eagles
20. Historic Properties
21. Discovery of Previously Unknown Remains and Artifacts
22. Designated Critical Resource Waters
23. Mitigation
24. Safety of Impoundment Structures
25. Water Quality
26. Coastal Zone Management
27. Regional and Case-by-Case Conditions
28. Use of Multiple Nationwide Permits
29. Transfer of Nationwide Permit Verifications
30. Compliance Certification
31. Activities Affecting Structures or Works Built by the United States
32. Pre-Construction Notification

I. Background

A. General

The U.S. Army Corps of Engineers (Corps) may issue nationwide permits (NWP) to authorize activities under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act of 1899 (RHA) that will result in no more than minimal individual and cumulative adverse environmental effects. Under Section 404 of the CWA (33 U.S.C. 1344), Department of the Army (DA) authorization is required for discharges of dredged or fill material into waters of the United States. Under Section 10 of the RHA (33 U.S.C. 403), DA authorization is required for construction of any structure in, over, or under any navigable water of the United States; the excavating from or depositing of material in navigable waters of the United States; or the accomplishment of any other work affecting the course, location, condition, or capacity of navigable waters of the United States.

NWPs were first issued by the Corps in 1977 (42 FR 37122) to authorize categories of activities that have minimal adverse effects on the aquatic environment and streamline the authorization process for those minor activities. Since 1977, NWPs have been issued or reissued in 1982 (47 FR 31794), 1984 (49 FR 39478), 1986 (51 FR 41206), 1991 (56 FR 59110), 1995 (60 FR 38650), 1996 (61 FR 65874), 2000 (65 FR 12818), 2002 (67 FR 2020), 2007 (72 FR 11092), 2012 (77 FR 10184), 2017 (82 FR

1860), and 2021 (86 FR 2744 and 86 FR 73522).

Section 404(e) of the CWA provides the statutory authority for the Secretary of the Army, after notice and opportunity for public hearing, to issue general permits on a nationwide basis for any category of activities involving discharges of dredged or fill material into waters of the United States for a period of no more than five years after the date of issuance (33 U.S.C. 1344 (e)). The Secretary's authority to issue individual permits and general permits has been delegated to the Chief of Engineers and his or her designated representatives. NWPs are a type of general permit issued by the Chief of Engineers and are designed to regulate activities in federally jurisdictional waters and wetlands that have no more than minimal adverse environmental effects (see 33 CFR 330.1(b)). The categories of activities authorized by NWPs must be similar in nature, cause only minimal adverse environmental effects when performed separately, and have only minimal cumulative adverse effect on the environment (33 U.S.C. 1344(e)(1)). The Corps has discretionary authority to modify or revoke the NWPs before they expire. NWPs and other general permits can also be issued to authorize activities pursuant to Section 10 of the RHA (see 33 CFR 322.2(f) and 330.1(g)). The NWP program is designed to provide timely authorizations for the regulated public while protecting the Nation's aquatic resources.

Section 10 of the RHA authorizes the Corps to issue general permits and after-the-fact permits for structures and work in navigable waters of the United States. Section 10 (33 U.S.C. 403) prohibits any obstructions to the navigable capacity of any waters of the United States "unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same." Section 10 does not mandate that the Corps specify what form those authorizations should take and does not limit authorization to permits, either individual permits or general permits. By using the word "authorized," a term that is broad in scope, Section 10 gives the Corps the authority to use different types of permits to approve structures and work in navigable waters of the United States. Since 1975, the Corps has issued general permits under Section 10 of the RHA (see 40 FR 31335). The Corps has issued NWPs under the authority of Section 10 of the RHA since 1977 (see 42 FR 37140).

The NWPs provide incentives for project proponents to design activities that require DA authorization under

Section 404 of the CWA and/or Section 10 of the RHA to avoid and minimize impacts to the aquatic environment in order to qualify for NWP authorization, because in most cases those project proponents can obtain NWP verifications from Corps districts in less time than it takes to receive standard individual permits. For some NWPs, project proponents can proceed with the authorized activities without reporting those activities to Corps district offices as long as the project proponent complies with all applicable terms and conditions of those NWPs. Other NWPs require project proponents to submit pre-construction notifications (PCNs) to Corps districts prior to proceeding with the authorized activities to give district engineers the opportunity to determine whether the project proponents' proposed activities are authorized by an NWP. The former set of NWPs are called non-reporting NWPs and the latter set of NWPs are called reporting NWPs.

Activities not authorized by NWPs, or by regional general permits or programmatic general permits issued by district engineers, require individual permits from the Corps. Individual permits are DA authorizations in the form of standard individual permits or letters of permission, which require an activity-specific public interest review and the preparation of appropriate environmental documentation in support of a permit decision for a specific activity. In Fiscal Year (FY) 2024, the average processing time for an NWP PCN that was required or voluntarily submitted, was 55 days and the average processing time for a standard individual permit was 253 days. The reduced processing time for NWPs creates a substantial incentive for project proponents to reduce the impacts of their regulated activities on the aquatic environment to a no more than minimal level. This incentive to minimize impacts directly benefits the aquatic resources that CWA and RHA protect.

Section 404(e)(1) of the CWA states that general permits may be issued on a state, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material into waters of the United States if the activities in such a category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. The phrase "minimal adverse environmental effects when performed separately" refers to the direct and indirect adverse environmental effects caused by the specific activity authorized by an NWP.

The phrase “minimal cumulative adverse effect on the environment” refers to the collective direct and indirect adverse environmental effects caused by all the activities authorized by a particular NWP during the time period when the NWP is in effect (a period of no more than 5 years) in a specific geographic region.

Some NWP include PCN requirements. When a PCN is submitted, Corps districts evaluate proposed NWP activities on a case-by-case basis to ensure that they will cause no more than minimal adverse environmental effects, individually and cumulatively. In most cases an applicant can begin their regulated activity if the district does not respond within 45 days of receiving a complete PCN. The exceptions to that general rule are when: general condition 18 (Endangered Species) or general condition 20 (Historic Properties) require a non-federal permittee to submit a PCN; activities subject to General Conditions 16 (Wild and Scenic Rivers) and 31 (Activities Affecting Structures of Works Built by the United States); activities proposed for authorization under NWP 49 (Coal Remining Activities; or if the proposed activity requires a written waiver to exceed specified limits of an NWP. When any of these exceptions apply, the applicant must wait until they are notified in writing that the activity may proceed under the NWP. District engineers also have authority under 33 CFR 330.5(d) to modify, suspend, or revoke the NWP authorization on a case-specific basis.

There are 39 Corps district offices and eight Corps division offices. The district offices administer the NWP program on a day-to-day basis by reviewing PCNs for proposed NWP activities. The division offices oversee district offices and are managed by division engineers. Division engineers have the authority to modify, suspend, or revoke NWP authorizations on a regional basis to take into account regional differences among aquatic resources and ensure that the NWPs authorize only those activities that result in no more than minimal individual and cumulative adverse environmental effects in a region (see 33 CFR 330.5(c)).

When a Corps district receives a PCN, the district engineer reviews the PCN and determines whether the proposed activity will result in no more than minimal individual and cumulative adverse environmental effects, consistent with the criteria in paragraph 2 of Section D, “District Engineer’s Decision.” At this point, the district engineer may add conditions to the NWP authorization to ensure that the

verified NWP activity results in no more than minimal individual and cumulative adverse environmental effects consistent with processes and requirements set out in 33 CFR 330.5(d).

For some NWPs, when submitting a PCN an applicant may request a waiver of a particular limit specified in the NWP’s terms and conditions. If the applicant requests a waiver of an NWP limit and the district engineer determines, after conducting any coordination with the resource agencies required under paragraph (d) of NWP general condition 32, that the proposed NWP activity will result in no more than minimal adverse environmental effects, the district engineer may grant such a waiver. Following the conclusion of the district engineer’s review of the PCN, the district engineer prepares a document explaining the decision on whether to issue a waiver for the proposed NWP activity. This document discusses the district engineer’s findings as to whether a proposed NWP activity qualifies for NWP authorization, including compliance with all applicable terms and conditions, and the rationale for any waivers granted, and activity-specific conditions needed to ensure that the NWP activity will have only minimal individual and cumulative adverse environmental effects and will not be contrary to the public interest (see 33 CFR 330.6(a)(3)(i)). Waivers are only permissible when they are explicitly provided for by a specific NWP’s terms and conditions.

The case-by-case review of PCNs often results in district engineers adding activity-specific conditions to NWP authorizations to ensure that the adverse environmental effects are no more than minimal. These can include permit conditions such as time-of-year restrictions and use of best management practices (BMPs) or compensatory mitigation requirements to offset authorized losses of jurisdictional waters and wetlands so that the net adverse environmental effects are no more than minimal. Any compensatory mitigation required for NWP activities must comply with the Corps’ compensatory mitigation regulations at 33 CFR part 332. Review of a PCN may also result in the district engineer asserting discretionary authority to require an individual permit from the Corps for the proposed activity, if he or she determines, based on the information provided in the PCN and other available information, that adverse environmental effects will be more than minimal, or otherwise determines that “sufficient concerns for the environment or any other factor of the

public interest so requires” consistent with 33 CFR 330.4(e)(2).

During their reviews of PCNs, district engineers use their discretion to determine the appropriate regional scale for evaluating cumulative effects for the purposes of 33 CFR 330.5(d)(1), 33 U.S.C. 1344(e)(1), 33 CFR 322.2(f)(1), and/or 33 CFR 323.2(h)(1). The appropriate regional scale for evaluating cumulative effects may be a waterbody, watershed, seascape, county, state, a Corps district, or other geographic area. The appropriate regional scale is dependent, in part, on what types of NWP activities are occurring, where they are occurring, and what types of adverse environmental effects they might be causing. For example, for NWPs that authorize structures and/or work in navigable waters of the United States under Section 10 of the RHA, the appropriate geographic region for assessing cumulative effects may be a specific navigable waterbody (e.g., a lake), or in the case of activities in ocean or estuarine waters, a seascape. For NWPs that authorize discharges of dredged or fill material into non-tidal wetlands and streams, the appropriate geographic region for assessing cumulative effects may be a watershed, county, state, or Corps district. The direct individual adverse environmental effects caused by activities authorized by NWPs are evaluated within the project footprint, and the indirect individual adverse environmental effects caused by activities authorized by NWPs are evaluated within the geographic area to which those indirect effects may extend.

Through the NWPs, the aquatic environment may also receive additional protection through regional conditions imposed by division engineers and activity-specific conditions added to NWPs by district engineers. These regional conditions and activity-specific conditions further minimize adverse environmental effects, because these conditions can only further restrict use of the NWPs. NWPs also allow district engineers to exercise, on a case-by-case basis, discretionary authority to require individual permits for proposed activities that may result in more than minimal individual and cumulative adverse environmental effects. NWPs help protect the aquatic environment because they provide incentives to permit applicants to reduce impacts to jurisdictional waters and wetlands to meet the restrictive requirements of the NWPs and receive authorization more quickly than they would through the individual permit process. Regional general permits issued by district engineers provide similar

environmental protections and incentives to project proponents.

After the NWP is issued or reissued, division engineers will issue supplemental documents to determine whether regional conditions are necessary to ensure that use of the NWP on a regional basis (*e.g.*, within a Corps district or state) will authorize only those activities with no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.5(c)(1)). The supplemental documents are prepared by Corps districts but must be approved and formally issued by the appropriate division engineer, because the NWP regulations at 33 CFR 330.5(c) state that the division engineer has the authority to modify, suspend, or revoke NWP authorizations for any specific geographic area within her or his division. For some Corps districts, their geographic area of responsibility covers an entire state. For other states, there is more than one Corps district responsible for implementing the Corps Regulatory Program, including the NWP program. In those states, there is a lead Corps district responsible for preparing the supplemental documents for all of the NWPs.

When districts prepare supplemental documents for division approval of regional conditions, or imposing no regional conditions, they assess cumulative effects by estimating the number of times a particular NWP might be used in the region (*e.g.*, Corps district or state) covered by the supplemental document, along with estimates of impact acreages and acreages of compensatory mitigation required. If the NWP is not suspended or revoked in a state or a Corps district, the supplemental document includes a certification that the use of the NWP in that district, with any applicable regional conditions, will result in no more than minimal cumulative adverse environmental effects. See 33 CFR 330.5(c)(1).

After the NWPs are issued or reissued and go into effect, district engineers will monitor the use of these NWPs on a regional basis (*e.g.*, within a watershed, county, state, Corps district or other appropriate geographic area), to ensure that the use of a particular NWP is not resulting in more than minimal cumulative adverse environmental effects (see 33 CFR 330.5(d)(1)). The Corps staff that evaluate NWP PCNs that are required by the text of the NWP or by NWP general conditions or regional conditions imposed by division engineers, or voluntarily submitted to the Corps district by project proponents to receive written NWP verifications,

often work in a particular geographic area and have an understanding of the activities that have been authorized by NWPs, regional general permits, and individual permits over time, as well as the current environmental setting for that geographic area. If Corps district staff believe that the use of an NWP in that geographic region is approaching a threshold above which the cumulative adverse environmental effects for that category of activities may be more than minimal, the district engineer may either make a recommendation to the division engineer to modify, suspend, or revoke the NWP authorization in that geographic region in accordance with the procedures in 33 CFR 330.5(c). Alternatively, under the procedures at 33 CFR 330.5(d), the district engineer may also modify, suspend, or revoke NWP authorizations on a case-by-case basis to ensure that the NWP does not authorize activities in that region that result in more than minimal cumulative adverse environmental effects.

For the NWPs, the assessment of cumulative effects occurs at three levels: national, regional, and the verification stage. Each national NWP decision document includes a national-scale cumulative effects analysis to evaluate whether the issuance or reissuance of the NWP would result in more than minimal cumulative adverse environmental effects. For all NWPs, an evaluation of the probable effects, including cumulative effects, of the proposed activity and its intended use on the public interest is required (see 33 CFR 320.4(a)(1)). For NWPs that authorize discharges of dredged or fill material into waters of the United States, an analysis of cumulative effects conducted in accordance with 40 CFR 230.7(b)(3) is also required.

Cumulative effects are the result of the accumulation of direct and indirect effects caused by multiple activities that persist over time in a particular geographic area (MacDonald 2000), such as a watershed or ecoregion (Gosselink and Lee 1989). For the NWPs, the analysis of cumulative effects would be the accumulation of impacts caused by activities authorized by an NWP during the period it is in effect (*i.e.*, no more than five years) in a watershed, ecoregion, or other appropriate geographic area, and how those accumulated impacts might affect the current environmental setting or environmental baseline within that geographic area. The current environmental setting includes the present effects of other federal, non-federal, and private actions, including those that do not require DA authorization, as well as the effects of

other federal, non-federal, and private actions that are occurring at the same time as the activities authorized by the NWP.

In the context of an NWP issued or reissued by Corps Headquarters, the “incremental effects of the action” would be the direct and indirect effects on the environment caused by activities authorized by the NWP during the period it is in effect. The incremental effects caused by NWP activities are to be added to the effects caused by other past, present, and reasonably foreseeable actions regardless of what agency (federal or non-federal) or person authorizes or undertakes those other past, present, and reasonably foreseeable actions. Oceans, estuaries, lakes, rivers, streams, wetlands, and other aquatic ecosystems are affected by a wide variety of federal, non-federal, and private actions in addition to activities authorized by the Corps under its permitting authorities, including activities authorized by NWPs in the past and activities authorized by other types of DA permits, such as regional general permits, standard individual permits, and letters of permission. Therefore, when evaluating cumulative effects of activities authorized by NWPs, context is important, and the severity of those impacts have to be evaluated against the environmental baseline to determine whether the cumulative adverse environmental effects caused by the issuance or reissuance of an NWP are likely to be no more than minimal, or more than minimal.

For an NWP, the cumulative effects are the collective incremental environmental effects of the activities that are authorized by an NWP, including the number of times that NWP is used to authorize activities in a specific geographic area during the five-year period that NWP is in effect, as well as the estimates of impact acres and acreages of compensatory mitigation required. For the issuance or reissuance of an NWP by Corps Headquarters, the geographic scale of the cumulative effects analysis is the entire United States, including its territories. The cumulative effects likely to be caused by activities authorized by an NWP are evaluated against the environmental baseline, which has been shaped by human activities and natural disturbances and other events over time, including activities authorized by prior versions of that NWP, as well as other federal, non-federal, and private actions that directly or indirectly affect the aquatic environment and contribute to the overall cumulative effects that have influenced the structure and function of that aquatic environment over time.

In the supplemental documentation, the division engineer analyzes the cumulative effects in a region, which could be defined as a state or a Corps district. Under 33 CFR 330.5(d)(1), when a district engineer considers cumulative effects when reviewing a PCN for a proposed NWP activity, she or he will use a geographic and temporal scale that is larger than the geographic and temporal scales that were used to evaluate the direct and indirect adverse environmental effects caused by the proposed NWP-specific activity. The geographic scope of the district engineer's consideration of cumulative effects would be the seascape, watershed, or other appropriate geographic region in which the proposed NWP activity is located. The district engineer would also consider other activities that were authorized by that NWP in that geographic area during the period of time that NWP is in effect, as well as the other federal, non-federal, and private actions that shaped the environmental baseline within that geographic region, to determine whether the incremental contribution of activities authorized by that NWP in that geographic region during the time it would be in effect would not be, or would be, more than minimal. The environmental baseline includes activities conducted in the past under authorizations provided by prior issuances of that NWP, activities authorized by other forms of DA authorization, as well as other federal, non-federal, and private actions not regulated by the Corps that directly or indirectly caused changes to, or losses of, waters and wetlands subject to the Corps' jurisdiction under its permitting authorities. In addition, the environmental baseline includes the ecological functions and services the waters and wetlands within that watershed, seascape, or other geographic area provide, as well as the degree to which those waters and wetlands provide those ecological functions and services.

When a district engineer reviews a PCN and determines that the proposed activity qualifies for NWP authorization, he or she will issue a written NWP verification to the permittee (see 33 CFR 330.6(a)(3)). If an NWP verification includes multiple authorizations using a single NWP (e.g., linear projects with crossings of separate and distant waters of the United States authorized by NWPs 12, 14, 57, and 58) or non-linear projects authorized with two or more different NWPs (e.g., an NWP 28 for reconfiguring an existing marina plus an NWP 19 for minor dredging within that

marina), the district engineer will evaluate the cumulative effects of the applicable NWP authorizations within the appropriate geographic area. As discussed above, examples of geographic areas that may be used for cumulative effects analyses for specific NWPs may be a waterbody, watershed, county, state, Corps district, or other geographic area, such as a seascape in ocean or estuarine waters.

Corps Headquarters conducted the required cumulative effects analyses in the national decision documents for the issuance or reissuance of each of the NWPs. Therefore, district engineers do not need to replicate the Headquarters national cumulative effects analyses for NWP verifications for a specific activity authorized by one or more NWPs. For an NWP verification, the district engineer only needs to include a brief statement in the administrative record documenting the NWP PCN review stating her or his determination whether the proposed NWP activity, plus any required mitigation, will result in no more than minimal individual and cumulative adverse environmental effects for the purposes of 33 CFR 330.5(d)(1), as well as 33 U.S.C. 1344(e)(1), 33 CFR 322.2(f)(1), and/or 33 CFR 323.2(h)(1). If the district engineer determines, after considering mitigation, that a proposed NWP activity will result in more than minimal cumulative adverse environmental effects, he or she will exercise discretionary authority and require an individual permit for the proposed activity.

An activity that requires DA authorization may include discharges that would occur within more than one state or within more than one Corps district or division. When the Corps receives an NWP PCN or individual permit application for such activities, a lead Corps district will be designated, and that district will serve as a single point of contact for each permit applicant.

B. Overview of Proposed Rule

On June 18, 2025, the Corps published in the **Federal Register** (90 FR 26100) a proposed regulation to reissue 56 of 57 existing NWPs with some modifications and associated general conditions and definitions, and to create one new NWP (2025 Proposal). The Corps provided a 30-day comment period, which closed on July 18, 2025. Among other things, the Corps proposed the following: (1) to reissue 56 of 57 existing permits (some with proposed modifications); (2) to issue one new NWP to authorize activities that improve the passage of fish and other aquatic organisms; (3) not to reissue

NWP 56 (finfish mariculture activities); and (4) to modify some general conditions and definitions. The Corps requested comment on these and all other aspects of the proposal.

C. Overview of This Final Action

This final action reissues 56 of the 57 existing NWPs, with some changes, and issues one new NWP (NWP A for activities to improve passage of fish and other aquatic organisms). This action does not reissue NWP 56 (finfish mariculture activities). This action also reissues the general conditions and definitions, with some changes.

This final action reissues 56 of 57 existing NWPs that were issued or reissued in 2021 and 2022 (collectively the 2021 NWPs). This final action reissues 15 of the 16 NWPs (i.e., NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 57, and 58) that were issued or reissued in the final rule that was published in the **Federal Register** on January 13, 2021, and went into effect on March 15, 2021 (86 FR 2744) with some changes. This action reissues the 41 NWPs (i.e., NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, 54, and 59) that were issued or reissued in the final rule published in the **Federal Register** on December 27, 2021, and went into effect on February 25, 2022 (86 FR 73522) with some changes. This action also reissues the NWP general conditions and definitions that were published in the January 13, 2021, final rule with some changes.

These 57 NWPs, the general conditions, and the associated definitions will go into effect on March 15, 2026. The expiration date for the NWPs issued or reissued in this final action is March 15, 2031.

D. Status of Existing Permits

When the Corps reissues existing NWPs, the reissued NWPs replace the prior versions of those NWPs so that there are not two sets of NWPs in effect at the same time. The expiration date of the 57 NWPs that went into effect on March 15, 2021, and February 25, 2022, is March 14, 2026. This expiration date was expressly provided for in the rulemakings establishing these NWPs (see 86 FR 2744 and 86 FR 73522). An activity completed under the authorization provided by a 2021 NWP continues to be authorized by that NWP (see 33 CFR part 330.6(b)). Activities authorized by the 2021 NWPs that have commenced or are under contract to commence by March 14, 2026, will have one year (i.e., until March 14, 2027) to complete those activities (see 33 CFR

330.6(b)). Activities previously authorized by the 2021 NWP that have not commenced or are not under contract to commence by March 14, 2026, or that will not be completed by March 14, 2027, will require reauthorization under the 2026 NWPs, provided those activities still comply with the terms and conditions, and qualify for authorization under the 2026 NWPs. If those activities no longer qualify for NWP authorization because they do not meet the terms and conditions of the 2026 NWPs (including any regional conditions imposed by division engineers), the project proponent will need to obtain an individual permit, or seek authorization under a regional general permit, if such a general permit is available in the applicable Corps district and can be used to authorize the proposed activity.

One commenter recommended changing the grandfather period for the activities authorized under the 2021 NWPs to between two and five years to allow for additional time to complete activities which receive verifications from the district engineer in the final year of an NWP authorization. The one-year grandfathering period in 33 CFR 330.6(b) was established in the November 22, 1991, final rule amending 33 CFR part 330 (see 56 FR 59110). Experience since this one-year grandfathering period was established has shown that it has been adequate to allow project proponents to complete the activities which were authorized by the NWP or to plan to seek new authorization under a newly issued NWP or individual permit. Therefore, the Corps declines to extend the grandfather period.

E. Nationwide Permit Verifications

Certain NWPs require the permittee to submit a PCN prior to commencing the proposed NWP activity. The requirement to submit a PCN is identified in the NWP text when it applies, as well as certain general conditions (e.g., general conditions 18 and 20, Endangered Species and Historic Properties, respectively).

In the PCN, the project proponent must specify which NWP or NWPs the project proponent wants to use to provide the required DA authorization under Section 404 of the CWA and/or Section 10 of the RHA. The district engineer should verify the activity under the NWP(s) requested by the project proponent, as long as the proposed activity complies with all applicable terms and conditions, including any applicable regional conditions imposed by the division engineer. All NWPs have the same

general requirement: that the authorized activities may only cause no more than minimal individual and cumulative adverse environmental effects. Therefore, if the proposed activity complies with the terms and all applicable conditions of the NWP the applicant wants to use, then the district engineer should issue the NWP verification unless the district engineer exercises discretionary authority to modify the NWP through the addition of conditions, or to require an individual permit. If the proposed activity does not meet the terms and conditions of the NWP identified in the applicant's PCN, and that activity meets the terms and conditions of another NWP identified by the district engineer, the district engineer will process the PCN under the NWP identified by the district engineer. If the district engineer exercises discretionary authority, the district engineer should explain the reasons for determining that the proposed activity raises sufficient concern for the environment or otherwise may be contrary to the public interest.

PCN requirements may be added to NWPs by division engineers through regional conditions to require PCNs for additional activities. For an activity where a PCN is not required, a project proponent may submit a PCN voluntarily, if the project proponent wants written confirmation that the activity is authorized by an NWP. Some project proponents submit permit applications without specifying the type of authorization they are seeking. In such cases, the district engineer will review those applications and determine if the proposed activity qualifies for NWP authorization or another form of DA authorization, such as a regional general permit (see 33 CFR 330.1(f)).

In response to a PCN or a voluntary NWP verification request, the district engineer reviews the information submitted by the prospective permittee. If the district engineer determines that the activity complies with the terms and conditions of the NWP, the district engineer will notify the permittee. Activity-specific conditions, such as compensatory mitigation requirements, may be added to an NWP authorization to ensure that the activity to be authorized under the NWP will result in no more than minimal individual and cumulative adverse environmental effects and will not be contrary to the public interest. The activity-specific conditions are incorporated into the NWP verification letter (*i.e.*, the written confirmation from the district engineer that the proposed activity is authorized by an NWP), along with the NWP text

and the NWP general conditions. In general, NWP verification letters will expire on the date the NWP expires (see 33 CFR 330.6(a)(3)(ii)), although district engineers have the authority to issue NWP verification letters that will expire before the NWP expires, if it is in the public interest to do so.

If the district engineer reviews the PCN or voluntary NWP verification request and determines that the proposed activity does not comply with the terms and conditions of an NWP, the district engineer will notify the project proponent and provide instructions for applying for authorization under a regional general permit or an individual permit. District engineers will respond to NWP verification requests, submitted voluntarily or as required through PCNs, within 45 days of receiving a complete PCN. Except for activities conducted by non-federal permittees that require PCNs under paragraph (c) of general conditions 18 (Endangered Species) and 20 (Historic Properties), activities subject to General Conditions 16 (Wild and Scenic Rivers) and 31 (Activities Affecting Structures of Works Built by the United States), and activities proposed for authorization under NWP 49 (Coal Remining Activities), if the Corps district does not respond to the PCN within 45 days of a receipt of a complete PCN, the project proponent may assume that the project is authorized, consistent with the information provided in the PCN. For NWP 49, and activities conducted by non-federal permittees that require PCNs under paragraph (c) of general conditions 18 (Endangered Species) and 20 (Historic Properties), activities subject to General Conditions 16 (Wild and Scenic Rivers) and 31 (Activities Affecting Structures of Works Built by the United States), the project proponent cannot begin work before receiving a written NWP verification. If the project proponent requested a waiver of a limit in an NWP, the waiver is not granted unless the district engineer makes a written determination that the proposed activity will result in no more than minimal individual and cumulative adverse environmental effects and issues an NWP verification.

F. Severability

The purpose of this section is to clarify the Corps' intent with respect to the severability of the NWPs in this action. Each NWP in this action operates independently and is an individual agency action. If any particular NWP of this action is determined by judicial review or operation of law to be invalid, that partial invalidation will not render the

remainder of the NWP in this action invalid. Likewise, if the application of any NWP to a specific activity in a particular location is determined to be invalid, the Corps intends that the NWP remain applicable to all other eligible activities.

II. Discussion of Public Comments

A. Overview

In response to the 2025 Proposal, the Corps received comments from more than 450 states, tribes, organizations, and individuals. Many commenters co-signed joint letters commenting on the 2025 Proposal. The Corps received around two hundred individual comment letters. One commenter attached more than 750 documents to their comments. The attached documents were comments originally submitted in response to the Department of the Army's March 2022 **Federal Register** notice (87 FR 17281) and were specific to NWP 12. The individual comment letters, including the attached comments that were re-submitted from the 2022 docket, are posted on *regulations.gov* docket (COE-2025-0002) for this rulemaking action. The Corps reviewed and considered all comments received in response to the 2025 Proposal.

B. Responses to General Comments

Many commenters expressed general support for the reissuance of the NWPs and many commenters expressed opposition to the NWP program or to the use of NWPs to authorize certain activities or activities in certain locations. Many commenters encouraged the Corps to finalize the rule to reissue the NWPs before the existing NWPs expire on March 14, 2026. Several commenters stated that the NWPs should be revoked. Many commenters stated that the NWPs streamline the permit process. One commenter stated that the NWPs strike a balance between environmental protection of the aquatic environment and reasonable economic development. One commenter stated that the Corps should ensure that the issuance of this final action does not add unnecessary costs to, or unnecessarily delay, the permitting process.

One commenter stated that the NWP program allows the Corps to focus its limited resources on reviewing permit applications that would result in more than minimal environmental impacts. Many commenters requested that the Corps increase permitting efficiencies in the NWP program, through this rulemaking, future rulemakings, and other administrative actions. Many

commenters suggested that the Corps undertake a second rulemaking before the NWPs in this final action expire. Many commenters suggested changes to the NWPs that should be considered in future rulemakings. One commenter stated that the NWPs do not cover routine activities, which causes Corps Districts to use resources to develop Regional General Permits.

The NWP program provides a mechanism to efficiently authorize activities that have no more than minimal adverse environmental effects on the environment. The NWP program is an important part of the Regulatory program because it allows the Corps to focus its finite resources on evaluating applications for Department of the Army (DA) authorization which cause more than minimal adverse environmental effects. The NWP program furthers the regulatory approach of the Corps Regulatory program that is articulated in 33 CFR 320.1(a)(3), to avoid unnecessary regulatory controls, and in 33 CFR 320.1(a)(1), to balance favorable impacts against detrimental impacts, reflecting the national concerns for both the protection and utilization of important resources. In accordance with 33 CFR 330.5(b)(1) anyone may, at any time, suggest changes to the NWPs to the Chief of Engineers. From time to time, but at least every 5 years, the Chief of Engineers will evaluate new NWPs and revocations or modifications to existing NWPs.

Many commenters stated that the proposed NWPs do not comply with the CWA, the National Environmental Policy Act (NEPA), the Endangered Species Act, and the National Historic Preservation Act. Many commenters stated that the NWPs achieve the goals in various Executive Orders, including Executive Order 14154 "Unleashing Energy Dominance", issued on January 20, 2025. Many commenters stated that the NWPs do not comply with the Administrative Procedure Act, stating that the Corps did not allow adequate time to comment or adequately explain its decision. One commenter stated that all technical documents, internal documents, regional manuals, document templates, and other interpretive materials used by the Corps must comply with the Administrative Procedures Act.

The decision to reissue, modify, or issue the NWPs is made in compliance with the CWA, NEPA, the Endangered Species Act, the National Historic Preservation Act, and other federal laws. Comments and responses to comments on compliance with the CWA, NEPA, ESA, and NHPA are discussed in more detail in Section III of this final action.

The Administrative Procedure Act governs the process by which federal agencies issue regulations and publish notices in the **Federal Register**. This rulemaking has been conducted in accordance with the Administrative Procedure Act and Executive Order 12866. The manner in which unidentified technical documents and other unidentified documents used by the Corps are developed and approved is beyond the scope of this rulemaking.

Many commenters stated that the NWPs provide clear guidance. One commenter requested that the NWPs include precise procedures for how to apply the NWP program in each circumstance. This final action incorporates modifications to the NWPs to provide additional clarity to potential permittees. The application of the terms of each NWP, in combination with the general conditions and other information in this final action, as well as any regional conditions, address how an NWP will be applied to a proposed specific activity.

Many commenters and several tribes stated that the proposed rule did not allow for adequate time to meaningfully participate in the rulemaking process and requested extensions to the deadline to comment on the proposed rule. Some commenters stated that this rulemaking is procedurally deficient. One commenter objected to extending the comment period. Several commenters recognized that the Corps had limited time to complete the current rulemaking and recommended that the future rulemaking for the NWPs allow for a longer comment period.

For the 2025 proposed rule, the Corps provided a 30-day comment period. The 2025 Proposal to reissue, issue, or modify the NWPs described modest changes to the 2021 NWPs. Of the 57 existing NWPs, changes were proposed to 13 NWPs and one new NWP was proposed. There were no changes proposed to 43 NWPs. The Corps believes that a 30-day review period allowed for adequate time to provide substantive comments on the proposed rule. The Corps sent response letters to entities that made timely requests for extensions of the comment period for the 2025 Proposal. The process and timing of any future rulemaking for the NWPs are beyond the scope of this rulemaking.

One commenter requested a public hearing on the 2025 Proposal and stated that the Corps should offer to hold meetings with the public and tribes to receive input on the 2025 Proposal. The Corps declined to hold a public hearing or public meetings on the proposed NWPs because it determined that a

public hearing or public meeting was unlikely to provide additional information that would inform the Corps' decision whether to reissue, issue, or modify these NWP. Under the Corps' regulations at 33 CFR 327.4(b), requests for public hearing under this paragraph shall be granted, unless the Corps determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by holding a public hearing. The Corps received around two hundred comments on the proposed rule, and it is unlikely that any statements provided during a public hearing would raise issues that are different than the issues or concerns discussed in the written comments received in response to the 2025 Proposal.

One commenter stated that the NWPs are useful for development with minimal impacts to waterways. Many commenters stated that the NWPs result in more than minimal adverse environmental impacts. Many commenters stated that the Corps should achieve "no net loss" of wetlands. Many commenters stated that the NWPs promote avoidance and minimization of environmental impacts. Many commenters opposed the NWPs because they do not require avoidance and minimization of impacts.

Section 404(e) of the CWA recognizes that activities authorized by general permits, including NWPs, will result in adverse environmental impacts, but limits those adverse impacts so that they can only be no more than minimal. The Corps has adopted terms and conditions for the NWPs to be sufficiently protective of the aquatic environment while allowing activities that result in no more than minimal adverse environmental effects to be conducted. There is no federal statute or regulation that requires "no net loss" of aquatic resources. The "no overall net loss" goal for wetlands articulated in the 1990 U.S. EPA-Army Memorandum of Agreement for mitigation for CWA Section 404 permits states that the Section 404 permit program will contribute to that national goal. The 1990 Memorandum of Agreement only applies to standard individual permits, not to general permits.

The NWPs authorize impacts with less paperwork and a shorter processing time for project proponents than standard individual permits. These differences in burden can incentivize project proponents to voluntarily reduce the adverse effects of their planned activities that would otherwise require an individual permit under Section 404 of the CWA and/or Section 10 of the RHA, in order to qualify for NWP

authorization. This reduction in adverse effects can therefore reduce a project's impact on the Nation's aquatic resources. General condition 23 (Mitigation) requires permittees to design and construct their projects to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site.

Many commenters suggested removing or raising the $\frac{1}{2}$ -acre impact limit of loss of waters for the NWPs. Many commenters recommended raising the $\frac{1}{2}$ -acre impact limit to three acres.

We are retaining the acreage limits for those NWPs that have specified acreage limits. Comments suggesting changes to the acreage limits of a specific NWP are summarized in the section of the preamble that discusses the comments received on that NWP. The acreage limits, along with the current PCN thresholds, other terms of the NWPs, in combination with the general conditions satisfy the requirements of Section 404(e) of the CWA and ensure that the NWPs authorize no more than minimal adverse environmental impacts both individually and cumulatively. In addition, division engineers have the authority to modify NWPs on a regional basis to reduce acreage limits through regional conditions and district engineers, upon review of a PCN, can modify an NWP verification to ensure that a case-specific activity will have no more than minimal adverse environmental effects.

In areas of the United States where higher acreage limits (e.g., one or two acres) would be appropriate for general permit authorizations, district engineers have the authority to issue regional general permits. A number of NWPs are self-limiting, in that the category of activities authorized by that NWP acts as a limit (e.g., NWP 10, which authorizes a single, non-commercial mooring buoy). For those self-limiting NWPs, acreage and linear foot limits are not necessary to control the adverse environmental effects of those activities. In NWPs which have impact limits or PCN thresholds, the acre impact limits, in conjunction with the PCN thresholds, and the $\frac{1}{10}$ -acre loss of wetlands and $\frac{3}{100}$ -acre loss of stream bed compensatory mitigation thresholds are sufficient to protect waters of the United States to ensure the NWPs cause no more than minimal adverse environmental effects.

Many commenters stated that the Corps should reinstate the 300 linear foot impact limit for losses of stream bed in NWPs 21 (Surface Coal Mining

Activities), 29 (Residential Developments), 39 (Commercial and Institutional Facilities), 40 (Agricultural Activities), 42 (Recreational Facilities), 43 (Stormwater Management Facilities), 44 (Mining Activities), 50 (Underground Coal Mining Activities), 51 (Land-Based Renewable Energy Generation), and 52 (Water-Based Renewable Energy Generation Pilot Projects). Many commenters stated that removal of the 300 linear foot limit from NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51 and 52 allows unlimited impacts to streams. One commenter recommended adding a linear foot impact limit of 500 feet.

The 300 linear foot impact limit was removed from 10 NWPs and the $\frac{3}{100}$ -acre threshold for stream compensatory mitigation for NWP activities was established in the 2021 NWPs as explained in the final rule to issue the 2021 NWPs (86 FR 2761–2768) and remains the Corps' position. The Corps will rely on other, existing protective mechanisms within the NWPs to ensure that the activities authorized by these NWPs will result in no more than minimal individual and cumulative adverse environmental effects. Those mechanisms include the $\frac{1}{2}$ -acre impact limit, the PCN requirements for these NWPs, and the ability of division and district engineers to further condition or restrict the applicability of an NWP in situations where they have concerns for the aquatic environment under the CWA Section 404(b)(1) Guidelines or for any factor of the public interest (see 33 CFR 330.1(d)).

Many commenters requested that all NWPs require PCNs for all activities. Many commenters stated that no PCN requirement should be changed. A few commenters stated that thresholds for PCN requirements should be lowered. Many commenters stated that the PCN requirements should be reduced. One commenter stated that the acreage threshold for triggering PCNs for certain NWPs is arbitrarily determined. One commenter stated that PCNs create unnecessary work and delay. Many commenters stated that the Corps should not exempt federal agencies from requirements to submit PCNs. Many commenters stated that by not requiring PCNs for every NWP activity, the Corps is failing to meet its statutory and regulatory obligations.

In this final action, we have retained the PCN thresholds that were in the 2025 Proposal. PCNs are an important mechanism to ensure that the NWPs only authorize those activities that have no more than minimal individual and cumulative adverse environmental effects. Pre-construction notifications allow district engineers to evaluate the

activity- and site-specific circumstances of proposed NWP activities to decide whether those activities are eligible for NWP authorization or require individual permits. In addition, PCNs provide district engineers with the opportunity to impose activity-specific conditions on the NWPs, including mitigation requirements, to ensure that the regulated activity will cause no more than minimal adverse environmental effects.

We agree that federal agencies that use the NWPs to authorize their activities must submit a PCN when required by the terms of the NWP and certain general conditions. General conditions 18 (Endangered Species) and 20 (Historic Properties) require federal agencies to follow their own implementing procedures for complying with the ESA and NHPA. Federal agencies do not have to submit a PCN to satisfy general conditions 18 or 20 if no PCN is required by the terms of the NWP which authorizes the proposed regulated activity or by any other general condition. Section 404(e) of the CWA does not mandate that the Corps track all NWP activities. Since the inception of the NWP program in 1977, many of the NWPs have not required PCNs, thus the changes that are being finalized are not a departure from the Corps' practice or procedures. The Corps will continue to use reliable data and resources to analyze the effects of the NWP Program.

One commenter stated that the PCN thresholds should be set to $\frac{1}{10}$ -acre or 300 linear feet. One commenter stated there is no ecological support for differing thresholds between $\frac{1}{10}$ th and $\frac{1}{2}$ acres for cumulative impacts.

For NWPs that have an acreage PCN threshold, the Corps has set that threshold at $\frac{1}{10}$ -acre. The $\frac{1}{10}$ -acre threshold is a sufficiently protective limit to allow district engineers review PCNs and provide opportunity to impose activity-specific conditions on the NWPs, including mitigation requirements, to ensure that the regulated activity will cause no more than minimal adverse environmental effects. The areal limit is also a more consistently understood measurement of impact compared to the length limit. The $\frac{1}{2}$ -acre limit to loss of waters of the United States, where NWPs have such a limit, in combination to the PCN requirements and other terms and condition of the NWP are sufficient to ensure that the NWPs will cause no more than minimal adverse environmental effects, individually and cumulatively.

Many commenters requested clarification on how to submit a PCN for

a linear project that spans more than one Corps district. Prospective permittees of linear projects that cross the boundaries of a Corps district or division may submit a PCN to one of the districts where regulated activities in waters of the United States are proposed. When the Corps receives an NWP PCN for activities that cross the boundary of a Corps district or division, a lead Corps district will be designated and serve as a single point of contact for each permit applicant.

Several commenters stated that all NWPs should require PCNs so the Corps can coordinate or consult with tribes on proposed NWP activities. Many commenters stated that activities should not be authorized by an NWP when they interfere with tribal rights. Several commenters stated that regional conditions should be modified to ensure that the NWPs do not authorize impacts to any lands or waters ceded in treaties, impacts to treaty rights, or any sacred/cultural site/landscape.

Consistent with general condition 17 (Tribal Rights), no activities are authorized by NWP where they impair reserved tribal rights. Corps districts consulted with tribes during the process for reissuing the NWPs and those consultation efforts may have resulted in regional conditions or coordination procedures with tribes to help ensure compliance with general condition 17. District engineers can develop regional conditions and develop protocols regarding tribal notification that build upon the existing Department of Defense, Army, and Corps' tribal consultation policies. In geographic areas where there are regional concerns about impacts to a particular waterbody or a sensitive aquatic resource, division engineers have the discretionary authority to suspend, modify, or revoke this NWP in a region or location. During review of a PCN, the district engineer will assess the proposal for compliance with general condition 17.

One commenter stated that the Corps should audit a sample of NWPs each year and publish the result of the audit in a report. One commenter recommended treating commercial and non-commercial project proponents differently, such as conditioning permits to protect certain landowners from harsh enforcement actions. Several commenters stated that the Corps should refuse to authorize activities after-the-fact if a PCN was not submitted.

If a permittee receives a verification letter, they must certify their compliance with the NWP, including any conditions to the NWP in accordance with general condition 30

(Compliance Certification). Corps districts conduct compliance inspections on a proportion of permit actions authorized each year, including activities authorized by NWPs. If a project proponent fails to comply with the terms and conditions of an NWP, then the activity is not authorized by that NWP and the district engineer may pursue compliance of an unauthorized action pursuant to 33 CFR 326. The district engineer has discretion how to resolve unauthorized actions, including whether to require restoration, accept an application for an after-the-fact authorization, or other remedies.

One commenter requested definition of the term "verification." As described in Section I.E. of this action, when a project proponent submits a PCN and the district engineer agrees that the proposed activity is authorized by an NWP, the district engineer sends a verification letter to the project proponent verifying that the proposed activity is authorized by an NWP. The district engineer is not issuing a permit, rather they are verifying that the proposed activity complies with the terms and conditions of an issued NWP. The NWP PCN and verification are a streamlined process, intended to be completed by the project proponent and district engineer with a minimal amount of paperwork.

Some commenters recommended that the Corps revise the CWA, various Corps regulations in 33 CFR parts 320 through 332, regional general permits, and the regulations for implementing Section 401 of the Water Act.

The Corps does not have authority to amend the statutory provisions of the CWA. The implementing regulations for Section 401 of the CWA are under the authority of the EPA and are beyond the scope of the Corps' authority to modify. Rulemaking for sections of Corps regulations beyond the reissuance of these NWPs are outside the scope of this rulemaking. Several commenters provided comments on concerns over specific impacts or permit actions in various regions or objections to regional general permits, which are beyond the scope of this review and will be addressed by the districts that issued them.

Many commenters stated these NWPs support the national priorities for energy infrastructure development. One commenter stated that Executive Order 14156 (Declaring a National Energy Emergency) has reduced statutory protections of natural resources. Many commenters support the timely reissuance of the NWPs to avoid disruption to energy infrastructure projects.

Use of emergency procedures does not obviate legal requirements to comply with all applicable laws and regulations. Consequently, compliance with other laws such as the NEPA, Endangered Species Act, the National Historic Preservation Act, and others are still required. The NWP can provide a streamline process to more quickly issue DA authorization for activities which meet the terms and NWP conditions.

Many commenters stated that the NWP do not consider climate change or environmental justice concerns. During the process to reissue or modify the NWP, the Corps considers the adverse environmental effects of the reissuance of these NWP in accordance Section 404(e) of the CWA, Section 10 of the RHA, and in compliance with applicable environmental laws, regulation, guidance and policy, as limited by the scope of our authority. Executive Order 14148—Initial Rescissions of Harmful Executive Orders and Actions (January 20, 2025) revoked several prior executive orders which addressed climate change and environmental justice concerns. Revoked orders included Executive Order 13990—Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis (January 20, 2021); Executive Order 14008—Tackling the Climate Crisis at Home and Abroad (January 27, 2021); Executive Order 13985—Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021); and Executive Order 14096—Revitalizing Our Nation's Commitment to Environmental Justice for All (April 21, 2023).

Executive Order 14154—Unleashing American Energy (January 20, 2025) provided further policy guidance on the consideration of climate change in agency regulatory analyses. On May 5, 2025, the Office of Management and Budget distributed further guidance to agencies (as required by E.O. 14154) which restricted consideration of greenhouse gas emissions in agency regulatory and permitting decision-making. In Executive Order 14151—Ending Radical and Wasteful Government DEI Programs and Preferencing (20 January 2025), the President of the United States directed the termination of environmental justice initiatives. On May 8, 2025, the Acting Assistant Secretary of the Army (Civil Works) rescinded the Corps' Environmental Justice strategic plan. The level of analysis and consideration of climate change and environmental justice concerns in the national decision documents and this final action comply

with these Executive Orders and directives.

C. Responses to Comments on Regional Conditions of Nationwide Permits

Under Section 404(e) of the CWA, NWP can only be issued for those activities that result in no more than minimal individual and cumulative adverse environmental effects. Corps regulations impose the same standard for general permits that authorize activities under Section 10 of the RHA (33 U.S.C. 403) (33 CFR 330.1(b), (g)). The NWP terms and general conditions to the NWP may not account for regional differences; therefore, regional conditions imposed by division engineers are an important mechanism for addressing those regional differences and ensuring compliance with statutory requirements. Effective regional conditions help protect local aquatic ecosystems and other resources and the functions and services they provide. They also help ensure that the NWP authorize only those activities that result in no more than minimal individual and cumulative adverse effects on the aquatic environment and are not contrary to the public interest.

There are two types of regional conditions: (1) Corps regional conditions and (2) water quality certification/CZMA consistency concurrence regional conditions. Corps regional conditions are added to the NWP by division engineers in accordance with the procedures at 33 CFR 330.5(c). Water quality certification and Coastal Zone Management Act consistency concurrence regional conditions are also added to the NWP if an appropriate authority grants a water quality certification or CZMA consistency concurrence with conditions for the issuance, reissuance, or modification of the NWP prior to the effective date of the issued, reissued, or modified NWP.

Examples of Corps regional conditions include:

- Restricting the types of waters of the United States where the NWP may be used (e.g., fens, bogs, bottomland hardwood forests, etc.) or prohibiting the use of some or all of the NWP in those types of waters or in specific watersheds.
- Restricting or prohibiting the use of NWP in an area covered by a Special Area Management Plan, where regional general permits are issued to authorize activities that have no more than minimal individual and cumulative adverse environmental effects and are consistent with that plan.
- Revoking certain NWP in a watershed or other type of geographic

area (e.g., a state or county) to require other forms of DA authorization (e.g., individual permits) for those activities.

- Adding PCN requirements to NWP in certain watersheds or other types of geographic areas, or in certain types of waters of the United States, to require notification for all activities or impose lower PCN thresholds.

- Reducing NWP acreage limits for activities in certain types of waters of the United States (e.g., streams) or specific waterbodies, or in specific watersheds or other types of geographic regions.

- Restricting activities authorized by NWP to certain times of the year in a particular waterbody, to minimize the adverse effects of those activities on fish or shellfish spawning, wildlife nesting, or other ecologically cyclical events.

- Conditions necessary to facilitate compliance with the "Endangered Species" general condition, to enhance protection of listed species or designated critical habitat under the Endangered Species Act.

- Conditions necessary to facilitate compliance with the "Tribal Rights" general condition, to enhance protection of tribal trust resources, including natural and cultural resources and tribal lands.

- Conditions necessary for ensuring compliance with the "Historic Properties" general condition, to enhance protection of historic properties.

- Conditions necessary to ensure that activities authorized by NWP will have no more than minimal individual and cumulative adverse effects on Essential Fish Habitat.

Regional conditions are modifications of the NWP that are made by division engineers. Regional conditions can only add conditions to, or further restrict the applicability of, an NWP (see 33 CFR 330.1(d)). Corps regional conditions approved by division engineers cannot remove any of the terms and conditions of the NWP, including general conditions. Corps regional conditions cannot increase PCN thresholds or remove notification requirements, but they can lower PCN thresholds to require PCNs for more activities authorized by a specific NWP. In summary, Corps regional conditions can only be more restrictive than the NWP terms and conditions established by Corps Headquarters when it issues or reissues an NWP.

Corps regional conditions may be added to NWP by division engineers after a public notice and comment process and coordination with appropriate federal, state, and local agencies, as well as tribes. After Corps

Headquarters published, in the **Federal Register**, the proposed rule to issue, reissue, or modify NWP, district engineers issued local public notices to announce the availability of the proposed rule for review and comment and to solicit public comment on proposed regional conditions and/or proposed suspensions or revocations of NWP authorizations for specific geographic areas, classes of activities, or classes of waters (see 33 CFR 330.5(b)(2)(ii)). These local public notices usually have a 45-day comment period. The local public notices also solicited suggestions from the public and interested agencies on additional regional conditions that they believe are necessary to ensure that the NWPs authorize only those activities that have no more than minimal adverse environmental effects.

Comments on proposed regional conditions were evaluated by the Corps district that issued the public notice. Corps districts also consulted or coordinated with tribes to identify and propose regional conditions to ensure compliance with general condition 17 (Tribal Rights) and fulfill the Corps' tribal trust responsibilities. The process for adding Corps regional conditions to the NWPs is described at 33 CFR 330.5(c). The regulations for the regional conditioning process were promulgated in 1991, with the proposed rule published in the **Federal Register** on April 10, 1991 (56 FR 14598) and the final rule published in the **Federal Register** on November 22, 1991 (56 FR 59110).

In response to the districts' local public notice, interested parties suggested additional Corps regional conditions or changes to Corps regional conditions. Interested parties also suggested suspension or revocation of NWPs in certain geographic areas, such as specific watersheds or waterbodies. Such comments should include data to support the need for the suggested modifications, suspensions, or revocations of NWPs.

After the public comment period ended for the districts' local public notices, each Corps district evaluated the comments received in response to their local public notice and began preparing, as required by 33 CFR 330.5(c)(1)(iii), supplemental documents for each NWP. Each supplemental document evaluates the NWP on a regional basis (e.g., by Corps district geographic area of responsibility or by state) and discusses whether regional conditions are needed for that NWP to ensure that authorized activities result in no more than minimal individual and cumulative adverse

environmental effects. Each supplemental document will also include a statement by the division engineer that will certify that the NWP, with approved regional conditions, will authorize only those activities that will have no more than minimal individual and cumulative adverse environmental effects.

The supplemental documents may cover a Corps district, especially in cases where the geographic area of responsibility for the Corps district covers an entire state. The supplemental documents may also cover portions of multiple Corps districts in cases where more than one Corps district has a geographic area of responsibility in a single state. The supplemental documents include an evaluation of public and agency comments on proposed and suggested regional conditions, with responses to those comments, to show that the views of potentially affected parties were fully considered (33 CFR 330.5(c)(1)(ii)). Each supplemental document also explains how substantive comments submitted in response to the local public notice were considered. After the supplemental documents for the NWPs are drafted by the district, they are sent to the division engineer for review along with the district's recommendations for regional conditions. The division engineer may approve the supplemental documents and the district's recommended regional conditions. Alternatively, the division engineer may also request changes to one or more supplemental documents, including changes to the regional conditions recommended by the district in those supplemental documents.

After the division engineer approves regional conditions for the NWPs by signing the supplemental documents, the district issues a public notice announcing the final Corps regional conditions and when those regional conditions go into effect (see 33 CFR 330.5(c)(1)(v)). The district's public notice will be posted on its website. Copies of the district's public notice are also sent to interested parties that are on the district's public notice mailing list via email or the U.S. mail. The public notice will also describe, if appropriate, a grandfathering period as specified by 33 CFR 330.6(b) for those project proponents who have already commenced work under the NWP or are under contract to commence work under the NWP (see 33 CFR 330.5(c)(1)(iv)). Copies of all Corps regional conditions approved by the division engineers for the NWPs are forwarded to Corps Headquarters (see 33 CFR 330.5(c)(3)).

The purpose of regional conditions is to tailor the NWPs to account for regional differences in aquatic resource types, the functions they provide, and their value to the region so that the NWPs in a particular geographic area authorize only those activities that result in no more than minimal individual and cumulative adverse environmental effects. Requiring consistency among regional conditions at a national level would be contrary to the purpose of regional conditions and would reduce the utility of the NWPs. In other words, the ability to add restrictions to one or more NWPs at a regional level to ensure that those activities result in no more than minimal individual and cumulative adverse environmental effects, allows the national terms and conditions to be less restrictive in other areas of the country where additional restrictions may not be necessary or relevant to the aquatic ecosystem.

The ability to tailor the NWP program in specific areas of the country allows the NWPs to authorize more activities than would be possible if the need for greater restrictions in one part of the country had to be applied to the nation as a whole. Corps regional conditions should be written clearly and provide only the additional restrictions that are necessary to ensure that NWP activities in the applicable geographic region result only in minimal individual and cumulative adverse environmental effects, consistent with the requirements of Section 404(e) of the CWA.

Under 33 CFR 330.5(c), the authority to approve Corps regional conditions is assigned to division engineers. A division engineer can take steps to provide consistency in Corps regional conditions for the districts within her or his division. However, it should also be noted that the eight Corps divisions encompass large geographic regions and there can be substantial differences in aquatic resource types, functions, services, and values within a Corps division. For example, the Corps' Northwestern Division extends from the northwest coast to the Midwest, with oceanic and estuarine waters along the coasts of Oregon and Washington, to inland wetlands and rivers in Missouri and Nebraska. As another example, the Mississippi Valley Division extends from Louisiana, with its extensive coastal wetlands and bottomland hardwood forests to Minnesota, which has many lakes, bogs, marshes, and swamps.

In addition, there are usually also substantial differences in other resources that are subject to regional conditions that may be developed to

assist in the Corps' compliance with other applicable federal laws, such as Section 7 of the Endangered Species Act, the Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act, Section 106 of the National Historic Preservation Act, and the Wild and Scenic Rivers Act. The presence and ranges of endangered and threatened species, and the locations of designated critical habitat often vary substantially within a Corps division. Most coastal Corps districts have essential fish habitat in their geographic areas of responsibility, whereas inland districts do not.

Regional conditions may also be developed to address tribal treaty rights and trust resources, which likely vary from tribe to tribe. Therefore, because of these factors, consistency in regional conditions necessary to ensure that NWP only authorize activities that have no more than minimal adverse environmental effects cannot be practicably achieved at a national or division level without reducing the availability of NWPs in other areas of the country.

Consistent with the Corps' approach to providing more transparency in the process for proposing and adding regional conditions to the NWPs that was adopted for the 2021 NWPs, the Corps posted copies of the district public notices soliciting input for proposed and suggested regional conditions in the www.regulations.gov docket for this rulemaking action (docket number COE-2025-0002), under "Supporting and Related Material." In addition, after publication of this final action to reissue the NWPs, the Corps will post copies of all district public notices announcing the final regional conditions in the www.regulations.gov docket for this rulemaking action, so that copies of all these district public notices are available in a single location. This docket is intended to provide a central location for interested parties to obtain information on proposed and finalized Corps regional conditions, as well as the WQC/CZMA regional conditions added through the water quality certification process and Coastal Zone Management Act consistency concurrence process for the issuance and reissuance process for the NWPs.

If, after the NWPs go into effect, division or district engineers receive new information that calls for new or modified Corps regional conditions to ensure that authorized activities cause no more than minimal individual and cumulative adverse environmental effects, Corps division and district

engineers may work together to propose and approve new or modified regional conditions after following the procedures in 33 CFR 330.5(c). Adding new Corps regional conditions, or modifying existing Corps regional conditions, after the final action issuing or reissuing the NWPs go into effect includes a public notice and comment process and amending supplemental documents for those Corps regional conditions. Information on regional conditions for the NWPs, and on the suspension or revocation of one or more NWPs in a particular area, can be obtained from the appropriate district engineer.

A few commenters recommended eliminating regional conditions or objected to applying regional conditions the NWPs. Many commenters stated the Corps should make PCN requirements and interpretations among the Corps districts standardized. A few commenters expressed support for applying regional conditions to ensure the NWPs result in no more than minimal adverse environmental effects in a region. One commenter stated that regional conditions are the most effective way to ensure compliance with an NWP. One commenter stated that the Corps should publish the justifications for each regional condition. One commenter stated that the Corps Headquarters should review and approve regional conditions.

The NWPs establish terms and conditions for authorization of regulated activities for the nation. Regional conditions provide flexibility to consider the variety of waters of the United States, quality of the aquatic resources, or regional concerns for specific types of impacts to waters of the United States while continuing to ensure that the NWPs will cause no more than minimal adverse environmental effects. Supplemental documentation is publicly available, and division engineers may make supplemental documents available on their websites, at their discretion. After this action is finalized, district engineers will issue public notices to notify the public of the final regional conditions to the NWPs.

Water Quality Certification and Coastal Zone Management Authorization Regional Reviews

The processes for states, approved tribes, and EPA to issue water quality certifications (WQCs) for the issuance of the NWPs, and for states to issue general CZMA consistency concurrences for the NWPs are separate from the Corps' process in 33 CFR 330.5(c) for division engineers adding Corps regional

conditions to the NWPs. The WQC process is governed by EPA's regulations at 40 CFR part 121, and by the regulations and policies of certifying authorities, such as states, tribes approved by EPA to administer their own water quality certification programs, or EPA regions. EPA regions act as the certifying authorities where no state or tribe has authority to issue certification (33 U.S.C. 1341(a)(1)). Currently, EPA acts as the certifying authority in two scenarios: (1) on behalf of tribes without "treatment in a similar manner as a state" (TAS) for CWA Section 401 and (2) on lands of exclusive federal jurisdiction in relevant respects.

The CZMA consistency process is governed by regulations issued by the Department of Commerce at 15 CFR part 930. Individuals who are interested in providing comments specific to WQCs and CZMA consistency determinations for the issuance or reissuance of the NWPs should submit their comments directly to the appropriate state, authorized tribe, or EPA regional office. Because these processes are separate from the Corps' regional conditioning process, the public notices issued by states, authorized tribes, and EPA regions during the WQC and CZMA consistency determination processes will not be included in the docket for this rulemaking action.

The Corps' regulations for establishing WQC regional conditions for the NWPs are provided at 33 CFR 330.4(c)(2). If, prior to the issuance or reissuance of NWPs, a state, authorized tribe, or EPA region issues a CWA Section 401 water quality certification with conditions, the division engineer will make those water quality certification conditions regional conditions for the applicable NWPs, unless she or he determines those conditions do not comply with 33 CFR 325.4 (see 33 CFR 330.4(c)(2)).

If the division engineer determines those water quality certification conditions do not comply with 33 CFR 325.4, then the conditioned water quality certification will be considered denied, and the project proponent will need to request an activity-specific water quality certification for the proposed activity which may result in any discharge from a point source into waters of the United States from the certifying authority. That certification request must satisfy the requirements of 40 CFR 121.5. The certifying authority may grant, grant with conditions, or deny water quality certification for an individual license or permit, for any activity which may result in any discharge into waters of the United

States (see 40 CFR 121.7), including an activity-specific discharge into waters of the United States that may be authorized by an NWP.

A similar process applies to a CZMA consistency concurrence issued by a state for the issuance of an NWP (see 33 CFR 330.4(d)(2)). If the division engineer determines those CZMA concurrence conditions do not comply with 33 CFR 325.4, then the conditioned CZMA consistency certification will be considered an objection (see 15 CFR 930.4(b)), and the project proponent will need to request an activity-specific CZMA consistency concurrence from the state under subpart D of 15 CFR part 930.

After division engineers finalize Corps regional conditions and determined whether conditions in WQCs and CZMA consistency concurrences for the issuance or reissuance of the NWPs are WQC/CZMA regional conditions for the NWPs, Corps districts will issue public notices announcing the final Corps and WQC/CZMA regional conditions, and the status of WQCs and CZMA consistency concurrences for the final NWPs. Corps Headquarters will post copies of these district public notices in the *regulations.gov* docket (docket number COE-2025-0002), under “Supporting and Related Material.”

D. Responses to Comments on Nature-Based Solutions and the NWP Program

In the 2025 Proposal, the Corps proposed to add a definition for “nature-based solutions” to the NWPs, in Section F, Definitions. Nature-based solutions can be incorporated into regulated activities authorized by NWP 13 (bank stabilization activities), NWP 27 (aquatic ecosystem restoration, enhancement, and establishment activities), NWP 31 (maintenance of existing flood control facilities), NWP 41 (reshaping existing drainage and irrigation ditches), NWP 43 (stormwater management facilities), NWP 54 (living shorelines), NWP 55 (seaweed mariculture activities), NWP 59 (water reclamation and reuse facilities), and NWP A (Activities to Improve Passage of Fish and Other Aquatic Organisms). The Corps also proposed modifications to some NWPs (e.g., NWPs 13 and 43) to enhance the ability of those NWPs to authorize regulated activities associated with nature-based solutions.

Many commenters expressed support for the addition of this definition. One commenter recommended that the Corps consider including the phrases “best management practices” and “stormwater control measures” in the definition of “nature-based solutions”

or instead of “nature-based solutions.” One commenter objected to the inclusion of “regenerative stormwater conveyances” and “natural channel design” as acceptable practices of “nature-based solutions.” One commenter recommended using more commonly known terms such as “green infrastructure” or “low-impact development” instead of “nature-based solutions.”

“Best management practices,” “stormwater management,” “green infrastructure,” and “low-impact development” are subcategories of nature-based solutions. The terms “best management practices,” “stormwater management,” and “stormwater management facilities” are already defined in Section F (Definitions) of this action. Nature-based solutions can include “regenerative stormwater conveyances,” which can result in benefits to an ecosystem, however these types of activities may not result in a project that meets an ecological reference and therefore may not be authorized by NWP 27 (Aquatic Ecosystem Restoration, Enhancement, and Establishment). Nature-based solutions include a wider range of actions, protection, management, restoration of ecosystems resulting in a broader range of benefits. Nature-based solutions can vary in the degree to which they involve natural or restored ecosystems and engineered components. We have not included “natural channel design” as an example of a nature-based solution.

One commenter recommended revising this definition to be consistent with the definition of “nature-based solutions” used by other Corps and federal agency programs. Many commenters recommended deleting overly broad language from the definition relating to societal challenges, suggesting that they could lead to challenges in interpretation and are aspirational. One commenter suggested adding “that ensure no net loss of ecological function” to the end of the definition.

The Corps declines to adopt a different definition of nature-based solutions than was proposed, and will include the language in the new definition referring to societal challenges. Societal challenges can be environmental and include water security and disaster-risk reduction. District engineers have the discretion to determine whether a proposed activity may be authorized by an NWP. Definitions for nature-based solutions generally have the elements of conservation, restoration, or management of natural systems for the

benefit of people and environments. We have adopted the definition of nature-based solutions from Cohen-Shacham and others (2016). The Corps declines to require that nature-based solutions ensure no net loss of ecological function as inclusion of that requirement would discourage the use of nature-based solutions. Nature-based solutions provide benefits to the ecosystem but may not result in no net loss of ecological function.

One commenter suggested incorporating a list of examples of nature-based solutions in the definition. One commenter stated that the term “nature-based solutions” is used differently in NWPs 13 and 43. One commenter suggested expanding the list of nature-based solutions examples to include vegetative stabilization and bioengineering. One commenter recommended removing thin-layer placement of sediment as an example of nature-based solutions out of concern that use of such an example would create a perceived narrowing of the types of sediment placement activities that may be authorized by NWP 27.

In this action, the Corps has proposed a new definition of “nature-based solutions.” Nature-based solutions can vary in the degree to which they involve natural or restored ecosystems and engineered components. Nature-based solutions may result in avoidance or minimization of adverse effects of authorized activities. They may also cause adverse effects to waters of the United States while providing other benefits to the aquatic ecosystem.

Some nature-based solutions will not qualify for authorization under certain NWPs which authorize nature-based solutions because the proposed activity does not meet the terms and conditions of that NWP. For instance, a proposed activity that is a nature-based solution may not be authorized by NWP 27 (aquatic ecosystem restoration, enhancement, and establishment activities) because it involves engineered features that do not resemble ecological references. Examples of nature-based solutions are listed in the terms of NWP 13 (bank stabilization activities) and NWP 43 (stormwater management facilities). The list of examples in each of these NWPs will be necessarily different because of the difference in the purpose of the regulated activities authorized by each of those NWPs.

Nature-based solutions associated with bank stabilization activities can include use of seawalls and bulkheads that are constructed with materials that have textured surfaces (e.g., crevices, depressions, pits, grooves, gaps) that

provide structural complexity and microhabitats that habitat-forming sessile organisms such as barnacles, branching coralline algae, bivalves, algae, and corals can attach to, grow on, and further enhance habitat structure (Strain et al. 2017) for other aquatic organisms. Fish may feed on the aquatic organisms attached to these seawalls and bulkheads, and aquatic organisms can be attracted to the structural habitat on these seawalls and bulkheads. Seawalls and bulkheads constructed with textured surfaces and other features to increase habitat complexity and are colonized by benthic organisms, such as seaweeds and sessile animals, and may attract and support populations of juvenile fish, including salmon species (Morris et al. 2018). Habitat complexity at seawalls and bulkheads that supports more diverse aquatic organism assemblages can also be enhanced at seawalls by incorporating water retaining features such as rock or tidal pools (O'Shaughnessy et al. 2020), "flower pots" (Morris et al. 2018), and benches (Toft et al. 2013), or large or small ledges (Strain et al. 2017).

Nature based solutions associated with bank stabilization may also include rocks placed in subtidal and intertidal areas next to seawalls and bulkheads, or in clusters next to seawalls and bulkheads, to provide habitat for aquatic organisms (Suedel et al. 2022). Rock piles next to seawalls and bulkheads can be constructed from rocks of different sizes or rocks of similar size, and gaps between these rocks can provide habitat and refuge areas for aquatic organisms. Another nature-based solution that may increase habitat and biodiversity next to seawalls, bulkheads, and revetments involves the placement of bags of molluscs or the placement of small reef structures to provide habitat for molluscs and other sessile aquatic organisms next to a seawall, bulkhead, or revetment (Suedel et al. 2022).

Other nature-based solutions associated with bank stabilization include revetments designed and constructed to increase structural complexity that can provide habitat for benthic and motile aquatic organisms. Rocks of different sizes can be used to construct revetments and provide cracks and holes of different sizes that can be used as habitat by aquatic organisms and plants (Suedel et al. 2022). Another nature-based solution that can add structural complexity in marine waters, is the placement of pieces of large wood in front seawalls, bulkheads, and revetments.

In waterbodies with soft substrates such as sand, the large wood pieces can attract benthic and pelagic organisms and enhance local biodiversity (Dickson et al. 2023). Installing large pieces of wood into marine and estuarine waters seaward of seawalls, bulkheads, and revetments can provide habitat for a variety of aquatic organisms, increase the number of trophic connections among aquatic species, and contribute to local nutrient cycling, and may help lessen changes in of biodiversity that may occur as a result of the construction of a seawall, bulkhead, or revetment (Witte et al. 2024, Dickson et al. 2023). Nature-based solutions which may be authorized by NWP 13 and may also be authorized by NWP 54 (living shorelines), include vegetative stabilization, bioengineering, or other types of soft bank stabilization.

Examples of nature-based solutions can be incorporated into regulated activities that may be authorized by NWP 27 (aquatic ecosystem restoration, enhancement, and establishment activities) include thin-layer placement of dredged material to sustain wetlands and other aquatic habitats; placement of spoil material to elevate a degraded riverbed and restore geomorphic processes; alignments of river channels within the existing floodway to enhance riverine function and connectivity; and reservoir sediment management activities to maintain continuity of sediment transport through the river network to sustain downstream aquatic habitats (e.g., downstream geomorphology) and terrestrial habitats (non-wetland riparian areas and floodplains) (see 86 FR 73544–73548). Thin layer placement of dredged material is one of a number of nature-based solutions that may involve the discharge of sediments into waters of the United States for the purpose of restoring wetlands, streams and other waters. Placement of sediments for the purpose of restoration, enhancement, or establishment, may occur in a variety of depths or configurations and may be authorized by NWP 27 provided the activity results in net increases in aquatic ecosystem functions and services and resembles an ecological reference.

Other examples of nature-based solutions that might be associated with activities authorized by NWP 27 include restoration of fringe wetlands in estuaries and lakes to reduce bank erosion; restoration of oyster reefs, coral reefs, and other types of subtidal or intertidal habitats to provide habitat, support biodiversity, and provide a variety of co-benefits (e.g., reduced shoreline or bank erosion); the re-

establishment, rehabilitation, establishment, or enhancement of riparian areas and wetlands to trap or transform sediments and pollutants carried by surface run-off or shallow subsurface flows before that water reaches rivers, streams, lakes, estuaries, ocean waters; and the use of dredged material to reestablish, rehabilitate, enhance, or establish wetlands or other aquatic habitats. Another nature-based solution includes process-based restoration of river corridors (*i.e.*, river and stream channels and their associated floodplains, riparian areas, and wetlands) to increase the functions and services provided by river corridors and provide increased resilience to drought and wildfires.

NWP 43 (Stormwater Management Facilities) may authorize regulated activities which incorporate nature-based solutions for the construction and maintenance of stormwater management and pollution abatement facilities if they involve discharges of dredged or fill material into non-tidal waters of the United States, such as stream biofilters, bioretention ponds or swales, rain gardens, vegetated filter strips, vegetated swales (bioswales), constructed wetlands, infiltration trenches, and regenerative stormwater conveyances. Other regulated activities that incorporate nature-based solutions that are conducted to meet pollutant discharge targets established under the CWA may also be authorized by NWP 43 as long as they comply with the applicable terms and conditions of this NWP.

Proposed new NWP A (Activities to Improve Passage of Fish and Other Organisms) may authorize regulated activities that incorporate nature-based solutions such as nature-like fishways, which use ecological engineering principles to provide nature-based solutions to improve the ability of fish and other aquatic organisms to pass around obstacles to access other aquatic habitats.

Other NWPs, such as NWP 31 (maintenance of existing flood control facilities), NWP 41 (reshaping existing drainage and irrigation ditches), NWP 55 (seaweed mariculture activities), and NWP 59 (water reclamation and reuse facilities) may also authorize regulated activities that incorporate nature-based solutions, including some of the examples listed in this section. Examples of regulated activities associated with nature-based solutions that may be authorized by these NWPs include bioretention ponds, biofilters, placement of bags of molluscs, and constructed wetlands.

One commenter suggested including a clear definition of soft bank stabilization. One commenter recommended adding a definition of bioengineering. Many commenters recommended that the Corps add language to each NWP to require prioritization of the use of nature-based solutions wherever possible.

Soft bank stabilization includes bioengineering and vegetative stabilization. Bioengineering is a longstanding concept in the discipline of soil and bank stabilization. We decline to add a definition of “soft bank stabilization” or “bioengineering” to the NWP to maintain the flexibility to apply those definitions as the science around each concept evolves. We will rely on the new definition of nature-based solutions as an overarching term that encompasses both soft-bank stabilization and bioengineering activities. Prospective permittees are encouraged to incorporate nature-based solutions into regulated activities. The incorporation of nature-based solutions into an NWP-specific activity may not be possible or appropriate in all situations, depending on the purpose of the activity, site specific characteristics and other factors.

In this action, the Corps has modified the NWP which may provide the most opportunity to incorporate nature-based solutions into the activity which requires DA authorization to provide examples of nature-based solutions. The Corps has also added the definition of “nature-based solutions” to Section F (Definitions) as a guide to prospective permittees and districts in the incorporation of nature-based solutions into NWP-specific activities.

E. Response to Comments on Notes in the NWPs for Utilities and Mariculture Activities

In the 2025 Proposal, the Corps proposed to modify the NWPs that authorize activities associated with utilities and the activities associated with mariculture. The Corps proposed to add or modify two Notes in each NWP to add language to clarify the intent of each Note, to identify information that should be provided to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) or U.S. Coast Guard (USCG), and to provide contact information for both NOS and USCG.

The Corps proposed to modify an existing note in NWP 12 (Oil or Natural Gas Pipeline Activities), NWP 52 (Water-Based Renewable Energy Generation Pilot Projects), NWP 57 (Electric Utility Line and Telecommunications Activities), and

NWP 58 (Utility Line Activities for Water and Other Substances) to encourage project proponents to contact NOS and to add a note to advise the permittee to contact USCG. The Corps proposed to modify an existing Note in NWP 48 (Commercial Shellfish Mariculture Activities) and NWP 55 (Seaweed Mariculture Activities) to advise the permittee to contact the USCG and to add a note that encourages project proponents to contact NOS. The Corps also requested comments on adding both Notes to NWP 4 (Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities) and NWP 27 (Aquatic Habitat Restoration, Enhancement, and Establishment Activities).

Many commenters supported or stated they did not object to the modified or added Notes. One commenter noted that the responsibility to provide information to the USCG and NOS was being moved from the Corps to the permittee. One commenter recommended that the Corps research a technology-based solution to provide the requested information to the NOS and USCG. A few commenters recommended that the Notes include a more detailed list of information that should be provided or should not be provided to USCG or NOS. One commenter requested clarification if district engineers must wait for a response from USCG before reviewing a PCN. One commenter stated that notification to NOS should only be required if a structure would obstruct navigation. Several commenters recommended adding language to the Notes to state that the information should be submitted to NOS within 1-year of completion. Several commenters recommended that the Notes be clarified to state that proponents of activities which do not require a PCN should also contact USCG. One commenter stated that the information provided to NOS for activities authorized under NWPs 12, 48, 52, 55, 57, and 58 should be provided to affected tribes upon request.

The purpose of these Notes is to encourage the permittee to contact USCG and NOS regarding the location and marking of proposed structures in navigable waters of the United States to avoid conflicts with navigation. Prospective permittees are encouraged to contact the USCG and NOS for activities in navigable waters of the United States subject to authorization by NWPs 12, 48, 52, 55, 57, and 58 regardless of whether the NWP requires submittal of a PCN to the district engineer. Prospective permittees are not required to wait for a response from USCG before submitting a PCN. District

engineers should not delay review of a PCN if the prospective permittee has not engaged with or received a response from USCG.

The Notes cannot detail all of the information that the USCG or NOS might prefer or request to receive from a permittee. Prospective permittees should coordinate with USCG and NOS regarding information necessary to inform the reviews or actions that are the responsibility of USCG or NOS. Tribes may, at any time, request such information from the district engineer that the district engineer has in his or her possession.

One commenter expressed objections to adding the Notes to NWP 4 and NWP 27. One commenter stated that it is impractical to notify NOS of structures or devices that are temporary in nature.

NWP 4 authorizes temporary structures and small fish attraction devices, but does not authorize artificial reefs or other large permanent structures in navigable water of the U.S. NWP 27 authorizes activities to restore aquatic ecosystems, and does not authorize the installation of engineered structures in waters of the United States. NWP 27 can be used to authorize the removal of culverts and other obstructions from waters, but it cannot be used to add or replace existing structures with new structures. After consideration of these comments, the Corps has determined that it is not necessary to add either Note to NWP 4 or NWP 27.

After reviewing the comments received in response to the proposed rule, the Corps has decided to adopt the Notes as proposed.

F. Responses to Comments on Specific Nationwide Permits

NWP 1. Aids to Navigation. The Corps did not propose any changes to this NWP. No comments were received on the proposed reissuance of this NWP. This NWP is reissued as proposed.

NWP 2. Structures in Artificial Canals. The Corps did not propose any changes to this NWP. Several commenters stated that all NWP 2 should require a PCN because the activities authorized by this NWP have the potential to cause harmful sedimentation by impacting the flow of water.

This NWP only authorizes the construction of structures in navigable waters of the United States. Discharges of dredge or fill material requiring authorization under Section 404 of the CWA are not authorized by this NWP. Permittees are required to comply with the general conditions to the NWP and regional conditions, including conditions included in any issued water

quality certifications. If an activity constructed in an artificial canal affects navigation, movement of aquatic species, or creates an impoundment (where the purpose of the activity is not to impound waters) or has improperly installed and maintained erosion and sedimentation controls, contrary to general conditions, the activity is not compliant with the NWP and is not authorized by this NWP. If a structure is not authorized, the district engineer will address the potential unauthorized activity in accordance with 33 CFR 326. This NWP is reissued as proposed.

NWP 3. Maintenance. The Corps did not propose any changes to this NWP. Many commenters supported the reissuance of this NWP. Many commenters stated that this NWP authorizes activities that are not similar in nature. Many commenters stated that this NWP should not be modified to add any additional PCN requirements or acreage limits. Many commenters stated that this NWP should have an acreage limit for “loss of waters of the United States.” One commenter stated that NWP 3 should always require a PCN because currently serviceable structures may be historic properties. One commenter suggested that the Notification paragraph for NWP 3 be modified to require documentation on how alternatives were considered. One commenter suggested that NWP 3 prohibit the emergency use of NWP 3 when the permittee has no documentation of monitoring, maintenance, or inspection activities.

The activities authorized by NWP 3 are similar in nature because they authorize the discharge of dredged or fill material in waters of the United States and work on structures, in navigable waters of the United States that are limited to the repair, rehabilitation, and replacement of currently serviceable structures or fills, or structures or fills damaged or destroyed by storms, floods (including tidal floods), fires, or other discrete events. This NWP authorizes regulated activities for the repair, rehabilitation, or replacement of existing, currently serviceable structures or fills, and only authorizes minor deviations to the structure’s configuration or filled area. The Corps declines to require PCNs for activities authorized by paragraph (a) because the current qualitative and quantitative limits in the text of this NWP are sufficient to ensure that the NWP authorizes only those activities that result in no more than minimal individual and cumulative adverse effects. Paragraph (a) of this NWP authorizes only minor deviations to previously authorized structures or fills.

If a non-federal permittee proposes an activity that might have the potential to effect a historic property or a property eligible for listing on the National Register of Historic Places, general condition 20 requires the prospective permittee to submit a PCN and the non-federal permittee is not authorized to begin construction until they receive written authorization from the district engineer. If the non-federal project proponent does not comply with 33 CFR 330.4(g)(2) and general condition 20, and does not submit the required PCN, then the activity is not authorized by an NWP. In such situations, it is an unauthorized activity, and the district engineer will determine an appropriate course of action under the regulations at 33 CFR part 326 if and when the Corps learns about that unauthorized activity. Because this NWP is limited to regulated activities associated with the repair, rehabilitation, and replacement of existing, currently serviceable structures or fills, there are usually no practicable off-site alternatives for repairing, rehabilitating, or replacing these structures or fills.

Paragraph (a) of general condition 23 (Mitigation) requires permittees to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable at the project site. Permittees are required to maintain structures or fills authorized by an NWP in accordance with general condition 14 (Proper Maintenance). The prompt need for repair could result from changes to a fill or structure that happen gradually, or as a result of an abrupt change, as from a natural disaster. Corps’ regulations at 33 CFR 325.2(e)(4) govern the use of emergency procedures to authorize activities in emergency situations. The Corps does not require documentation from the permittee to justify the need for an emergency repair, or any other project purpose; therefore, the Corps declines to require documentation from the permittee justifying the need for the emergency repair.

Several commenters requested that the Corps define the term “minor deviations.” One commenter stated that this NWP should indicate what should be considered maintenance and what should be considered a new project. One commenter stated that NWP 3 should prohibit any increases in the size of the structure. Many commenters stated that this NWP authorizes large infrastructure repairs without Corps review.

This NWP authorizes regulated activities associated with the repair, rehabilitation, or replacement of existing infrastructure while allowing

minor deviations to the structure or fill due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards. What constitutes a “minor deviation” varies and is dependent on the degree to which changes in the structure’s configuration or filled area would occur as a result of the repair, rehabilitation, or replacement activity relative to the size and shape of the existing structure or fill. Minor deviations may also be necessary because of changes in materials, construction techniques, the requirements of other regulatory agencies, or current construction codes or safety standards.

The NWP requires the structure or fill not be put to uses that differ from the uses originally contemplated when the structure or fill was originally constructed. Repair, rehabilitation, or replacement activities that exceed the “minor deviations” provision of this NWP may be authorized by individual permits, regional general permits, or another NWP. Discharges of dredged or fill material associated with maintenance activities which do not modify the character, scope, or size of the original fill design may be exempted from regulation under Section 404(f) of the CWA.

Many commenters stated that this NWP should be modified to authorize maintenance activities on currently serviceable structures or fill that did not require a permit at the time it was constructed. Many commenters requested that the NWP be modified to authorize new or additional riprap to protect the repaired structure or fill, provided that riprap is the minimum necessary to achieve protection. One commenter objected to the use of NWP to authorize new or additional rip rap.

For the reasons explained in the 2021 final rule (86 FR 73528), the Corps declines to modify the NWP to authorize maintenance activities for structures that did not require a permit at the time it was constructed and also declines to reissue this NWP with modifications that would authorize the placement of new or additional riprap to protect the existing structure or fill.

One commenter stated that the term “previously authorized structure” is applied inconsistently across the Districts and requested that the phrase be defined. Many commenters stated that work to repair structures or fill that are damaged by storms, floods, fire or other discrete events is inconsistent with the definition of “currently serviceable.”

The term “previously authorized” means the structure or fill was

authorized by an individual permit or a general permit, or the structure or fill was authorized under the provisions of 33 CFR 330.3. To qualify for NWP 3 authorization, it is not necessary for the project proponent to produce a copy of the prior authorization. In many cases it might not be possible to produce a copy of a written authorization because the discharge, structure, or work may have been authorized by a general permit that does not require a PCN, or it was authorized by regulation without a reporting requirement. Once a structure or fill is authorized, it remains authorized unless the district engineer suspends or revokes the authorization (see 33 CFR 325.6).

The term “currently serviceable” is defined in Section F of the NWPs (Definitions). This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. The term currently serviceable is not included in the list of actions authorized after destruction or damage by storms, floods, fire or other discrete events. If a district engineer determines that an activity, including an activity conducted to respond to an emergency, did not comply with the terms and conditions of NWP 3, he or she can take action to address the alleged non-compliance.

One commenter recommended that paragraph (b) be modified to limit the removal of sediments to 25 cubic yards or within 25 feet of the structure. One commenter stated that activities authorized under paragraph (c) should require a PCN to ensure the activities are truly temporary. One commenter requested that a new Note be added to require that vegetation that is removed must be replaced.

Paragraph (b) authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) for a distance of no more than 200 feet in any direction from the structure. All activities authorized by paragraph (b) of this NWP require submittal of a PCN to the district engineer. District engineers will review these proposed activities to determine whether removal of accumulated sediments up to 200 feet from the structure will result in no more than minimal individual and cumulative adverse environmental effects.

Paragraph (c) of NWP 3 does not authorize permanent discharges of

dredged or fill material into waters of the United States. Permittees must comply with the requirements of paragraph (c) as well as general conditions 11 (Equipment) and 13 (Removal of Temporary Structures of Fills) and remove temporary fills in order for an activity to be authorized by NWP 3. The Corps believes that the limitation in paragraph (c) and the general conditions are adequate to ensure that impacts from temporary fills will cause no more than minimal adverse environmental effects. Paragraph (c) as well as general conditions 11 and 13 require areas to be restored to pre-construction elevations and revegetated, as appropriate. The Corps declines to add a new Note to this NWP.

Many commenters stated that this NWP authorizes activities that cause significant adverse environmental impacts. One commenter stated that the decision document for this NWP fails to consider impacts as a result of emergency reconstruction activities as a result of natural disasters.

The final decision document for this NWP provides an assessment of activities that may be authorized by this NWP during the five-year period it is anticipated to be in effect, as well as an evaluation of potential environmental impacts that is commensurate with the anticipated degree and severity of those environmental impacts. The decision document has been prepared in compliance with the requirements of the NEPA, the Corps’ public interest review regulations, and the CWA Section 404(b)(1) Guidelines. As discussed in this final action and the final decision document, the Corps has determined that the NWP 3 will cause no more than minimal adverse environmental effects, both individually and cumulatively. The activities that are authorized by this NWP are considered in this final action and in the decision document, including all activities that may be authorized by paragraph (a) of the NWP. This NWP is reissued as proposed.

NWP 4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities. The Corps sought comment on adding two notes to this NWP to protect navigation. These Notes identify information that should be provided to NOS or USCG and provide contact information for both NOS and USCG. Comments received on the proposed addition of the two Notes are summarized in Section II.E of this final action, and in that section the Corps provided responses to those comments. As discussed in Section II.E. the Corps declines to add the Notes to this NWP. This NWP is reissued as proposed.

NWP 5. Scientific Measurement Devices. The Corps did not propose any changes to this NWP. One commenter supported reissuance of NWP 5. One commenter stated that a PCN should be required for weirs and flumes. One commenter suggested modifying the NWP 5 to prohibit the placement of any device which cannot be removed in its entirety. Many commenters stated that weirs or flumes authorized by NWP 5 should be designed to maintain unimpeded fish passage. One commenter recommended modifying NWP 5 to protect treaty-reserved resources.

No PCN is required for activities authorized by this NWP. Adverse effects from the structures or fills authorized by this NWP should generally be temporary. NWP 5 requires devices and structures or fills associated with that device be removed to the maximum extent practicable. There may be situations where the removal of the device or some part of a device or structures or fills associated with that device would cause more adverse environmental effects to aquatic resources than leaving it in place. For instance, it may be preferable to cut off an anchor piling at the mud line rather than disturb the substrate in order to retrieve the entirety of the structure.

The language in NWP 5 is consistent with the language in general condition 5 (Removal of Temporary Structures and Fills). General condition 2 (Aquatic Life Movement) prohibits substantial disruption of necessary life cycle movements of aquatic life indigenous to the waterbody. Weirs and flumes may have some adverse impact to the movement of aquatic species while they are in place. If the regulated activity might affect, or is in the vicinity of a species listed (or proposed for listing) or designated critical habitat (or habitat proposed for such designation) under the ESA, general condition 18 (Endangered Species) requires non-federal permittees to submit a PCN and states the permittee cannot begin work until the district engineer has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or conference has been completed.

If a PCN is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with the ESA. District engineers can develop regional conditions and develop protocols regarding tribal notification that build

upon the existing Department of Defense, Army, and Corps' tribal consultation policies. The terms of this NWP, as well as the NWP general conditions will ensure that the authorized activities will cause no more than minimal adverse environmental effects. The Corps declines to require PCNs for weirs and flumes.

This NWP is reissued as proposed.

NWP 6. Survey Activities. The Corps did not propose any changes to this NWP. Many commenters recommended that the 1/10-acre limit be raised to 1/2-acre. One commenter recommended modifying this NWP to require a PCN for exploratory trenching because trenching has the potential to affect historic properties.

NWP 6 authorizes discharges of dredged or fill material that do not exceed 1/10-acre into waters of the United States for the purpose of constructing temporary pads. Temporary pads must be removed in accordance with general condition 5 (Removal of Temporary Structures and Fills). The Corps believes that the limits in this NWP are appropriate to ensure impacts from these activities cause no more than minimal adverse environmental effects. If a non-federal permittee proposes an activity that might have the potential to effect a historic property or a property eligible for listing on the National Register of Historic Places, general condition 20 (historic properties) requires the prospective permittee to submit a PCN and the permittee may not begin the activity until they receive written authorization from the district engineer. If the non-federal project proponent does not comply with 33 CFR 330.4(g)(2) and general condition 20, and does not submit the required PCN, then the activity is not authorized by an NWP.

This NWP is reissued as proposed.

NWP 7. Outfall Structures and Associated Intake Structures. The Corps did not propose any changes to this NWP. Many commenters stated that NWP authorization should not be available to project proponents who have violated National Pollutant Discharge Elimination System (NPDES) regulations or who are seeking to modify a structure due to improper design or installation of the outfall or intake structures.

This NWP authorizes work and structures, and discharges of dredged or fill material for the purpose of constructing or modifying outfall structures and associated intake structures where the effluent from the outfall is authorized or otherwise in compliance with the NPDES Program

(Section 402 of the CWA). It is the responsibility of EPA, or authorized states or tribes, pursuant to Section 402 of the CWA to enforce NPDES regulations that are applicable to the effluent of outfall structures. Discharges of dredged or fill material, or work or structures, which are not in compliance with the terms and conditions of an NWP are not authorized by that NWP. District engineers may address an unauthorized action that requires authorization by Section 404 of the CWA or Section 10 of the RHA pursuant to 33 CFR 326.

This NWP is reissued as proposed.

NWP 8. Oil and Gas Structures on the Outer Continental Shelf. The Corps did not propose any changes to this NWP. No comments were received on the proposed reissuance of this NWP. This NWP is reissued as proposed.

NWP 9. Structures in Fleeting and Anchorage Areas. The Corps did not propose any changes to this NWP. Many commenters stated that NWP 9 should require a mooring buoy and anchoring structure maintenance agreement and that midline floats on mooring/anchor lines should be mandatory.

We do not agree that a maintenance agreement and a midline float is required for every mooring buoy and anchoring structure. The design of these structures, as well as the characteristics of the fleeting and anchorage areas, will vary across the nation. Regional concerns about the mooring buoys authorized by this NWP are more appropriately addressed by division and district engineers, who have the authority to modify, suspend, or revoke NWP authorizations on a regional or activity-specific basis. If a division engineer imposed a regional condition on this NWP, in order to qualify for NWP authorization, the permittee must comply with that regional condition as well as any requirements in the text of the NWP and applicable NWP general conditions.

This NWP is reissued as proposed.

NWP 10. Mooring Buoys. The Corps did not propose any changes to this NWP. Many commenters stated that activities should not be authorized by NWP 10 when they interfere with tribal rights. Many commenters stated that NWP 10 should require a mooring buoy and anchoring structure maintenance agreement and that midline floats on mooring/anchor lines should be mandatory. One commenter stated that NWP 10 should be revised to limit mooring buoys where the applicant already has an existing mooring structure, or on the basis of whether the applicant has access to adjoining property.

We do not agree that a maintenance agreement and a midline float is required for every mooring buoy and anchoring structure. The design of these structures, as well as the characteristics of the fleeting and anchorage areas, will vary across the nation. Regional concerns about the mooring buoys authorized by this NWP are more appropriately addressed by division and district engineers, who have the authority to modify, suspend, or revoke NWP authorizations on a regional or activity-specific basis.

In order to qualify for NWP authorization, the permittee must comply with regional conditions, activity-specific conditions, as well as any requirements in the text of the NWP and applicable NWP general conditions. We also decline to limit the use of this NWP on the basis of the applicant's access to other mooring structures or on the basis of property ownership. As stated in Section E. (Further Information), NWPs do not grant any property rights or exclusive privileges. The Corps has no authority over zoning or land use rights.

This NWP is reissued as proposed.

NWP 11. Temporary Recreational Structures. The Corps did not propose any changes to this NWP. One commenter stated that temporary structures should be removed in less than 30 days if requested by an affected tribe.

Activities authorized by this NWP must comply with general condition 17 (tribal rights). Corps districts consulted with tribes during the process for reissuing this NWP and those consultation efforts may have resulted in regional conditions or coordination procedures with tribes to help ensure compliance with general condition 17. Shorter time periods for removal may be imposed through regional conditions, or if the district engineer receives a PCN, he or she may add activity-specific conditions.

This NWP is reissued as proposed.

NWP 12. Oil or Natural Gas Pipeline Activities. The Corps proposed to modify Note 1 and to add a Note (designated as Note 7) in this NWP. Language was added to each Note to clarify the intent of each Note. Note 1 was modified to identify information that should be provided to NOS and to provide contact information for NOS. New Note 7 identifies information that should be provided to USCG and to provide contact information for USCG. The Corps provides a summary of the comments received on revised Note 1 and new Note 7 and responses to comments in Section II.D of this final action.

Many commenters expressed support for NWP 12. Many commenters expressed support for the NWP as written. Many commenters objected to the reissuance of this NWP. One commenter stated that this NWP should be available for authorization of jurisdictional activities associated with carbon dioxide pipelines.

Nationwide permit 12 authorizes discharges of dredged or fill material or work or structures associated with oil or natural gas pipeline activities. Nationwide permit 12 defines oil or natural gas pipelines as “any pipe or pipeline for the transportation of any form of oil or natural gas, including products derived from oil or natural gas, such as gasoline, jet fuel, diesel fuel, heating oil, petrochemical feedstocks, waxes, lubricating oils, and asphalt.” Nationwide permit 58 (Utility Line Activities for Water and Other Substances) may be used to authorize regulated activities associated with the construction, maintenance, repair, and removal of utility lines for water and other substances, including but not limited to hydrogen, methanated hydrogen, or carbon dioxide. There is some overlap in the NWPs. The district engineer will review PCNs that he or she receives and determine if the case-specific activity can be authorized by the NWP requested by the prospective permittee. If the case-specific activity does not comply with the terms and conditions of the NWP, the district engineer will notify the project proponent within 30 days of the date the PCN was submitted to the district engineer that the project proponent must apply for a different NWP, a regional general permit, or an individual permit.

A few commenters stated that natural gas pipelines are subject to industry standards and oversight by the Federal Energy Regulatory Commission (FERC), resulting in temporary impacts to jurisdictional waters which are mitigated where possible. A few commenters stated that reissuance of this NWP is important for improving pipeline safety and reliability. One commenter supported reissuing this NWP before the other NWPs. Some commenters expressed opposition to specific pipeline projects. The Corps acknowledges these comments.

A few commenters stated that the NWP does not protect waters of the United States. Many commenters stated that this NWP allows more than minimal adverse environmental impacts, individually and cumulatively. Many commenters stated that the Corps should ensure that this NWP authorizes no more than minimal individual and

cumulative effects. Several commenters stated that the Corps should collect more detailed information on NWP 12 verifications to better inform the decision whether to reissue the NWP. Many commenters oppose additional modifications to this NWP and further cumulative effects analysis for this NWP. Many commenters stated that this NWP violates CWA and NEPA. A few commenters stated that the Corps should prepare an EIS for each pipeline project.

Section 404(e) of the CWA provides the Corps with the authority to issue NWPs to authorize categories of activities involving discharges of dredged or fill material into waters of the United States to streamline the authorization process for these activities, as long as they result in no more than minimal individual and cumulative adverse environmental effects. The terms and conditions of the NWPs, such as acreage limits and the mitigation measures in some of the NWP general conditions, are imposed to ensure that the NWPs authorize only those activities that result in no more than minimal adverse effects on the aquatic environment and other public interest review factors.

The Corps Headquarters has prepared a national decision document to address the environmental effects of the reissuance of this NWP in accordance with NEPA and CWA. The national decision document evaluates cumulative impacts in accordance with the CWA Section 404(b)(1) Guidelines at 40 CFR 230.7 for the issuance of general permits. The national decision document includes estimates of the number of times the NWP is anticipated to be used during the five-year period it will be in effect, the authorized impacts to jurisdictional waters and wetlands, and the compensatory mitigation required to offset losses of jurisdictional waters and wetlands. Those impacts, and the compensatory mitigation, are evaluated against the current environmental setting (*i.e.*, the affected environment).

The national decision document includes an environmental assessment (EA) with a finding of no significant impact, satisfying the requirements of NEPA. Neither the CWA nor NEPA mandate that the Corps prepare an environmental impact statement to analyze the impacts of the reauthorization of this NWP. Since the Corps fulfills the requirements of NEPA when it issues its national decision document for the reissuance of that NWP, specific activities authorized by this NWP do not require additional NEPA analysis. As documented in this

action and in the national decision documents, the issuance of this NWP complies with the requirements of the CWA.

In addition to the assessment of cumulative effects at the national level, division engineers will consider cumulative effects in the supplemental documentation for a region, which is typically defined as a state or Corps district. District engineers will consider cumulative effects during their review of a PCN for a case-specific activity. In furtherance of the district engineer's review of cumulative effects, paragraph (b)(4)(ii) of NWP general condition 32 requires PCNs for proposed NWP activities for linear projects to include and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require a PCN.

When a district engineer issues a verification letter in response to a PCN or a voluntary request for an NWP verification, the district engineer prepares a brief document that explains the decision on whether to issue a verification letter for the proposed NWP activity or exercise discretionary authority to require an individual permit for that proposed activity. The district engineer's document explains whether the proposed NWP activity, after considering permit conditions such as mitigation requirements, will result in no more than minimal individual and cumulative adverse environmental effects. If the district engineer reviews a PCN and determines that the impacts of the jurisdictional activity are more than minimal, the district engineer will exercise discretionary authority to require an individual permit for that proposed activity.

One commenter supported the determination that reissuance of the NWP will have “no effect” on listed species or critical habitat. Many commenters stated that programmatic ESA consultation should be required for reissuance of this NWP. Many commenters stated that this NWP violates the ESA. One commenter stated that this NWP should prohibit jurisdictional activities that are in the vicinity of listed species or designated critical habitat.

The Corps' compliance with ESA for the reissuance of the NWPs is discussed in Section III.C. of this action. General condition 18 (Endangered Species) addresses compliance with Section 7 of the ESA for each NWP-specific activity. If the regulated activity might affect, or

is in the vicinity of a species listed (or proposed for listing) or designated critical habitat (or habitat proposed for such designation) under the ESA, general condition 18 (Endangered Species) requires non-federal permittees to submit a PCN and states the permittee cannot begin work until the district engineer has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or conference has been completed. If a PCN is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with the ESA.

Several commenters stated that this NWP violates Section 106 of the NHPA. One commenter stated that this NWP should require tribal consultation under Section 106 of the NHPA. One commenter expressed concern over impacts to newly discovered cultural resources.

The Corps’ compliance with Section 106 of the NHPA for the reissuance of the NWPs is discussed in Section III.D. of this action. General condition 20 (Historic Properties) addresses compliance with section 106 of the NHPA. Under paragraph (c) of general condition 20, non-federal permittees must submit a PCN to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties even if a PCN is not otherwise required. Non-federal permittees may not proceed with their activity unless the district engineer has reviewed the PCN and determined that the activity has “no potential to effect” historic properties or the district engineer has completed consultation under Section 106 of NHPA.

If the district engineer determines that the proposed NWP activity will result in either “no historic properties affected,” “no adverse effects,” or “adverse effects,” he or she will conduct NHPA Section 106 consultation with the appropriate consulting parties, including tribes. If a PCN is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with the NHPA. Permittees must also comply with general condition 21 (Discovery of Previously

Unknown Remains and Artifacts) and immediately notify the district engineer of discoveries of previously unknown historic, cultural, or archeological remains and artifacts. The permittee must avoid activities that may affect the remains and artifacts to the extent possible until required coordination is completed.

Some commenters stated that the Corps is not complying with Executive Order 13175. Many commenters stated that this NWP violates tribal sovereignty and does not provide opportunity for tribal input. One commenter stated that this NWP should require free prior and informed consent from tribes. One commenter stated that this NWP violates the RESPECT Act and sovereign land rights. One commenter stated that man camps associated with pipeline construction projects are linked to criminal activity.

Consultation with tribes on the reissuance of the NWPs is discussed in Section V of this final action (Administrative Requirements), in the section for E.O. 13175 (Consultation and Coordination with Indian Tribal Governments). Tribal treaty rights are addressed through NWP general condition 17 (Tribal Rights) for all NWPs, including NWP 12. General condition 17 states that no activity authorized by an NWP may impair reserved tribal rights. During the process for issuing these NWPs, Corps districts have been consulting or coordinating with tribes to identify regional conditions or coordination procedures to ensure that activities authorized by NWP 12 and other NWPs do not have substantial adverse effects on tribal rights and, as appropriate, treaty reserved resources.

Division engineers can modify the NWPs at a regional level to address tribal concerns within the limits of Corps’ authorities. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a nonbinding document that encourages good faith consultation with indigenous peoples to “obtain their free, prior, and informed consent” before implementing measures that could affect them. The Corps follows Executive Order 13175 and existing Department of Defense, Army, and Corps’ tribal consultation policies to meaningfully consult with tribes and consider the concerns of tribes, but not necessarily receive the agreement of tribes, before making permit decisions. The RESPECT Act (Pub. L. 117–317) does not create obligations that are relevant to this rulemaking. Concerns regarding criminal activities are more appropriately addressed by local, state,

tribal, and federal law enforcement officials.

One commenter stated that this NWP is contrary to Executive Orders 13990 (Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis) and 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations). One commenter stated that this NWP is consistent with the direction in Executive Order 14156 (Declaring a National Energy Emergency).

Executive Order 13990 was rescinded by Executive Order 14148 (Initial Rescissions of Harmful Executive Orders and Actions) and Executive Order 12898 was rescinded by Executive Order 14173 (Ending Illegal Discrimination and Restoring Merit-Based Opportunity). Executive Order 14156 declared a national energy emergency and directed federal agencies to facilitate the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources through existing permitting vehicles. This NWP helps fulfill the policies of Executive Order 14156 by maintaining the streamlined process that has been in existence since 1977, to authorize categories of activities associated with the construction and maintenance of oil or natural gas pipelines that have no more than minimal individual and cumulative adverse environmental effects.

Some commenters supported the retention of the ½-acre impact limit or opposed changes to this limit. One commenter said the ½-acre impact limit should be applied to the entire length of a pipeline. One commenter stated that ½-acre impact limit should include temporary impacts. Many commenters expressed support for additional impact limits on this NWP. Many commenters suggested raising the impact limits on this NWP. One commenter recommended that this NWP authorize up to 1,000 linear feet of stream impacts. One commenter suggested capping the number of crossings that could be authorized by this NWP. Some commenters suggested limiting the activities that may be authorized by this NWP on the basis the dimensions of the pipeline or amount of impacts to riparian buffers. One commenter stated that this NWP should require authorization of activities in water of the United States and other non-jurisdictional waters.

This NWP authorizes discharges of dredged or fill material into waters of the United States and work and

structures in navigable waters of the United States associated with the construction, maintenance of repair, and removal of oil and natural gas pipelines and associated facilities. The NWP prohibits loss of waters that exceed $\frac{1}{2}$ -acre of waters of the United States for each single and complete project. The “loss of waters of the United States” refers to permanent adverse effects to waters of the United States as a result of filling, flooding, excavation, or drainage because of the activities subject to the Corps’ authority, and does not include temporary impacts.

The Corps believes that the $\frac{1}{2}$ -acre limit authorized by this NWP, as limited by the constraints in the text of the NWP (e.g., requirements to restore temporary impacts to preconstruction elevations) and in the NWP general conditions, is appropriate to ensure that each single and complete project will cause no more than minimal adverse environmental effects. The Corps has no authority to regulate impacts to non-jurisdictional aquatic resources and cannot require permits for activities outside waters of the United States.

One commenter stated that temporary and cumulative impacts should be considered when evaluating activities authorized by this NWP. One commenter recommended raising the timeframe for temporary discharges from three months to five months. One commenter recommended allowing the district engineer to waive the requirement to restore areas to preconstruction contours.

The national decision document for this NWP considers both temporary impacts and cumulative effects in the analysis. Some activities authorized by NWP 12 (e.g., the construction of substations and permanent access roads) result in permanent fills while other authorized activities generally result in temporary impacts. The terms of the NWP, as well as general conditions 11 (Equipment) and 13 (Removal of Temporary Structures and Fills) require that temporary fills be removed upon completion of the activity. The permittee must restore the affected area to pre-construction elevations and revegetate the area as appropriate. When the district engineer reviews a PCN, in accordance with Section D, District Engineer’s Decision, he or she will consider the duration of the adverse effects (temporary or permanent) as well as the cumulative effects of the specific activity.

Paragraph (b)(4) of NWP general condition 32 requires project proponents to include in PCNs any other NWP(s), regional general permit(s), or individual permit(s) used

or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require DA authorization but do not require a PCN. This information is used by district engineers to determine whether the proposed activity will result in no more than minimal individual and cumulative adverse environmental effects. When the district engineer receives a PCN, he or she will consider the direct and indirect effects of the regulated activity in accordance with Section D (District Engineer’s Decision) and determine if the activity will cause no more than minimal adverse environmental effects, both individually and cumulatively.

This NWP states that material from trench excavation can be temporarily sidecast into waters of the United States for no more than three months and this time period may be extended by the district engineer to not more than 180 days (6 months) where appropriate. The Corps retains the three-month limit and the district engineer’s discretion to allow temporary fills to remain in place for six months. Waters of the United States which are filled, flooded, excavated, or drained, and are not restored to preconstruction contours and elevations after construction, are included in the measurement of loss of waters of the United States, and are considered permanent adverse effects.

Many commenters opposed further limits on the thresholds for requiring a PCN. A few commenters stated that no PCN should be required by this NWP. Many commenters stated that this NWP should require a PCN for all activities. Many commenters supported lowering the thresholds for requiring a PCN. A few commenters suggested adding other thresholds for requiring the submittal of a PCN. One commenter recommended retaining the 0.10-acre threshold for requiring the submittal of a PCN. A few commenters opposed the 250-mile threshold for requiring a submittal of a PCN. One commenter suggested raising the 250-mile PCN threshold.

Nationwide permit 12 requires a PCN for any discharge of dredged or fill material into waters of the United States that results in a loss of greater than $\frac{1}{10}$ -acre of waters of the United States. A PCN is also required for any proposed work or structure which requires authorization under Section 10 of the RHA, and for any regulated activity associated with an overall project that is greater than 250 miles in length when the project purpose is to install new pipeline for the majority of the distance of the overall project length. If a proposed NWP 12 activity does not

trigger any of the three PCN thresholds in the text of the NWP, or a PCN threshold in the text of one of the NWP general conditions (e.g., general condition 18 (Endangered species) and general condition 20 (Historic Properties)), then a PCN is not required for the proposed activity unless a division engineer has imposed a regional condition to require PCNs in a particular geographic region.

Division engineers can add regional conditions to add PCN thresholds, if he or she determines the PCN threshold is necessary to ensure that the NWP authorizes only those activities that have no more than minimal adverse environmental effects. The Corps has found that a length of 250 miles is both a good indicator of potential cumulative effects of an oil or natural gas pipeline while minimizing the potential for inconsistent implementation of the PCN requirement across districts. The Corps is retaining the PCN thresholds associated with NWP 12 activities that result in losses of waters of the United States or have potential effects on navigation. The PCN thresholds, in combination with the other terms of the NWP and the general conditions ensure that the NWP causes no more than minimal adverse environmental effects.

Many commenters stated that the Corps should require a PCN for mechanized land clearing of forested wetlands. Many commenters supported the removal of the PCN threshold for mechanized land clearing in the 2021 final rule to reissue the NWPs.

Mechanized land clearing in waters of the United States may result in a discharge of dredged material which requires DA authorization under Section 404 of the CWA. To be regulated under Section 404 of the CWA, a discharge of dredged material involves any addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States that is incidental to any activity, including mechanized land clearing, ditching, channelization, or other excavation (see 33 CFR 323.2(d)(1)(iii)). For the reasons stated in the 2021 final rule (86 FR 2773–2775), the Corps maintains the position that no PCN for mechanized land clearing should be added to this NWP.

A few commenters stated that the NWP should require avoidance and minimization to the maximum extent possible. Many commenters opposed the addition of uniform national BMPs or standards to this NWP.

Paragraph (a) of general condition 23 (Mitigation), requires permittees to avoid and minimize adverse effects to

waters of the United States to the maximum extent practicable. Best management practices are more appropriately addressed as regional conditions added to the NWP by division engineers or activity-specific conditions added to NWP authorizations by district engineers. The Corps is not adding any national BMPs to NWP 12.

Many commenters suggested that acreage impact limits and PCN thresholds be consistent between NWPs 12 and 14. The acreage limits for NWPs 12 and 14 have some similarities, with a $\frac{1}{2}$ -acre limit for losses of non-tidal waters of the United States. The $\frac{1}{2}$ -acre limit for NWP 12 also applies to tidal waters, while NWP 14 has a $\frac{1}{3}$ -acre limit for losses of tidal waters. NWP 12 and NWP 14 both require a PCN for activities causing the loss of greater than $\frac{1}{10}$ -acre of waters of the United States. NWP 12 also requires a PCN for activities requiring a Section 10 permit and when a proposed oil or natural gas pipeline activity is associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline along the majority of the distance of the overall project length. In addition to the $\frac{1}{10}$ -acre PCN threshold, the NWP 14 requires a PCN for discharges of fill material into special aquatic sites. Nationwide permits 12 and 14 have some somewhat different impact limits and PCN thresholds because of differences between oil or natural gas pipeline activities and linear transportation projects. With the exception of discharges of dredged or fill material associated with substations, pipeline foundations, or access roads, many impacts authorized by the NWP 12 are temporary and require restoration back to preconstruction elevations (*i.e.*, discharges of dredged or fill material associated with the installation of the oil or natural gas pipeline). Nationwide permit 14 for linear transportation projects authorizes discharges of dredged or fill material associated with linear transportation projects (*e.g.*, roads, railroads, airport runways, and trails), which are more likely to result in discharges of dredged or fill material that are not temporary.

Many commenters recommended restricting the ability of the division or district engineer to modify, suspend, and revoke NWP authorizations. Many commenters opposed restricting the ability of the division or district engineer to modify, suspend, and revoke NWP authorizations. In accordance with 33 CFR 330.5, division and engineers have the discretion to modify, suspend, or revoke NWP authorizations. The

Corps is retaining the division and district engineer's discretion to modify, suspend, and revoke NWPs.

Several commenters stated that permittees fail to comply with the requirement to remove temporary access roads and recommended increased compliance and enforcement by the Corps. A few commenters stated that this NWP should include language about the repercussions of unauthorized activities in this NWP.

If the permittee fails to comply with the terms and conditions of an NWP, including NWP general conditions then the activity is not authorized by that NWP and the district engineer may pursue compliance of an unauthorized action pursuant to 33 CFR 326. The district engineer has discretion how to resolve unauthorized actions, including whether to require restoration, accept an application for an after-the-fact authorization, or other remedies. The Note in Section C (NWP General Conditions) advises prospective permittees of their obligations regarding compliance with NWP terms and conditions.

Several commenters stated that the Corps should require additional information in PCNs for NWP 12. One commenter stated that prospective permittees should not be allowed to proceed with construction 45 days after submittal of a PCN.

The Corps has determined that the contents of a complete PCN as stated in paragraph (b) of general condition 32 are sufficient for the district engineer to make his or her decision. Some general conditions, such as general condition 18 (endangered species) or general condition 20 (historic properties) require a non-federal permittee to wait for written approval before commencing construction. Activities that qualify for the default authorization that occurs 45-days after the district engineer receives a complete PCN must comply with all conditions of the NWP, including the general conditions and any applicable regional conditions imposed by the division engineer.

One commenter supported separating this NWP into one or more general permits. One commenter objected to separating this NWP into one or more general permits. One commenter recommended that use of this NWP be prohibited for activities in sensitive areas. One commenter stated that use of this NWP should be prohibited for large pipeline projects. Many commenters stated that this NWP should not automatically prohibit authorization of activities associated with oil and gas pipelines.

Section 404(e) of the CWA does not specify how broad or narrow categories of activities authorized by NWPs and other general permits must be. The Corps has substantial discretion to identify categories of activities that are appropriate for NWPs and other general permits. For instance, in the 2021 final rule to reissue the NWPs (86 FR 2744), the Corps modified NWP 12 and created two new NWPs (NWP 57. Electric Utility Line and Telecommunications Activities and NWP 58 Utility Line Activities for Water and Other Substances) to authorize activities associated with types of utility projects that were formerly authorized by NWP 12. The Corps declines to further narrow the activities authorized by NWP 12.

Division engineers may develop regional conditions for an NWP if he or she determines it necessary to ensure that activities in a region will cause no more than minimal adverse environmental effects to sensitive areas. This NWP requires project proponents to submit a PCN for regulated activities associated with pipelines greater than 250-miles in length, when the purpose is to install new pipeline over the majority of the overall length. The PCN must include the locations and proposed impacts of all crossings of waters of the United States that require DA authorization. The district engineer will review the PCN and determine if the proposed NWP activity will, after considering permit conditions such as mitigation requirements, result in no more than minimal individual and cumulative adverse environmental effects. If one crossing of waters of the United States associated with the installation of a new oil or natural gas pipeline requires an individual permit, then 33 CFR 330.6(d) applies and the district engineer will determine which activities require individual permits and which activities can be authorized by an NWP. Section 330.6(d) of the Corps' NWP regulations, as well as Note 2 of NWP 12, remain in effect. Section 330.6(d) and Note 2 maintain the Corps' long-standing process regarding the use of NWPs and individual permits to authorize linear projects such as oil or natural gas pipelines.

Many commenters requested more consistency across districts regarding whether this NWP authorizes regulated activities associated with the abandonment of pipelines. District engineers have discretion to determine on a case-by-case basis how to address pipeline abandonment activities. If a permittee proposes to abandon a pipeline which lies over, under, or in a navigable water of the United States, the district engineer will review the PCN to

determine if the proposed action will impact navigation.

Many commenters requested a clarification of the scope of “emergency activities” authorized by this NWP. The activities that are authorized by NWP 12 are defined in the terms of this NWP. Nationwide permit 12 can be used to authorize regulated activities associated with emergency installation, replacement or repair of utility lines. The availability of this NWP to authorize such activities may facilitate the implementation of these emergency activities by reducing delays in securing authorization. Which activities constitute an “emergency” is determined by regulation and policy.

Many commenters requested that “normal maintenance” be exempted under Section 404(f). Discharges of dredged or fill material for maintenance activities may be exempted from regulation under the CWA by Section 404(f), in accordance with 33 CFR 323.4(a)(2). If not exempted by Section 404(f) of the CWA, such discharges may be authorized by a variety of NWPs, such as NWP 3 (Maintenance), NWP 33 (Temporary Construction, Access, and Dewatering), or NWP 45 (Repair of Uplands Damaged by Discrete Events). The 1989 Memorandum of Agreement Between the Department of the Army and the U.S. EPA Concerning the Determination of the Section 404 Program and the Application of the Exemptions under Section 404(f) of the Clean Water Act, states that the U.S. EPA has the authority to establish policies on which activities are eligible for the CWA Section 404(f) exemptions. There are no work or structures in navigable waters of the United States that are exempted from regulation under Section 10 of the RHA.

Many commenters stated that the definition of “single and complete linear project” causes cumulative effects to aquatic resources. Many commenters objected to the determination that each waterbody crossing is a single and complete project. One commenter requested that the Corps define “separate and distant.” One commenter disagreed that the Corps fails to consider cumulative impacts from all crossings.

The authorization of separate and distant crossings of waters of the United States as single and complete projects for the purposes of NWP authorization is a long-standing practice consistent with the Corps’ regulations at 33 CFR 330.2(i). Under paragraph (b)(4) of general condition 32, PCNs for linear projects are required to include those crossings of waters of the United States that require NWP PCNs as well as those

crossings that will utilize the NWPs and do not require PCNs. The Corps declines to define the phrase “separate and distant” because what constitutes separate and distant crossings can vary across the country because of differences in the distribution of waters and wetlands in the landscape, local hydrologic conditions, local geologic conditions, and other factors. What constitutes separate and distant crossings is more appropriately determined by district engineers on a case-by-case basis. When reviewing a PCN, the district engineer will consider the cumulative effects of all crossings of waters of the United States and apply the 10 criteria listed in paragraph 2 of Section D, District Engineer’s Decision.

One commenter stated that vague conditions such as “to the maximum extent possible” and “where practicable” should be eliminated from the NWP. One commenter recommended that the phrase “near as possible” be revised to “maximum extent practicable.” The use of the terms such as “to the maximum extent practicable” and “where practicable” afford the district engineer the discretion to consider the benefits and detriments of activities, temporary activities in light of differences in the local hydrologic conditions, and other factors while ensuring that the activity will have no more than minimal adverse environmental effects. This NWP requires access roads to be constructed as near as possible to pre-construction contours and elevations. The additional avoidance and minimization required by the more restrictive “near as possible” is necessary and still allows flexibility to deviate from preconstruction contours.

Many commenters oppose providing notice and an opportunity for potentially impacted communities to comment on each NWP-specific activity. Many commenters stated that the NWP does not provide opportunity for public input on each activity. Many commenters stated that this NWP does not ensure that impacts to disadvantaged and environmental justice communities are considered.

The public was provided an opportunity to comment on the Corps’ proposal to issue, reissue, or modify NWP 12 when Corps Headquarters published its proposed rule in the **Federal Register** (90 FR 26100) to start the public comment period. However, after an NWP is issued, there is no public comment process for specific NWP activities. If, for a proposed oil or natural gas pipeline activity, the district engineer exercises discretionary authority and requires an individual

permit for that activity, the public will have an opportunity to provide comments in response to the public notice issued by the Corps district. During the process to reissue or modify the NWPs, the Corps considers the adverse environmental effects of the reissuance of these NWPs in accordance Section 404(e) of the CWA, Section 10 of the RHA, and in compliance with applicable environmental laws, regulation, guidance and policy, as limited by the scope of our authority. The level of analysis and consideration of environmental justice concerns in the national decision documents and this final action comply with current Executive Orders and agency directives, including Executive Order 14151. The NWPs are not expected to have any discriminatory effect or disproportionate negative impact on any community or group.

One commenter opposed this NWP, stating it undermines local environmental requirements. One commenter stated that states and local authorities should review projects with activities that may be authorized by this NWP. One commenter stated that a PCN should be required for activities proposed where residential areas are within 500 feet of the pipeline right-of-way. One commenter stated that the Corps has no authority to make siting decisions for pipelines. One commenter expressed concerns over risks of horizontal directional drilling.

As stated in item 2 of Section E (Further Information), the NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law. State and local governments are the entities that have primary responsibility for regulating land use and pipeline siting. The Corps does not have jurisdiction to regulate or enforce inadvertent returns, leaks, or spills that may occur during horizontal directional drilling to install or replace oil or natural gas pipelines. The eighth paragraph of this NWP authorizes, to the extent that DA authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through subsoil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines. The purpose of this paragraph is to provide authorization for regulated activities that are necessary to remediate inadvertent returns of drilling fluids to reduce adverse environmental effects that might be caused by releases of

drilling fluids to the surrounding environment.

One commenter stated that this NWP should be available to all parties rather than just to the oil and gas industry. One commenter expressed concern that this NWP exposes the NWP Program to judicial scrutiny. This NWP places no restriction on who may apply for authorization for discharges of dredged or fill material into waters of the United States or work and structures in navigable waters of the United States for activities associated with oil or natural gas pipelines. While potential litigation risk is a consideration when contemplating changes to an NWP, the Corps also considers other factors such as administrative efficiency, reduction of regulatory burdens, and other approaches for maintaining environmental protections.

Many commenters expressed concern over the impacts of activities authorized by this NWP on water supply and water quality. Many commenters expressed opposition to oil and gas pipelines because of concern over fossil fuels or supporting renewable energy resources. Many commenters stated that authorizing fossil fuel projects is contrary to the public interest. Many commenters expressed concerns over ruptures, spills and leaks from oil and gas pipelines. Several commenters stated that the Corps does not analyze the harms and threats posed on the environment through operation and maintenance of pipelines.

The national decision document for this NWP considers the effects of regulated discharges of dredged or fill material, or work or structures, on water supply and conservation as part of the public interest review. Discharges of dredged or fill material into waters of the United States require water quality certification from the appropriate certifying authority unless a waiver of the water quality certification requirement occurs. For those certifying authorities that choose to require individual water quality certifications for activities authorized by this NWP, they can place conditions on the certification to ensure the activity complies with state water quality standards. General condition 25 (water quality) requires permittees to comply with any granted water quality certifications. As stated in item 2 of Section E (Further Information), the NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law. State and local governments are the entities that have primary responsibility for regulating water use.

Congress did not grant the Corps' statutory authority to regulate the extraction of oil or natural gas, the operation of any oil or natural gas pipeline, the product transported by the pipeline, or the emissions that result from combustion of oil or natural gas or from the industrial processes that derive other products from oil or natural gas. The Corps' authority is limited to the discharges of dredged or fill material into waters of the United States and work or structure in navigable waters of the United States. The extent of the NEPA analysis for this NWP addresses the environmental effects of reissuing NWP 12 for a period of five years. NEPA does not require that the Corps evaluate upstream and downstream impacts, including potential impacts on the planet's climate which are associated with the extraction or consumption of oil or natural gas or products derived from oil or natural gas.

In the national decision document for the issuance of this NWP, the Corps discusses leaks or spills that may occur during the construction and/or operation of oil or natural gas pipelines. Congress has not granted the Corps statutory authority to take actions to prevent or control potential leaks or spills that may occur during the construction or operation of oil or natural gas pipelines. Since the Corps does not regulate the release of oil, natural gas, or products derived from oil or natural gas, the Corps is not required to perform a detailed analysis of the effects of those possible future leaks or spills because those leaks or spills are not an effect of the Corps' proposed action. Although some regulated activities authorized by various NWPs may be associated with energy production, distribution, and use, the Corps does not have the authority to regulate or control the which type of energy production is proposed by a project proponent.

Many commenters recommended that compensatory mitigation should be required for all losses of stream banks and any loss of waters. One commenter stated that states rely on the Corps to require compensatory mitigation for impacts to streams in their state.

General condition 23 requires compensatory mitigation for all wetland losses greater than 1/10-acre and for all stream losses greater than 3/100-acre that require PCNs, unless the district engineer determines that some other form of mitigation would be more environmentally appropriate. The Corps establishes PCN thresholds to ensure compliance with federal law and to ensure that activities authorized by an NWP will cause no more than minimal

adverse environmental effects. States and other local authorities may enact laws and regulations to place further protections on streams and other natural resources. The NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

This NWP is reissued as proposed.

NWP 13. Bank Stabilization. The Corps proposed to modify NWP 13 by adding a paragraph to clarify that this NWP can be used to authorize regulated activities that incorporate nature-based solutions associated with bank stabilization activities, including those in conjunction with hard bank stabilization activities such as seawalls, bulkheads, and revetments. The Corps also proposed to modify this NWP by adding a new Note to encourage project proponents to use soft bank stabilization approaches and/or nature-based solutions where appropriate to reduce the potential individual and cumulative adverse environmental effects that may be caused by bank stabilization activities. The proposed new Note also provides examples of the numerous factors that likely need to be considered when planning and designing a proposed bank stabilization activity, including hard or soft approaches to bank stabilization.

Many commenters recommended that the Corps not reissue this NWP. Many commenters stated that this NWP causes more than minimal adverse environmental effects. Many commenters stated that the Corps failed to support the finding that this NWP will cause no more than minimal individual and cumulative adverse environmental effects. Many commenters objected to the reliance on compensatory mitigation to reduce the cumulative impacts of NWP 13 to a minimal level. Many commenters stated that NWP 13 authorizes activities with significant adverse impacts and therefore violates NEPA and the CWA. Many commenters expressed concern that the Corps failed to analyze "secondary effects" on aquatic ecosystems. Many commenters stated that Corps should conduct proper endangered species consultation for the reissuance of NWP 13.

The process to reissue this NWP complied with Section 404(e) of the CWA (including the Section 404(b)(1) Guidelines), NEPA, and ESA. The terms and conditions for this NWP are appropriate for limiting bank stabilization activities so that they have no more than minimal individual and cumulative adverse environmental effects, while allowing landowners and other entities to protect their property

and safety. In the national decision document for the reissuance of this NWP, the Corps prepared an EA using reliable data and resources to inform a finding of no significant impact to comply with NEPA requirements. Therefore, the reissuance of this NWP does not require the preparation of an environmental impact statement. In the national decision document, we have completed a 404(b)(1) Guidelines analysis, including an analysis of direct and secondary effects, and determined that the reissuance of this NWP complies with the Guidelines. The Corps' compliance with ESA for the reissuance of the NWPs is discussed in Section III.C. of this action.

Many commenters stated that this NWP authorizes activities that are not similar in nature. One commenter stated that the Corps should require mitigation for projects that result in more than minimal losses of riverine functions for hard bank stabilization. Many commenters expressed concern that the Corps failed to meaningfully consider climate change and sea level rise.

This NWP authorizes discharges of dredged or fill material into waters of the United States or work and structures in navigable waters of the United States associated with bank stabilization activities necessary for erosion control or prevention. This NWP authorizes categories of activities that are similar in nature. The similar in nature requirement does not mean that activities authorized by an NWP must be identical to each other. The phrase "categories of activities that are similar in nature", is best read to confer broad discretion on the Secretary to facilitate the practical implementation of this general permit program. General condition 23 requires compensatory mitigation for all wetland losses greater than 1/10-acre and for all stream losses greater than 3/100-acre that require PCNs, unless the district engineer determines that some other form of mitigation would be more environmentally appropriate. The activities authorized by NWP 13 are a tool for landowners and communities to adapt to sea level rise and increases in the frequency of severe storm events.

Many commenters suggested reducing the impact limits for this NWP. Many commenters recommended adding an acreage impact to this NWP. Many stated that all armoring projects should be evaluated through the individual permit process. Many commenters stated that the public should be given the opportunity to comment on all shoreline armoring projects regardless of size.

This NWP does not have an acreage limit; regulated activities authorized by this NWP are subject to nine criteria, including a 500-linear foot length limit along the bank and one-cubic yard per running foot, unless waived by the district engineer. The limits in this NWP are sufficient to ensure that the NWP authorizes only those activities that have minimal adverse effects on the aquatic environment. Division engineers may regionally condition this NWP to impose lower impact limits to account for local environmental conditions and the ecological functions and services provided by waters of the United States in those areas.

In response to a PCN the district engineer can add special conditions to the NWP authorization to ensure minimal adverse effects, or exercise discretionary authority and require another type of permit, such as an individual permit, for the activity. If the district engineer exercises discretionary authority and requires an individual permit for a bank stabilization activity, the public will have an opportunity to provide comments in response to the public notice issued by the Corps district. The public was provided an opportunity to comment on the Corps' proposal to issue, reissue, or modify an NWP when Corps Headquarters published its proposed rule in the **Federal Register** (90 FR 26100) to start the public comment period. However, after an NWP is issued, there is no public comment process for specific NWP activities.

Many commenters stated that PCNs should be required for all NWP 13 projects. Many commenters objected to any new PCN thresholds. Several commenters recommended reducing the 500-linear foot limit. One commenter suggested raising the 500-linear foot limit. One commenter stated that the one cubic yard per running foot limit is too restrictive. One commenter requested clarification if the 500 linear foot limit is measured along the centerline or along each bank.

The Corps establishes PCN thresholds to ensure compliance with federal laws and to ensure that activities authorized by an NWP will cause no more than minimal adverse environmental effects. This NWP requires the prospective permittee submit a PCN when a proposed activity (1) involves discharges of dredged or fill material into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of dredged or fill material of greater than an average of one cubic yard per running foot as measured along the length of the treated

bank, below the plane of the ordinary high water mark or the high tide line.

The linear foot limit in this NWP applies to the length of the regulated activity as measured along each bank where the bank stabilization would occur, not the length of the stream segment as measured along the centerline. If the prospective permittee intends bank stabilization along 300 linear feet of the right stream bank and additional bank stabilization along 300 linear feet of the left stream bank of the same stream segment, a PCN is required because the total length of the activity will exceed 500 linear feet. If a proposed activity does not trigger any of the three PCN thresholds in the text of the NWP, or a PCN threshold in the text of one of the NWP general conditions (e.g., general condition 18, endangered species and general condition 20, historic properties), then a PCN is not required for the proposed activity unless a division engineer has imposed a regional condition to require PCNs in a particular geographic region. Upon receipt of a PCN, the district engineer will determine if the regulated activity will cause no more than minimal adverse environmental effects. The Corps is retaining the PCN thresholds in this NWP.

Many commenters recommended removing the district engineers' ability to waive the limits in this NWP. Many commenters stated that the Corps is not adequately considering the benefits versus the adverse effects when deciding whether to waive limits. Many commenters suggested removing the 1,000 linear foot limit on waivers for bulkheads to allow for case-by-case approvals.

Paragraph (b) limits the activity authorized by this NWP to 500 linear feet unless waived and limits any bulkhead to no more than 1,000 linear feet. Paragraph (c) limits the activity to an average of one cubic yard per running foot along the length of the treated bank unless waived. Paragraph (d) prohibits discharges of dredged or fill material into special aquatic sites unless waived. The criterion in paragraphs (b), (c), and (d) of this NWP can be waived upon written determination by the district engineer that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects. All requests for waivers under NWP 13 will be coordinated with the appropriate resource agencies, in accordance with paragraph (d) of general condition 32, to assist with the district engineer's evaluation. The district engineer will review the PCN and determine if the proposed NWP activity will, after

considering any comments from resource agencies, any waived criterion, and permit conditions such as mitigation requirements, result in no more than minimal individual and cumulative adverse environmental effects.

We are retaining the waiver provisions for NWP 13. Waivers are an important tool for providing flexibility in the NWP program, and for authorizing activities that have only minimal adverse environmental effects. Waivers also allow the Corps to focus its limited resources on proposed activities that require DA authorization and may have more than minimal impacts on the aquatic environment. The national decision documents list the estimated annual usage of this NWP, the amount of authorized impacts and the amount of required compensatory mitigation. This level of information is sufficient to determine that this NWP is being reissued compliant with Section 404(e) of the CWA.

Many commenters suggested an addition to paragraph (e) to prohibit the impediment of groundwater and hyporheic exchange, for example, through the filling of wetlands. One commenter recommended adding “and that material from failed protection will be removed from stream (and if reused, can only be used as backfill as it does not meet 100 yr flood requirements)” to the end of paragraph (e). Many commenters suggested that subsection (i) should state that maintenance of any bank stabilization must be required for the lifetime of the activity. One commenter requested that the NWP include a condition that requires the project be designed to ensure the bank stabilization is sustainable. One commenter suggested clarifying that the authorized maintenance under the NWP includes the removal of failing structures.

Discharges of dredged or fill material into wetlands and other waters of the United States may directly or indirectly impact movement of ground water and hyporheic exchange. The loss of functions resulting from the regulated activity are considered in the evaluation of the impacts, at the national level, at the regional level, and at the district level. The district engineer will determine, through review of the PCN, if impacts to wetlands and other special aquatic sites resulting from the specific activity will cause no more than minimal adverse environmental effects. Paragraph (i) and general condition 14 (Proper Maintenance) require a permittee maintain and repair any activity authorized by this NWP. Paragraph (i) does not require a

landowner or other entity to maintain a bank stabilization activity in perpetuity. There are also a variety of other factors that affect the functional lifespan of a bank stabilization activity.

If failure of an authorized activity occurs, the district engineer may pursue compliance of an unauthorized action pursuant to 33 CFR 326. The Corps declines to modify paragraph (e) to prescribe a specific method for resolving noncompliance with an NWP, preserving flexibility in such situations. As described in 33 CFR 326, the district engineer has the discretion to make decisions on resolving unauthorized actions based on the specific site characteristics, type of resource impacted, and whether removal of eroded material would cause greater impacts then allowing it to remain in place. Consistent with paragraph (i) and general condition 14 (Proper Maintenance) a permittee may remove existing fill or structures in order to maintain and repair any activity authorized by this NWP. Removal of authorized fills and structures may be also authorized by NWP 3 (Maintenance), by regional general permit, or by individual permit.

Many commenters suggested adding language that requires that fill material must be free from contaminants. Many commenters recommended adding language that requires the applicant to ensure the preservation of fish when dewatering aquatic resources.

Activities authorized by this NWP must comply with general condition 6 (Suitable Material) which prohibits the discharge of material that contains pollutants in toxic amounts. The permittee is also responsible for complying with all general conditions to the NWP. General condition 2 (Aquatic Life Movements) requires that temporary crossings be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If the regulated activity might affect, or is in the vicinity of a species listed (or proposed for listing) or designated critical habitat (or habitat proposed for such designation) under the ESA, general condition 18 (Endangered Species) requires non-federal permittees to submit a PCN and states the permittee cannot begin work until the district engineer has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or conference has been completed. If a PCN is required for the proposed NWP

activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with the ESA. The permittee is required to comply with any mitigation measures identified during Section 7 ESA consultation, or species proposed for listed) or critical habitat (or habitat proposed for such designation).

Many commenters supported the proposed addition of language about nature-based solutions. Many commenters opposed the addition of the nature-based solutions definition and some expressed concern that nature-based solutions are not always the most beneficial to the environment or feasible. Many commenters recommended requiring the use of nature-based solutions. Many commenters suggested requiring nature-based solutions be considered before allowing another form of bank stabilization. One commenter recommended that the district engineer ensure a seamless transition occurs between soft bank transitions to hard bank structures and transitions to unmodified bank.

This NWP encourages project proponents to incorporate nature-based solutions into the design of the activities authorized by this NWP. The Corps acknowledges that there are circumstances when nature-based solutions will not be practicable for a site for a variety of reasons. Inclusion of nature-based solutions into the design of a project is not required by this NWP. Note 2 reinforces the Corps’ acknowledgement that the landowner has the general right to protect his or her property from erosion. The project proponent will determine what bank stabilization options are feasible. In addition, district engineers can only provide general information to landowners regarding bank stabilization options. District engineers cannot design a landowner’s bank stabilization activity.

Paragraph (a) of general condition 23 (Mitigation), requires permittees to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable. General condition 23 requires compensatory mitigation for all wetland losses greater than 1/10-acre and for all stream losses greater than 3/100-acre for all activities authorized under this NWP, unless the district engineer determines that some other form of mitigation would be more environmentally appropriate. The district engineer will determine if a proposed activity would cause more than minimal adverse impacts to the environment in light of the terms of the

NWP, all the general conditions, and the criteria in Section D. District Engineer's Decision.

A few commenters expressed concern that proposed examples of nature-based solutions are actually bank hardening approaches that contradict nature-based solutions. One commenter recommended clarifying if "bags of molluscs" refers to living organisms, is limited to the use of native species, the quantity of mollusks used, or if this relates to oyster shell bags used in living shorelines. One commenter suggests aligning the definition of nature-based solutions with the examples provided in NWP 43 (Stormwater Management Facilities) to ensure consistency for transportation and stormwater management projects that incorporate nature-based solutions. One commenter suggested adding the word "also" to the first sentence of the eleventh paragraph, so it reads "This NWP also authorizes discharges . . ." to clarify that the permit doesn't only authorize discharges incorporating nature-based solution.

Depending on the characteristics of a site, soft bank stabilization may not be appropriate. Nature-based solutions can include natural and engineered components. Elements of nature-based solutions can be incorporated into hard bank stabilization, such as use of construction materials for seawalls and bulkheads that have textured surfaces, or the placement of rock clusters next to a seawall or bulkhead. We have modified NWP to add "vegetative stabilization" and "bioengineering" to the list of examples of nature-based solutions for bank stabilization activities. We have also added a sentence to the eleventh paragraph to reinforce that nature-based solutions should be appropriate for the physical and biological characteristics of the site.

Nature-based solutions may also include the placement of bags of molluscs to create habitat. Molluscs are found in both freshwater and saltwater and include mussels and oysters. The phrase "bags of molluscs" refers to living organisms, but nature-based solutions can also include the placement of bags of mollusc shells. If the molluscs are living, the bags of molluscs should consist of species that are native to the waterway where they will be placed to avoid the introduction of invasive species in a waterway. The examples of nature-based solutions in NWP 13 and in NWP 43 (Stormwater Management Facilities) are necessarily different because the examples listed in any NWP are related to the purpose of the proposed discharge of dredged or fill material or work and structures. The

Corps is retaining the list of examples in this NWP. The Corps agrees to modify the first sentence of the eleventh paragraph to make clear that this NWP authorizes activities associated with bank stabilization and also authorizes activities associated with incorporating nature-based solutions into new and existing bank stabilization.

Many commenters supported the addition of Note 2 to this NWP. Many commenters opposed the addition of Note 2. Several commenters expressed concern that Note 2 would only apply to activities that require submittal of a PCN. One commenter requested a modification to Note 2 to state what hard armoring is permitted along shorelines and to specify what private property structures are eligible for protection and what level of bank stabilization is required. A few commenters expressed concerns that Note 2 recommends nature-based solutions and does not prohibit hard stabilization. Several commenters stated that the Note should be modified to recognize local agencies authority to determine approaches for projects. Several commenters recommended adding additional factors to consider when determining the type of bank stabilization, such as local climate, soil properties, water fluctuations, bank slope and wake action. One commenter stated that the private property owner's right to protect their property is limited by concerns of adverse impacts to property of others, public health and safety, adverse environmental impacts, and the public interest.

This NWP encourages the incorporation of nature-based solutions into existing and new bank stabilization projects where those methods are likely to be successful. Note 2 applies to all activities authorized by this NWP. The Corps recognizes that there may be locations where the incorporation of soft bank stabilization or other nature-based solutions may not be practicable. The responsibility for land use planning and zoning, including land use in coastal zones, generally falls on state and local governments. If a state regulates shore erosion control activities, the state's regulations or permit decisions will influence or dictate the shore erosion approach proposed by the landowner. There will be a variety of factors to consider when identifying, planning, and designing an appropriate and effective bank stabilization activity for a particular site. Some of the factors to consider are listed in Note 2, but there may be other factors to consider based on the location of a site.

The Corps acknowledges that the property owner's right to protect their

property is balanced by considerations including whether the protective structure may cause damage to the property of others, adversely affect public health, or otherwise be contrary to the public interest. It is up to the landowner to decide how he or she wants to protect his or her property from erosion. Upon review of the PCN, if the district engineer determines that the proposed activity does not qualify for the NWP, he or she will advise the applicant whether the activity qualifies for another NWP or regional general permit authorization or requires an individual permit.

Many commenters suggested that the NWP explicitly state the preference for the use of NWP 54 for shoreline stabilization projects instead of NWP 13. Several commenters requested that the Corps properly enforce the removal of permitted temporary fills.

The Corps declines to establish a preference for one approach to bank stabilization over other approaches. Paragraph (b) of general condition 32 (Pre-Construction Notification) states the PCN must include the specific NWP(s) that the prospective permittee wants to use to authorize the proposed activity. Corps districts will enforce NWP 13 activities in the same manner as they enforce all individual permits and general permit authorizations, which is through the procedures described in the Corps' regulations at 33 CFR part 326 and relevant guidance and policy documents. Under its procedures at 33 CFR part 326, the Corps can take actions to address situations where permittees do not comply with the terms and conditions of this NWP, including the removal of temporary discharges of dredged or fill material into waters of the United States.

This NWP is reissued with the modifications discussed above.

NWP 14. Linear Transportation Projects. The Corps did not propose any changes to this NWP. Many commenters expressed support for the reissuance of this NWP. Many commenters oppose the reissuance of this NWP. One commenter stated that this NWP authorizes more than minimal impacts. Many commenters stated that this NWP causes significant cumulative impacts to water quality, salmon, and shellfish. Several commenters stated that a public comment period should be required for this NWP. Many commenters support the use of temporary mats under NWP 14.

This NWP authorizes activities that have no more than minimal individual and cumulative adverse environmental effects. For this NWP, the assessment of cumulative effects occurs at three levels:

National, regional, and the verification stage. The national NWP decision document includes a national scale cumulative effects analysis. Corps Headquarters prepared a national decision document for the reissuance of this NWP and made a finding of no significant impact. Each supplemental document has a cumulative effects analysis conducted for a region, which is typically defined as a state or Corps district.

When a district engineer issues a verification letter in response to a PCN or a voluntary request for an NWP verification, the district engineer prepares a brief document that explains whether the proposed NWP activity, after considering permit conditions such as mitigation requirements, will result in no more than minimal individual and cumulative adverse environmental effects. The public was provided an opportunity to comment on the Corps' proposal to issue, reissue, or modify an NWP when Corps Headquarters published its proposed rule in the **Federal Register** (90 FR 26100) to start the public comment period. However, after an NWP is issued, there is no public comment process for specific NWP activities.

Many commenters requested that NWP 12 and NWP 14 have consistent acreage limits. Many commenters oppose the $\frac{1}{3}$ -acre impact limit in tidal waters and $\frac{1}{2}$ -acre impact limit in non-tidal waters. One commenter stated that the impact limits should not be changed.

The acreage limits for NWPs 12 and 14 have some similarities, with a $\frac{1}{2}$ -acre limit for losses of non-tidal waters of the United States. The $\frac{1}{2}$ -acre limit for NWP 12 also applies to tidal waters, while NWP 14 has a $\frac{1}{3}$ -acre limit for losses of tidal waters. Nationwide permits 12 and 14 have somewhat different impact thresholds because of differences between oil or natural gas pipeline activities and linear transportation projects. With the exception of discharges of dredged or fill material associated with substations, pipeline foundations, or access roads, many impacts authorized by the NWP 12 are temporary and require restoration back to preconstruction elevations (*i.e.*, discharges of dredged or fill material associated with the installation of the oil or natural gas pipeline). Nationwide permit 14 for linear transportation projects authorizes discharges of dredged or fill material associated with linear transportation projects (*e.g.*, roads, railroads, airport runways, and trails), which are more likely to result in discharges of dredged or fill material that are not temporary. The Corps is

retaining the impact limits for this NWP.

Many commenters requested that NWP 12 and NWP 14 have consistent PCN thresholds. Several commenters supported the $\frac{1}{10}$ -acre threshold for submittal of a PCN. A few commenters stated this NWP should have no PCN threshold for low quality wetlands. One commenter stated that isolated waters should not be considered special aquatic sites. One commenter stated that a PCN should be required for all activities authorized by this NWP because historic resources are being affected.

NWP 12 and NWP 14 both require a PCN for activities causing the loss of greater than $\frac{1}{10}$ -acre of waters of the United States. NWP 12 also requires a PCN for activities requiring a Section 10 permit and when a proposed oil or natural gas pipeline activity is associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline along the majority of the distance of the overall project length. In addition to the $\frac{1}{10}$ -acre threshold, NWP 14 requires a PCN for discharges of fill material into special aquatic sites. Wetlands are special aquatic sites as defined by regulation in 33 CFR 330.2(j).

The Corps only has the authority to issue permits for regulated activities in waters of the United States. Not all wetlands and waters are waters of the United States. A jurisdictional determination is not required in order to submit a PCN. If the project proponent did not obtain an approved jurisdictional determination for the project site prior to submitting the PCN, for the purposes of evaluating the PCN, the district engineer will presume the wetlands, streams, and other waters on the project site are subject to CWA jurisdiction. If a PCN is required, the district engineer will review the PCN and consider the quality of the aquatic resources that would be impacted by the regulated activity when making the district engineer's decision (Section D).

If a non-federal permittee proposes an activity that might have the potential to effect a historic property or a property eligible for listing on the National Register of Historic Places, in accordance with general condition 20 (historic properties), the prospective permittee must submit a PCN and may not begin construction until they receive written authorization from the district engineer. Federal agencies must follow their own regulations for complying with Section 106 of the NHPA. During the review of the PCN, the district engineer will assess the proposal for compliance with general condition 17

(Tribal Rights). The Corps declines to modify the PCN thresholds for this NWP. The PCN requirements, in addition to the other terms of this NWP and the NWP general conditions ensure that the activities authorized by this NWP cause no more than minimal adverse environmental effects.

Many commenters oppose the definition of "single and complete linear project," stating that it is used to avoid review of projects through the individual permit process. The practice for providing NWP authorization for single and complete linear projects, where each separate and distant crossing of waters of the United States may qualify for its own NWP authorization, is consistent with the Corps' NWP regulations at 33 CFR 330.2(i), and dates back to November 22, 1991. District engineers will review PCNs to determine whether proposed crossings of waters of the United States are to be considered together or as separate and distant on a case-by-case basis, after evaluating site and regional characteristics. If one crossing of waters of the United States associated with the construction of a linear transportation project requires an individual permit, then 33 CFR 330.6(d) applies and the district engineer will determine which activities require individual permits and which activities can be authorized by an NWP. Section 330.6(d) of the Corps' NWP regulations, as well as Note 1 of NWP 14, remain in effect. Section 330.6(d) and Note 1 maintain the Corps' long-standing process regarding the use of NWPs and individual permits to authorize linear projects.

One commenter stated that replacement of existing fills should not count toward the $\frac{3}{100}$ -acre threshold. One commenter stated that this NWP should authorize nature-based solutions. One commenter recommended adding a note to NWP 14 to encourage the use of nature-based solutions.

Discharges of dredged or fill material for maintenance activities may be exempt from regulation under the CWA by Section 404(f) in accordance with 33 CFR 323.4(a)(2). If not exempted by Section 404(f) of the CWA, such discharges may be authorized by a variety of NWPs, such as NWP 3 (Maintenance) or NWP 14 (Linear Transportation Projects), NWP 33 (Temporary Construction, Access, and Dewatering), or NWP 45 (Repair of Uplands Damaged by Discrete Events). General condition 23 requires compensatory mitigation for all wetland losses greater than $\frac{1}{10}$ -acre and for all stream losses greater than $\frac{3}{100}$ -acre for all activities which require a PCN,

unless the district engineer determines that some other form of mitigation would be more environmentally appropriate.

This NWP authorizes discharges of dredged or fill material into waters of the United States and work and structures in navigable waters of the United States for activities associated with the construction, expansion, modification, or improvement of linear transportation projects. Prospective permittees may incorporate nature-based solutions into activities which requires DA authorization, where appropriate. Culvert replacements may be authorized by NWP 3 (Maintenance), NWP 14 (Linear Transportation Projects), or NWP A (Activities to Improve Passage of Fish and Other Aquatic Organisms) when the case-specific activity complies with the terms and conditions of the NWP. However, the incorporation of nature-based solutions may not be possible based on-site conditions, design requirements, and other factors. We decline to add a note to NWP 14 because the opportunity to incorporate nature-based solutions into linear transportation projects may be limited.

This NWP is reissued as proposed.

NWP 15. U.S. Coast Guard Approved Bridges. The Corps proposed to modify this NWP to refer to the General Bridge Act of 1946 as one of the statutory authorities that may be used by the U.S. Coast Guard to authorize a bridge over navigable waters of the United States. No comments were received on the proposed reissuance of this NWP. This NWP is reissued as proposed.

NWP 16. Return Water From Upland Contained Disposal Areas. The Corps did not propose any changes to this NWP. One commenter suggested changes to NWP 16 to authorize discharges of return water from a barge.

The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d). NWP 16 authorizes the return water from an upland contained disposal area provided the activity meets the terms and conditions of this NWP. This NWP only authorizes the return water. NWP 16 does not authorize the actual dredging activity, dredge material transport, or the discharge of dredged or fill material into waters of the United States, beyond the return water activity described above. The text of NWP 16 states dredging activities may require Section 404 authorization (33 CFR 323.2(d)) and will require Section 10 authorization if located in navigable waters of the United States. This NWP does not authorize the discharge of return water

from a vessel. We decline to modify the terms of this NWP.

One commenter suggested revising the NWP to require that activities authorized by NWP 16 require a separate individual Section 401 water quality certification. One commenter suggested NWP 16 not be reissued, stating it could authorize the placement of contaminated dredged material, causing detrimental water quality impacts and violating the CWA. One commenter stated that a PCN should be required for activities authorized under NWP 16 and that testing of the dredged material should be required.

The authority to make decisions regarding water quality under Section 401 of the CWA, including whether a project proponent must obtain an individual water quality certification, lies with state, tribe or EPA Region with the authority to grant, waive or deny water quality certifications. The permittee is responsible for complying with the terms and conditions to the NWP and any applicable regional conditions, including conditions of a granted general or individual 401 WQC. Activities authorized by this NWP must also comply with general condition 6 (Suitable Material) which prohibits the discharge of material that contains pollutants in toxic amounts. If the permittee fails to comply with a general condition, then the activity is not authorized by that NWP and the district engineer may pursue compliance of an unauthorized action pursuant to 33 CFR 326. We do not agree that a PCN should be required for this NWP. If the project proponent intends to discharge dredged material into waters of the United States beyond the return water activity, he or she must obtain a separate DA authorization, and a separate water quality certification.

This NWP is reissued as proposed.

NWP 17. Hydropower Projects. The Corps did not propose any changes to this NWP. Many commenters stated that the activities authorized under this NWP are not similar in nature and objected to the lack of impact limitations. Many commenters requested that the Corps decrease the total allowable generating capacity for NWP 17 activities from 10,000 kw to 5,000 kw. Many commenters requested confirmation that NWP 17 cannot be used for new dam construction.

This NWP authorizes categories of activities that are similar in nature, that is discharges of dredged or fill material regulated by the Corps that are associated with the construction of hydropower facilities within existing infrastructure which is under the authority of the FERC. For the reasons

articulated in the 2021 NWPs (86 FR 73522) NWP 17 was modified to authorize activities associated with hydropower projects with a generating capacity of less than 10,000 kilowatts. This NWP does not authorize the construction of new dams for hydropower projects. This NWP authorizes discharges of dredged or fill material to install hydropower generation into existing reservoirs or structures.

Many commenters requested that the Corps withdraw the NWP 17 because it authorizes significant adverse impacts that violate the CWA. Many commenters suggested the inclusion of additional protective measures in the NWP, such as limiting impact size, requiring fish passage technology, bypasses, size restrictions, sediment flushing, fish-protective turbine spacing, and technologies to prevent water quality violations.

This NWP requires a PCN for all authorized activities. District engineers will review each PCN to determine if the proposed discharge of dredged or fill material into waters of the United States will result in no more than minimal individual and cumulative adverse environmental effects and may include activity-specific conditions in the NWP authorization. Decisions on the appropriate protective measures necessary to ensure the activity causes no more than minimal adverse effects to the environment will vary based on site conditions, type of facility, the proposed action and species and habitats that are present. If the district engineer determines a proposed discharge of dredged or fill material into waters of the United States will result in more than minimal adverse environmental effects after considering mitigation proposed by the applicant, he or she will exercise discretionary authority and require an individual permit for the proposed activity.

Many commenters oppose the authorization of activities under NWP 17 in watersheds containing unlicensed or non-compliant hydropower projects with known environmental and cultural impacts. Many commenters requested that the Corps prohibit use of NWP 17 for hydropower projects in a specific waterbody. Many commenters suggested requiring formal government-to-government consultation and written concurrence from affected tribes for all NWP 17 activities.

Division engineers may regionally condition this NWP to account for local environmental conditions and the ecological functions and services provided by waters of the United States. In geographic areas where there are

regional concerns about impacts to a particular waterbody or a sensitive aquatic resource, division engineers have the discretionary authority to suspend, modify, or revoke this NWP in a region or location. During the review of the PCN, the district engineer will assess the proposal for compliance with general condition 17 (Tribal Rights).

This NWP is reissued as proposed.

NWP 18. Minor Discharges. The Corps did not propose any changes to this NWP. Many commenters supported reissuance of this NWP with no changes. Many commenters suggested adding language to paragraph (a) of this NWP specifying that dredged or fill material cannot be discarded in areas above the plane of the ordinary high-water mark or high tide line in a manner that would result in future discharge into the waterbody via runoff. Many commenters recommended increasing the acreage impact threshold in this NWP to $\frac{1}{2}$ -acre. One commenter requested that the volume limit be raised to 50 cubic yards. One commenter stated that wetlands are not all special aquatic sites and requested the Corps change the PCN threshold of this NWP to only require a PCN when wetlands of a certain quality would be impacted by the activity.

This NWP authorizes discharges of dredged or fill material into waters of the United States provided the activity meets certain criteria. Disposal of dredged material in uplands is not subject to Corps' authority with the exception of return water, which may be authorized by NWP 16 (Return Water from Upland Disposal Sites). If discharges of dredged or fill material into waters of the United States located above the ordinary high water mark or high tide line are authorized by an NWP, the permittee must comply with general condition 12 (Soil Erosion and Sediment Controls) to stabilize exposed soils and fills. The permittee must also protect water quality through compliance with any conditions to water quality certifications.

The Corps believes that the 25 cubic yard limit for discharges and excavation activities and the $\frac{1}{10}$ -acre limit for losses of waters of the United States ensure that this NWP authorizes only those activities that have minimal individual and cumulative adverse effects on the aquatic environment. Special aquatic sites are defined by regulation in 33 CFR 330.2(j) and include all areas that meet the definition of a wetland. The Corps declines to change the PCN threshold to exclude certain wetlands.

One commenter recommended that the language in paragraph (a) of the

NWP be modified to remove the phrase "and the volume of material excavated" because the Corps does not typically regulate excavation or removal of material. One commenter stated that wetlands do not have an ordinary high water mark or high tide line and recommended that paragraph (a) be revised to limit the quantity of discharges in waters of the United States rather than below the plane of the ordinary high water mark or the high tide line.

When measuring the quantity of the discharge of dredged or fill material, the Corps will include the volume of any excavated area (*i.e.*, the volume of the substrate excavated) which is below the plane of the ordinary high water mark (OHWM) or high tide line (HTL). Excavation activities may result in discharges of dredged or fill material into waters of the United States that require Section 404 permits (see 33 CFR 323.2(d)). Therefore, it is not appropriate to remove references to excavation from this NWP. Unless exempted under Section 404(f) of the CWA, excavation activities in waters of the United States that result in more than incidental fallback require Section 404 authorization. Minor discharges authorized under NWP 18 often involve excavation activities that result in more than incidental fallback and would therefore constitute a discharge that is regulated under Section 404. The volume limitation is applied in waters of the United States below the high tide line or ordinary high water mark. The acreage limitation is applied in all waters of the United States. Wetlands may occur both waterward and below, or landward and above, the ordinary high water mark or the high tide line. For these reasons, the Corps declines to revise paragraph (a).

This NWP is reissued as proposed.

NWP 19. Minor Dredging. The Corps did not propose any changes to this NWP. One commenter expressed support for reissuance of the NWP as written. One commenter requested that the volume limit of this NWP be raised to 50 cubic yards. One commenter suggested requiring a PCN for all activities authorized by this NWP. Another commenter suggested requiring a PCN for activities in special aquatic sites.

The Corps believes that the 25 cubic yard limit in this NWP ensures that this NWP authorizes those activities that have minimal individual and cumulative adverse effects on the aquatic environment. Where the 25 cubic yard limit would be exceeded, the dredging activity may be authorized under regional general permits or

individual permits. Division engineers can also add regional conditions to this NWP to require PCNs for some or all NWP 19 activities to provide district engineers the opportunity to evaluate these minor dredging activities on a case-by-case basis.

One commenter stated that the NWP should include language that requires dredging to be conducted in a manner that avoids destabilizing the bed and banks of waterbodies. One commenter recommended expanding the list of areas where dredging is not authorized to include areas such as habitats for anadromous species, as well as in tidal marshes, eelgrass beds, mapped pocket estuaries, and tribal shellfish harvesting areas. One commenter requested a cumulative impact assessment for areas where repeated dredging has substantially reduced habitat availability.

General condition 12 (Soil Erosion and Sediment Controls) requires a permittee to stabilize any work below the ordinary high water mark or high tide line at the earliest practicable date. Division engineers may develop regional conditions for an NWP if he or she determines it necessary to ensure that activities in a region will cause no more than minimal adverse environmental effects to sensitive areas. If the regulated activity might affect, or is in the vicinity of a species listed (or proposed for listing) or designated critical habitat (or habitat proposed for such designation) under the ESA, general condition 18 (Endangered Species) requires non-federal permittees to submit a PCN and states the permittee cannot begin work until the district engineer has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or conference has been completed. If a PCN is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with the ESA.

For the NWPs, the assessment of cumulative effects occurs at three levels: National, regional, and the verification stage. Each national NWP decision document includes a national scale cumulative effects analysis under the Corps' public interest review. Each supplemental document has a cumulative effects analysis for a region, which is usually a state or Corps district. When a district engineer issues a verification letter in response to a PCN or a voluntary request for an NWP

verification, the district engineer prepares a brief document that explains whether the proposed NWP activity, after considering permit conditions such as mitigation requirements, will result in no more than minimal individual and cumulative adverse environmental effects.

This NWP is reissued as proposed.

NWP 20. Response Operations for Oil or Hazardous Substances. The Corps did not propose any changes to this NWP. No comments were received on the proposed reissuance of this NWP. This NWP is reissued as proposed.

NWP 21. Surface Coal Mining Activities. The Corps did not propose any changes to this NWP. Several commenters stated that this NWP should not be reissued. Several commenters stated that the 1/2-acre impact limit is overly permissive. Several commenters stated that surface coal mining activities should only be authorized by individual permits.

The discharge of dredged or fill material associated with surface coal mining and reclamation operations that are authorized by this NWP cannot result in the loss of greater than 1/2-acre of non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters. All activities authorized by this NWP require PCNs. If the district engineer determines a proposed NWP 21 activity will result in more than minimal adverse environmental effects after considering mitigation proposed by the permit applicant, he or she will exercise discretionary authority and require an individual permit for the proposed activity. The 1/2-acre limit, the PCN requirements, and the ability of division and district engineers to modify, suspend, or revoke this NWP on a regional or activity-specific basis ensures that the activities authorized by this NWP result in no more than minimal adverse environmental effects.

Several commenters stated that this NWP authorizes activities that have significant direct and cumulative effects, including effects to threatened and endangered species, waterways, water quality, animals, flood risks, and the human environment. Several commenters stated that the reissuance of the NWP should be evaluated in an environmental impact statement and programmatic ESA consultation.

As discussed in Section III.A. of this final action, the Corps Headquarters has prepared a national decision document and with a finding of no significant impact, therefore the requirements of NEPA have been met and no environmental impact statement is required. The terms and conditions of this NWP, such as acreage limits and the

mitigation measures in some of the NWP general conditions, are imposed to ensure that the NWPs authorize only those activities that result in no more than minimal adverse effects on the aquatic environment and other public interest review factors. District engineers will review the PCN and consider the effects of the regulated activity on waters of the United States. Permittees must comply with general conditions 10 (Fills Within 100-Year Floodplains) and 25 (Water Quality) and any conditions of a granted water quality certification. As discussed in Section III.C. of this final action, the Corps has determined that the issuance of this final action will have “no effect” on listed species (or species proposed for listed) or critical habitat (or habitat proposed for such designation), therefore no programmatic consultation on the issuance of these NWP is required.

Several commenters stated that the prohibition on “valley fills” allows other activities to be authorized under this NWP that have similar impacts on downstream waters. Several commenters stated that the scale of the cumulative impacts assessment for the activities authorized by NWP 21 should be limited to those areas where coal is mined, rather than nationwide. Several commenters stated that this NWP should never be used to authorize activities in the Appalachian Region.

The term “valley fills” is defined in the terms of NWP 21, and discharges of dredged or fill material that meet that definition are not authorized by this NWP. Other discharges of dredged or fill material into waters of the United States for activities associated with mining operations may be authorized by this NWP provided the regulated activity causes no more than minimal adverse effects to the aquatic environment. For the NWPs, the assessment of cumulative effects under the Corps’ public interest review occurs at three levels: National, regional, and the verification stage. Each national NWP decision document includes a national scale cumulative effects analysis under the Corps’ public interest review. The cumulative effects analysis at the national scale considers past, present, and reasonably foreseeable impacts to the nations waters which are impacts by human activities. Each supplemental document has a cumulative effects analysis for a region, which is typically defined as a state or Corps district. When a district engineer issues a verification in response to a PCN or a voluntary request for an NWP verification, the district engineer prepares a brief decision document that documents the district

engineer’s decision that the proposed NWP activity, after considering permit conditions such as mitigation requirements, will result in no more than minimal individual and cumulative adverse environmental effects.

If the Corps district staff believe that the use of an NWP in that geographic region may be approaching a threshold above which the cumulative adverse environmental effects for that category of activities may be more than minimal, the district engineer may either make a recommendation to the division engineer to modify, suspend, or revoke the NWP authorization in that geographic region in accordance with the procedures in 33 CFR 330.5(c). Alternatively, under the procedures at 33 CFR 330.5(d), the district engineer may also modify, suspend, or revoke NWP authorizations on a case-by-case basis to ensure that the NWP does not authorize activities that result in more than minimal cumulative adverse environmental effects.

This NWP is reissued as proposed.

NWP 22. Removal of Vessels. The Corps did not propose any changes to this NWP. No comments were received on the proposed reissuance of this NWP. This NWP is reissued as proposed.

NWP 23. Approved Categorical Exclusions. The Corps proposed to modify paragraph (a) of this NWP to add references to NEPA to replace the references from the Council on Environmental Quality NEPA regulations that were removed from the Code of Federal Regulations on April 11, 2025 (90 FR 10610). The Corps proposed to modify paragraph (a) to reference Sections 106, 109, and 111(1) of the NEPA statute. The Corps also sought comment on whether a Regulatory Guidance Letter is the best way to document the categorical exclusions that are approved under this NWP or if another document, such as a **Federal Register** notice, would provide better notice to the public.

One commenter supported the updates to the text of the NWP. Many commenters requested that the Corps use the **Federal Register** to notify the public of categorical exclusions that are approved for use under this NWP. One commenter requested that the Corps use a Regulatory Guidance Letter to notify the public of categorical exclusions that are approved under this NWP. Several commenters recommended notifying the public of any revisions to the list of categorical exclusions in both the **Federal Register** and in a Regulatory Guidance Letter. One commenter recommended that the Corps provide a list of categorical exclusions approved

by the Federal Highways Administration or a summary of activities that have historically qualified for this NWP.

After consideration of the comments, the Corps will notify the public of future changes to the list of categorical exclusions applicable to this NWP in a **Federal Register** notice. We have modified the text of the Note to indicate that future changes to approve categorical exclusions applicable to this NWP will be announced in the **Federal Register**. Until it is rescinded or replaced, Regulatory Guidance Letter 05–07 contains the list of activities approved for authorization under this NWP as of the date of this action. Regulatory Guidance Letter 05–07 and any future **Federal Register** notices of changes to categorical exclusions applicable to NWP 23 can be found on the Corps' website (*usace.army.mil*). Regulatory Guidance Letter 05–07 lists the categorical exclusions requested by the Federal Highways Administration, Bureau of Reclamation, and USCG and approved for authorization under this NWP.

Many commenters stated that the activities authorized by this NWP are not all similar in nature. One commenter stated that a PCN should be required for all activities proposed for authorization under this NWP.

We believe that the “categories of activities that are similar in nature” requirement in CWA Section 404(e) is to be interpreted broadly, for practical implementation of this general permit program. This NWP only authorizes discharges of dredged or fill material into waters of the United States and work and structures in navigable waters of the United States when: (1) another federal agency has determined, pursuant to Section 106, 109, and 111(1) of NEPA, that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis; and (2) the Chief of Engineers has concurred with that agency's or department's determination and has approved that activity for authorization under this NWP.

To be categorically excluded from NEPA, an agency must determine that a category of activities normally does not individually or cumulatively have significant effect on the human environment. After the other agency makes that determination, the Chief of Engineers also evaluates that category of activities to determine if he or she concurs that the agencies' categorical exclusions have no more than minimal adverse effects on the aquatic environment. A PCN is required for

certain activities approved for authorization under this NWP. If the district engineer determines a proposed discharge of dredged or fill material into waters of the United States will result in more than minimal adverse environmental effects, he or she will exercise discretionary authority to add case-specific conditions to the NWP or to require an individual permit for the proposed activity.

One commenter requested that the Corps consider whether certain categories of routine transportation activities, such as minor road maintenance or rehabilitation, could be addressed through standardized verification procedures. One commenter stated that the NWP should include a Note to advise the permittee that an action that qualifies for a categorical exclusion under NEPA may not be categorically excluded from a state environmental policy regulation.

The NWPs provide a streamlined process for authorizing activities that cause no more than minimal adverse environmental effects. Discharges of dredged or fill material for maintenance activities may be exempted from regulation under the CWA by Section 404(f). If not exempted by Section 404(f) of the CWA, such discharges may be authorized by a variety of NWPs, such as NWP 3 (Maintenance) or NWP 14 (Linear Transportation Projects), NWP 33 (Temporary Construction, Access, and Dewatering), NWP 45 (Repair of Uplands Damaged by Discrete Events). Maintenance activities in navigable waters of the United States may also be authorized by a variety of NWPs, such as NWP 3 (Maintenance) or NWP 14 (Linear Transportation Projects), NWP 33 (Temporary Construction, Access, and Dewatering), NWP 45 (Repair of Uplands Damaged by Discrete Events).

Environmental policy regulations and requirements are different for each state. If there are state requirements which inform the Division Engineer's decision on the addition of regional conditions to the NWPs or the district engineer's case-specific review of an activity that may be authorized by the NWP, the division engineer or the district engineer may use his or her discretionary authority to modify the NWP. It is not necessary to add a Note advising permittees that their activity may be subject to review under state laws and regulations because the NWP does not purport to exempt a proposed activity from compliance with applicable state laws or regulations.

This NWP is reissued with the modifications discussed above.

NWP 24. Indian Tribe or State Administered Section 404 Programs.

The Corps proposed to modify this NWP to remove Florida from the list of states that have been approved by EPA to administer their own CWA Section 404 permit program under the authority of 33 U.S.C. 1344(g)–(l). EPA's approval of Florida's assumption of the CWA Section 404 permit program was vacated by the District Court for the District of Columbia in 2024. One commenter expressed support for the change to the NWP.

This NWP is reissued as proposed.

NWP 25. Structural Discharges. The Corps did not propose any changes to this NWP. No comments were received on the proposed reissuance of this NWP. This NWP is reissued as proposed.

NWP 27. Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities. The Corps proposed to change the title of this NWP to refer to “aquatic ecosystems” instead of “aquatic habitats” because activities authorized by this NWP should, over time, produce net increases in a variety of aquatic ecosystem functions and services. The Corps also proposed to modify the paragraph that requires NWP 27 activities to resemble ecological references and include ecological references that are cultural ecosystems and ecological references based on indigenous and local ecological knowledge. In addition, the Corps proposed to remove the list of examples of activities authorized by this NWP and modify the list of categories of activities that are not authorized by this NWP.

The Corps also proposed to require the submission of Reports for all NWP 27 activities and remove the “Notification” paragraphs from this NWP. However, PCNs will still be required when PCN thresholds in the NWP general conditions (e.g., general condition 18, endangered species) or regional conditions added by division engineers are triggered. Lastly, the Corps proposed to add a new Note (Note 2) to this NWP to state that if an NWP 27 activity requires PCN because of an NWP general condition or a regional condition imposed by a division engineer, the baseline information required by paragraph (3) of the Reporting requirement substitutes for the delineation of waters, wetlands, and other special aquatic sites required by paragraph (b)(5) of general condition 32.

A few commenters opposed the reissuance of this NWP. Many commenters supported the proposed changes to this NWP. A few commenters requested a size limit be placed on all projects that can be authorized by NWP 27. One commenter stated that no activities should be authorized under this NWP without a public hearing or

public notice. Many commenters supported the statement that activities authorized by this NWP do not require compensatory mitigation. A few commenters opposed the language clarifying compensatory mitigation shall not be required by NWP 27.

This NWP requires aquatic ecosystem restoration, enhancement, and establishment activities that result in net increases in aquatic resource functions and services and resemble ecological references. This NWP does not have any acreage or other quantitative limits because the overall effect of the regulated activity results in a benefit to the aquatic environment. Aquatic habitat restoration, enhancement, and establishment activities can occur in large or small areas. When the district engineer reviews the reports required for activities proposed for authorization by this NWP, he or she will assess whether the activities will satisfy the terms and conditions of this NWP. If a specific activity does not, then the district engineer will notify the project proponent that he or she must apply for a different NWP, for a regional general permit, or for an individual permit.

This NWP requires that activities in waters of the United States associated with restoration, enhancement, and establishment result in net increases in aquatic ecosystem functions and services, which will generally result in an increase in acreage of aquatic habitats. However, there may be some activities authorized by this NWP that result in a decrease in acreage of aquatic resources in order to affect a net increase in aquatic ecosystem functions and services. Such decreases in acreage of aquatic resources are acceptable because it is the ecosystem functions, and the services that people derive from those functions, which are important to society. The public was provided an opportunity to comment on the Corps' proposal to issue, reissue, or modify NWP 27 when Corps Headquarters published its proposed rule in the **Federal Register** (90 FR 26100) to start the public comment period. However, after an NWP is issued, there is no public comment process for specific NWP activities. The Corps is retaining language that states no compensatory mitigation is required for activities authorized by this NWP.

One commenter recommended defining voluntary restoration to differentiate it from activities associated with compensatory mitigation. One commenter suggested that the Corps establish a new NWP that approves mitigation banking instruments or in-lieu fee program instruments. One

commenter supported the use of an ecological reference standard. One commenter opposed allowing project proponents to decide how to establish the goals of the restoration, enhancement or establishment activities. A few commenters recommended requiring applicants to document and justify their selection of the ecological reference(s). One commenter recommended that the report include a discussion of the ecological reference condition(s) relied upon by the project proponent to inform the district engineers' review.

The Corps does not find it necessary to define what constitutes a voluntary restoration activity. This NWP authorizes activities associated with voluntary restoration and with restoration by third party mitigation providers. Both types of restoration activities are subject to the same requirements of this NWP. In a process separate from this NWP, third-party mitigation providers are also subject to any approved mitigation banking instrument or in-lieu fee program instrument (33 CFR 332). Third-party mitigation providers of mitigation banks or in-lieu fee programs which require approval by the Corps will include information on the goals and objectives of the compensatory mitigation, as well as performance standards, in their mitigation banking instrument or in-lieu fee program instrument. Nationwide permits authorize discharges of dredged or fill material into waters of the United States or work and structures in navigable waters of the United States under the authorities of Section 404(e) of the CWA and the implementing regulations at 33 CFR 330. Under the Corps' regulations at 33 CFR 332, the approval of a compensatory mitigation banking instrument or an in-lieu fee program instrument is a separate process and does not authorize the discharge or dredged or fill material or work or structures associated with the restoration, enhancement, or establishment activities.

For voluntary aquatic ecosystem restoration, enhancement, and establishment activities, project proponents can decide on the objectives and whether, and how, they establish goals and ecological performance criteria. To allow the district engineer to assess whether there will be a net increase in aquatic resource functions and services and that the proposed activity will resemble an ecological reference, we have added a provision to the reporting requirement that requires the prospective permittee identify the objectives of the proposed aquatic ecosystem restoration and enhancement

and establishment activity. Item (5) of the "Report" section of NWP 27 has been revised to require that the project proponent state the objectives of the proposed aquatic ecosystem restoration enhancement and establishment activity proposed for authorization under NWP 27 and to make clear that the report should describe the methods by which those objectives will be met.

A few commenters recommended allowing some engineered elements in restoration projects while maintaining ecological reference standards, arguing that excluding all artificial components would eliminate most restoration opportunities in developed areas. One commenter supported allowing habitat manipulation that simulates a naturally occurring feature, such as a beaver dam. One commenter recommended developing a separate NWP to authorize low-tech process-based restoration, such as beaver dam analogues (BDAs) and post assisted log structures (PALS) (Wheaton et al. 2019). One commenter suggested adding a reference to the Corps' definition of "restoration." One commenter stated that restoration should always provide net increases in biological functions.

Nationwide permit 27 does not authorize the construction, maintenance, or expansion of artificial, engineered features that require management because those activities would not resemble ecological references. Examples of such artificial, engineered features that would not resemble ecological references include culverts, bridges, water pumps, and gated water control structures. The removal of such structures, and restoration of the water of the United States may be authorized by NWP 27, if such activity meets the terms and condition of the NWP. Construction, maintenance, or expansion of engineered features that are analogous to natural landscape features, features that occur in nature, may be authorized under NWP 27. Constructed levees or berms that simulate natural landforms which form as a result of a river's natural flooding and sediment deposition processes, constructed or anchored log jams that mimic the movement of large woody debris or beaver dams in a riverine system, and rock grade controls that mimic a rock slide or bedrock sill may be authorized by NWP 27 if they resemble an ecological reference. The proposed modifications to this NWP remove the restriction on conversions of streams and natural wetlands to better allow process-based restoration, including BDAs and PALS.

It is unnecessary to include a reference to the definition of “restoration” in this NWP. The Corps will continue to rely on the definition of “restoration” in Section F. (Definitions), consistent with the definition of “restoration” found in 33 CFR 332.2. Regulated activities proposed for authorization under this NWP must result in net increases in aquatic resource functions and services, and such activities may result in a net increase in biological function, either as a direct or indirect result of the restoration activity.

One commenter requested that the text of this NWP make clear that natural elements that do not currently occur in the project area may still meet the definition of ecological reference standard provided they contribute to overall ecological function and result in a net improvement. Many commenters argued that restoration projects do not universally result in ecological improvements and requested enhanced monitoring requirements. One commenter recommended including a definition of “aquatic ecosystem functions and services” in the NWP.

The Corps agrees that, for activities authorized by this NWP, natural elements that are not currently in the project area may be part of an NWP-specific restoration, enhancement, or establishment activity if they resemble an ecological reference that currently exists or did exist in the region and result in net increases in aquatic ecosystem functions and services. For instance, the restoration of a farmed wetland may include the addition of native wetland vegetation that is not currently in the farmed wetland but that can be found in wetlands currently in the region. The terms of this NWP and the definition of “Ecological Reference” in Section F (Definitions) provide sufficient information about the limits or acceptable elements of an ecological reference.

Monitoring is not required by this NWP. In accordance with 33 CFR 332, third-party mitigation providers must monitor compensatory mitigation banks or in-lieu fee programs sites as established in the mitigation banking instrument or in-lieu fee program instrument. Project proponents of voluntary restoration projects may voluntarily monitor the activity in order to report to federal or state agencies, or entities which may have funded the activity. Permittees who receive an NWP verification letter, either as a result of a PCN submitted in compliance with a general condition or a PCN submitted voluntarily, must certify to the district engineer that the authorized

activity has been completed in compliance with the NWP authorization in accordance with general condition 30 (Compliance Certification). If a permittee fails to comply with the terms and conditions of this NWP, the district engineer will address the potential unauthorized activity in accordance with 33 CFR 326. The Corps will rely on the definitions of “functions” and “services” in 33 CFR 332.2 and declines to add a definition of “aquatic ecosystem functions and services” to this NWP.

Many commenters supported removing the list of examples of authorized activities. A few commenters opposed complete removal of the examples list, recommending that the list be included, but adding language to make clear that the list does not limit the activities authorized by this NWP. Some commenters requested that this NWP authorize the removal of fords and in-stream grade control structures. One commenter stated that the Corps should no longer approve restoration that includes Natural Channel Design, Legacy Sediment Removal, connecting to an “Engineered Floodplain”, or Regenerative Stormwater Conveyance Step Pools. Several commenters requested recognition that some projects may provide both restoration and flood management benefits.

The Corps is removing the list of examples of authorized activities as proposed. The removal of low fords is an activity that would likely result in net increases in aquatic ecosystem functions and services and could be authorized by this NWP if the activity results in an aquatic ecosystem that resembles an ecological reference. The removal of in-stream grade control structures, such as irrigation structures, may be more appropriately authorized by NWP 33 (Temporary Construction, Access, and Dewatering).

Certain types of manipulation of the physical or chemical characteristics of a site may restore aquatic resources or downstream waters; however, they must result in an aquatic ecosystem that resembles an ecological reference in order for the regulated activity to be authorized by this NWP. A stream restoration activity that also helps reduce sediment, nutrient, and pollutant inputs to downstream waters and helps meet established Total Maximum Daily Loads (TMDLs) can be authorized by this NWP, provided the restored stream will resemble an ecological reference for that stream type in the region. Activities associated with the restoration, enhancement, and establishment of aquatic ecosystems may have multiple goals or benefits, but those activities

authorized by this NWP must result in a net increase in aquatic ecosystem functions and services so that the aquatic ecosystem resembles an ecological reference.

Many commenters supported the removal of the prohibition on conversion. One commenter stated that the terms of an NWP may not be explicit enough to ensure that conversion is allowed. One commenter recommended retaining language stating that wetland plant communities that occur when wetland hydrology is more fully restored is not a prohibited habitat conversion. Several commenters stated that the conversion of open waters areas to wetlands may result in a benefit to the ecosystem and should not be categorized as “conversion.” One commenter supported allowing the relocation of non-tidal waters in authorized projects. Some commenters expressed concern about eliminating the prohibition on conversion, arguing that some conversions result in net functional losses. One commenter recommended only allowing conversions when the project would result in a net increase to the aquatic resource.

The Corps proposed to modify the list of categories of activities not authorized by this NWP to remove the prohibition on conversions of a stream or natural wetlands to another aquatic habitat type or uplands. This NWP retains the prohibition on the conversion of tidal wetlands to open water impoundments and other aquatic uses. The full suite of aquatic ecosystem functions and services must be considered when determining whether the net gains in aquatic resource functions and services required by this NWP will occur. When conducting these evaluations to determine NWP 27 eligibility, there should not be a focus on a specific aquatic resource function, or the ecological service(s) produced from that aquatic resource function. To assist district engineers in making these determinations, prospective permittees considering such activities should provide supporting information in their NWP 27 Reports or PCNs to demonstrate net increases in aquatic resource functions and services.

Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. Changes in plant communities resulting from restoring wetland hydrology are still acceptable under this NWP provided the resulting aquatic habitat type resembles an ecological reference. Restoring wetland

hydrology has a high likelihood of changing the plant community, and such changes are usually an objective of those wetland restoration activities. Discharges of dredged or fill material into waters of the United States and work or structures in navigable waters of the United States for the purpose of restoring, enhancing, or establishing aquatic ecosystems must result in a net increase in aquatic ecosystem functions and services in order to be authorized by this NWP. The Corps is modifying the statement that this NWP does not authorize conversions of tidal wetlands to open water impoundments or other aquatic uses, to clarify that such conversions may be authorized if the conversion is solely for the purpose of enhancing the functions of tidal wetlands. The objective of the restoration, enhancement, or establishment activities authorized by this NWP is to provide a net increase in aquatic resource functions and services and this modification allows the district engineer the flexibility to authorize activities that will result in a wider variety of tidal habitats, including other types of special aquatic sites.

Many commenters supported excluding dam removal from NWP 27. Many commenters stated that NWP 27 should authorize dam removal. Many commenters argued that dam removal has a number of ecological benefits, and that removal of smaller dams should be authorized by this NWP. Some of the commenters stated that this NWP should authorize removal of small dams as defined by dam height or acre-feet of storage in the impoundment. Some of these commenters recommended that dam removal could be authorized by NWP 27 after submittal of a PCN.

The Corps is retaining the language stating that this NWP does not authorize discharges of dredged or fill material into waters of the United States and work or structures in navigable waters of the United States associated with any type of dam removal. The removal of small water control structures, dikes, and berms, to the extent DA authorization is needed, and associated restoration of the stream channel associated with the removal of the water control structure may still be authorized by NWP 27 so long as those activities result in net increases in aquatic ecosystem functions and services and resemble an ecological reference. Activities associated with low head dam removal may be authorized by NWP 53 (Removal of Low-Head Dams) and regulated activities associated with the removal of other types of dams may be authorized by regional general permit or an individual permit.

One commenter supported the addition of Bureau of Land Management to the list of federal agencies who can authorize or fund restoration projects. A few commenters recommended revising item (5) of Reporting by moving “and if applicable” from the end of item (5) to the beginning of item (6), to make clear that the prospective permittee must only include the documents listed in item (6) in the Report if they apply to the proposed NWP-specific activity.

The Corps is retaining the language adding the Bureau of Land Management to the list of federal agencies who can authorize or fund projects. The Corps is revising items (5) and (6) under Reporting as suggested to make clear that the prospective permittee must only include the documents in item (6) if the prospective permittee is proposing the activity in accordance with an agreement, documentation, or permit from the listed agencies.

Many commenters supported the removal of a requirement to submit a PCN and replacement with a Report requirement. Many commenters objected to the removal of the requirement to submit a PCN, stating that a PCN should be required for all activities or for all activities in certain regions. One commenter supported the requirement to submit a PCN when required by general condition. Many commenters stated that an individual permit should be required for larger projects. A few commenters recommended that no report be required for small projects.

All activities authorized by this NWP require some form of advance notification to district engineer before commencing authorized activities, to ensure compliance with the NWP. If the district engineers determines that a proposed activity does not qualify for NWP 27 authorization because it is not an aquatic ecosystem restoration, enhancement, or establishment activity or it is not likely to result in net gains in aquatic resource functions and services; or it does not resemble an ecological reference, then the district engineer will notify the project proponent that he or she must apply for a different NWP, a regional general permit, or an individual permit. If a PCN is required by a general condition (e.g., general condition 18 (Endangered Species) or general condition 20 (Historic Properties)), the district engineer will review the PCN for compliance with the terms and general conditions and Section D (District Engineer's Decision). If a PCN is required by a general condition, the project proponent cannot proceed with the activity until he or she receives

written notification from the district engineer. The Corps does not agree that an individual permit should be required for regulated activities associated with the restoration, enhancement, or establishment of aquatic ecosystems because the activity will cause no more than minimal adverse effects to the environment by providing a net benefit to the aquatic ecosystem. Likewise, the Corps does not agree that a PCN should be required for all activities authorized by this NWP. The district engineer's review of a report will be sufficient to determine if the case-specific activity will comply with the terms of this NWP. Division engineers may develop regional conditions to require a PCN for this NWP if he or she determines it is necessary to ensure that activities in a region will cause no more than minimal adverse environmental effects out of concern for sensitive areas or tribal rights.

Several commenters requested clarification about procedures following report timeframes and when the project proponent has authorization to proceed. One commenter stated that the district engineer must show through scientific literature how they supported their determination of the adequacy of the restoration. One commenter supported the requirement to submit the report 30-days before commencing activities in waters of the United States. Several commenters stated that the report should be submitted to the district engineer 60-days before commencing activities. A few commenters expressed concern about conflicts between this NWP and state regulatory requirements, such as water quality certification timeframes.

Prospective permittees must submit advance notification to the district engineer. The advance notification takes the form of either: (1) a Report, or (2) a PCN. Prospective permittees must submit a Report for all activities authorized by this NWP unless a general condition requires submittal of a PCN (e.g., general condition 18 (Endangered species)). When no PCN is required, the project proponent must submit a Report to the district engineer at least 30-days before commencing activities in waters of the United States authorized by this NWP. The district engineer will review the Report to assess whether the case-specific activities will satisfy the terms and conditions of this NWP. The project proponent may proceed with their case-specific activity if 30 days have passed from submittal of the report to the district engineer and the project proponent has not received written notice from the district engineer that the proposed activity does not qualify for

authorization under NWP 27. If the district engineer reviews the Report and determines a PCN is required in order to comply with a general condition, the district engineer must notify the project proponent within 30-days of submittal of the Report. If a specific activity does not comply with the terms and conditions of this NWP, then the district engineer will notify the project proponent within 30 days of the date the Report was submitted to the district engineer indicating that the project proponent must apply for a different NWP, a regional general permit, or an individual permit. The district engineer's documentation of their determination that the case-specific activity is authorized by the NWP 27 does not require detailed analysis of the adequacy of the proposed restoration. The district engineer's review of a Report must only establish that the proposed activity meets the terms and conditions of this NWP. When the district engineer reviews a PCN, he or she will document the district engineer's decision in accordance with Section D (District Engineer's Decision). The Corps believes that 30-days is sufficient time for the district engineer to determine if a case-specific activity will comply with the terms and conditions of this NWP or to notify the project proponent that they must apply for some other type of DA authorization.

General condition 25 (Water Quality) requires a permittee to comply with any conditions of a granted water quality certification. If a certifying authority has not previously granted certification or waived certification, the prospective permittee must obtain an individual water quality certification or waiver in order for an activity to be authorized by this NWP. Nationwide permits do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

Many commenters supported the addition of Note 2 and the removal of the requirement to submit a wetland delineation to the district engineer, if a PCN is required for activities authorized under this NWP. Many commenters objected to the removal of the requirement to provide a wetland delineation to the district engineer.

This NWP does not have any quantitative limits, such as acreage limits, which necessitate identifying the precise location of jurisdictional boundaries, such as wetland boundaries, ordinary high water marks, high tide lines, or mean high water marks. A jurisdictional determination is not required in order to receive an NWP verification or conduct activities authorized by an NWP or other permit

type. This NWP requires authorized activities to result in net increases in aquatic resource functions and services, which will generally add acreage to the nation's aquatic habitat base. The information required by the Reporting section of this NWP, including baseline information is sufficient for the district engineer to determine if an activity complies with the terms of this NWP and general conditions, including any regional conditions.

A few commenters expressed disagreement with the data and analysis in the national decision document for the NWP 27. The national decision document for this NWP was prepared using estimates of past and future use of an NWP based on information available at the time of document preparation and our best understanding of the state of the science of restoration, enhancement, and establishment activities.

This NWP is reissued with the modifications discussed above.

NWP 28. Modifications of Existing Marinas. The Corps did not propose any changes to this NWP. One commenter stated a PCN should be required for all activities authorized by this NWP. One commenter requested that tribes be notified of actions proposed for authorization by this NWP that would be located in usual and accustomed fishing grounds. One commenter stated that this NWP should require that activities avoid eelgrass, macroalgae, and shellfish habitat. One commenter stated that a review of cumulative impacts should be completed for areas with multiple existing overwater structures. One commenter recommended that the incremental expansion of marina infrastructure be monitored for cumulative impacts to nearshore habitat and access to treaty-protected fisheries.

This NWP authorizes the work and structures in navigable waters of the United States associated with the reconfiguration of existing docking facilities within an authorized marina area. Expansions or additions of any kind are not authorized by this NWP. Permittees must comply with general condition 23 (Mitigation) and design the activity to avoid and minimize impacts to the maximum extent practicable at the site. Division engineers can add regional conditions to this NWP to require PCNs for some or all NWP 28 activities to provide district engineers the opportunity to review these activities on a case-by-case basis and determine whether the activity would cause more than minimal adverse effects on a sensitive aquatic resource or tribal rights.

For the NWPs, the assessment of cumulative effects occurs at three levels: National, regional, and the verification stage. Each national NWP decision document includes a national scale cumulative effects analysis under the Corps' public interest review. Each supplemental document has a cumulative effects analysis for a region, which is typically defined as a state or Corps district. When a district engineer issues a verification letter in response to a PCN or a voluntary request for an NWP verification, the district engineer prepares a brief document that explains the decision that the proposed NWP activity, after considering permit conditions such as mitigation requirements, will result in no more than minimal individual and cumulative adverse environmental effects.

If a permittee conducts work or constructs structures that are not authorized by an issued permit, it is an unauthorized activity, and the Corps district will determine an appropriate course of action under its regulations at 33 CFR part 326. Under Section 10 of the RHA, the removal of any unauthorized structures from navigable waters of the United States "may" be enforced and proper proceedings "may" be instituted under the direction of the Attorney General of the United States.

This NWP is reissued as proposed.

NWP 29. Residential Developments. The Corps did not propose any changes to this NWP. Many commenters stated that this NWP does not authorize activities that are similar in nature and/or have similar effects on the environment. Commenters stated that developments ranging from single-family homes to large multi-unit developments as well as "attendant features" are dissimilar activities. Many commenters stated the NWP contributes significantly to the loss of wetlands in the United States. One commenter recommended modifying NWP 29 to apply separate standards for larger housing developments and for small individual landowners or separate the NWP 29 into two separate NWPs. One commenter stated that this NWP should be withdrawn. Many commenters stated that the term "subdivision" should be defined in the NWP.

We believe that the "categories of activities that are similar in nature" requirement in CWA Section 404(e) is to be interpreted broadly, for practical implementation of this general permit program. This NWP authorizes categories of activities that are similar in nature, that is discharges of dredged or fill material regulated by the Corps that are associated with the construction of

residential development. The requirements of this NWP are appropriate for both regulated activities associated with the construction of single-family homes and multi-unit developments. Residential developments that are part of a larger mixed-use development may be authorized by NWP 29 in combination with other NWPs if consistent with general condition 28 (Use of Multiple Nationwide Permits). This NWP includes a subdivision provision, which states that for residential subdivisions, the aggregate total loss of waters of the United States authorized by this NWP cannot exceed 1/2-acre, including any loss of waters of the United States associated with the development of individual subdivision lots. Defining the term "subdivision" is unnecessary as there is little confusion surrounding the term.

One commenter recommended changing "aggregate total" to "cumulative total." One commenter requested that the NWP be modified to clarify that discharges of dredged or fill material into waters of the United States and work and structures into navigable waters of the United States can be authorized by this NWP for activities associated with attendant features may be authorized by this NWP only if they are part of the original development or subdivision. One commenter requested that this NWP be modified to clarify that this NWP does not authorize swimming pools constructed in aquatic resources.

The Corps declines to revise the NWP to replace the term "aggregate" with the term "cumulative" to avoid confusion with the regulatory requirements in the Corps regulations 33 CFR 320.4, which frequently use "cumulative." This NWP may authorize attendant features associated with residential developments provided they meet the requirements of general condition 15 (single and complete project), and the application of the definition of "single and complete nonlinear project." The 1/2-acre limit, the requirement that all activities authorized by this NWP require PCNs, the general conditions that apply to these activities including mitigation requirements in those general conditions, and the district engineers' review of PCNs ensure that the activities authorized by this NWP will result in no more than minimal individual and cumulative adverse effects.

Many commenters stated that the Corps should maintain and not decrease the current 1/2-acre impact limit on the NWP. Many commenters stated that the impact limit should be decreased to less than 1/2 acre. Many commenters stated that this NWP should be revised to

require the use of low-impact construction methods or require the use of nature-based solutions. Many commenters stated that this NWP should not authorize activities within certain locations, including critical habitat. Many commenters recommended requiring climate resiliency screening (sea level rise vulnerability, floodplain modeling) as part of the district engineer's review of the PCN.

The 1/2-acre limit, plus the requirement that all activities require PCNs and thus get case-by-case review by district engineers, are sufficient to ensure that the NWP authorizes those activities with no more than minimal adverse environmental effects. District engineers will consider the direct, indirect, and cumulative effects of the proposed activity in accordance with paragraph (2) in the District Engineers Decision (Section D.). Division engineers can modify, suspend, or revoke this NWP in geographic areas to ensure that the authorized activities do not cause more than minimal individual and cumulative adverse environmental impacts to sensitive areas.

Paragraph (a) of general condition 23, mitigation, requires permittees to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable on the project site regardless of the construction type or method. This action adds a definition of nature-based solutions to assist in the district engineer's review of the PCN. Prospective permittees are encouraged but not required to incorporate nature-based solutions into their project design. The Corps will not require the use of nature based-solutions because there may be locations where the incorporation of nature-based solutions may not be practicable. Activities authorized by this NWP must comply with general condition 10 (fills within 100-year floodplains). Although the CWA and the RHA do not require the district engineer to screen proposed activities for climate resilience, the use of nature-based solutions may contribute to climate resiliency efforts.

Activities authorized by this NWP must also comply with general condition 18 (Endangered Species). If the regulated activity might affect, or is in the vicinity of a species listed (or proposed for listing) or designated critical habitat (or habitat proposed for such designation) under the ESA, general condition 18 (Endangered Species) states the non-federal permittee cannot begin work until the district engineer has provided notification that the proposed activity will have "no effect" on listed species (or species

proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or conference has been completed. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with the ESA.

Many commenters objected to the removal of the 300 linear foot limit from the NWP, stating that it violates the CWA. A few commenters supported the removal of the 300 linear foot limit. One commenter stated that the NWP should be modified to prohibit the district engineer from waiving impact limits.

The 300 linear foot impact limit was removed from this NWP in the 2021 NWPs as explained in the final rule to issue the 2021 NWPs (86 FR 2761–2768) and remains the Corps' position. The Corps will rely on other, existing protective mechanisms within the NWP to ensure that the authorized activities will result in no more than minimal individual and cumulative adverse environmental effects. Those mechanisms include the 1/2-acre impact limit, the PCN requirements for these NWPs, and the ability of division and district engineers to further condition or restrict the applicability of an NWP in situations where they have concerns for the aquatic environment under the CWA Section 404(b)(1) Guidelines or for any factor of the public interest (see 33 CFR 330.1(d)). The ability for district engineers to waive impact limits was not proposed for inclusion in this NWP. The district engineer's discretion to waive the 300-linear foot impact limit was removed for the reasons explained in the 2021 NWPs, which remains the Corps position. When a district engineer issues a verification letter in response to a PCN or a voluntary request for an NWP verification, the district engineer prepares a brief document that explains the decision on whether to issue a verification letter for the proposed NWP activity or exercise discretionary authority to require an individual permit for that proposed activity.

One commenter suggested that the NWP require compensatory mitigation for any impacts over 1/10-acre. One commenter stated that the authority to waive the mitigation requirements should be banned or restricted to a higher level of review. Many commenters stated that reliance on compensatory mitigation to reduce cumulative impacts of NWP 29 does not satisfy CWA requirements. Many commenters stated that compensatory mitigation is not effective at offsetting impacts authorized by this NWP. Many commenters stated that the draft

decision document and NWP 29 itself lacks specific methods for mitigating the effects of residential construction.

General condition 23 requires compensatory mitigation for all wetland losses greater than $\frac{1}{10}$ -acre and for all stream losses greater than $\frac{3}{100}$ -acre when a PCN is required, unless the district engineer determines that some other form of mitigation would be more environmentally appropriate. District engineers have the discretion to delegate the authority to review PCNs. The district engineer, or delegated authority will make activity-specific determinations whether the compensatory mitigation is sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects. The use of compensatory mitigation and other forms of mitigation to ensure that activities authorized by an NWP result in no more than minimal individual and cumulative adverse environmental effects is codified in the Corps' NWP regulations at 33 CFR 330.1(e)(3). Section 404(e) of the CWA does not prescribe how the Corps is to ensure that the categories of activities authorized by general permits such as the NWPs will cause only minimal adverse environmental effects when performed separately and will have only minimal cumulative adverse effect on the environment. Therefore, the Corps has discretion on how to comply with the requirement in the statute.

Compensatory mitigation projects required for activities authorized by the NWPs must comply with the Corps' regulations at 33 CFR part 332, which require monitoring and other actions to ensure that the required compensatory mitigation offsets the permitted wetland or stream losses. The geographic area or watershed where mitigation credits are available to offset adverse impacts to wetlands and streams is determined through the review of the compensatory mitigation proposal in compliance with 33 CFR 332. District engineers will review the PCN to determine if the compensatory mitigation proposed by the prospective permittee is suitable to offset the adverse impacts to aquatic resources, considering the location of the impacts relative to the compensatory mitigation, watershed characteristics, and type of compensatory mitigation. If the district engineer determines that the compensatory mitigation is not suitable, he or she may advise the prospective permittee to revise their mitigation plan or review the proposed activity through the individual permit process.

One commenter expressed concern that the expected amount of

compensatory mitigation required by this NWP decreased from the 2021 Rule according to the draft decision document for this NWP. The decision document for this NWP estimates the amount of compensatory mitigation that will be required annually and over the five-years the NWPs in this final action could be in effect. The acres of compensatory mitigation that may be required to offset regulated activities authorized by the NWP in this final action are based on reliable data and resources. These estimates in the national decision documents are updated each time the Corps prepares national decision documents to support the reissuance of an NWP. Estimates of required compensatory mitigation acreage may change from decision document to decision document as a result of a variety of factors, which may include increased reliance on compensatory mitigation banks and in-lieu fee programs, or increased avoidance and minimization sufficient for the district engineer to determine that a case-specific authorized activity results in no more than minimal individual and cumulative adverse environmental effects.

This NWP is reissued as proposed.

NWP 30. Moist Soil Management for Wildlife. The Corps did not propose any changes to this NWP. No comments were received on the proposed reissuance of this NWP. This NWP is reissued as proposed.

NWP 31. Maintenance of Existing Flood Control Facilities. The Corps did not propose any changes to this NWP. One commenter expressed support for this NWP. Many commenters recommended adding aerial and linear impact limitations to this NWP. Many commenters urged the Corps not to reissue this NWP, stating that it causes significant impacts in violation of 404(e) of the CWA.

This NWP authorizes the discharge of dredged or fill material into waters of the United States or work or structures in navigable waters of the United States for the purpose of maintaining existing flood control facilities. While this NWP does not have a quantitative limit, maintenance activities that require DA authorization are limited to the maintenance baseline that is approved by the district engineer for each existing flood control facility. The NWP does not authorize new construction or expansion of an existing flood control facility. Flood control facilities contain aquatic resources which are adapted to a regime of periodic disturbance and will re-colonize an area after recurring maintenance. Based on the recovery of these resources after maintenance

activities, the Corps believes that no quantitative limit is required to ensure that the activities authorized by this NWP will not cause more than minimal adverse environmental effects.

Significant impacts are unlikely to occur as a result of these recurring maintenance activities because of the ecological recovery that occurs between each maintenance activity. That ecological recovery, the recovery of biotic and abiotic components, is likely the reason why recurring maintenance is needed, because the ecological recovery within an existing flood control facility, such as the re-growth of vegetation and the accumulation of sediment, may be diminishing the capacity of the flood control facility to perform its intended flood control functions.

Many commenters stated that the activities authorized by this NWP should be restricted to those that are similar in nature. We believe that the "categories of activities that are similar in nature" requirement in CWA Section 404(e) is to be interpreted broadly, for practical implementation of this general permit program. This NWP authorizes categories of activities that are similar in nature, that is discharges of dredged or fill material regulated by the Corps that are associated with activities related to the maintenance of existing flood control facilities within the established maintenance baseline.

Many commenters recommended that vegetation removal from levees be addressed by a regional approach. Maintenance of an existing flood control facility may require the removal of vegetation, regardless of whether a DA authorization is required for maintenance activities back to the maintenance baseline. This NWP does not impose any specific requirements regarding vegetation on levees, and it does not prescribe any specific management approach to levee vegetation. Division engineers may develop regional conditions to an NWP if he or she determines it necessary to ensure that activities in a region will cause no more than minimal adverse environmental effects. The district engineer will review the PCN and determine if the proposed NWP activity will, after considering permit conditions such as mitigation requirements, result in no more than minimal individual and cumulative adverse environmental effects.

Many commenters recommended that compensatory mitigation be required each time an activity is authorized by this NWP. One commenter urged the Corps to require compensatory mitigation for lost habitat values and,

impacts to anadromous fish and special status species each time the NWP is utilized.

This NWP authorizes only maintenance activities for existing flood control facilities that were previously authorized, or did not require DA authorization at the time they were originally constructed. Mitigation, including compensatory mitigation, may have been required for the original construction of the flood control facility. Mitigation may also be required for the first-time approval of the maintenance activity up to the maintenance baseline by the district engineer. Subsequent recurring maintenance activities to return the existing flood control facility to the maintenance baseline should not require mitigation because those maintenance activities generally have temporary impacts.

If the regulated activity might affect, or is in the vicinity of a species listed (or proposed for listing) or designated critical habitat (or habitat proposed for such designation) under the ESA, general condition 18 (Endangered Species) states the non-federal permittee cannot begin work until the district engineer has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or conference has been completed. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with the ESA.

One commenter expressed concern that the national decision document for this NWP stated that there would be a five-fold increase in the use of this NWP under this final action. No changes have been made to the terms or conditions of this NWP. The estimated impact acreages in the national decision document for this NWP includes both permanent and temporary impacts to waters of the United States. The national decision document for this NWP was prepared using estimates of past and future use of an NWP based on information available at the time of document preparation.

This NWP is reissued as proposed.

NWP 32. Completed Enforcement Actions. The Corps did not propose any changes to this NWP. One commenter stated that the Corps should coordinate with affected tribes prior to administering an enforcement action to ensure that tribal treaty resources are protected. District engineers undertake tribal consultations regarding resolution of unauthorized actions (33 CFR part

326) consistent with the existing Department of Defense, Army, and Corps’ tribal consultation policies. Activities that are authorized by this NWP must comply with general condition 17 (Tribal Rights).

This NWP is reissued as proposed.

NWP 33. Temporary Construction, Access, and Dewatering. The Corps did not propose any changes to this NWP. Many commenters supported the reissuance of the NWP with no changes. One commenter stated that the NWP should require the permittee to ensure that fish are preserved from areas that are temporarily dewatered. One commenter stated that this NWP should require that any fill brought in from outside the project area for constructing temporary structures be verified to be free from contaminants.

General condition 2 (Aquatic Life Movements) requires that temporary crossings be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If the regulated activity might affect, or is in the vicinity of a species listed (or proposed for listing) or designated critical habitat (or habitat proposed for such designation) under the ESA, general condition 18 (Endangered Species) requires non-federal permittees to submit a PCN and states the permittee cannot begin work until the district engineer has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or conference has been completed. If a PCN is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with the ESA. The permittee is required to comply with any mitigation measures identified during Section 7 ESA consultation. General condition 6 (Suitable Material) requires that all material used for construction be free from toxic pollutants in toxic amounts. The Corps declines to require the permittee use a specific method for verifying that the material is compliant with general condition 6.

One commenter objected to the inclusion of language stating that structures can be left in place after construction if authorized by a separate Section 10 permit, stating that all structures should be removed or should require authorization under both a Section 10 and a CWA Section 404 permit. One commenter stated that this

NWP should exempt waterfilled barriers used to create coffer dams/water diversions from requiring a permit under either Section 10 of the RHA or Section 404 of the CWA.

This NWP prohibits any temporary fills from remaining in place and requires that they be removed in their entirety after completion of construction. Permanent structures or fills may be authorized through a separate DA authorization, such as an individual permit, other NWP, or a regional general permit. Structures in navigable waters of the United States require authorization under Section 10 of the RHA and discharges of dredged or fill material into waters of the United States, including navigable waters of the United States, require authorization under Section 404 of the CWA. Many structures do not result in an activity which requires authorization under Section 404. For instance, many pilings are structures that do not result in activity that requires authorization under Section 404 of the CWA (33 CFR 323.3(c)(2)). There may be situations when it would cause more environmental damage to remove a structure in its entirety than it would to leave the structure in place. The Corps declines to specifically exempt waterfilled barriers from requiring authorization under this NWP. District engineers will determine what activities require authorization under DA authorities.

This NWP is reissued as proposed.

NWP 34. Cranberry Production Activities. The Corps did not propose any changes to this NWP. No comments were received on the proposed reissuance of this NWP. This NWP is reissued as proposed.

NWP 35. Maintenance Dredging of Existing Basins. The Corps did not propose any changes to this NWP. Many commenters recommended that the NWP require dredging projects include sediment contamination testing and adherence to EPA/State cleanup standards. One commenter stated this NWP should include authorization under Section 404 of the CWA. One commenter stated that this NWP should require a PCN so that the district engineer can review the dredge disposal areas associated with the proposed activity for potential effects to historic properties. Many commenters stated that this NWP be modified to require a PCN.

This NWP authorizes dredging in navigable waters of the United States to previously authorized depths or controlling depths for ingress/egress, whichever is less. Discharges of dredged or fill material are not authorized by this

NWP. During dredging activities, sediments may be resuspended in the water column and may carry chemical substances may have adverse effects to water quality. Those adverse effects are likely to be temporary because the suspended sediments are likely to settle back onto the bottom. Under Section 401 of the CWA, certifying authorities may determine that a dredging activity may result in a discharge into waters of the United States and require the project proponent to obtain an individual water quality certification or waiver unless the certifying authority has issued water quality certification for the issuance of a general permit that authorizes the dredging activity. The permittee must comply with general condition 25 (Water Quality). Water quality certifications for activities authorized by this NWP will help ensure that any discharges that may be caused by those dredging activities comply with applicable water quality requirements.

Since it was first issued in 1991 (56 FR 59144), this NWP has been issued only under the authority of Section 10 of the RHA. This NWP has never been issued or reissued under the authority of Section 404 of the CWA. If the project proponent intends to dispose of dredged material into waters of the United States a separate DA authorization, such as another NWP, an individual permit, or a regional general permit is required.

If the dredge activity in navigable waters of the United States might have the potential to affect a historic property or a property eligible for listing on the National Register of Historic Places, in accordance with general condition 20 (historic properties), the prospective permittee must submit a PCN and may not begin construction until he or she receives written authorization from the district engineer. Federal permittees will comply with general condition 20 by following their agency procedures for implementing Section 106 of NHPA.

Division engineers can add regional conditions to this NWP to require PCNs for activities to provide district engineers the opportunity to review these activities on a case-by-case basis and determine if impacts to sensitive areas would cause no more than minimal adverse environmental effects. The activities authorized by this NWP are limited to existing marina basins, access channels to marinas or boat slips, and boat slips. The terms and conditions of this NWP ensure that activities authorized by this NWP cause no more than minimal adverse environmental effects. The Corps declines to require a PCN for this NWP.

This NWP is reissued as proposed.

NWP 36. Boat Ramps. The Corps did not propose any changes to this NWP. One commenter recommended that the NWP 36 be modified to increase the fill limit to 100 cubic yards and the maximum width to 30 feet. One commenter stated that the NWP should not allow the district engineer to issue waivers. One commenter requested that the prohibition on discharging material into special aquatic sites be removed from the NWP. One commenter requested this NWP be modified to require a PCN for all authorized activities out of concern for the potential to affect historic properties.

This NWP authorizes discharges of dredged or fill material into waters of the United States and work and structures in navigable water of the United States for the construction of boat ramps in waters of the United States. The terms of the NWP restrict the volume of discharged material to 50 cubic yards and the width of the boat ramp to 20 feet unless waived by the district engineer. Project sites, aquatic resources, and habitats vary across the nation; therefore, this NWP affords the district engineers the discretion to restrict or waive the width and volume limits so long as the activity would cause no more than minimal adverse environmental effects. Paragraph (e) of this NWP prohibits the placement of material into special aquatic sites, which include wetlands and riffles and pools. The Corps believes that the limits of this NWP are appropriate to ensure the NWP activity will result in no more than minimal adverse environmental effects.

If the regulated activity in waters of the United States might have the potential to affect a historic property or a property eligible for listing on the National Register of Historic Places, in accordance with general condition 20 (historic properties), the prospective permittee must submit a PCN and may not begin construction until he or she receives written authorization from the district engineer. Federal permittees will comply with general condition 20 by following their agency procedures for implementing Section 106 of NHPA.

This NWP is reissued as proposed.

NWP 37. Emergency Watershed Protection and Rehabilitation. The Corps did not propose any changes to this NWP. A few of commenters requested the NWP be modified to add "local or state government entity or political subdivision" as a category of emergency watershed protection and rehabilitation work authorized by this NWP. This NWP authorizes work done or authorized by certain federal agencies under their implementing regulations or

policies. Federal agencies have known regulations and policies which include requirements to meet environmental standards that the Corps can review to determine that activities authorized by this NWP would cause no more than minimal adverse environmental effects. Local or state governments, or other political subdivisions will have a variety of standards and requirements which may not provide similar environmental controls. The Corps declines to revise this NWP.

This NWP is reissued as proposed.

NWP 38. Cleanup of Hazardous and Toxic Waste. The Corps did not propose any changes to this NWP. No comments were received on the proposed reissuance of this NWP. This NWP is reissued as proposed.

NWP 39. Commercial and Institutional Developments. The Corps did not propose any changes to this NWP. One commenter stated that the activities authorized by this NWP are not similar in nature. One commenter stated that this NWP should not be reissued. One commenter stated that commercial and industrial developments should require an individual permit. One commenter requested the NWP be modified to raise the 1/2-acre impact limit to one-acre. Many commenters stated that the Corps should maintain or not decrease the current 1/2-acre impact limit. One commenter requested that the NWP be modified to limit stream bed impacts to 300 linear feet. One commenter stated that the requirement to submit a PCN for this NWP should be removed. One commenter requested the NWP be modified to include a threshold below which no PCN would be required.

Practical implementation of the Corps' general permit program warrants a broad interpretation of the "categories of activities that are similar in nature" requirement in CWA Section 404(e). This NWP authorizes categories of activities that are similar in nature, that is discharges of dredged or fill material regulated by the Corps that are associated with the construction of commercial and institutional developments. The activities authorized by this NWP must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The 1/2-acre limit, the requirement that all activities authorized by this NWP require PCNs, the general conditions that apply to these activities, including mitigation requirements in those general conditions, and the district engineers' review of PCNs ensures that the activities authorized by this NWP will result in no more than minimal individual and cumulative adverse

effects. The 300 linear foot impact limit was removed from this NWP in the 2021 NWPs as explained in the final rule to issue the 2021 NWPs (86 FR 2761–2768) and remains the Corps' position.

A few commenters recommended revising this NWP to include data centers, and artificial intelligence and machine learning facilities as examples of commercial developments. One commenter stated that this NWP should list pharmaceutical storage and pharmaceutical manufacturing facilities as an example of commercial developments.

The Corps agrees that data centers, artificial intelligence and machine learning facilities, pharmaceutical storage facilities, and pharmaceutical manufacturing facilities are types of commercial developments. In response to these comments, this NWP has been modified to include "data centers (to include for example, artificial intelligence and machine learning facilities)," "pharmaceutical manufacturing facilities," and the broader term "storage facilities" in the list of examples of commercial developments. The list of examples of commercial and institutional developments in this NWP is not intended to be all-encompassing. This NWP authorizes attendant features to commercial and institutional developments, including utility lines, and roads. There are a number of NWPs that also could authorize discharges of dredged or fill material associated with the construction of facilities associated with commercial and institutional developments, such as NWP 12 (Oil and natural gas pipelines), NWP 14 (Linear Transportation Projects), NWP 18 (Minor Discharges), NWP 51 (Land-based Renewable Energy Generation Facilities), NWP 57 (Electric Utility Line and Telecommunication Activities), or NWP 58 (Utility Line Activities for Water and Other Substances). The use of multiple NWPs to authorize a single and complete project must comply with general condition 28 (Use of Multiple Nationwide Permits).

Prospective permittees who submit a PCN in accordance with paragraph (b) of general condition 32 (Pre-Construction Notification) will identify the specific NWP or NWPs that they propose to use. The district engineer will review the PCN and determine if the case specific activity qualifies for the NWP identified in the PCN. If a proposed activity meets the terms of the requested NWP, and any applicable regional conditions, then the district engineer should issue the NWP verification under the NWP identified in the PCN. If the district engineer decides after reviewing the

PCN that the proposed activity does not qualify for the NWP identified by the project proponent, he or she does not have to notify the applicant that the PCN is being evaluated under another NWP. If the district engineer decides that the proposed activity does not qualify for authorization under any NWP, he or she will notify the applicant and provide instructions on how to apply for authorization under an individual permit or a regional general permit.

One commenter stated that phased commercial developments may cause cumulative effects that may not be appropriate for authorization under an NWP. A few commenters stated that commercial developments in floodplains, special aquatic sites, or areas important to salmon should not be authorized by this NWP. One commenter stated that this NWP should require compensatory mitigation for any impacts greater than $\frac{1}{10}$ -acre.

The requirements of general condition 15 (Single and Complete Project), and the application of the definition of "single and complete nonlinear project" will limit the environmental impacts of any phased commercial developments. The $\frac{1}{2}$ -acre limit of NWP 39, plus the requirement that all activities require PCNs and thus get case-by-case review by district engineers, are sufficient to ensure that the NWP authorizes those activities that will cause no more than minimal adverse environmental effects, individually and cumulatively. District engineers will consider the direct, indirect, and cumulative effects of the proposed activity in accordance with paragraph (2) in the District Engineers Decision (Section D.). Division engineers can modify, suspend, or revoke this NWP in a region or geographic to ensure that this NWP does not authorize activities that result in more than minimal cumulative adverse environmental effects.

Activities authorized by this NWP must comply with general condition 10 (Fills Within 100-year Floodplains) and with general condition 18 (Endangered Species). If the regulated activity might affect, or is in the vicinity of a species listed (or proposed for listing) or designated critical habitat (or habitat proposed for such designation) under the ESA, general condition 18 (Endangered Species) states the non-federal permittee cannot begin work until the district engineer has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or

conference has been completed. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with the ESA. If the district engineer reviews the PCN and determines that the proposed activity may adversely affect essential fish habitat, he or she will initiate essential fish habitat consultation with the NMFS. General condition 23 requires compensatory mitigation for all wetland losses greater than $\frac{1}{10}$ -acre and for all stream losses greater than $\frac{3}{100}$ -acre, unless the district engineer determines that some other form of mitigation would be more environmentally appropriate.

This NWP is reissued with the modifications discussed above.

NWP 40. Agricultural Activities. The Corps did not propose any changes to this NWP. Many commenters stated that the Corps should maintain and not decrease the current $\frac{1}{2}$ -acre impact limit on the NWP. One commenter expressed concern over the size of impacts authorized by this NWP. One commenter recommended modifying this NWP to authorize work and structures in navigable waters of the United States under Section 10 of the RHA. One commenter requested language be included to explicitly state that conservation practices that are designed or constructed to meet USDA–NRCS specification be considered agricultural activities.

The Corps has made no change to the $\frac{1}{2}$ -acre impact limit in this NWP. This NWP authorizes discharges of dredged or fill material into waters of the United States for agricultural activities. The Corps declines to modify this NWP to authorize activities in navigable waters of the United States, such activities may be authorized by another NWP, a regional general permit, or an individual permit. The NWP provides a list of examples of activities that are considered agricultural activities, but the list is not all-inclusive. This NWP requires that prospective permittees submit a PCN. Upon receipt of the PCN, district engineers will determine if a proposed activity is an agricultural activity. If the district engineer determines that a discharge of dredged or fill material into waters of the United States associated with a conservation practice does not meet the terms and conditions of this NWP, the project proponent can apply for different NWP, for a regional general permit, or for an individual permit.

Many commenters opposed connecting agricultural drainage ditches to fish bearing streams in Washington State, expressing concern about water

quality. One commenter recommended prohibiting use of this NWP in any agricultural, drainage, or irrigation ditches that are used by fish.

Division engineers may develop regional conditions for an NWP if he or she determines it necessary to ensure that activities in a region will cause no more than minimal adverse environmental effects to sensitive areas. Permittees must comply with general condition 25 (Water Quality) and any granted water quality certification. The potential effects of a regulated activity on fish bearing streams in Washington State would be better addressed at the regional level. The district engineer may add conditions to a case-specific NWP which incorporate measures to avoid and minimize impacts to listed species (or species proposed for listing) and critical habitat (or critical habitat proposed for designation). District engineers may also add conditions to NWP authorizations to address EFH Conservation Recommendations made by NMFS during activity-specific EFH consultations. General conditions 2 (Aquatic Life Movements) and 3 (Spawning Areas) require the permittee to maintain low flows and to avoid impacts to spawning areas during spawning seasons, to the maximum extent practicable.

This NWP is reissued as proposed.

NWP 41. Reshaping Existing Drainage and Irrigation Ditches. The Corps did not propose any changes to this NWP. A few commenters recommended that this NWP be modified to require a PCN for all activities. One commenter stated that this NWP should be modified to limit the length and frequency of the activities authorized by this NWP. One commenter requested that projects in a region on the eastern seaboard require an individual permit. One commenter recommended adding a statement requiring “as-built” be provided to verify original capacity and dimensions. One commenter stated that activities authorized by this NWP may impact historic properties. One commenter recommended modifying the NWP to prohibit authorization of this NWP in any agricultural, drainage, or irrigation ditches that are used by fish at any time of the year. This NWP authorizes discharges of dredged or fill material in non-tidal waters of the United States to reshape drainage or irrigation ditches. The Corps does not believe that length or frequency limits are necessary to ensure that this NWP causes no more than minimal adverse environmental effects, individually or cumulatively. In geographic areas where there are regional concerns about impacts to a sensitive aquatic resource, division

engineers have the discretionary authority to require a PCN for proposed NWP-activities in a region or location. Permittees who receive a verification letter certify compliance with the NWP terms and general conditions, in accordance with general condition 30 (Compliance Certification).

If a non-federal permittee proposes an activity that might have the potential to affect a historic property or a property eligible for listing on the National Register of Historic Places, in accordance with general condition 20 (historic properties), the prospective permittee must submit a PCN and may not begin construction until they receive written authorization from the district engineer. The district engineer may add conditions to a case-specific NWP which incorporate measures to avoid and minimize impacts to listed species (or species proposed for listing) and critical habitat (or critical habitat proposed for designation). District engineers may also add conditions to NWP authorizations to address EFH Conservation Recommendations made by NMFS during activity-specific EFH consultations. General conditions 2 (Aquatic Life Movements) and 3 (Spawning Areas) require the permittee to maintain low flows and to avoid impacts to spawning areas during spawning seasons, to the maximum extent practicable. If the district engineer receives a PCN, he or she may add conditions to a case-specific NWP verification to ensure that the activity would cause no more than minimal adverse environmental effects.

This NWP is reissued as proposed.

NWP 42. Recreational Facilities. The Corps did not propose any changes to this NWP. One commenter expressed opposition to the reissuance of this NWP and stated that the activities under this NWP result in more than minimal impacts. One commenter stated that impacts to 1/2-acre of non-tidal waters or over 1,000 feet of stream channel are not minimal. Many commenters stated the Corps should maintain and not decrease the current 1/2-acre impact limit on this NWP.

This NWP requires a PCN for all activities. District engineers will review the PCN and to determine if the proposed discharge of dredged or fill material into waters of the United States will result in no more than minimal individual and cumulative adverse environmental effects and may include activity-specific conditions in the NWP authorization. Activities authorized by this NWP must not cause the loss of more than 1/2-acre of non-tidal waters of the United States. Losses of streams will count toward the 1/2-acre limit. The

terms and conditions of this NWP, including the 1/2-acre limit and the requirement that all activities require PCNs, will ensure that the activities authorized by this NWP will result in no more than minimal individual and cumulative adverse environmental effects.

One commenter stated that use of this NWP should be prohibited in areas important to listed species or essential fish habitat. One commenter stated that the NWP should require compensatory mitigation for any impacts over 1/10 acre.

If the regulated activity might affect, or is in the vicinity of a species listed (or proposed for listing) or designated critical habitat (or habitat proposed for such designation) under the ESA, general condition 18 (Endangered Species) states non-federal permittees cannot begin work until the district engineer has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or conference has been completed. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with the ESA.

District engineers may also add conditions to NWP authorizations to address EFH Conservation Recommendations made by NMFS during activity-specific EFH consultations or to ensure that the activity would cause no more than minimal adverse environmental effects. General conditions 2 (Aquatic Life Movements) and 3 (Spawning Areas) require the permittee to maintain low flows and to avoid impacts to spawning areas during spawning seasons, to the maximum extent practicable. General condition 23 requires compensatory mitigation for all wetland losses greater than 1/10-acre and for all stream losses greater than 3/100-acre that require PCNs, unless the district engineer determines that some other form of mitigation would be more environmentally appropriate.

This NWP is reissued as proposed.

NWP 43. Stormwater Management Facilities. The Corps proposed to modify this NWP to reference the broader term of “nature-based solutions” instead of the narrower terms of “green infrastructure” and “low-impact development integrated management features.” The nature-based solutions associated with regulated activities authorized by this NWP include features that can be constructed and maintained to manage

stormwater and reduce inputs of pollutants, including sediments and nutrients, to downstream waters. To provide additional clarity to potential permittees, the Corps also proposed to add more examples to the text of this NWP of nature-based solutions for stormwater management and reducing pollution loads to waters and wetlands. Other nature-based solutions and other features that are conducted to meet pollutant reduction targets established under TMDLs set under the CWA may also be authorized by this NWP provided they comply with the applicable terms and conditions of this NWP.

Many commenters recommended retaining the $\frac{1}{2}$ -acre impact threshold in this NWP. Many commenters recommended clarifying that the $\frac{1}{2}$ -acre impact threshold does not apply to temporary or long-term impacts to waters. A few commenters stated that changes to other aquatic resource types should be considered loss of waters and considered in the determination of minimal adverse impacts. Many commenters recommended ensuring the cumulative effects of repeated maintenance dredging and vegetation removal are evaluated. One commenter recommended adding language explicitly authorizing routine maintenance activities to ensure continued function.

The activities authorized by this NWP must not cause the loss of greater than $\frac{1}{2}$ -acre of non-tidal waters of the United States. The “loss of waters of the United States” refers to permanent adverse effects to waters of the United States as a result of filling, flooding, excavation, or drainage because of the activities subject to Corps’ authority, and does not include temporary impacts. The definition of “loss of waters of the United States” is in Section F of this action (Definitions). This NWP does not authorize any activities in non-tidal wetlands adjacent to tidal waters or in tidal waters.

This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams. When a PCN is required, the district engineer will determine if a proposed activity would cause more than minimal individual and cumulative adverse effects to the environment in light of all the general conditions and the criteria in Section D, District Engineer’s Decision. The district engineer will consider the direct, indirect, and cumulative effects of the action on waters of the United States. The Corps’ CWA authority over aquatic resources is limited to waters of the

United States. The second paragraph of this NWP states that “to the extent that a section 404 permit is required, discharges of dredged or fill material into non-tidal waters of the United States for the maintenance of stormwater management facilities” is authorized by this NWP.

Several commenters expressed support for the proposed language that nature-based solutions can be authorized under this NWP. One commenter stated that this NWP should authorize nature-based solutions.

To the extent that nature-based solutions require DA authorization and are associated with stormwater management facilities, regulated activities associated with nature-based solutions may be authorized by NWP 43. The district engineer will review the PCN and make a case-specific determination whether such structures, are authorized by this NWP.

Many commenters stated that stormwater management facilities should be prohibited in a variety of areas, including wetlands and critical habitat. One commenter opposed use of this NWP in natural streams or areas used by fish. One commenter opposed converting natural resources into stormwater management facilities. One commenter stated that facilities located in a floodplain should require an individual permit. Many commenters recommended tribal coordination within salmon-bearing watersheds or usual and accustomed fishing areas.

It is not always possible or desirable to site stormwater management facilities in upland areas, and locating them in jurisdictional wetlands or other waters of the United States may be the only practicable option for effectively managing stormwater. This NWP authorizes the construction of these facilities in non-tidal jurisdictional wetlands and waters, as long as those activities result in no more than minimal individual and cumulative adverse environmental effects. This NWP does not authorize discharges of dredged or fill material into perennial streams for the construction of new stormwater management facilities.

Except for certain maintenance activities, all activities authorized by this NWP require submittal of a PCN. For those activities that require PCNs, the district engineer will evaluate potential impacts to fish and determine if the proposed activity may affect listed species (or species proposed for listing) or critical habitat (or habitat proposed for such designation) and complete any required ESA Section 7 consultation. Activities authorized by this NWP must comply with general condition 10 (Fills

in 100-Year Floodplains). If, during the review of a PCN, the district engineer determines the proposed activity may adversely affect EFH, she or he will initiate EFH consultation with the NMFS. Division engineers may add regional conditions to this NWP to protect other sensitive areas. The district engineer will review all PCNs for compliance with general condition 17 (Tribal Rights).

One commenter stated that the activities authorized by this NWP should not be considered restoration. One commenter stated that compensatory mitigation should not be required for activities authorized by this NWP because stormwater management facilities improve and protect aquatic resources. One commenter recommended the Corps retain discretionary authority to require mitigation.

Stormwater management facilities are an important tool for fulfilling the objective of the CWA, by protecting and restoring the physical, chemical, and biological integrity of our Nation’s waters. Some activities authorized by this NWP will not meet the definition of “restoration,” but they may still provide benefits to the aquatic ecosystem. General condition 23 requires compensatory mitigation for all wetland losses greater than $\frac{1}{10}$ -acre and for all stream losses greater than $\frac{3}{100}$ -acre that require PCNs, unless the district engineer determines that some other form of mitigation would be more environmentally appropriate.

One commenter expressed support for the current PCN threshold. Many commenters stated that the district engineer should consider low impact development alternatives and changing rainfall intensity or flood risk. Many commenters stated that the prospective permittee should have to submit a long-term maintenance plan as part of the PCN.

General condition 23 requires the prospective permittee to design the activity to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable at the project site. The use of nature-based approaches may contribute to avoidance and minimization and could address changing climate factors. This NWP does not require the inclusion of nature-based solutions in the design of a stormwater management facility. Activities authorized by this NWP that are associated with the maintenance of stormwater facilities do not require a PCN if they are limited to restoring the original design capacities of the stormwater management facility. The Corps has determined that these

activities will cause no more than minimal adverse environmental effects if completed in compliance with the terms of this NWP and all applicable general conditions.

One commenter stated that NWP 43 should authorize a broader category of activities which improve water quality rather than specifying that the NWP authorizes activities that are conducted to meet TMDLs set under the CWA. One commenter stated that the Corps should recognize that prospective permittees must comply with requirements of states, municipalities, and tribes. One commenter stated that the final decision on what is most appropriate to meet public safety needs should be made by the local agency responsible for stormwater management. One commenter stated that monitoring may be required for certain activities where there are limits on allowable degradation, performance standards, or potential violations of water quality standards.

This NWP authorizes discharges of dredged or fill material into non-tidal waters of the United States for the construction of stormwater management facilities, maintenance of such stormwater facilities and nature-based solutions for managing stormwater and reducing inputs of sediments, nutrients, and other pollutants into waters. This NWP authorizes regulated activities which include, but are not limited to, activities which are conducted to meet TMDLs. The Corps agrees that states and municipalities may require, under their authorities, the construction and implementation of facilities to meet water quality criteria, designated uses, and compliance with post-construction stormwater requirements. If the construction and maintenance of those facilities involves discharges of dredged or fill material into waters of the United States, this NWP can be used to authorize those activities. If a certifying authority grants a water quality certification with conditions, those conditions become regional conditions to the NWP. Section E of this action (Further Information) states the NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law. Project proponents are responsible for complying with other licenses or permits.

This NWP is reissued as proposed.

NWP 44. Mining Activities. The Corps did not propose any changes to this NWP. Many commenters stated that the Corps should maintain and not decrease the current 1/2-acre impact limit on this NWP. One commenter stated that 1/2-acre of impacts to a small stream is not

minimal. One commenter recommended using a sliding acreage cap for impacts based on project size. One commenter stated that the 1/2-acre impact limit should be expanded to at least 3 acres. One commenter recommended a new NWP permit only for aggregates with a higher acreage impact limit.

The terms and conditions of this NWP, including the 1/2-acre limit and the requirement that all activities require PCNs, will ensure that the activities authorized by this NWP will result in no more than minimal individual and cumulative adverse environmental effects. District engineers will review these PCNs, and can add conditions to the NWP authorization, including mitigation requirements, to ensure that the authorized activity will cause no more than minimal adverse environmental effects. If a proposed activity will result in more than minimal adverse environmental effects, after considering the mitigation proposal provided by the prospective permittee, the district engineer will exercise discretionary authority and require an individual permit.

Division engineers may also add regional conditions to this NWP to change the PCN threshold or restrict activities in sensitive waters or locations. This NWP authorizes aggregate mining activities, and the Corps does not believe a separate NWP for those activities is warranted. Activities that are not authorized by this NWP may be authorized by a regional general permit or individual permit.

One commenter stated that mining activities, especially within a fish bearing stream, should not be covered under an NWP. One commenter objected to the use of this NWP when activities occur in streams, floodplains, or are adjacent to non-tidal waters occupied by anadromous salmon.

All activities authorized by this NWP require a PCN. District engineers will review PCNs for case specific activities and determine whether they may affect ESA-listed species (or species proposed for listing) or designated critical habitat (or habitat proposed for such designation). If the district engineer determines a proposed NWP activity may affect listed species (or species proposed for listing) or designated critical habitat (or habitat proposed for designation), he or she will conduct ESA Section 7 consultation with the U.S. Fish and Wildlife Service's (FWS) or National Marine Fisheries Service's (NMFS) as appropriate. If, during the review of a PCN, the district engineer determines the proposed activity may adversely affect EFH, she or he will initiate EFH consultation with the

NMFS. Division engineers may add regional conditions to this NWP to protect other special status species.

This NWP is reissued as proposed.

NWP 45. Repair of Uplands Damaged by Discrete Events. The Corps did not propose any changes to this NWP. One commenter stated that any repairs should not include structures waterward of the new ordinary high water mark unless there is an immediate threat to a primary structure or associated infrastructure. One commenter suggested this NWP be modified to authorize beach restoration, up to 25 cubic yards, conducted by a local government or hydropower owner with a FERC license.

This NWP only authorizes restoration of the damaged upland areas up to the contours or ordinary high water mark that existed prior to the occurrence of the damage. We do not agree that the restoration should be limited to the post-damage ordinary high water mark. The purpose of this NWP is to authorize regulated activities to repair uplands that have been damaged by a discrete event. It may not be practicable to limit fills to the new ordinary high water mark where the ordinary high water mark was changed by a discrete event.

Use of this NWP to authorize beach nourishment has been prohibited since 2012 (77 FR 10227) and we continue to maintain this position. The FERC license is not sufficient to replace the review by the district engineer to ensure that the activity would cause no more than minimal adverse environmental effects. The Corps declines to modify this NWP to authorize beach nourishment. Beach nourishment or restoration activities may be authorized by individual permits or regional general permits.

One commenter stated the requirement to submit the PCN within one year from the date of damage is too short due to engineering and regulatory processes that need to be followed. This commenter recommended the timeframe be extended to two years.

The Corps agrees that 12 months may be too short a timeframe to submit a PCN for activities authorized by this NWP. The Corps is modifying this NWP to require submittal of a PCN within 18-months and retaining the district engineer's discretion to waive the 18-month deadline if the prospective permittee can demonstrate funding, contract, or similar delays. Such delays can occur after major storm events if the entities responsible for making decisions regarding disbursement of funds or issuing contracts are short staffed or receive more requests than can be handled in a timely manner. The

Corps is retaining the requirement that the activity be under contract to commence or commence construction within two years of the date of the damage, and retaining the district engineer's discretion to waive the two-year timeframe.

This NWP is reissued with the modifications discussed above.

NWP 46. Discharges in Ditches. The Corps did not propose any changes to this NWP. One commenter expressed concern with the scale of impacts authorized by this NWP. A few commenters objected to the use of this NWP to authorize activities in ditches occupied by fish.

The Corps is retaining the one-acre limit that was established for this NWP when it was first issued in 2007. The one-acre limit has been effective in ensuring that discharges of dredged or fill material into the non-tidal ditches that satisfy four criteria in the first paragraph of this NWP result in no more than minimal individual and cumulative adverse environmental effects. Division engineers can add regional conditions to this NWP to impose an acreage limit that is less than one-acre, to ensure that activities authorized in the region will have no more than minimal individual and cumulative adverse environmental effects. During the review of PCNs for proposed NWP 46 activities, district engineers can require compensatory mitigation to offset losses of waters of the United States, in accordance with general condition 23 (Mitigation).

This NWP requires prospective permittees to submit a PCN. When the district engineer reviews the PCN, he or she will consider potential impacts to salmon and other fish species. General condition 2 (Aquatic Life Movements), prohibits activities which could disrupt the necessary life cycle movements of aquatic species and general condition 3 (Spawning Areas) prohibits the destruction of important spawning areas. If deemed appropriate, this NWP can be regionally conditioned by division engineers to limit or restrict the use of this NWP in waters accessible to anadromous salmonid species. The text of this NWP states that it does not authorize discharges into streams, or streams that have been relocated into uplands.

One commenter requested clarification if activities in ditches that receive groundwater inputs are excluded from this NWP. One commenter requested that this NWP be modified to allow activities in ditches that receive water from sources other than waters of the United States.

This NWP authorizes discharges of dredged or fill material into ditches that are waters of the United States so long as the ditches (1) are constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, and (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch. Although criterion (2) requires that the ditch must receive water from a water of the United States that existed prior to the construction of the upland ditch, the terms of the NWP do not require that the ditch only receive water from a water of the United States prior to the construction of the ditch. The ditch may also receive water from other sources, such as precipitation or groundwater. This NWP does not authorize discharges of dredged or fill material into ditches constructed in streams or other waters of the United States, or in streams that have been relocated in uplands. To the extent that ditches are determined to be waters of the United States, this permit provides authorization for discharges of dredged or fill material into them provided all terms and conditions of this NWP are met.

This NWP is reissued as proposed.

NWP 48. Commercial Shellfish Mariculture Activities. Federal court decisions in *The Coalition to Protect Puget Sound v. U.S. Army Corps of Engineers* (U.S. District Court, Western District Court of Washington at Seattle and U.S. Court of Appeals for the Ninth Circuit) vacated the 2017 NWP 48 in waters within Washington State. As a result, project proponents in Washington state have since sought authorization for regulated activities, work, or structures under a standard individual permit or letter of permission. Due to the low volume of PCNs received under the 2021 NWPs for activities proposed within waters in Washington State, the Corps proposed to modify NWP 48 to exclude its use in waters within Washington State. The Corps proposed to modify Note 1 and to add a Note (designated as Note 4) in this NWP. Language was added to each Note to clarify the intent of each Note. Note 1 was modified to identify information that should be provided to USCG and to provide contact information for USCG. New Note 4 identifies information that should be provided to NOS and provides contact information for NOS. The Corps provides a summary of the comments received on revised Note 1 and new Note 4 and responses to comments in Section II.D of this final action.

One commenter recommended that a PCN be required for all activities authorized by this NWP. One commenter opposed NWP 48 and recommended all covered activities require an individual permit. One commenter suggested prohibiting the use of this NWP and requiring an individual permit in high-value subsistence and cultural zones. One commenter recommended that the NWP be withdrawn until it can be demonstrated that the impacts of shellfish mariculture on the aquatic environment are minimal in nature. One commenter supported the revocation of NWP 48 in Washington State but disagreed with the use of Letters of Permission for authorizing mariculture operations in the state.

The terms and conditions of this NWP, including its PCN requirement, will ensure that commercial shellfish mariculture activities authorized by this NWP will result in no more than minimal individual and cumulative adverse environmental effects. If the regulated activity might affect, or is in the vicinity of a species listed (or proposed for listing) or designated critical habitat (or habitat proposed for such designation) under the ESA, general condition 18 (Endangered Species) requires non-federal permittees to submit a PCN and states the permittee cannot begin work until the district engineer has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or conference has been completed.

Division engineers may impose regional conditions to require PCNs or revoke this NWP for proposed activities that might affect treaty rights, submerged aquatic vegetation, or other concerns. Regional conditions can help ensure compliance with general condition 17, (Tribal rights) so that no NWP 48 activity will cause more than minimal adverse effects on reserved tribal rights (including treaty rights), protected tribal resources, or tribal lands.

When reviewing a PCN, if the district engineer determines that the proposed activity, after considering mitigation proposed by the prospective permittee, will result in more than minimal individual and cumulative adverse environmental effects, he or she will exercise discretionary authority and require an individual permit for that activity. The district engineer has the discretion to determine what type of individual permit may be appropriate

for authorizing the proposed activity, a Letter of Permission or a standard individual permit.

One commenter expressed concerns that the NWP could cause more than minimal adverse impacts to submerged aquatic vegetation. One commenter expressed concern that no compensatory mitigation will be required to offset the impacts from the authorized activities. One commenter stated that commercial shellfish mariculture activities improve habitat, increase species richness, and increase species diversity of aquatic resources. One commenter disagreed with the Corps' claim that the placement of oyster shells is a permanent discharge of dredged or fill material and can bury submerged aquatic vegetation. One commenter expressed concern that this NWP has no acreage impact limitation.

Prospective permittees must submit a PCN for commercial mariculture operations that impact more than 1/2-acre of submerged aquatic vegetation. This PCN threshold is sufficient for the purposes of ensuring that a project will have no more than minimal individual or cumulative adverse environmental effect. Division engineers may restrict or prohibit use of this NWP in geographic regions or specific waterbodies where more than minimal individual or cumulative adverse environmental effects may occur. District engineers will review the PCN and determine if the case-specific activity will cause more than minimal adverse effects on the environment. Placement of oyster shells in waters of the United States, either temporarily or permanently, can impact submerged aquatic vegetation. The length of time it takes for submerged aquatic vegetation to reestablish in an area can vary by species and habitat. District engineers will review PCNs to determine what activities result in a loss of waters of the United States and if the effects of the discharge are more than minimal.

One commenter requested clarification if the commercial shellfish operator would need to reapply every five years for continued authorization of the regulated activities. The commenter stated that requiring prospective permittees to reapply every NWP cycle is excessive and puts an extreme burden on districts where mariculture is prevalent.

General permits, including NWPs, must be reissued at least every five years. Commercial shellfish mariculture activities typically involve on-going discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States throughout the five-

year period a general permit is in effect. When that general permit expires, the on-going activities must be reauthorized in order for the regulated activities to continue to be authorized by general permit, assuming the general permit is reissued by the appropriate permitting authority (*i.e.*, Corps Headquarters for an NWP, a district engineer for a regional general permit or a programmatic general permit). Commercial shellfish mariculture operators can choose to utilize NWP 48 or other general permits to provide DA authorization for their activities, or they can apply for standard individual permits or letters of permission for those activities and if they would like to request that Corps districts issue standard individual permits or Letters of Permission for those activities that would be in effect for periods longer than five years.

One commenter requested that the NWP define which activities require authorization under Section 404 of the CWA and which activities require authorization under Section 10 of the RHA. Structures or work in navigable waters of the United States require authorization under Section 10 of the RHA and discharges of dredged or fill material into waters of the United States require authorization under Section 404 of the CWA. The majority of the activities associated with commercial shellfish mariculture require authorization under Section 10 of the RHA. Some activities associated with seeding, cultivating and harvesting activities will require authorization under Section 404 of the CWA. District engineers will determine what specific activities are subject to each of these laws.

One commenter asserted that mechanical harvest, harrowing and shell dispersal do not constitute a discharge of dredged or fill material and insisted that those activities should be covered under the normal farming exemption.

Discharges of dredged or fill material require DA authorization under Section 404 of the CWA unless exempted by Section 404(f) of the CWA. In accordance with the 1989 Memorandum of Agreement Between the Department of the Army and the U.S. EPA Concerning the Determination of the Section 404 Program and the Application of the Exemptions under Section 404(f) of the CWA, the U.S. EPA has the authority to establish policies on which activities are eligible for the CWA Section 404(f) exemptions. There are no work or structures in navigable waters of the United States that are exempted from regulation under Section 10 of the RHA.

This NWP is reissued as proposed.

NWP 49. Coal Remining Activities. The Corps did not propose any changes to this NWP. One commenter stated mining activities should not be covered under an NWP. All activities authorized by this NWP must result in net increases in aquatic resource functions. Regulated activities associated with remining activities reduce acid mine drainage and sedimentation, which help manage cumulative effects on a watershed basis. The reduction in acid mine drainage and/or sedimentation in downstream segments of stream channels has resulted in functional improvements in many watersheds.

This NWP is reissued as proposed.

NWP 50. Underground Coal Mining Activities. The Corps did not propose any changes to this NWP. Many commenters opposed reissuance of this NWP and stated that the activities authorized under the NWP have significant and harmful impacts on the environment. One commenter stated mining activities should require an individual permit. Many commenters opposed the use of this NWP in the Appalachian Regions due to impacts from previous mining.

The Corps Headquarters has prepared a national decision document to address the environmental effects of the reissuance of this NWP in accordance with NEPA and the CWA. The national decision document evaluates cumulative impacts in accordance with the CWA Section 404(b)(1) Guidelines at 40 CFR 230.7 for the issuance of general permits. In the national decision document for this NWP, the Corps Headquarters has made a finding of no significant impact.

In addition to the national analysis, the division engineer will prepare supplemental documentation and can exercise discretionary authority and modify the NWP by imposing regional conditions to ensure that activities authorized by this NWP in a region cause no more than minimal adverse environmental effects. The prospective permittee must submit a PCN to the district engineer for all activities proposed for authorization by this NWP. When the district engineer reviews the PCN, he or she will consider the direct and indirect effects of the NWP-specific activity in accordance with Section D (District Engineer's Decision) and determine if the activity will cause no more than minimal adverse environmental effects, both individually and cumulatively. If the district engineer reviews the PCN and determines that the proposed activity, after considering any mitigation proposal submitted by the applicant,

will result in more than minimal adverse environmental effects, he or she will assert discretionary authority and require an individual permit for that activity.

Many commenters stated that the Corps should maintain the current 1/2-acre impact limit on this NWP. Many commenters stated that the 1/2-acre impact limit should only apply to permanent impacts to waters. Many commenters opposed the 1/2-acre impact limit. Many commenters opposed the provision that allows the permittee to proceed 45-days after submittal of the PCN to the district engineer.

This NWP prohibits the loss of greater than 1/2-acre of non-tidal waters of the United States. The 1/2-acre limit for this NWP, as well as the requirement that all activities require PCNs, will ensure that this NWP authorizes activities that result in no more than minimal adverse environmental effects, individually and cumulatively. The “loss of waters of the United States” refers to permanent adverse effects to waters of the United States as a result of filling, flooding, excavation, or drainage because of the activities subject to Corps’ authority, and does not include temporary impacts. The district engineer will review the PCN and consider the impacts of the regulated activities, including the duration of the adverse effects (temporary or permanent) in accordance with Section D (District Engineer’s Decision). Activities that qualify for the default authorization that occurs 45-days after the district engineer receives a complete PCN must comply with all terms and conditions of the NWP, including the general conditions and any applicable regional conditions imposed by the division engineer.

Many commenters expressed concern that this NWP would significantly increase sediment loads into waters of the United States. Many commenters stated that the activities authorized by this NWP would harm endangered species.

Permittees must comply with the general conditions of this NWP, including general condition 25 (Water Quality) and general condition 12 (Soil Erosion and Sediment Controls), which require the permittee to comply with any conditions to granted water quality certifications and to implement appropriate soil erosion and sediment controls. Paragraph (c) of general condition 25 acknowledges that the district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

If the regulated activity might affect, or is in the vicinity of a species listed (or proposed for listing) or designated critical habitat (or habitat proposed for such designation) under the ESA, general condition 18 (Endangered Species) states the permittee cannot begin work until the district engineer has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or conference has been completed. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with the ESA. No activity is authorized by an NWP if it is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation.

This NWP is reissued as proposed.

NWP 51. Land-Based Renewable Energy Generation Facilities. The Corps did not propose any changes to this NWP. One commenter expressed support for this NWP. One commenter expressed concern with the scale of impacts authorized by this NWP. A few commenters stated these activities should not be covered under an NWP. Many commenters stated that the Corps should maintain the current 1/2-acre impact limit on this NWP. Many commenters stated that the 1/2-acre impact limit should only apply to permanent impacts to waters. One commenter stated that a PCN should be required for all activities authorized by this NWP citing concerns for impacts to historic properties.

This NWP authorizes discharges of dredged or fill material into waters of the United States for the construction, expansion, or modification of land-based renewable energy facilities. The authorized discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The “loss of waters of the United States” refers to permanent adverse effects to waters of the United States as a result of filling, flooding, excavation, or drainage because of the activities subject to Corps’ authority, and does not include temporary impacts (Section F. Definitions). The 1/2-acre limit, along with the PCN requirements and compliance with the NWP general conditions, will ensure that the activities authorized by this NWP will result in no more than minimal individual and cumulative adverse environmental effects. PCN is required if the discharge results in the loss of greater than 1/10-acre of waters of the

United States. The district engineer will review the PCN and he or she will consider the impacts of the discharges of dredged or fill material into waters of the United States, including the duration of the adverse effects (temporary or permanent) in accordance with Section D (District Engineer’s Decision).

If a non-federal permittee proposes an activity that might have the potential to affect a historic property or a property eligible for listing on the National Register of Historic Places, in accordance with general condition 20 (historic properties), the prospective permittee must submit a PCN and may not begin construction until they receive written authorization from the district engineer. Federal agencies must follow their own procedures for complying with Section 106 of the NHPA.

One commenter requested that the NWP be expanded to provide authorization for battery storage projects. There is overlap in some activities authorized by certain NWPs and battery storage projects, such as battery energy storage systems, may be authorized by this NWP, as well as by NWP 39 (Commercial and Institutional Developments) or NWP 57 (Electric Utility Line and Telecommunications Activities) provided they comply with the terms and conditions of the NWP.

One commenter suggested the NWP be modified to restrict its use in critical habitat, recovery units or areas known to be of importance to migratory birds, bald eagles, and golden eagles. One commenter stated that this NWP causes more than minimal impacts to areas important to fish. One commenter stated that compensatory mitigation should be required for impacts that cannot be avoided.

In accordance with general condition 19 (Migratory Birds and Bald and Golden Eagles), project proponents are responsible for complying with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. If the regulated activity might affect, or is in the vicinity of a species listed (or proposed for listing) or designated critical habitat (or habitat proposed for such designation) under the ESA, general condition 18 (Endangered Species) requires non-federal permittees to submit a PCN and states the permittee cannot begin work until the district engineer has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or conference has been completed. If a

PCN is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with the ESA. Activities authorized by this NWP must comply with general condition 10 (Fills Within 100-year Floodplains). Division engineers can regionally condition this NWP to restrict or prohibit its use in waters of the United States, where the discharges of dredged or fill material are likely to result in more than minimal adverse effects on the aquatic environment. During the review of PCNs for case-specific activities, district engineers can require compensatory mitigation to offset the permitted losses of waters of the United States, in accordance with general condition 23 (Mitigation).

This NWP is reissued as proposed.

NWP 52. Water-Based Renewable Energy Generation Pilot Projects. The Corps proposed to modify Note 3 and to add a Note (designated as Note 6) in this NWP. Language was added to each Note to clarify the intent of each Note. Note 3 was modified to identify information that should be provided to NOS and to provide contact information for NOS. New Note 6 identifies information that should be provided to USCG and to provide contact information for USCG. The Corps provides a summary of the comments received on revised Note 3 and new Note 6 and responses to comments in Section II.D of this final action.

One commenter supported NWP 52 and the proposed changes. One commenter objected to the reissuance of this NWP and stated that all covered activities should require an individual permit. Many commenters stated that the Corps should maintain the current $\frac{1}{2}$ -acre impact limit on this NWP. Many commenters stated that the $\frac{1}{2}$ -acre impact limit should only apply to permanent impacts to waters. Many commenters stated that the number of units allowed by this NWP should be reduced from 10 to 3. One commenter stated that authorizing these activities in streams, wetlands or other critical areas would result in more than minimal adverse environmental impact. Several commenters expressed concern with shading or light reduction caused by solar panels. Many commenters stated that activities authorized by this NWP impact treaty rights and tribal treaty fishing rights.

The terms and conditions of this NWP, including the $\frac{1}{2}$ -acre limit, and the ten-unit limit will ensure that this NWP authorizes only those activities with minimal adverse effects on the aquatic environment. All activities

authorized by this NWP require a PCN, which provides district engineers an opportunity to review each proposed activity and determine whether the adverse effects on the aquatic environment will be minimal. District engineers may add activity-specific conditions to the NWP authorization which require actions to mitigate adverse environmental effects. The Corps is retaining the $\frac{1}{2}$ -acre limit and the requirement that all authorized activities require PCNs. The “loss of waters of the United States” refers to permanent adverse effects to waters of the United States as a result of filling, flooding, excavation, or drainage because of the activities subject to Corps’ authority, and does not include temporary impacts.

This NWP is also subject to general condition 22 (Designated Critical Resource Waters), which prohibits using this NWP to authorize discharges of dredged or fill material into critical resource waters and wetlands adjacent to such waters. Critical resource waters include marine sanctuaries and marine monuments managed by the National Oceanic and Atmospheric Administration, and National Estuarine Research Reserves, and waters designated by the district engineer after notice and opportunity for comment. Division engineers may also impose regional conditions to restrict or prohibit the use of this NWP in specific categories of waters or in certain geographic areas. Division engineers will review the PCN and make a project-specific determination that the adverse effects on navigation, the aquatic environment, and other public interest review factors would be minimal, individually and cumulatively. During review of a PCN, district engineers may exercise discretionary authority and require an individual permit if the proposed activity will result in more than minimal adverse effects on the aquatic environment. Division engineers can add regional conditions to this NWP to help ensure compliance with general condition 17 (Tribal Rights).

Many commenters objected to the Corps relinquishing its authority to the FERC for activities proposed under this NWP. Note 4 states that hydrokinetic renewable energy generation projects that require authorization by the FERC under the Federal Power Act of 1920 do not require separate authorization from the Corps under Section 10 of the RHA. Note 4 is based on current law and must remain in the NWP. If the water-based renewable energy generation activity results in discharges of dredged or fill material into waters of the United States, then Section 404 authorization is

required for the proposed activity. In situations when FERC authorizes a structure in a navigable water of the United States, this NWP can authorize the discharge of dredged or fill material if the proposed activity complies with the NWP terms and all general conditions.

One commenter stated that pilot projects should be temporary. Many commenters stated that permanent installation of hydrokinetic units should require an individual permit because they are based on new technologies.

This NWP does not authorize activities associated with permanent installation of water-based renewable energy generation pilot projects. The construction of permanent water-based renewable energy generation facilities would require separate authorization under a regional general permit or individual permit.

This NWP is reissued as proposed.

NWP 53. Removal of Low-Head Dams. The Corps did not propose any changes to this NWP. One commenter supported reissuance of this NWP. A few commenters suggested that this NWP be expanded to authorize the removal of other dams using criteria based on size or storage volume.

This NWP, defines “low-head dam” as a “dam or weir built across a stream to pass flows from upstream over all, or nearly all, of the width of the dam crest and does not have a separate spillway or spillway gates, but it may have an uncontrolled spillway.” The definition further states that low-head dams in all cases, provide little or no storage function. The Corps declines to modify this NWP to expand the activities covered by this NWP based on a dam height or storage capacity, as those criteria could result in a greater range of potential impacts to aquatic resources. The definition of “low head dam” in this NWP limits the use of this NWP to dams that have the key features presented in the definition. The definition of “low head dam,” in addition to the PCN requirement, ensures that activities authorized by this NWP cause no more than minimal adverse environmental effects.

If the proposed dam removal activity does not qualify for authorization under this NWP or NWP 27, then an individual permit will be required unless the Corps district has issued a regional general permit that could be used to authorize the proposed activity. District engineers can also issue regional general permits to authorize the removal of other types of dams, such as run-of-the-river dams. The removal of fords or in-stream grade-control structures might also be authorized by NWP 27 as a long

as the activity results in a net increase in aquatic ecosystem functions and services and complies with the other terms and conditions of the NWP.

One commenter recommended revising this NWP to allow placement of demolition debris from the low head dam below the ordinary high water mark within 200 linear feet of the structure. One commenter recommended that the Corps create a single permit to authorize dam removal, restoration, and bank stabilization activities.

This NWP requires that the material of the removed low-head dam structure be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. The terms and conditions of the NWP ensure that the authorized activities cause no more than minimal adverse effects to the environment. We decline to modify this NWP to expand the list of activities authorized by this NWP. Bank stabilization activities may be authorized by NWP 13 (Bank Stabilization), restoration of the stream in the vicinity of the dam may be authorized by NWP 27 (Aquatic Ecosystem Restoration, Enhancement, and Establishment) or other DA permits, such as a regional general permit. Activities authorized by one or more NWPs must comply with all general conditions, including general permit 28 (Use of Multiple Nationwide Permits). The district engineer will review the PCN and determine if the proposed activity can be authorized by one or more NWPs. If a prospective permittee cannot comply with the terms of the NWP and the general conditions, the district engineer may advise the project proponent to apply for a regional general permit or individual permit.

This NWP is reissued as proposed.

NWP 54. Living Shorelines. The Corps proposed to modify the first paragraph of this NWP to state that a portion of a living shoreline can consist of an unvegetated cobble or sand beach, which can be considered a pocket beach.

Many commenters supported reissuance of this NWP, noting that it streamlined the permitting process for bank stabilization projects which provide ecological enhancement. One commenter supported the retention of the PCN requirement and the language in the NWP. One commenter objected to the reissuance of this NWP and stated that all covered activities should require an individual permit. One commenter stated that these activities could result in more than minimal adverse environmental impacts. One commenter

stated that the applicant must demonstrate that the proposed activity will not impact waters of the United States.

This NWP authorizes structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States associated with the construction and maintenance of living shorelines. The permittee must comply with the terms and general conditions of this NWP, including general conditions which require avoidance and minimization of effects to spawning areas. A PCN is required for all NWP 54 activities. The district engineer will review the PCN and, if the proposed activity will result in more than minimal individual and cumulative adverse environmental effects after considering mitigation proposed by the applicant, the district engineer will exercise discretionary authority and require an individual permit.

One commenter expressed concern that permittees will not be required to avoid or minimize impacts to waters of the United States. One commenter stated that the applicant should demonstrate why the proposed activity is necessary. One commenter stated that the applicant must provide assurances that the structure will not become a hazard. One commenter stated that the NWP should prohibit the introduction of non-native or invasive species.

Paragraph (a) of general condition 23 (Mitigation) and paragraphs (e) and (f) of this NWP require structures and fills in jurisdictional waters and wetlands, including navigable waters, to be minimized to the maximum extent practicable on the project site. It is up to the landowner to decide how he or she wants to protect his or her property from erosion. This NWP authorizes the construction or maintenance of living shorelines in order to offer landowners an alternative general permit authorization to the various types of bank stabilization activities authorized by NWP 13 (Bank Stabilization). Paragraph (h) of this NWP requires that the permittee maintain the living shoreline, including making repairs after discrete events. Paragraph (d) of this NWP requires that the permittee use native plants.

One commenter stated that the activities authorized by this NWP should not be used as compensatory mitigation. One commenter stated that the permittee should be required to comply with water quality standards.

When the prospective permittee submits a PCN and compensatory mitigation is required by general condition 23 (Mitigation), the district

engineer will review the proposed compensatory mitigation and determine if it is sufficient to offset the adverse environmental effects of a regulated activity. Consistent with general condition 25 (water quality) the permittee must comply with any conditions of a granted water quality certification for any activity that may result in a discharge from a point source into waters of the United States.

One commenter suggested that this NWP be modified to limit the use of cobble and gravel fill materials by adding "where appropriate and consistent with the characteristics of the natural shoreline." Many commenters stated that the NWP should avoid improper use of larger rocks in living shorelines. A few commenters suggested modifying this NWP to authorize small-scale beach nourishment.

The terms of this NWP, in combination with the general conditions, appropriately limit the types of structures or fill materials that are authorized by this NWP. Cobble, sand, and rock sills may all be part of a living shoreline as long as the footprint is made up of mostly native material and incorporates vegetation or other living, natural "soft" elements, and the activity meets the other requirements of this NWP. We have not included beach nourishment in this NWP because these projects do not have a living component such as fringe wetland vegetation, or oysters or mussels, and are not considered living shorelines. When using the term "beach nourishment," we are referring to larger scale beach fill projects, which usually occur on open coasts. There may be a portion of the living shoreline that consists of unvegetated sandy substrate (e.g., a micro-beach or pocket-beach within or next to the fringe wetland). In addition, we recognize that some movement of sand fill may be necessary to maintain the living shoreline. The district engineer will review the required PCN to determine if a specific activity may be authorized by this NWP, another NWP, a regional general permit, or if the activity will require an individual permit.

One commenter suggested modifying this NWP to allow fills and structures to be placed more than 30 feet from the mean low water line or the ordinary high water mark or to allow activities more than 500 feet in length without a waiver from the district engineer. One commenter objected to allowing the district engineer the discretion to waive the 30-foot or 500-foot limits.

The Corps is retaining the 30-foot and 500 linear foot limits and retaining the district engineer's discretion to waive

these limits on a case-by-case basis, after reviewing the PCN and coordinating that PCN with the resource agencies. For a waiver to occur, the district engineer must issue a written determination with a finding that the proposed activity will result in no more than minimal individual and cumulative adverse environmental effects.

A few commenters stated that use of this NWP should be limited in the State of Washington. One commenter stated that this NWP has the potential to result in impacts to tribal treaty natural resources and fishing activities.

Division engineers may also impose regional conditions to restrict or prohibit the use of this NWP in specific categories of waters or in certain geographic areas. Division engineers can add regional conditions to this NWP to help ensure compliance with general condition 17 (Tribal Rights). District engineers may also include project-specific conditions with any NWP verification to ensure the activity results in no more than minimal adverse environmental effects.

One commenter suggested that language allowing temporary structures during construction, similar to language found in NWP 13 (Bank Stabilization), be added to NWP 54. We agree with the suggested change and have added language after paragraph (h) of this NWP to authorize temporary structures, fills, and work, including the use of temporary mats, necessary to construct the living shoreline.

This NWP is reissued with the modifications discussed above.

NWP 55. Seaweed Mariculture Activities. The Corps proposed to modify Note 1 and to add a Note (designated as Note 4) in this NWP. Language was added to each Note to clarify the intent of each Note. Note 1 was modified to identify information that should be provided to USCG and to provide contact information for USCG. New Note 4 identifies information that should be provided to NOS and provides contact information for NOS. The Corps provides a summary of the comments received on revised Note 1 and new Note 4 and responses to comments in Section II.D of this final action.

Many commenters urged the Corps to revoke NWP 55 due to concerns that the activities covered could cause more than minimal impacts. A few commenters suggested prohibiting the use of this NWP and requiring an individual permit. One commenter stated that the use of this NWP should be prohibited in areas important to tribes.

The work and structures in navigable waters of the United States authorized by this NWP are associated with seaweed mariculture, which is expected to have a relatively small, if not beneficial, impact on marine ecosystems. This NWP includes terms and conditions, including the requirement to submit a PCN for all proposed NWP 55 activities, to ensure the NWP authorizes only those regulated activities associated with seaweed mariculture that result in no more than minimal individual and cumulative adverse environmental effects. In response to a PCN, district engineers will apply the criteria listed in paragraph 2 of Section D, District Engineer's Decision to determine whether the proposed activity can be authorized by NWP 55, with or without additional permit conditions, or exercise their discretionary authority to require an individual permit. Division engineers may modify, suspend, or revoke this NWP on a regional basis in accordance with the procedures at 33 CFR 330.5(c).

Division engineers may impose regional conditions to require PCNs or revoke this NWP for proposed activities that might affect treaty rights, submerged aquatic vegetation, or other concerns. Regional conditions can help ensure compliance with general condition 17, (Tribal rights) so that no NWP 55 activity will cause more than minimal adverse effects on reserved tribal rights (including treaty rights), protected tribal resources, or tribal lands.

This NWP is reissued as proposed.

NWP 56. Finfish Mariculture Activities. The Corps proposed to not reissue this NWP. Under this final action, NWP 56 will expire on March 14, 2026. Section I.D. of this action (and 33 CFR 330.6(b)) provides information about the time within which permittees must complete activities authorized by this NWP. After this expiration date, project proponents who want to construct structures in navigable waters of the United States for finfish mariculture activities will need to obtain individual permits (*i.e.*, standard individual permits or letters of permission) for those activities unless the Corps district has issued a regional general permit or a programmatic general permit to authorize regulated structures associated with finfish mariculture. Many commenters supported the Corps' decision not to reissue this NWP. This NWP is not reissued.

NWP 57. Electric Utility Line and Telecommunications Activities. The Corps proposed to modify Note 1 and to

add a Note (designated as Note 8) in this NWP. Language was added to each Note to clarify the intent of each Note. Note 1 was modified to identify information that should be provided to NOS and to provide contact information for NOS. New Note 8 identifies information that should be provided to USCG and to provide contact information for USCG. The Corps provides a summary of the comments received on revised Note 1 and new Note 8 and responses to comments in Section II.D of this final action.

Many commenters support the reissuance of this NWP as proposed. One commenter stated that NWP 57 will have no more than minimal adverse effects on the environment. One commenter recognizes that impacts that are not discharges of dredged or fill material are outside of the Corps' regulatory authority under Section 404 of CWA. One commenter opposes the reissuance of NWP 57, stating that it will result in more than minimal impacts. Several commenters stated that a PCN should be required when a project includes mechanized land clearing. One commenter stated that activities authorized by NWP 57 should be required to avoid marine aquatic vegetation areas.

The 1/2-acre impact limit, PCN requirements and other requirements of this NWP, and general conditions, are sufficient to ensure that the activities authorized by this NWP cause no more than minimal adverse environmental effects. Utility line installations must not cause changes to pre-construction contours in waters of the United States. Changes to pre-construction contours constitute a loss of waters of the United States. A PCN is required for the loss of greater than 1/10-acre of waters of the United States. If a PCN is required, district engineers can add conditions to the NWP authorization, including mitigation requirements, to ensure that the authorized activity will cause no more than minimal adverse environmental effects.

Paragraph (a) of general condition 23 (Mitigation), requires permittees to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable. General condition 23 requires compensatory mitigation for all wetland losses greater than 1/10-acre and for all stream losses greater than 3/100-acre for all activities authorized under this NWP, unless the district engineer determines that some other form of mitigation would be more environmentally appropriate. The district engineer may, consistent with paragraph (i) of general condition 23, require compensatory mitigation for

conversions of wetlands in utility rights-of-way to offset adverse environmental effects of such conversions.

If after reviewing a PCN, the district engineer determines the proposed activity will result in more than minimal adverse environmental effects, after considering the mitigation proposal provided by the prospective permittee, he or she will exercise his or her discretionary authority and require an individual permit. Division engineers may also add regional conditions to this NWP to change the PCN threshold or restrict activities in sensitive waters or locations. The Corps declines to add a PCN threshold for mechanized land clearing to this NWP.

One commenter suggested that the requirements for access roads be consistent between NWPs 57 and 14. One commenter recommended that the phrase “near as possible” be revised to “maximum extent practicable.”

This NWP requires access roads to be constructed as near as possible to pre-construction contours and elevations. The additional avoidance and minimization required by the more restrictive “near as possible” is necessary and still allows flexibility to deviate from preconstruction contours. The Corps declines to modify this NWP to allow access roads in tidal waters or wetlands adjacent to tidal waters. Temporary access roads in tidal waters may be authorized by NWP 33 (Temporary Construction, Access, and Dewatering).

Many commenters oppose Note 2 in NWP 57, stating that reliance on the definition of “single and complete linear project” is unlawful. The practice for providing NWP authorization for single and complete linear projects, where each separate and distant crossing of waters of the United States may qualify for its own NWP authorization, is consistent with the Corps’ NWP regulations at 33 CFR 330.2(i), which were published in the November 22, 1991, issue of the **Federal Register**. This NWP has been issued in compliance with Section 404(e) of the CWA (including the Section 404(b)(1) Guidelines). District engineers will review PCNs to determine whether proposed crossings of waters of the United States are to be considered together or as separate and distant on a case-by-case basis, after evaluating site and regional characteristics. If one crossing of waters of the United States associated with the construction of a linear transportation project requires an individual permit, then 33 CFR 330.6(d) applies, and the district engineer will determine which activities require individual permits and which activities

can be authorized by an NWP. Section 330.6(d) of the Corps’ NWP regulations, as well as Note 2 of NWP 57, remain in effect. Section 330.6(d) and Note 2 maintain the Corps’ long-standing process regarding the use of NWPs and individual permits to authorize linear projects.

One commenter requested that this NWP be expanded to provide authorization for battery storage projects. Battery storage projects, such as battery energy storage systems, may be authorized by this NWP, as well as by NWP 39 (Commercial and Institutional Developments) or NWP 51 (Land-Based Renewable Energy Generation Facilities) provided they comply with the terms and conditions of the NWP. There is overlap in activities authorized by certain NWPs.

This NWP is reissued as proposed.

NWP 58. Utility Line Activities for Water and Other Substances. The Corps proposed to modify Note 1 and to add a Note (designated as Note 7) in this NWP. Language was added to each Note to clarify the intent of each Note. Note 1 was modified to identify information that should be provided to NOS and to provide contact information for NOS. New Note 7 identifies information that should be provided to USCG and to provide contact information for USCG. The Corps provides a summary of the comments received on revised Note 1 and new Note 7 and responses to comments in Section II.D of this final action.

Many commenters expressed general support for NWP 58. Many oppose the reissuance of this NWP and stated that this NWP would authorize more than minimal adverse environmental impacts. A few commenters stated that a district engineer’s decision that activities from the same pipeline have no more than minimal cumulative effects should be in writing and made publicly available. Many commenters assert that NWP 58 fails to comply with NEPA and is therefore unlawful.

This NWP has been issued in compliance with Section 404(e) of the CWA (including the Section 404(b)(1) Guidelines). The terms and conditions of this NWP are appropriate for limiting authorized activities associated with utility lines activities for water and other substances so that they have a no more than minimal individual and cumulative adverse effect on the aquatic environment. Certain activities require pre-construction notification to the district engineer. District engineers will review PCNs for proposed NWP 58 activities, and may add permit conditions, including mitigation requirements, to the NWP authorization

to help ensure that the authorized activities cause no more than minimal adverse environmental effects. District engineers can also exercise discretionary authority and require an individual permit if the proposed activity may result in more than minimal adverse environmental effects. Following the conclusion of the district engineer’s review of a PCN, he or she prepares an official, publicly-available decision document. This document discusses the district engineer’s findings as to whether a proposed NWP activity qualifies for NWP authorization, including compliance with all applicable terms and conditions, and activity-specific conditions needed to ensure that the activity being authorized by the NWP will have no more than minimal individual and cumulative adverse environmental effects. As explained in Section III.A. of this final action, the reissuance of the NWP complies with NEPA.

One commenter requested that this NWP be modified to specifically list CO₂ pipelines as example of a substance that could be transported by utility lines installed under this NWP. One commenter suggested creating a separate NWP for CO₂ pipelines with limits on the size of such projects.

This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters of the United States for construction, maintenance, repair, and removal of utility lines for water and other substances, excluding oil, natural gas, products derived from oil or natural gas, and electricity. Carbon dioxide is not derived from oil or natural gas but is emitted when oil or natural gas are burned. NWP 58 defines “utility lines” as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose that is not oil, natural gas, or petrochemicals. Carbon dioxide is transported as a liquid. The Corps agrees that this NWP may authorize regulated activities associated with the construction, maintenance, repair, or removal of pipelines for pipelines that convey carbon dioxide, hydrogen or methanated hydrogen, industrial products that are not petrochemicals, wastewater, brine, irrigation water, sewage or stormwater. The Corps declines to create a separate NWP specifically for carbon dioxide pipeline activities because regulated activities associated with carbon dioxide pipelines are authorized by this NWP.

Many commenters expressed concern over the use of this NWP to authorize activities associated with pipelines that transport carbon dioxide or hydrogen.

One commenter stated that the decision document of NWP 58 fails to include analysis of carbon dioxide pipelines and is therefore in violation of the CWA and NEPA. Many commenters stated that carbon dioxide pipelines should require an individual permit.

The Corps does not have jurisdiction over the construction or siting of any pipeline, the products transported by any pipeline, nor over inadvertent returns, leaks, or spills that may occur during the installation or operation of pipelines. The siting of pipelines falls under the authority of the FERC or state agencies. Pipeline safety, including carbon dioxide or hydrogen pipelines, falls under the authority of the Pipeline and Hazardous Materials Safety Administration. The Corps has authority over discharges of dredged or fill material into waters of the United States and structures or work in navigable waters of the United States.

As discussed in Section III. A. and B. of this final action, this NWP was issued in compliance with NEPA and the CWA. Through the national decision document, the Corps has determined that this NWP will cause no more than minimal adverse environmental effects. The division engineer can exercise discretionary authority and modify the NWP by imposing regional conditions, that will help ensure that the NWP authorizes only those activities with minimal individual and cumulative adverse effects on the aquatic environment. District engineers can exercise discretionary authority and require an individual permit if he or she determines the proposed activity will result in more than minimal adverse environmental effects.

One commenter recommended revising the last sentence of the seventh paragraph of this NWP to be consistent with Note 4 and similar text in NWP 12 (Oil or Natural Gas Pipelines). The Corps agrees with this suggestion and has added the word “may” after “discharge of dredged or fill material” to acknowledge that some structures over navigable waters of the United States will not require authorization under Section 10 of the RHA. Pipelines over navigable waters of the United States are bridges and may require a permit from the USCG.

Many commenters opposed Note 2 in NWP 58, stating that reliance on the definition of “single and complete linear project” is unlawful. One commenter stated that specific direction should be provided to the district engineer on the use of discretionary authority to ensure that the NWP is not used to approve large-scale projects.

The practice for providing NWP authorization for single and complete linear projects, where each separate and distant crossing of waters of the United States may qualify for its own NWP authorization, is consistent with the Corps’ NWP regulations at 33 CFR 330.2(i), which were published in the November 22, 1991, issue of the **Federal Register**. This NWP has been issued in compliance with Section 404(e) of the CWA (including the Section 404(b)(1) Guidelines). District engineers will review PCNs to determine whether proposed crossings of waters of the United States are to be considered together or as separate and distant on a case-by-case basis, after evaluating site and regional characteristics. If one crossing of waters of the United States associated with the construction of a linear transportation project requires an individual permit, then 33 CFR 330.6(d) applies, and the district engineer will determine which activities require individual permits and which activities can be authorized by an NWP. Section 330.6(d) of the Corps’ NWP regulations, as well as Note 2 of NWP 57, remain in effect. Section 330.6(d) and Note 2 maintain the Corps’ long-standing process regarding the use of NWPs and individual permits to authorize linear projects.

Several commenters recommended modifying the NWP to require a PCN for proposed mechanized land clearing. One commenter suggested that activities authorized by this NWP must avoid marine aquatic vegetation areas. One commenter stated that the Corps should exercise more oversight of projects authorized by this NWP rather than relying on information from the prospective permittee.

Mechanized land clearing in waters of the United States may result in a discharge of dredged material which requires DA authorization under Section 404 of the CWA. To be regulated under Section 404 of the CWA, a discharge of dredged material involves any addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States that is incidental to any activity, including mechanized land clearing, ditching, channelization, or other excavation (see 33 CFR 323.2(d)(1)(iii)). The ½-acre impact limit, PCN requirements and other requirements of this NWP, and general conditions, are sufficient to ensure that the activities authorized by this NWP cause no more than minimal adverse environmental effects.

Utility line installations must not cause changes to pre-construction contours in waters of the United States.

Changes to pre-construction contours constitute a loss of waters of the United States. A PCN is required for the loss of greater than ¼-acre of waters of the United States. If a PCN is required, district engineers can add conditions to the NWP authorization, including mitigation requirements, to ensure that the authorized activity will cause no more than minimal adverse environmental effects. Paragraph (a) of general condition 23 (Mitigation), requires permittees to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable. General condition 23 requires compensatory mitigation for all wetland losses greater than ¼-acre and for all stream losses greater than ¾-acre for all activities authorized under this NWP, unless the district engineer determines that some other form of mitigation would be more environmentally appropriate.

The district engineer may, consistent with paragraph (i) of general condition 23, require compensatory mitigation for conversions of wetlands in utility rights-of-way to offset adverse environmental effects of such conversions. If after reviewing a PCN, the district engineer determines the proposed activity will result in more than minimal adverse environmental effects, after considering the mitigation proposal provided by the prospective permittee, he or she will exercise his or her discretionary authority and require an individual permit. Division engineers may also add regional conditions to this NWP to change the PCN threshold or restrict activities in sensitive waters or locations. The Corps declines to add a PCN threshold for mechanized land clearing to this NWP.

The district engineer will rely on information provided by the prospective permittee and other reliable data and resources when making a decision whether the NWP-specific activity will result in no more than minimal adverse environmental effects. Permittees who receive an NWP verification letter, either as a result of a PCN submitted in compliance with a general condition or a PCN submitted voluntarily, must certify to the district engineer that the authorized activity has been completed in compliance with the NWP authorization in accordance with general condition 30 (Compliance Certification). If a permittee fails to comply with the terms and conditions of this NWP, the district engineer will evaluate the potential unauthorized activity in accordance with 33 CFR 326.

One commenter suggested that the requirements for access roads be consistent between NWPs 58 and 14.

One commenter recommended that the phrase “near as possible” be revised to “maximum extent practicable.”

This NWP requires access roads to be constructed as near as possible to pre-construction contours and elevations. The additional avoidance and minimization required by the more restrictive “near as possible” is necessary and still allows flexibility to deviate from preconstruction contours. The Corps declines to modify this NWP to allow access roads in tidal waters or wetlands adjacent to tidal waters. Temporary access roads in tidal waters may be authorized by NWP 33 (Temporary Construction, Access, and Dewatering).

This NWP is reissued with the modifications discussed above.

NWP 59. Water Reclamation and Reuse Facilities. The Corps did not propose any changes to this NWP. Several commenters expressed general support for NWP 59. A few commenters oppose the ½-acre limitation for NWP 59, citing that the acreage limitation severely limits the practical use of this NWP. One commenter requested clarification if reuse water pipelines such as those used for extractive industries (natural gas hydraulic fracturing) would fall under NWP 58 or NWP 59.

The ½-acre limit in NWP 59 is consistent with other NWPs and is necessary to ensure that regulated activities cause no more than minimal adverse environmental effects. This NWP authorizes discharges of dredged or fill material into waters of the United States to construct, expand, or maintain water reclamation and reuse facilities as attendant features of other activities authorized by NWP, such as NWP 29 (residential developments), NWP 39 (commercial and institutional developments), NWP 40 (agricultural activities), and NWP 42 (recreational facilities). There may be overlap with NWP 58 for some activities authorized by this NWP. There are a number of activities that may be authorized by more than one NWP, and such redundancy is not problematic because the statutory requirement for all NWPs and other general permits is the same: those general permits can only authorize activities that have no more than minimal individual and cumulative adverse environmental effects. If the district engineer, after review of the PCN, determines that an activity cannot be authorized by NWP 59, he or she will advise the applicant whether the activity qualifies for another NWP or regional general permit, or if an individual permit is required.

This NWP is reissued as proposed.

NWP A. Activities To Improve Passage of Fish and Other Aquatic Organisms. The Corps proposed this new NWP to authorize structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for activities that restore or enhance the passage of fish and other aquatic organisms through river and stream networks as well as other types of waters.

Many commenters expressed support for the addition of this NWP. Several commenters stated that this NWP authorizes activities that are similar in nature. One commenter supported the statements in the 2025 Proposal stating that prospective permittees have the flexibility to use engineered components or nature-based solutions. One commenter opposed this NWP. One commenter recommended that this NWP authorize replacement of low-head irrigation dams with permanent structures such as weirs and vanes as well as replacing culverts in favor of low water crossings. A few commenters recommended that this NWP authorize the removal of in-stream structures such as dams, weirs, fords or other grade control structures.

Many commenters recommended limiting the activities authorized by this NWP to those associated with nature-like fishways, culvert and low-head dam removal and related restoration, and fish screens, stating that all other activities should require an individual permit. One commenter stated that placement of gravel for enhancing spawning habitat should be authorized by this NWP. One commenter supported the prohibition to use this NWP to authorize dam removal. One commenter stated that bridges should be mentioned in every instance where culverts are mentioned. One commenter requested clarification that this NWP authorizes installation and modification of culverts that are incidental to the fish passage elements of a project.

This new NWP can be used to authorize discharges of dredged or fill material in waters of the United States and work and structures in navigable waters of the United States associated with the construction, maintenance, modification, removal, or expansion of structures, devices, or fills that increase the ability of fish and other aquatic organisms to pass through, or around, infrastructure and other built features. The structures, devices, or fills may be engineered and may include nature-based solutions. This NWP is written to authorize regulated activities associated with a variety of options for improving the passage of fish and other organisms

and is not limited to nature-like fishways, fish screens and culvert removal.

This new NWP does not authorize the removal of dams of any size. Regulated activities associated with the removal of low head dams may be authorized by NWP 53 (Removal of Low-Head Dams). Regulated activities associated with the removal of any other type of dam will require evaluation through the individual permit process. There are some diversion structures that are not dams and regulated activities associated with the removal of these structures, including weirs and vanes, may be covered by this new NWP, if such removal improves passage of fish and other organisms.

Regulated activities associated with the removal of existing in-stream structures, such as weirs, fords, and other grade control structures, are authorized by this NWP when they restore or enhance the ability of fish and other aquatic organisms to move through the aquatic ecosystem. This NWP also authorizes regulated activities associated with the removal or replacement of existing culverts along with other structures, including but not limited to culverted fishways, low-water crossings, or bridges. Unless otherwise exempt, discharges of dredged or fill material associated with the construction of bridges in waters of the United States, including navigable waters of the United States, require authorization under Section 404 of the CWA. Bridges that cross navigable waters of the United States require a separate authorization from the U.S. Coast Guard under Section 9 of the RHA.

We have modified the text of the NWP to change the examples of activities that may be authorized by this NWP to replace “culverts” with “structures.” This modification clarifies there is flexibility in the types of structures that may be replaced, or which may replace existing culverts in order to enhance the movement of fish or aquatic organisms.

This new NWP authorizes the construction, maintenance, modification, or expansion of culverts and other structures if they are associated with the improvement of passage of fish and other aquatic organisms. Such activities include, but are not limited to, replacement of culverts that are perched or undersized or the construction or installation of additional culverts near existing culverts (e.g. installing an additional culvert next to an existing single culvert in a stream channel to reduce water velocities through the existing culvert sufficient to allow fish to swim

upstream). We have added language to clarify that this NWP does not authorize the construction or installation of new culverts where there are not existing culverts. In other words, the construction or installation of new culverts where no culvert is present at the waterbody crossing or no culvert is in, or adjacent to, the waterbody crossing is not authorized by this NWP. In situations where there is no existing culverted crossing or if there is an existing in-stream grade control structure which lacks a culvert, this NWP does not authorize the discharge of dredged or fill material or construction or installation of a new culvert. Installation of new culverts where a culvert does not exist may be authorized by other NWPs, such as NWP 14 if the activity is associated with a linear transportation project, and such culverts may include measures to improve passage of fish and other organisms.

One commenter requested additional clarification on types of fish passages that may qualify for authorization under this NWP. Many commenters recommended additional examples of activities that could be authorized by this NWP, including the removal of culverts for the purpose of daylighting streams, the addition of behavioral guidance and deterrence features that leverage attraction or avoidance behavioral responses of fish; the creation of seasonal floodways; the installation of fish lifts, fish by-pass pipes, and/or fish screens on water supply intakes; and/or the addition of gravel to spawning habitat. Several commenters requested that examples of activities authorized by this NWP that fall under the category of "other ecological process" be added.

We have modified the text of the proposed NWP to expand the list of examples of activities and types of structures or devices that may be authorized by this NWP. We have added text to clarify that fishways may be conventional/technical, to make clear that either term is appropriate for use to describe fishways that may be authorized by this NWP. We have modified the text to clarify that this NWP may be used to authorize modification of existing structures or fills, in addition to the construction, maintenance, expansion or removal of existing structures or fills to enhance passage of fish and other aquatic organisms. We have added some additional examples to the list in the NWP, namely devices to minimize entrainment and entrapment of fish and other aquatic organisms, such as fish screens; and fish lifts and fish by-pass

pipes. We have also added devices to guide fish and other aquatic organisms through passage features as an example of a structure that could be authorized by this NWP.

The list of examples in the NWP is not exhaustive. We agree that removing culverts, daylighting culverts, or creating seasonal floodways are activities that may be authorized by this NWP if they restore or enhance the passage of fish and other aquatic organisms and comply with the other terms of this NWP and the NWP general conditions. The enhancement of spawning habitat would not be authorized by this new NWP unless such activity restores or enhances the ability of fish and other aquatic organisms to move through the aquatic ecosystem. The placement of gravel for enhancing fish spawning habitat may be authorized by NWP 18 (Minor Discharges) or NWP 27 (Aquatic Ecosystem Restoration, Enhancement, and Establishment).

Many commenters expressed support of the one-acre impact limit in this NWP. Many commenters opposed the one-acre impact limit. One commenter suggested changing the impact limit of this NWP from one-acre of loss of waters to 1/5-acre of conversion of waters of the United States to uplands. One commenter recommended that all activities authorized by this NWP be considered temporary impacts.

The Corps is retaining the one acre loss of waters of the United States limit in this NWP. The "loss of waters of the United States" refers to permanent adverse effects to waters of the United States as a result of filling, flooding, excavation, or drainage because of the activities subject to Corps' authority, and does not include temporary impacts. For activities that are intended to improve the passage of fish and other aquatic organisms through river or stream networks or other components of the aquatic environment, permanent fills in rivers and streams or other aquatic habitats may occur through the placement of boulders, cobbles, large wood and other materials to construct a nature-like fishway or the construction of a conventional fishway, or the replacement of a culvert. The construction of bypass channels around dams or weirs could involve filling or excavating wetlands or river or stream channels. Activities that are planned, designed, and constructed to improve the ability of fish and other aquatic organisms to pass through or around barriers are unlikely to result in the conversion of aquatic habitats to dry land. However, the placement of rocks, wood, or other fill material into a stream

segment would result in a permanent discharge of fill material into to waters of the United States and would be considered a "loss of waters of the United States."

One commenter requested clarification if this NWP authorizes activities in wetlands adjacent to waters of the United States. One commenter requested that language be added to the new NWP to inform the prospective permittee that some activities may be exempt from requiring DA authorization under Section 404(f) of the CWA.

Activities in jurisdictional wetlands adjacent to other waters of the United States may be authorized by this NWP provided the regulated activity increases or enhances the passage of fish and other aquatic organisms. Discharges of dredged or fill material associated with maintenance activities are exempted from regulation under Section 404(f) of the CWA, unless they modify the character, scope, or size of the original fill design. The RHA contains no language which exempts work or structures in navigable waters of the United States from regulation. The Corps declines to add text to this NWP to inform the prospective permittee that some activities may be exempt from regulation under Section 404 of the CWA because the activities authorized by this NWP are likely to modify the character of the original structure or fill.

Many commenters expressed support for the 1/10th acre threshold limit for submittal of a PCN. Many commenters stated that a PCN should be required for all activities. One commenter recommended raising the PCN threshold to one-acre. One commenter expressed concern that certain activities, such as culvert replacement, modification of in-stream structures, and construction or expansion of fish bypass channels, could result in more than minimal damage to the aquatic ecosystem. Many commenters expressed concern that cumulative impacts would not be adequately evaluated under this NWP.

This new NWP requires a PCN for activities resulting in the loss of greater than 1/10-acre of waters of the United States. This PCN threshold is implemented so that, in combination with the other terms and NWP general conditions, this NWP will result in no more than minimal adverse environmental impact, both individually and cumulatively. Through the national decision document, the Corps has determined that this NWP will cause no more than minimal adverse environmental effects. The division engineer can exercise discretionary authority and modify the NWP by imposing regional conditions to

help ensure that the NWP authorizes only those activities with minimal individual and cumulative adverse effects on the aquatic environment. The district engineer will review the PCN and determine if compensatory mitigation or other special conditions are necessary to ensure that the NWP-specific activity will result in no more than minimal adverse environmental impact.

Several commenters recommended requiring activities to meet specified design criteria. Several commenters recommended that this NWP should require that any authorized activity will improve the movement of wood, water, and sediment, in addition to fish.

There are numerous techniques to design features that improve passage of fish and aquatic organisms. Some of those techniques were discussed in the resources that were referenced in the 2025 Proposal. Activities which enhance the passage of fish and other aquatic organisms will vary by site, by species, and by waterbody. The Corps declines to set specific design criteria to allow for flexibility in the type of activity that is selected by the project proponent and to avoid prohibiting the application of new and emerging technologies. District engineers can generally discuss potential options to improve passage of fish and aquatic resources with project proponents. District engineers do not design or approve the design used to improve passage of fish and aquatic resources for activities which require NWP authorization. It is the prospective applicant's responsibility to ensure that the project is designed by someone with appropriate expertise in the design of such features. The district engineer's review will be limited to whether the proposed project meets the terms and conditions of the NWP and the criteria in Section D. (District Engineer's Decision). This NWP authorizes regulated activities associated with activities that restore or enhance the ability of fish and other aquatic organisms to move through aquatic ecosystems. There may be other benefits to such actions, such as the movement of wood, water, and sediment, that also benefit the aquatic ecosystem although they are not the focus of the activities authorized by this NWP.

Several commenters stated that the terms of this NWP do not ensure that a proposed activity will improve fish passage. Several commenters stated that this NWP should require monitoring and an adaptive management framework to ensure the projects are meeting ecological goals. One commenter stated

that the NWP should require monitoring to demonstrate net ecosystem benefits.

This NWP only authorizes activities that improve or enhance the passage of fish and other organisms. Permittees must submit a PCN for activities that would cause greater than 1/10-acre of loss of waters of the United States. Permittees who receive a verification letter from the Corps are required to certify their compliance with the NWP in accordance with general condition 30 (Compliance Certification). If a permittee fails to comply with the terms and conditions of this NWP, the district engineer will address the potential unauthorized activity in accordance with 33 CFR 326. This new NWP does not require that the regulated activities result in net ecosystem benefits. Losses of waters may occur as a result of activities to improve the passage of fish and other organisms.

Several commenters expressed concern that the NWP would allow the movement of invasive or non-native species. One commenter suggested a regional or activity specific permit condition to prevent the spread of invasive species.

Enhancing the passage of native fish and aquatic organisms may also allow the movement of invasive species or non-native species. Project proponents should consider the benefits and detriments of enabling invasive species to access waterways where they do not currently exist. Fishways can be designed to reduce the ability of large-bodied predatory fish or non-native species to move through the fishway, such as designing the fishway to have shallow water depths that larger individuals cannot pass through (Tamario et al. 2018). Under the discretionary authority provision at 33 CFR 330.1(d) and other provisions of the NWP regulations at 33 CFR part 330, division and district engineers can further condition or restrict the applicability of an NWP for cases where they have concerns for the aquatic environment.

Many commenters stated that this NWP does not comply with the ESA, stating that consultation is required for beneficial effects to listed species. One commenter recommended that the Corps identify activities authorized by this NWP that may require consultation under Section 7 of ESA. One commenter stated that authorizing improvements to fish passage could impact salmonids.

All permittees must comply with general condition 18 (Endangered Species). If the regulated activity might affect, or is in the vicinity of a species listed (or proposed for listing) or designated critical habitat (or habitat

proposed for such designation) under the ESA, general condition 18 (Endangered Species) requires non-federal permittees to submit a PCN and states the permittee cannot begin work until the district engineer has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or conference has been completed. If a PCN is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with the ESA. The Corps acknowledges that consultation is required by Section 7 regardless of whether the effect is beneficial or detrimental (see paragraph (c) of general condition 18). Federal permittees must comply with their own implementing regulations for ESA.

If salmonids are listed under the ESA, the district engineer will review the PCN and determine if the NWP-specific activity will have "no effect" on the listed species or critical habitat or complete any appropriate consultation under Section 7 of the ESA. If essential fish habitat has been designated for the salmonid species, district engineers will complete consultation in accordance with the Magnuson-Stevens Fishery Conservation and Management Act at 50 CFR 600.920. Corps districts will conduct consultations in accordance with the EFH consultation regulations. District engineers may add conditions to NWP authorizations in order to ensure the effects of the activity on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) are no more than minimal. Conditions may also be added to address EFH Conservation Recommendations made by NMFS during activity-specific EFH consultations.

Several commenters stated that the Corps should issue a public notice for each NWP-specific activity. One commenter stated that regional conditions should be added to the permit to address water quality concerns.

The public was provided an opportunity to comment on the Corps' proposal to issue, reissue, or modify an NWP when Corps Headquarters published its proposed rule in the **Federal Register** (90 FR 26100) to start the public comment period. However, after an NWP is issued, there is no public comment process for specific NWP activities. Consistent with general condition 25 (water quality) the

permittee must comply with any conditions of a granted water quality certification for any activity that may result in a discharge from a point source into waters of the United States. Division engineers may develop regional conditions for an NWP if he or she determines it necessary to ensure that activities in a region will cause no more than minimal adverse environmental effects to sensitive areas, which may include areas with water quality concerns.

One commenter stated that NWP should be modified to clarify that compensatory mitigation is not required for activities authorized by this NWP. One commenter stated that compensatory mitigation may be required for this NWP.

Compensatory mitigation may be required for losses of waters authorized by this NWP. General condition 23 (Mitigation) requires compensatory mitigation for all wetland losses greater than 1/10-acre and for all stream losses greater than 3/100-acre for all activities authorized under this NWP, unless the district engineer determines that some other form of mitigation would be more environmentally appropriate. The district engineer will consider the benefits of the NWP-specific activity in determining the need for compensatory mitigation to offset the impacts to waters which would result from the regulated activities authorized by this NWP. The district engineer will review the PCN and determine if the NWP-specific activity will, after considering permit conditions such as mitigation requirements, result in no more than minimal individual and cumulative adverse environmental effects.

The Corps is issuing this NWP with the modifications discussed above. Proposed new NWP A is issued as NWP 60.

G. Responses to Comments on the Nationwide Permits General Conditions

Many commenters supported the reissuance of the general conditions from the 2021 NWPs. Several commenters supported the reissuance of all general conditions without additional unnecessary and burdensome requirements. One commenter stated that there are too many general conditions and requested that the overall number of general conditions be reduced to streamline the NWPs. One commenter stated that additional best management practices or industry standards should be added to regional conditions instead of general conditions. One commenter requested that the general conditions be amended to recognize Tribal designations that

correspond to any referenced state or federal designations.

Many commenters stated that the Corps violated the Administrative Procedure Act and CWA by relying on the general conditions to make a determination that the NWPs would have no more than minimal adverse environmental effects. Many commenters stated that the general conditions are insufficient to ensure that adverse impacts to waters of the United States have been minimized and avoided.

The NWP program is an administrative mechanism that allows the Corps to authorize activities with only minimal adverse environmental impacts in a timely manner. The NWP program incentivizes project proponents to design their activities to avoid and minimize adverse impacts to jurisdictional waters and wetlands to qualify for the streamlined NWP authorization. The final permits issued today, including the general conditions, maintain a proper balance between efficiently authorizing activities with minimal individual and cumulative adverse environmental effects and protecting the aquatic environment. If a project proponent does not comply with the general conditions, then the activity is not authorized by an NWP. In such situations, it is an unauthorized activity, and the district engineer will determine the appropriate course of action. District engineers will use available tools and information, such as databases and websites managed by state and local governments and non-governmental organizations, and information made available by tribal governments that may be helpful in determining whether an activity complies with the general conditions to the NWPs and applicable environmental laws.

Discussion of Proposed Modifications to Nationwide Permit General Conditions

GC 1. Navigation. The Corps did not propose any changes to this general condition. One commenter recommended that lighted buoys be avoided and stated that smaller markings would be acceptable. One commenter stated that GC 1 should be modified to state that permittees must agree that they will be required to remove structures or work that impairs reserved treaty rights.

The requirements for safety lights and signals are prescribed by the U.S. Coast Guard through their regulations at 33 CFR part 67 and are not under the authority of the Corps. Consistent with GC 17 (Treaty Rights) no activity or its operation may impair reserved tribal rights, including, but not limited to,

reserved water rights and treaty fishing and hunting rights. If the district engineer determines that work or structure authorized by an NWP impairs reserved treaty rights, the district engineer will determine whether to modify, suspend, or revoke the NWP verification in accordance with 33 CFR 330.5(d).

The general condition is adopted as proposed.

GC 2. Aquatic Life Movements. The Corps did not propose any changes to this general condition. Many commenters stated that the wording of the general condition lacks enforceable or explanatory language. One commenter stated that applicants should be required to submit an engineered design where endangered species are likely to be found.

It is not practicable to avoid all impacts to indigenous aquatic species. Regulated activities are likely to cause some interference to life cycle movements during construction. The intent of this general condition is to ensure that the impacts are no more than minimal, unless the purpose is to impound water. The characteristics of aquatic habitat types and the life cycle movements of indigenous aquatic species vary across the nation therefore, it is not possible to add more specific requirements to this general condition. District engineers will determine compliance with this general condition, on a case-by-case basis, considering any regional conditions, specific characteristics of the indigenous aquatic species, and aquatic habitats in the project area. The district engineer will determine if a proposed activity would cause more than minimal adverse impacts to the environment considering all the general conditions and the criteria in Section D. District Engineer's Decision. Permittees must also comply with general condition 18 (Endangered Species). The district engineer may add conditions to an NWP verification to avoid and minimize impacts to listed species (species proposed for listing) or critical habitat (or habitat proposed for such designation). The Corps declines to require engineered designs for activities authorized by an NWP.

The general condition is adopted as proposed.

GC 3. Spawning Areas. The Corps did not propose any changes to this general condition. Many commenters recommended strengthening and clarifying the language in the general condition. Many commenters assert that the general condition is not adequate to protect spawning areas. One commenter stated that the general condition should be modified to prohibit activities in

spawning areas used for spawning by endangered species.

The district engineer will determine compliance with this general condition on a case-by-case basis, in light of the timing of the activity relative to the spawning season and the characteristics of the spawning areas. It is not practicable or feasible to avoid all impacts to spawning areas. The use of the terms such as “to the maximum extent practicable” affords the district engineer the discretion to consider the benefits and detriments of activities that may require DA authorization, such as restoration activities authorized by NWP 27 (Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities) or emergency actions authorized by NWP 37 (Emergency Watershed Protection and Rehabilitation), while ensuring that the activity will have no more than minimal adverse environmental impacts. In accordance with the general conditions, including general conditions 17 (treaty rights) and 18 (endangered species) and any regional conditions, the district engineer will determine if a proposed activity would cause more than minimal adverse impacts to the environment in light of all general conditions and the criteria in Section D. District Engineer’s Decision.

The general condition is adopted as proposed.

GC 4. Migratory Bird Breeding Areas. The Corps did not propose any changes to this general condition. Many commenters recommend strengthening and clarifying the language in this general condition. Many commenters assert that this general condition is not adequate to protect breeding areas for migratory birds. One commenter stated that the general condition should be modified to prohibit activities in breeding areas during breeding season.

This general condition establishes a national requirement to avoid impacts to migratory bird breeding areas to the maximum extent practicable. It is not feasible or practicable to completely avoid impacts to migratory bird breeding areas. The use of the terms such as “to the maximum extent practicable” afford the district engineer the discretion to consider the benefits and detriments of activities that may require DA authorization, such as restoration activities authorized by NWP 27 (Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities) or emergency actions authorized by NWP 37 (Emergency Watershed Protection and Rehabilitation), while ensuring that the activity will have no more than minimal adverse environmental impacts.

The general condition is adopted as proposed.

GC 5. Shellfish Beds. The Corps did not propose any changes to this general condition. One commenter stated that the general condition should be modified to clarify that habitat restoration in shellfish beds as allowed by the general condition is “oyster” habitat restoration and not general habitat restoration. One commenter recommended that language be added to the general condition to prohibit any activity in areas harvested by tribes with reserved treaty rights.

This general condition applies to oysters, clams, or other native shellfish in any waterbody that contains concentrated shellfish populations. Habitat restoration authorized by NWP 27 (Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities) may result in improved habitat quality and increases in shellfish populations. Activities that do not comply with all general conditions, including regional conditions are not authorized by an NWP. In accordance with general condition 17 (treaty rights) no activity is authorized by an NWP if it impairs a reserved treaty right.

The general condition is adopted as proposed.

GC 6. Suitable Material. The Corps did not propose any changes to this general condition. Many commenters stated that the general condition has no ability to regulate chemicals released during spills, leaks, or frac-outs. One commenter stated that suitable material should be defined as construction materials free of all pollutants that could leach or be discharged into waters of the United States.

The Corps agrees that general condition 6 does not convey authority over spills or leaks of chemicals, or releases of drilling muds used in directional drilling activities because these activities do not constitute a discharge of dredged or fill material that require DA authorization. Leaks or spills of chemicals, or releases of drilling mud, are not authorized by any DA permit. Leaks or spills of chemicals, or releases of drilling muds used in directional drilling activities which occur during an activity that requires DA authorization may be subject to Section 401 of the CWA or Section 402 of the CWA which are administered by state agencies, tribes, or EPA. Consistent with general condition 25 (water quality) the permittee must comply with any conditions of a granted water quality certification for any activity that may result in a discharge from a point source into waters of the United States. The Corps also does not have authority

over leaks or spills of chemicals occurring during the operation of facilities constructed on fills or structures that required DA authorization. Such spills or leaks are more appropriately addressed through federal, state, or local laws that are administered by other federal agencies, or state or local government agencies.

No commenter provided specific standards or criteria to define environmentally suitable construction materials. In the absence of a specific standard or criteria to develop a definition, the general condition prohibits the use of materials that contain toxic pollutants in toxic amounts, such as heavy metals, pesticides, and polycyclic aromatic hydrocarbons, in accordance with Section 307 of the CWA. Pollutants that could affect water quality of waters of the United States are regulated by states, tribes, or EPA through Section 401 of the CWA, whereby certifying authorities determine if the proposed discharge complies with applicable water quality standards.

The general condition is adopted as proposed.

GC 7. Water Supply Intakes. The Corps did not propose any changes to this general condition. Many commenters questioned the effectiveness of this general condition, citing the lack of a definition of “proximity”, the perceived difficulty in accessing information on the location of water supply intakes, and the lack of a PCN requirement for some NWPs. These commenters requested that the general condition be modified to prohibit the use of NWPs in source waters protection areas or waters designated for use as drinking water supplies.

The term “proximity” should be applied using the commonly understood definition of the term (“very near, close” according to Merriam-Webster’s Collegiate Dictionary, 10th edition). Therefore, the proposed NWP activity would have to be very near, or close to, the public water supply intake for general condition 7 to apply. We do not agree that all NWP activities should be prohibited in source water protection areas for public water systems. NWP activities can be conducted in those areas with little or no more than minimal adverse effects to water quality. In addition, all NWPs that authorize discharges into waters of the United States require Section 401 water quality certification. States can deny water quality certification for any NWP activity that might result in a discharge that is not in compliance with applicable water quality requirements.

For those NWP activities that require PCNs or when PCNs are voluntarily reported to Corps districts, district engineers will review the PCNs to determine if general condition 7 applies. For those NWP activities that do not require PCNs and are not voluntarily reported to Corps districts, the permittee is responsible for complying with all applicable terms and conditions of the NWP, including general condition 7. District engineers have the authority to determine whether those unreported NWP activities comply with all applicable general and regional conditions. If an activity does not comply with one or more applicable conditions, the district engineer will take appropriate action under 33 CFR part 326. Under the discretionary authority provision at 33 CFR 330.1(d) and other provisions of the NWP regulations at 33 CFR part 330, division and district engineers can further condition or restrict the applicability of an NWP for cases where they have concerns regarding impacts to water supply intakes.

The general condition is adopted as proposed.

GC 8. Adverse Effects From Impoundments. The Corps did not propose any changes to this general condition. Many commenters stated that this condition does not limit adverse impacts to a minimal level because of the inclusion of the phrase “to the maximum extent practicable.”

District engineers will use their discretion in determining whether specific impoundments authorized by NWP have minimized, to the maximum extent practicable, adverse effects to the aquatic system as a result of accelerated water flows or restricted water flows. The application of the term “maximum extent practicable” is dependent on case-specific circumstances and site conditions.

The general condition is adopted as proposed.

GC 9. Management of Water Flows. The Corps proposed to add “tidal flows” to the text of this general condition to clarify that expected high flows, and normal or high flows, include the flow of water caused by tides. One commenter stated that the general condition should be issued as proposed with no additional changes. Many commenters stated that the general condition does not limit adverse impacts to a minimal level because of the inclusion of the term “to the maximum extent practicable.” One commenter stated that no alteration of the course, current, or cross section of a waterbody should be allowed without engineered drawings, that have been

approved by the district engineer or other another qualified engineer. One commenter stated that normal and high flows must be quantified.

District engineers will use their discretion in determining whether a case-specific activity authorized by NWP meets the requirements of this general condition. The application of the term “maximum extent practicable” is dependent on case-specific circumstances and site conditions. General condition 32 requires that a complete PCN include sketches that are sufficiently detailed to help the district engineer understand the proposed activity. The district engineer reviews the PCN based on the criteria in Section F. District Engineer’s Decision to determine whether a case-specific activity would have no more than minimal adverse effects on the environment. The district engineer’s review makes no determination whether the case-specific activity meets current engineering standards and assumes that the permittee will comply with other relevant laws, authorizations and requirements. The Corps does not agree that engineered drawings should be required to show compliance with this general condition. It would be impracticable to define normal and high flows since it would depend on the environmental setting of the NWP activity.

The general condition is adopted as proposed.

GC 10. Fills Within 100-Year Floodplains. The Corps did not propose any changes to this general condition. Many commenters stated that floodplains provide important functions and services. Many commenters stated that compliance with FEMA-approved floodplain management requirements is insufficient to ensure no more than minimal adverse environmental effects. Many commenters stated that the Corps cannot rely on compliance with the general condition to ensure that authorized activities will not cause more than minimal effects on flood storage and conveyance. Many commenters stated that the general condition should prohibit the use of NWPs in floodplains. One commenter stated that the general condition should restrict the use of NWPs to authorize above-grade construction in the 100-year floodplain.

The Corps agrees that floodplains provide important ecological functions and services. The NWP program supports the objectives of E.O. 11988 (Floodplain Management) by encouraging minimization of losses of waters of the United States to qualify for NWP authorization, including losses of

waters of the United States in 100-year floodplains. The Corps does not have the authority to regulate activities in the 100-year floodplain except for discharges of dredged or fill material into waters of the United States that may be located in those floodplains. Many areas within 100-year floodplains are not subject to CWA jurisdiction, because a large proportion of the area within 100-year floodplains consists of uplands.

The primary responsibility for land use matters, including development in 100-year floodplains, lies with state, local, and tribal governments (see 33 CFR 320.4(j)(2)). For those NWP activities that do not require PCNs and are not voluntarily reported to Corps districts, the permittee is responsible for complying with all applicable terms and conditions of the NWP, including general condition 10. District engineers have the authority to determine whether those unreported NWP activities comply with all applicable general and regional conditions. If an activity does not comply with one or more applicable conditions, the district engineer will take appropriate action under 33 CFR part 326. Under the discretionary authority provision at 33 CFR 330.1(d) and other provisions of the NWP regulations at 33 CFR part 330, division and district engineers can further condition or restrict the applicability of an NWP for cases where they have concerns for the aquatic environment.

One commenter stated that the general condition should require engineered drawings approved by the district engineer or other qualified engineer to prove that the activity would have no adverse impacts to 100-year floodplains. One commenter stated that the Corps may not be able to rely on floodplain management requirements to ensure public safety.

General condition 32 requires that a complete PCN include sketches that are sufficiently detailed to help the district engineer understand the proposed activity. The district engineer reviews the PCN based on the criteria in Section D (District Engineer’s Decision) to determine whether a case-specific activity would have no more than minimal adverse effects on the environment. The district engineer’s review makes no determination whether the case-specific activity meets current engineering standards and presumes that the permittee will comply with other relevant laws, authorizations and requirements. The Corps does not agree that engineered drawings should be required to show compliance with this general condition. The district engineer reviews a PCN based on the criteria in

Section D (District Engineer's Decision) to determine whether a case-specific activity would have no more than minimal adverse effects on the environment. The district engineer's review makes no determination whether the case-specific activity meets current engineering standards and assumes that the permittee will comply with other relevant laws, authorizations and requirements. General condition 10 requires the permittee comply with applicable FEMA-approved state or local floodplain management requirements. This general condition is consistent with item 2 of Section E, Further Information, which states that the NWP's do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

State and local governments are the entities that have primary responsibility for regulating land uses within floodplains and other areas. Concerns about adverse effects to public safety with respect to floodplains and floodways are more appropriately addressed by the state and local agencies that have the primary responsibility for floodplain management.

The general condition is adopted as proposed.

GC 11. Equipment. The Corps proposed to modify this general condition by adding two new sentences to specify that areas affected by the use of mats must be restored. Several commenters support the proposed changes. A few commenters oppose the proposed changes to the general condition. A few commenters stated that the language "significant soil compaction" is ambiguous. One commenter stated that the language should only require restorative measures to prevent substantial impairment of hydrologic and soil functions. One commenter recommended that the text of the general condition allow the restoration requirements to be waived if the district engineer determines that the area would recover naturally. One commenter stated that this issue would be better addressed through regional conditions.

The purpose of the modification to the general condition is to require that the permittee restore any areas affected by mats to pre-construction elevations and, if appropriate, to revegetate the affected area. The modified condition also encourages the permittee to implement techniques to reverse the adverse effects of soil compaction that may occur as a result of the use of mats. Compacted soils may result in depressional areas that hold surface

water and inhibit the recovery of hydrologic and soil functions, as well as the reestablishment of the plant community.

The general condition is adopted as proposed.

GC 12. Soil Erosion and Sediment Controls. The Corps did not propose any changes to this general condition. Many commenters stated that the general condition allows permittees to determine how to apply the general condition. One commenter recommends clarifying that work should not occur during low tides when and where migratory waterbirds are utilizing tidal flats. One commenter recommended requiring that erosion and sediment controls be designed to federal or state design criteria and approved by state or federal personnel. One commenter recommended that the general condition require a time limit for permanent and temporary stabilization activities. Many commenters assert that the phrase "at the earliest practicable date" allows exposed soils to erode until it is practicable to stabilize them. One commenter recommended defining low flow conditions.

In order for an activity to be authorized by an NWP, permittees are required to comply with all general conditions to the NWP's. General condition 4 requires that NWP activities avoid breeding areas for migratory birds to the maximum extent practicable. General condition 19 also addresses the applicability of the Migratory Bird Treaty Act to the NWP program, and states that the permittee is responsible for contacting the local office of the U.S. Fish and Wildlife Service to determine if an "incidental take" permit is necessary and available under the Migratory Bird Treaty Act. The appropriate stabilization measures may be dictated by state or local sediment and erosion control regulations. Specific soil erosion and sediment control requirements vary among state and local governments and other entities. Appropriate stabilization measures will vary by site location and activity type.

The Corps agrees that exposed soils are likely to erode until they are permanently stabilized. The purpose of soil erosion and sediment controls that are required to be used and maintained during construction is to limit and contain sediment in the construction area until the area can be permanently stabilized. It would not be practicable to require a time limit for permanent and temporary stabilization activities because many of these requirements may be included in state and local sediment and erosion requirements. In addition, the timeframe for installing

temporary and permanent stabilization measures will vary on a case-by-case basis and may depend on weather conditions. The last sentence of this general condition states that permittees are encouraged to conduct NWP activities in waters of the United States during periods of no-flow or low-flow or during low tides. We decline to define what constitutes a low-flow condition at a national level. District engineers will use their discretion to determine what constitutes a low-flow condition depending on the site-specific conditions.

The general condition is adopted as proposed.

GC 13. Removal of Temporary Structures and Fills. The Corps did not propose any changes to this general condition. One commenter recommended modifying the general condition to require the removal of all temporary structures in their entirety rather than "to the maximum extent practicable." There are circumstances when it might not be feasible to completely remove the structure after its use has been discontinued or circumstances where attempting to remove a temporary structure in its entirety has the potential to cause more substantial adverse environmental effects than leaving a portion of the structure in place. For example, it might not be feasible to remove an entire piling from navigable waters after it is no longer needed, but the project proponent could remove that portion of the piling that extends above the bottom of the waterbody so that it no longer is an obstruction to navigation.

The general condition is adopted as proposed.

GC 14. Proper Maintenance. The Corps did not propose any changes to this general condition. One commenter recommended revising the language of the general condition to prohibit the use of an NWP for emergency purposes when a structure or fill has not been maintained or inspected. Maintenance of structures or fills is a requirement of this general condition. If a project proponent does not comply with the terms and conditions of an NWP, then the case-specific activity is not authorized by the NWP. This general condition establishes no requirement for monitoring or inspection of an authorized structure or fill. If a project proponent conducts activities in waters of the United States without DA authorization, the district engineer will address the potential unauthorized activity in accordance with 33 CFR 326. Emergency projects that are not covered by NWP's or regional general permits may be addressed under the Corps'

emergency permitting procedures at 33 CFR 325.2(e)(4).

The general condition is adopted as proposed.

GC 15. Single and Complete Project. The Corps did not propose any changes to this general condition. The Corps did not receive any comments on this general condition. The general condition is adopted as proposed.

GC 16. Wild and Scenic Rivers. The Corps did not propose any changes to this general condition. One commenter recommended revising this general condition to allow federal permittees to satisfy the requirements of the general condition and provide documentation of such compliance, if a PCN is required by the NWP or another general condition. One commenter recommended that the general condition clarify how a non-federal permittee can comply with this general condition when a federal agency other than the Corps is leading the environmental review.

The language in this general condition is based on federal agency regulations and guidance for implementing the Wild and Scenic Rivers Act, and the text of Section 7(a) of the Wild and Scenic Rivers Act. Section 7(a) of the Wild and Scenic Rivers Act requires the federal agency authorizing the water resources project to do the coordination with the federal agency with direct management responsibility for that river. Until the federal agency with direct management responsibility for that river issues its written determination to the district engineer, the project proponent cannot proceed under the NWP authorization.

The general condition is adopted as proposed.

GC 17. Tribal Rights. The Corps did not propose any changes to this general condition. Many commenters recommended that this general condition require PCNs for all NWPs within areas of concern to tribes. Many commenters stated that tribes should be notified and provided opportunities to comment on activities which would impact tribal trust lands or natural and cultural resources important to tribes. One commenter stated that the Corps should require concurrence from potentially affected Tribes. One commenter stated that tribes should determine if general condition 17 is applicable to an activity, instead of the Corps. Once commenter recommended revising the general condition to clarify that it applies to both on- and off-reservation reserved rights. One commenter stated that the text of the general condition diminishes the protections of tribal rights.

The text of this general condition serves as a guide to users when undertaking tribal consultations regarding the application of an NWP to a particular activity, and when developing protocols regarding tribal notification that build upon the existing Department of Defense, Army, and Corps' tribal consultation policies. The CWA Section 404(e) requirement that no activity authorized by an NWP may cause more than minimal adverse effects remains applicable in the context of potential effects to tribal rights, resources, or lands. Division engineers may modify, suspend, or revoke this NWP on a regional basis in accordance with the procedures at 33 CFR 330.5(c). Division engineers may impose regional conditions to require PCNs for proposed activities that might affect treaty rights. The Corps follows Executive Order 13175 and existing Department of Defense, Army, and Corps' tribal consultation policies to meaningfully consult with tribes and consider the concerns of tribes, but not necessarily receive the agreement of tribes, before making permit decisions. District engineers can coordinate with tribes to help make these decisions, including whether a proposed NWP activity complies with general condition 17. District engineers have the final decision-making authority as to whether a proposed NWP activity that requires DA authorization qualifies for NWP authorization. This general condition applies to activities authorized by NWPs both on- and off-reservation reserved tribal rights.

The general condition is adopted as proposed.

GC 18. Endangered Species. The Corps proposed to modify the last sentence of the first paragraph of this general condition by removing language referring to 50 CFR 402.17. In a final rule published in the **Federal Register** on April 5, 2024 (89 FR 24268), the U.S. Fish and Wildlife Service and National Marine Fisheries Service removed Section 402.17 from their Endangered Species Act (ESA) Section 7 interagency consultation regulations at 50 CFR part 402.

A few commenters objected to the proposed changes. A few commenters supported the proposed changes. A few commenters requested that the Corps consider additional changes in future rulemakings to improve the efficient processing of permits.

Under 33 CFR 330.5(b), anyone may, at any time, suggest that Corps Headquarters consider new NWPs or conditions for issuance, or changes to existing NWPs. Corps Headquarters has the authority to periodically review the

NWPs and their conditions and initiate the process for proposing to modify, reissue, or revoke the NWPs (see 33 CFR 330.5(b) and 330.6(b)). The Corps will continue to exercise this authority to evaluate opportunities for more efficient processing of permits and likewise will evaluate future suggestions as part of subsequent rulemakings, including suggestions for timely completion of consultation or conferences sufficient to comply with Section 7 of the ESA.

Many commenters stated that reliance on general condition 18 unlawfully delegates the Corps' ESA responsibilities to permittees. A few commenters stated that when project proponents who do not submit a PCN when required to do so by general condition 18, cause harm to listed species and violate the ESA. One commenter stated that the general condition places the responsibility for identification of the potential presence of listed species or critical habitat on the non-federal permittee.

The Corps complies with Section 7 of the ESA through 33 CFR 330.4(f) and NWP general condition 18. The regulation and general condition 18 require a non-federal permittee to submit a PCN for any activity that might affect listed species or designated critical habitat (or species proposed for listing or habitat proposed for designation). The Corps established the "might affect" threshold in 33 CFR 330.4(f)(2) and in paragraph (c) of general condition 18 because it is more stringent than the "may affect" threshold for Section 7 consultation in the Services regulations at 50 CFR part 402. The "might" threshold is below the threshold that triggers the requirement for ESA Section 7 consultation for the proposed federal action.

When a PCN is submitted, the Corps evaluates the PCN and makes an effect determination for the proposed NWP activity for the purposes of ESA Section 7. If the non-federal project proponent does not comply with 33 CFR 330.4(f)(2) and general condition 18, and does not submit the required PCN when a listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, then the activity is not authorized by an NWP. In such situations, it is an unauthorized activity, and the Corps district will determine an appropriate course of action under its regulations at 33 CFR part 326 to respond to the unauthorized activity, if and when the Corps learns about that unauthorized

activity. In accordance with general condition 32, a non-federal project proponent is responsible for providing all the information required for a complete PCN, including the names of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will verify that the appropriate documentation has been submitted.

A few commenters stated that general condition 18 should not include species proposed for listing or critical habitat proposed for such designation. One commenter recommended that the general condition be modified so that a PCN is only required when an activity may affect and is likely to adversely affect listed species or critical habitat.

Section 7(a)(4) of the ESA requires agencies to confer with the Services on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under Section 4 of the ESA or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. The NWP regulations at 33 CFR 330.4(f)(2) impose a PCN requirement for proposed NWP activities by non-federal permittees where listed species (or species proposed for listing) or critical habitat might be affected or are in the vicinity of the proposed NWP activity. Because the Corps is statutorily mandated to consider species and critical habitat proposed for listing, we decline to remove the proposed species and habitat from the PCN requirement.

Similarly, the Corps also declines to modify the general condition to require a PCN only when an activity may affect and is likely to adversely affect a listed species or critical habitat. This is because the Corps must make the “may affect” determination and cannot delegate that decision to a permit applicant. Similarly, a prospective permittee cannot determine if an activity that “may affect” listed species or critical habitat is “not likely to adversely affect” those resources. The Corps is the decision-maker in these circumstances. The Corps will seek any required concurrence from the FWS or NMFS.

Many commenters recommended that the general condition be modified to state that no PCN is required when programmatic consultation has been completed by the district engineer and regional conditions have been developed to mitigate impacts. Several commenters stated that the Corps

should complete ESA consultation within 45-days. Many commenters stated that project proponents should be allowed to proceed with their activity 45-days after submitting a PCN. One commenter stated that the Corps and FWS should publish standard avoidance and minimization measures and that project proponents who include these measures into their PCN should be allowed to proceed after 45-days unless the Corps has notified them that the PCN is incomplete.

Corps districts may complete regional programmatic consultation for specific species and develop local procedures to more efficiently complete Section 7 consultation. Similarly, division engineers may approve regional general conditions which incorporate measures to ensure that impacts to listed species (or species proposed for listing) and critical habitat (or critical habitat proposed for designation) are no more than minimal. However, even when a regional programmatic consultation or protective regional conditions apply, the PCN serves to ensure that the Corps can validate that the proposed activity will comply with ESA. This responsibility to validate compliance with ESA cannot be waived if the Corps does not act within a specific timeframe. However, the Corps’ review should be completed expeditiously if the Corps determines a regional programmatic consultation or protective regional conditions apply. The outcome of regional programmatic consultation may require that the district engineer modify the NWP for a case-specific activity by adding special conditions to the NWP (33 CFR 330.5).

If the district engineer is required to consult with the Services, the Services may take longer than 45 days to complete the consultation process. The Services’ regulations at 50 CFR 402.13 state that the Services’ will provide written concurrence or non-concurrence with a federal agency’s determination of “may affect, not likely to adversely affect” within 60-days, and will extend the 60-day timeframe upon mutual consent of the Service, the federal agency and the applicant. In accordance with 50 CFR 402.14, formal consultation concludes within 90 days and the Service should provide the biological opinion within 45-days of the conclusion of formal consultation, unless the timeframe is extended. The biological opinion itself does not authorize the project proponent to take species or adversely affect designated critical habitat.

To ensure compliance with ESA, the Corps cannot finalize the agency action to issue the NWP verification until the Section 7 consultation, or a conference

is completed for activities that “may affect” listed species (or species proposed for listing) and critical habitat (or critical habitat proposed for designation). Given compliance with the ESA cannot be waived, the prospective permittee cannot proceed with the regulated activity without receiving written verification. The requirement for this written verification is described in both general condition 18 paragraph (c) and paragraph (a)(2) of general condition 32. Proposals for programmatic consideration of common and widespread species listed under ESA should be directed to USFWS or NMFS.

One commenter stated that the general condition should be modified to mandate consultation under the ESA in sensitive areas. Many commenters requested that the general condition be modified to define “in the vicinity.” Many commenters recommended that the phrase “or is in the vicinity of the activity” be deleted from the general condition. One commenter stated that the general condition should be modified to state that permittees may rely on the USFWS Information Planning and Consultation (IPaC) tool to determine if a species is “in the vicinity” of a water crossing. One commenter stated that the general condition should include the entire text of the definition of the “effects of the action.” One commenter stated that consultation should include information about the distance that a project must be located from an endangered species in order to avoid jeopardizing that species.

No activity is authorized by an NWP which “may affect” listed species or designated critical habitat until ESA Section 7 consultation has been completed. The ESA requires a federal agency to consult with the Services when a regulated activity “may affect” a listed species (or species proposed for listing) or critical habitat (or critical habitat proposed for designation). This obligation to consult under Section 7 applies regardless of the location of the NWP-specific activity. In determining whether a case-specific activity “may affect” a listed species (or species proposed for listing) or critical habitat (or critical habitat proposed for designation), the district engineer will consider the “effects of the action” (50 CFR 402.02). The “effects of the action” may include consequences occurring outside the immediate area involved in the action.

The term “in the vicinity” for the purposes of paragraph (c) of this general condition cannot be defined at a national level. What constitutes “in the vicinity” can vary substantially by

species, environmental setting, the medium in which the species lives (e.g., water, air, or in the ground), and other factors. The vicinity is also dependent on the NWP activity and the types of effects that might be caused by that NWP activity. The Corps also declines to remove the term “in the vicinity” from the general condition. The Services’ regulations at 50 CFR 402.02 include the definition of the “effects of the action.” In the interest of brevity and to limit any future need to change the language of the general condition should the Services decide to modify the definition, the Corps declines to include the definition in general condition 18.

When reviewing a PCN, the district engineer makes an independent determination of whether the proposed activity “may affect” listed species or designated critical habitat and thus requires ESA Section 7 consultation. The district engineer relies in part on information in the PCN, but he or she will also utilize other information, including local knowledge of the area, and the species and the habitats in which the listed species occurs. Information on listed species under the management of FWS is available to the public through the IPaC system,¹ an on-line project planning tool developed and maintained by the FWS. The FWS’s IPaC tool is just one tool that might provide useful information to prospective permittees about species that might be in the vicinity of proposed activity. Information on species under the management of NMFS may be found on their website.² There may be other tools, such as databases and websites managed by state and local governments and non-governmental organizations that may be helpful in determining whether a proposed NWP activity might affect listed species (or species proposed for listing) or critical habitat (or critical habitat proposed for designation), or if listed species (or species proposed for listing) or critical habitat (or critical habitat proposed for designation) are in the vicinity of a proposed activity.

Through ESA Section 7 consultation, with the FWS and/or the NMFS as appropriate, the district engineers will ensure that case-specific NWP activities will not jeopardize any threatened and endangered species or adversely modify designated critical habitat. District engineers may add conditions to an NWP that authorizes an activity to avoid, minimize, or offset the effects of the action.

One commenter requested clarification if the second sentence of paragraph (a) of general condition 18 should include the text “or species proposed for listing.” A few commenters stated that the level of information available on species proposed for listing causes uncertainty in the analysis of impacts. A few commenters expressed concern that projects may be delayed if a species is listed midway through a construction activity.

The second sentence of paragraph (a) refers specifically to the requirements to complete consultation under Section 7 of the ESA for listed species or critical habitat which an activity “may affect.” Federal agencies confer with the Services to ensure an activity will not jeopardize a species proposed for listing or adversely modify proposed critical habitat. The Corps has retained the text of paragraph (a) to specify that no activity is authorized by an NWP unless the Corps has complete ESA Section 7 consultation for proposed species and proposed critical habitat. The Corps must comply with Section 7 of the ESA. Permittees and district engineers will use best available data and resources to inform the determination of effects and any mitigation measures. Information on species proposed for listing may be found on the Services’ proposed species’ web pages. For species administered by the FWS, additional information can also be found in IPaC and in the species status reports in the FWS’s Environmental Online System. Prospective permittees are encouraged to use this publicly available information and/or contact the Services to obtain information on listed species (or species proposed for listing) or critical habitat (or critical habitat proposed for designation) in the vicinity of a proposed project.

If the Service lists a species or designates critical habitat, the Service may adopt the conference findings of a case-specific activity if no new significant information is developed for the species or critical habitat and if there are no significant changes to the activity (50 CFR 402.10). Re-initiation of consultation may be required under Section 7 of the ESA if an activity which requires DA authorization has not been completed. In such cases, the division engineer and/or district engineer will consider available information on the species and/or habit and the discretionary options described in 33 CFR 330.5.

One commenter stated that general condition 18 should only require federal agencies to submit a PCN if they have not completed Section 7 consultation

under the ESA. One commenter requested clarification if a federal permittee or federally-funded project is required to submit a PCN for an activity that requires consultation under Section 7 of ESA if no PCN is required by the terms and other conditions of the NWP. One commenter stated that the general condition should be revised to state that proponents of a linear project can proceed at crossings and areas outside Corps’ jurisdiction where the project proponent has determined that a PCN is not required. One commenter stated that the Corps should designate a non-federal representative conduct Section 7 consultation.

In accordance with general condition 18, federal agencies must follow their own procedures for complying with Section 7 of the ESA. Paragraph (b) of general condition 18 does not contain a requirement for federal agencies to submit a PCN. Federal agencies only need to submit documentation of compliance with Section 7 of the Endangered Species Act (ESA) when the terms and conditions of the NWP, or regional conditions imposed by the division engineer, require the submission of a PCN. If a federal agency is required to submit a PCN, consistent with general condition 32, a complete PCN will include documentation demonstrating the federal agency’s compliance with the Endangered Species Act. Corps districts will generally not consult under Section 7 on behalf of another federal agency unless the district engineer has determined that the federal agency has not provided appropriate documentation of compliance with Section 7 of the ESA or the district engineer has agreed to be the lead federal agency for compliance with Section 7 of the ESA (50 CFR 402.07).

The non-federal permittee is responsible for complying with paragraph (c) of general condition 18 and submitting a PCN to the district engineer when a proposed NWP activity triggers one of the PCN thresholds in that paragraph. Generally speaking, a non-federal permittee is a permittee that is not a federal agency. There may be limited circumstances where a non-federal agency might be considered as having ESA Section 7 obligations similar to those of a federal agency. For example, the Federal Highway Administration may assign a state Department of Transportation the responsibility for complying with non-NEPA environmental statutes such as the ESA. When a non-federal permittee is required to submit a PCN by general condition 18, the activity that requires DA authorization is not authorized by

¹ <https://ipac.ecosphere.fws.gov/>.

² <http://www.nmfs.noaa.gov/>.

an NWP until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or conference has been completed. Prospective permittees, including proponents of linear projects must comply with general condition 18. District engineers have the discretion to designate a non-federal representative to conduct informal consultation or prepare a biological assessment in accordance with 50 CFR 402.08.

The general condition is adopted with the modifications discussed above.

GC 19. Migratory Birds and Bald and Golden Eagles. The Corps did not propose any changes to this general condition. One commenter stated that the general condition 19 should be revised to use the text from the 2017 NWPs. One commenter stated that the prospective permittee should be required to prove that they have contacted FWS and the specific measures that they will implement to reduce adverse impacts so those measures can be reviewed by the Corps.

General condition 19 was revised in the 2021 NWPs to clarify that the permittee, with the assistance of the FWS, is the entity responsible for determining what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles. This condition also clarifies that the permittee, with FWS assistance, is also responsible for determining what “take” permits, if any, might be required under the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. Compliance with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act is the responsibility of the permittee.

The general condition is adopted as proposed.

GC 20. Historic Properties. The Corps did not propose any changes to this general condition. A few commenters stated that general condition 20 should require a PCN for most activities authorized by NWPs. A few commenters stated that the requirements of this general condition can result in extended review times and onerous paperwork. Several commenters requested clarification on the terms “might have the potential to cause” and “potentially eligible” stating that districts apply these requirements inconsistently when determining if a PCN is required.

The only activities that are immediately authorized by NWPs without the requirement for a PCN under general condition 20 are activities

with “no potential to cause effect” to historic properties. For compliance with Section 106 of the NHPA the Corps complies with the implementing regulations at Appendix C to 33 CFR part 325, and the Corps’ “Revised Interim Guidance for Implementing Appendix C of 33 CFR part 325 with the Revised Advisory Council on Historic Preservation Regulations at 36 CFR part 800,” dated April 25, 2005, and amended on January 31, 2007. Paragraph (b) of general condition 20 requires non-federal permittees to submit a PCN to the district engineer if the NWP activity might have the potential to cause effects on any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. The non-federal permittee must not begin the activity until notified by the district engineer either that the activity has no potential to cause effects on historic properties or that NHPA Section 106 consultation has been completed. The terms “might have the potential to cause effects” and “potentially eligible” are thresholds that are intended to provide the district engineer with an opportunity for further review to determine whether a historic property is present.

One commenter stated that the general condition should be modified to define the distance from a jurisdictional feature where a non-federal permittee should consider whether an activity might cause effects to a historic property, such as 300 feet. One commenter suggested changing “historic properties” to “historic resources.”

An area within which an NWP activity “might have the potential to cause effects” for the purposes of paragraph (c) of this general condition cannot be defined at a national level. What constitutes a “potential effect” to a historic property from an NWP activity can vary substantially by the type of NWP activity and the type of historic property, if a historic property is present. The distance between an NWP activity and a historic property where the NWP activity might have the potential to cause effects will depend on the types of effects that might be caused by that NWP activity (e.g., physical destruction or alteration of a historic property in the project area, or visual or noise effects to historic properties outside of the project area), landscape setting, and other factors. The Corps will continue to use the term “historic properties” consistent with the language in Section 106 of the NHPA and the definition in Section F. Definitions.

District engineers will review PCNs and determine whether proposed NWP activities have the potential to affect historic properties. Section 106 consultation remains the responsibility of the Corps. The requirements of general condition 20 ensure that Section 106 consultation occurs for NWP activities that have potential to cause effects to historic properties.

A few commenters stated that general condition 20 relies on applicants to make a determination if an activity has the potential to affect historic properties, delegating the responsibility to comply with Section 106 of NHPA on the permittee instead of the Corps. A few commenters recommended that the general condition make clear that the district engineer cannot request additional information about cultural resources in the project area if permittee has determined that the “might have the potential” threshold has not been met. A few commenters stated that the “might have the potential” threshold is higher than the threshold set forth in the ACHP regulations.

The Corps complies with Section 106 of the NHPA through the NWP regulations at 33 CFR 330.4(g) and NWP general condition 20. Those regulations prohibit authorization of an activity by an NWP that may have the potential to cause effects to historic properties unless the requirements of Section 106 have been satisfied. General condition 20 is applicable to every activity which may be authorized by an NWP as permittees are required to comply with all general conditions to the NWPs. District engineers will review PCNs and may request additional information to inform their determination if an activity may have the potential to cause effects on properties listed, or eligible for listing, in the National Register of Historic Places. Paragraph (c) of general condition 20, requires a non-federal permittee to submit a PCN for any activity that might have the potential to cause effects on any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. The “might” threshold is below the threshold that triggers the requirement for Section 106 consultation for the proposed federal action. The purpose of the “might have the potential to cause effects” threshold is to require submittal of PCNs for proposed NWP activities that might have a possibility of causing effects to historic properties, so that the district engineer can determine whether Section 106 consultation is required for a proposed NWP activity.

The district engineer is responsible for evaluating the PCN and making an effect determination for the proposed NWP activity for the purposes of Section 106 of the NHPA. If the district engineer determines that the proposed NWP activity has no potential to cause effects on historic properties, Section 106 consultation is not required. If the district engineer determines that the proposed NWP activity will result in either “no historic properties affected,” “no adverse effects,” or “adverse effects,” he or she will conduct NHPA Section 106 consultation with the appropriate consulting parties. If the non-federal project proponent does not comply with 33 CFR 330.4(g)(2) and general condition 20, and does not submit the required PCN, then the activity is not authorized by an NWP. In such situations, it is an unauthorized activity and the Corps district will determine an appropriate course of action under its regulations at 33 CFR part 326, if and when the Corps learns about that unauthorized activity.

One commenter stated that tribes should determine if general condition 20 is applicable to an activity, instead of the Corps. One commenter requested that the general condition define the roles and responsibilities of the permittee and the Corps in consulting with tribes on efforts to identify of historic properties. One commenter requested that the general condition be modified to stipulate that tribes should be consulted before identification efforts are conducted and to require that cultural resource surveys be completed after the submittal of a PCN. One commenter stated that tribes are the expert on traditional cultural properties/landscapes and requested 30 days to review PCNs.

The division engineer has the authority to determine if an NWP-specific activity meets the terms and conditions of an NWP. When a district engineer reviews a PCN and determines that consultation under Section 106 of the NHPA is required, the district engineer will consult with consulting parties identified under 36 CFR 800.2(c). Consulting parties include the Indian tribes and the prospective permittee. The district engineer will complete Section 106 consultation in accordance with implementing regulations at 36 CFR part 800, 33 CFR 325 Appendix C, and the Corps’ “Revised Interim Guidance for Implementing Appendix C of 33 CFR part 325 with the Revised Advisory Council on Historic Preservation Regulations at 36 CFR part 800,” dated April 25, 2005, and amended on January 31, 2007. The Corps declines to modify

this general condition to specify the roles of the consulting parties or to prohibit actions that the permittee may take before submittal of the PCN and beginning of the federal action. Division engineers may modify this NWP on a regional basis in accordance with the procedures at 33 CFR 330.5(c) to impose regional conditions to require PCNs for proposed activities that might affect historic properties, including traditional cultural properties that are or are eligible to be listed on the National Register of Historic Places. District engineers will determine whether an activity may have the potential to cause effects on properties listed, or eligible for listing, in the National Register of Historic Places using available information, including information may be shared by tribes.

A few commenters recommended that no changes be allowed to scopes of work for historic properties investigations once reviews are complete. A few commenters recommended that district offices inform prospective permittees of the scope of any required historic properties investigations before a PCN is submitted. A few commenters supported the language in the general condition that clarifies that identification efforts will be commensurate with potential impacts. One commenter stated that it is unclear if general condition 20 requires the Corps to consult with consulting parties when making a determination of effects or after the determination of effect is made. One commenter stated that general condition 20 should be revised to clarify that the Corps follows 36 CFR 800 when Section 106 consultation is required.

The NHPA does not require non-federal prospective permittees to consult with a State Historic Preservation Officer or a Tribal Historic Preservation Officer, or with tribes. Prospective permittees are encouraged to engage with Corps districts in pre-application consultations at the earliest practical time in the planning process so that the district engineer may discuss measures to comply with general condition 20 and 33 CFR 330.4(g). When reviewing PCNs, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act, including implementing regulations at 36 CFR part 800, 33 CFR 325 Appendix C, and the Corps’ “Revised Interim Guidance for Implementing Appendix C of 33 CFR part 325 with the Revised Advisory Council on Historic Preservation Regulations at 36 CFR part 800,” dated

April 25, 2005, and amended on January 31, 2007.

The district engineer, in consultation with consulting parties, is responsible for ensuring compliance with Section 106 of the NHPA and will require the project proponent to provide the information necessary to inform the determination of eligibility and determination of effects. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of Section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

One commenter requested clarification if a federal permittee or federally-funded project that fulfilled the requirements of Section 106 of the NHPA must submit a PCN if no PCN is required by the terms or other conditions of the NWP. A few commenters stated that non-federal permittees should not have to submit a PCN if the district engineer has completed regional consultation and developed regional conditions to mitigate impacts to historic properties. A few commenters recommended that the Corps adhere to the 45-day review time or as an alternative change paragraph (c) of this general condition so that the district engineer’s review of the PCN does not exceed 90 days.

In accordance with general condition 20, federal agencies must follow their own procedures for complying with Section 106 of the NHPA. Paragraph (b) of general condition 20 does not contain a requirement for federal agencies to submit a PCN. Federal agencies only need to submit documentation of compliance with Section 106 of the NHPA when the terms and conditions of the NWP, or regional conditions imposed by the division engineer, require the submission of a PCN. Corps districts may develop a program alternative and develop local procedures to more efficiently satisfy the requirements of Section 106 of the NHPA. Paragraph (d) of general condition 20 states that for non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete PCN whether NHPA Section 106 consultation is required. District engineers must consult with the SHPO, tribes and other consulting parties to satisfy Section 106 of the NHPA. There are no mandatory timelines for the completion of the Section 106 process. The Section 106 consultation process may take longer than 45 days. The NWP verification cannot be issued and the project applicant cannot proceed with the

proposed activities under Corps' jurisdiction until the Section 106 consultation process has been completed.

A few commenters suggested adding language to paragraph (c) of the general condition to require that the person who would make the determination that non-federal permittees must submit a PCN for the purposes of complying with general condition 20 would need to satisfy the Secretary of the Interior's Standards for Professional Qualifications in Archaeology and Historic Preservation.

It is not appropriate to add text to this general condition to stipulate the qualifications of people determining if a PCN is required for the purposes of compliance with general condition 20. Non-federal permittees are responsible for determining if an activity "might have the potential to cause effects to historic properties." Determinations whether an activity has the potential to cause effects to historic properties may be made by a variety of agency officials, including Corps district staff. The Corps is ultimately responsible for determining compliance with the requirements of Section 106 of the National Historic Preservation Act.

The general condition is adopted as proposed.

GC 21. Discovery of Previously Unknown Remains and Artifacts. The Corps did not propose any changes to this general condition. A few commenters supported reissuing this general condition with no substantive changes. Many commenters stated that the general condition does not limit impacts to a no more than minimal level because of the inclusion of the text "to the maximum extent practicable." One commenter recommended editing the first sentence of the general condition to improve readability.

The application of the term "maximum extent practicable" is dependent on case-specific circumstances and site conditions, and gives the district engineer the discretion to determine what is necessary to comply with the general condition for each circumstance in which inadvertent discoveries occur. We recognize that in some circumstances it may not be possible to avoid further construction activities that might affect the remains and artifacts, because those construction activities may have to be completed for safety or minimizing erosion and sedimentation. The language of the general condition is sufficiently clear in its current form, and we decline to make any changes to this general condition.

The general condition is adopted as proposed.

GC 22. Designated Critical Resource Waters. The Corps did not propose any changes to this general condition. Many commenters expressed concern that the general condition did not provide protection against indirect or secondary impacts from upstream NWP activities on the critical resource waters. One commenter requested that this general condition be modified to prohibit the use of NWP 12 in critical resource waters.

Activities authorized by an NWP which occur upstream from critical resource waters must comply with the general conditions to the NWPs and any regional conditions. Through compliance with general conditions and regional conditions, activities subject to an NWP would cause no more than minimal individual and cumulative adverse environmental effects. The district engineer will review PCNs for activities consistent with Section E (District Engineer's Decision) and will consider the direct and indirect effects of the activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity. The district engineer may add site specific conditions to address specific environmental concerns. Paragraph (a) of this general condition prohibits the use of NWP 12 to authorize discharges of dredged or fill material into waters of the United States located within or directly affecting critical resource waters and wetlands adjacent to such waters.

The general condition is adopted as proposed.

GC 23. Mitigation. The Corps did not propose any changes to this general condition. Many commenters stated that this general condition should be strengthened to require that prospective permittees take all practicable steps to avoid and minimize adverse impacts. One commenter stated that mitigation is no substitute for avoidance of impacts. Many commenters stated that the first sentence of paragraph (a) of the general condition should be revised to require avoidance and minimization of adverse effects to any wetland and waterbody rather than waters of the United States. One commenter stated that the NWPs cause no more than minimal individual and cumulative environmental impacts, therefore general condition 23 should be eliminated. One commenter stated that requiring the district engineer to consider the need for compensatory mitigation places an unnecessary burden on the district and results in delays and unnecessary costs.

Mitigation includes avoidance, minimization, and compensatory

mitigation. Paragraph (a) of general condition 23 requires the NWP activity to be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (*i.e.*, on site). The Corps does not have authority to require mitigation to address impacts that occur as a result of activities in areas that are not regulated under the CWA or RHA. The purpose of compensatory mitigation is to offset unavoidable adverse impacts to jurisdictional waters and the compensatory mitigation should be considered after all appropriate and practicable avoidance and minimization has been achieved.

The NWPs only authorize activities that have no more than minimal adverse environmental effects both individually and cumulatively. An activity is not authorized under an NWP unless the activity complies with both the terms and all applicable conditions to ensure that an activity will have no more than minimal adverse environmental effects. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN review period, unless the 45-day timeframe does not apply due to requirements of a general condition (*e.g.*, general condition 18 (Endangered Species) or general condition 20 (Historic Properties)), with activity-specific conditions that specify the mitigation requirements. Work cannot proceed in waters of the United States until the district engineer has approved a specific compensatory mitigation plan or has determined that a mitigation plan is not practicable or necessary to ensure timely completion of the required compensatory mitigation.

One commenter stated mitigation should not be used to justify that an activity would have less than minimal impacts. Many commenters stated that compensatory mitigation should be required at a ratio of greater than one-to-one. Many commenters stated that the existing thresholds for compensatory mitigation in paragraphs (c) and (d) of the general condition should be retained. Many commenters stated that the acreage thresholds for requiring compensatory mitigation in the NWPs should be increased. One commenter stated that the Corps should require compensatory mitigation for any amount of acreage of wetlands and streams when a PCN is required while retaining the district engineer's discretion to make a case-specific

determination if compensatory mitigation is appropriate.

The use of compensatory mitigation and other forms of mitigation to ensure that activities authorized by an NWP result in no more than minimal individual and cumulative adverse environmental effects is codified in the Corps' NWP regulations at 33 CFR 330.1(e)(3). Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. The terms and conditions of the NWPs, such as acreage limits and the mitigation, are considered by the district engineer to determine if an activity would result in no more than minimal adverse effects on the aquatic environment. Since the NWPs authorize activities across the country, paragraphs (c) and (d) of this general condition establish a national threshold for stream compensatory mitigation, but there is flexibility in the general condition to allow district engineers to make activity-specific determinations on whether compensatory mitigation should be required for activities that result in the loss of waters of the United States.

When an NWP requires a PCN, district engineers may require compensatory mitigation for activities which do not exceed the acreage thresholds in general condition 23 when he or she determines compensatory mitigation is necessary to ensure that the adverse environmental effects are no more than minimal. District engineers also have the discretion to determine, on a case-by-case basis that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal. Division engineers can add regional conditions to the NWPs to establish a lower threshold for requiring compensatory mitigation. For all DA permits, including the NWPs, compensatory mitigation requirements are determined on a case-by-case basis.

Many commenters stated that the practice of giving the district engineer discretion to make a case-specific determination if compensatory mitigation is required follows longstanding agency practice to prevent no more than minimal adverse environmental effects. One commenter recommended retaining language in the general condition which gives the district engineer the discretion to determine whether compensatory mitigation is required. Several commenters stated that the district engineer should not have discretion to determine the type of mitigation or to waive the requirement to provide

compensatory mitigation. One commenter stated that giving the district engineer the discretion to waive compensatory mitigation fails to prevent direct, indirect, and cumulative effects. Many commenters stated that the district engineer should not have the discretion to accept riparian area mitigation in lieu of wetland compensatory mitigation for losses of wetlands.

A few commenters stated that compensatory mitigation for stream bed losses should not be required when a PCN is required by an NWP condition that is not related to aquatic resource impacts, such as when a PCN is required by general condition 20 (historic properties). A few commenters stated that the general condition should list circumstances when compensatory mitigation for stream bed losses may be waived, including when the activity would not change the ecological function of the stream bed. A few commenters stated that compensatory mitigation should not be required if the activity incorporates the U.S. Fish and Wildlife Service's best management practices, or when the prospective permittee will incorporate conservation measures required to satisfy Section 7 consultation for aquatic habitats subject to the ESA.

General condition 23 (Mitigation) requires compensatory mitigation for all wetland losses greater than $\frac{1}{10}$ -acre and for all stream losses greater than $\frac{3}{100}$ -acre for all activities authorized under this NWP, unless the district engineer determines that some other form of mitigation would be more environmentally appropriate. District engineers impose compensatory mitigation requirements on specific activities authorized by NWPs to ensure that those activities result in no more than minimal individual and cumulative adverse environmental effects, including direct and indirect effects. This discretion is appropriate because the district engineer can evaluate the case-specific circumstances of an activity to consider factors such as the quality and ecological function of the waters being lost, the benefits of the regulated activity to the aquatic ecosystem, and similar considerations. Just as some circumstances may warrant a greater mitigation ratio than that specified as the minimum, other circumstances may justify less mitigation.

The district engineers' discretion to determine mitigation requirements on a case-by-case basis also provides the necessary flexibility to adjust to the on-the-ground realities that may not make specific types of mitigation possible or

beneficial in all cases. In some cases, a different type of mitigation (*e.g.*, wetland instead of riparian) may be the only practical option or may provide a greater environmental benefit. When a district engineer exercises his or her discretion to deviate from the recommended mitigation, it may be necessary to require mitigation at a higher ratio to ensure the environmental effects are no more than minimal.

The flexibility in general condition 23 allows district engineers to consider the impacts of the case-specific activity, and other site-specific activities required by other agencies, such as mine reclamation, when determining whether to require compensatory mitigation for NWP activities. District engineers evaluate stream compensatory mitigation proposals and should be provided the flexibility to consider a variety of potential stream restoration or rehabilitation approaches.

Many commenters objected to the requirement in paragraph (d) that losses of stream bed that exceed $\frac{3}{100}$ -acre will require compensatory mitigation. One commenter stated that paragraph (d) is inconsistent with Executive Orders 14219, "Ensuring Lawful Governance and Implementation of the President's 'Department of Government Efficiency' Deregulatory Agenda," and E.O. 14192, "Unleashing Prosperity through Deregulation." A few commenters supported the retention of the $\frac{3}{100}$ -acre stream bed loss threshold. One commenter stated that the $\frac{3}{100}$ -acre threshold did not create a new requirement but converted the threshold from a linear measurement to an area measurement.

Many commenters stated that the $\frac{3}{100}$ -acre threshold should be removed, and the district engineer should have the discretion to determine whether to require compensatory mitigation for stream bed losses. Many commenters requested that the Corps change the threshold for compensatory mitigation for stream bed losses from $\frac{3}{100}$ -acre to 300 linear feet. One commenter stated that mitigation should be required based on both aerial and linear impacts thresholds. Several commenters stated that the threshold for requiring compensatory mitigation for impacts to streams should be raised to $\frac{1}{10}$ -acre. A few commenters expressed concern that the $\frac{3}{100}$ -acre threshold would allow greater impacts to stream beds. One commenter requested that the $\frac{3}{100}$ -acre threshold to require compensatory mitigation should only apply to perennial streams impacted by permanent fill.

Paragraph (d) of general condition 23 requires compensatory mitigation at a

minimum one-for-one ratio for all losses of stream bed that exceed $\frac{3}{100}$ -acre and require a PCN. The rationale for establishing the $\frac{3}{100}$ -acre threshold for stream compensatory mitigation for NWP activities was explained in the final rule to issue the 2021 NWPs (86 FR 2744). The rationale remains valid and justifies the retention of the $\frac{3}{100}$ -acre threshold. This threshold is intended to be conservative based on the complexities of riverine systems, the substantial variation in riverine systems across the country, and the subjectivity inherent in the threshold for the NWPs (*i.e.*, no more than minimal individual and cumulative adverse environmental effects). Paragraph (d) applies to any loss of stream bed which exceeds $\frac{3}{100}$ -acre, when the stream bed is part of a water of the United States and is permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. District engineers retain the discretion to determine on a case-by-case basis whether to require compensatory mitigation for losses of stream bed authorized by NWPs.

Many commenters recommended that paragraph (e) of the general condition retain language on the width of riparian buffers. A few commenters stated that paragraph (e) should require riparian buffers wider than 25 to 50 feet.

The Corps' compensatory mitigation regulations at 33 CFR 332.3(i) allow district engineers to require the restoration, establishment, enhancement, and preservation, as well as the maintenance, of riparian areas and/or buffers around aquatic resources where necessary to ensure the long-term viability of those resources. The recommended riparian area width of 25 to 50 feet was established in the NWP program in 2000 (65 FR 12833) because riparian areas of that width can provide important aquatic habitat functions and water quality benefits. The rationale remains valid and continues to support this recommended riparian width. The general condition gives the district engineer the discretion to require wider riparian buffers to address concerns for water quality or habitat loss at a specific location.

Many commenters stated that districts vary in the types of compensatory mitigation required to offset wetlands impacts and encouraged the Corps to focus on improving consistency among districts regarding the application of mitigation requirements. Many commenters recommended that the Corps adhere to the 2008 Mitigation rule (33 CFR 332) and revise the NWP program when a new mitigation rule is finalized. Many commenters stated that

the district engineer should have the flexibility to consider how to apply the mitigation hierarchy described in 33 CFR 332.3(b). One commenter stated that a qualified engineer should submit mitigation plans and those plans should be approved by the district engineer.

Compensatory mitigation can be provided through the restoration, enhancement, establishment, and protection of aquatic resources to offset losses of those functions caused by activities authorized by the NWPs and other types of DA permits. The district engineer reviews compensatory mitigation plans for compliance with the compensatory mitigation regulations at 33 CFR 332. District engineers will review case-specific activities, including proposed compensatory mitigation, in compliance with the applicable environmental regulations in place at that time and will consider any changes to 33 CFR 332 or other regulations that may occur in the future. As stated in paragraph (f)(1) of GC 23, the use of mitigation bank and in-lieu fee program credits to provide compensatory mitigation for NWP activities is preferred, not required. This preference is based on the hierarchical framework for considering compensatory mitigation options for NWPs and other DA permits that is provided in 33 CFR 332.3(b). The district engineer's acceptance of mitigation only validates that the mitigation complies with the requirements of 33 CFR 332 and GC 23. It is the responsibility of the permittee to ensure that the work complies with other applicable laws, authorizations and requirements, including any applicable engineering standards. As such, it's not necessary to require that mitigation plans be submitted by a qualified engineer.

One commenter stated that many districts have regional conditions that address the loss of functions of forested wetlands and recommended revising paragraph (i) of the general condition to require compensatory mitigation for the permanent conversion of forested wetlands in all cases.

Consistent with paragraph (i) of this general condition, if a proposed NWP activity involves mechanized land clearing in a forested wetland, and it requires a PCN, the district engineer can require compensatory mitigation to ensure the proposed activity results in no more than minimal individual and cumulative adverse environmental effects. The district engineer also has discretion to require compensatory mitigation on a case-by-case basis for the conversion of forested wetlands to ensure the activity results in no more than minimal adverse environmental

effects both individually and cumulatively.

The general condition is adopted as proposed.

GC 24. Safety of Impoundment Structures. The Corps did not propose any changes to this general condition. One commenter stated that a qualified dam safety engineer should submit the plans for impoundment structures and the plans should be approved by a qualified engineer. The general condition states that the district engineer may require non-federal permittees to demonstrate that impoundment structures have been designed by qualified permits. The general condition also states that the district engineer may require documentation that the design has been reviewed by a similarly qualified person.

The general condition is adopted as proposed.

GC 25. Water Quality. The Corps proposed to modify the text of this general condition to clarify that the proposed activity which may result in any discharge from a point source would have to be into a water of the United States in order to trigger the requirement for water quality certification. This proposed change would make the text of this general condition consistent with EPA's current water quality certification regulations at 40 CFR part 121, which defines "license or permit" as consistent with See 40 CFR 121.1(f).

One commenter supported the change to the general condition. One commenter opposed the revision, stating that the change is unnecessary because the language in 40 CFR 121.2 clearly states the threshold requirement for a 401 water quality certification. Several commenters suggested changing the language in the general condition from "may" to "will." One commenter stated that the general condition should mandate water quality reviews. One commenter stated that district engineers are inconsistently applying the standard for when a water quality certification may be required. Several commenters stated that the proposed revised language in the general condition is not consistent with the language in the current regulation. The commenters recommend revising "discharge from a point source" to "any discharge." One commenter stated that the general condition should reinforce that water quality certification is required only when an activity would result in a discharge from a point source into waters of the United States. One commenter requested that text be added to the general condition to state that

where a permittee has already received a FERC license and an associated water quality certification, the permittee is not required to obtain a duplicate water quality certification to satisfy general condition 25.

The current regulations at 40 CFR 121.2 state that a certification is required for any federal permit that “authorizes any activity which may result in any discharge from a point source into waters of the United States.” The revised language in the general condition is consistent with the current regulation. Discharges of dredged or fill material into waters of the United States are not authorized by an NWP until the certifying authority has granted or waived water quality certification. The certifying authority makes the determination if an activity which requires DA authorization would result in a discharge that requires a water quality certification or waiver, and reviews certification requests in accordance with 40 CFR 121. The Corps is responsible for complying with the requirements of Section 401 of the CWA even if there is another federal agency making a decision on a federal license or permit which also requires review under Section 401 of the CWA.

If a certifying authority has not previously certified compliance of an NWP with CWA Section 401, the permittee must obtain an individual water quality certification or waiver for a proposed activity which may result in a discharge from a point source into waters of the United States. In accordance with 33 CFR 330.4(c)(3), if a state denies a water quality certification for an activity that otherwise meets that NWP, a district engineer may provisionally notify the prospective permittee that the district engineer has completed his or her review, but the activity is not authorized pending the completion of the processes required by 40 CFR 121.

The general condition is adopted as proposed.

GC 26. Coastal Zone Management. The Corps did not propose any changes to this general condition. The Corps did not receive any comments on this general condition. The general condition is adopted as proposed.

GC 27. Regional and Case-by-Case Conditions. The Corps did not propose any changes to this general condition. The Corps did not receive any comments on this general condition. The general condition is adopted as proposed.

GC 28. Use of Multiple Nationwide Permits. The Corps proposed modifications to this GC to clarify the

standards that must be met to comply with this general condition.

Several commenters expressed support for the proposed changes to the general condition. Several commenters stated that the general condition should limit the total acreage limit to the lowest specified acreage limit. Several commenters recommended that the general condition limit the number of NWPs that can be used to authorize an activity to two to minimize cumulative impacts. Several commenters asked that the general condition clarify how temporary and cumulative effects are considered in the thresholds of this general condition. One commenter stated that there should be a waiver to this general condition when restoration activities are proposed which would be authorized under NWP 27.

The purpose of the revision to this general condition is to clarify the longstanding requirement to limit the total acreage impacts to the highest total acreage limit of each NWP being used for a single and complete project. The text in paragraph (a) will limit the use of NWPs with no acreage limits, including NWP 27. The general condition limits the acreage loss of waters of the United States to the highest specified acreage limit, and it does not allow the acreage limit of an NWP with a specified lower acreage limit to be exceeded. The general condition applies acreage impact limits to losses of waters of the United States. The definition of loss of waters of the United States is restricted to activities that cause permanent adverse effects to waters of the United States and does not include temporary or cumulative impacts. When the district engineer receives a PCN, his or her review will consider the direct, indirect, and cumulative effects of the single and complete project, in accordance with paragraph 2 of Section D (District Engineer's Decision).

The general condition is adopted as proposed.

GC 29. Transfer of Nationwide Permit Verifications. The Corps did not propose any changes to this general condition. One commenter stated that this general condition only addresses the transfer of an NWP verification is situations where the property ownership is transferred between landowners, and recommended that it be expanded to allow the transfer of a permit verification when responsibility over the project is transferred even if the activities authorized by the NWP occur on lands not owned by the permittee, such as government owned lands.

The language in the general condition was taken from Appendix A of 33 CFR

325, which is the standard form for Department of the Army permits. This language is found at general condition 4 of Appendix A of 33 CFR 325. We believe that the language in this general condition should be consistent with our standard permit language. Permittees with questions about the transfer of an NWP verifications should contact the district engineer in the district where the activity is located.

The general condition is adopted as proposed.

GC 30. Compliance Certification. The Corps proposed to modify the second sentence of this general condition to refer to the “successful completion” of any required permittee-responsible mitigation instead of the “success” of any required permittee-responsible mitigation. One commenter supported the proposed change.

The general condition is adopted as proposed.

GC 31. Activities Affecting Structures or Works Built by the United States. The Corps did not propose any changes to this general condition. One commenter expressed support for the reissuance of this general condition. One commenter stated that the Corps should clarify how the NWPs in this action would affect the timelines of Section 408 reviews of federal projects.

A PCN is required for proposed NWP activities that also require Section 408 permissions so that the appropriate coordination can occur between district staff involved in the NWP evaluation and Section 408 permission processes. The Corps acknowledges that it may take longer for NWP verification to be issued by the district engineer when a 408 permission is required, because the NWP verification cannot be issued before the Section 408 permission process is completed.

The general condition is adopted as proposed.

GC 32. Pre-Construction Notification. The Corps proposed to modify paragraph (a)(2) of this general condition, to make it consistent with paragraph (c) of general condition 18 (Endangered Species). In paragraph (b)(5) of this general condition, the Corps proposed to simplify the first sentence to state that the PCN must include a delineation of waters, wetlands, and other special aquatic sites on the project site. The Corps proposed to remove references to “other waters” such as lakes and ponds and perennial and intermittent streams because those features would be covered by the term “waters.” The Corps also proposed to modify paragraph (b)(5) of this general condition by adding a new sentence at the end of this paragraph which points

permittees using NWP 27 (Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities) to proposed new Note 2 in NWP 27.

Many commenters stated that PCNs should be required for all activities authorized by NWPs. Several commenters stated that both federal and non-federal permittees should be required to submit PCNs for every activity authorized by an NWP. One commenter stated that the project proponent should determine if a PCN is required for each single and complete crossing. One commenter stated that the Corps should clarify when a PCN is required for activities that impact protected resources. Many commenters said that no additional information requirements should be added to the PCN process that would further complicate or burden the process.

The Corps establishes PCN thresholds for those NWP activities that have the potential to cause more than minimal adverse environmental effects, to provide the opportunity for district engineer to conduct an activity-specific review and to exercise discretionary authority and require individual permits for activities that will have more than minimal adverse environmental effects. The PCN process provides an opportunity for the district engineer to do a site- and activity-specific evaluation of a proposed NWP activity and take into account the characteristics of the project site and proposed activity, to determine whether the proposed NWP activity will cause no more than minimal individual and cumulative adverse environmental effects. Certain general conditions (*e.g.*, general conditions 18 (endangered species) and 20 (historic properties)) require submittal of a PCN when an activity that requires DA authorization may impact protected resources. Division engineers may also modify NWPs to require a PCN to address regional concerns for protected resources. We are retaining the language in general conditions 18 and 20 which direct federal agencies to follow their own procedures for complying with Section 7 of the ESA and Section 106 of the NHPA. The Corps has not added any information requirements beyond the clarifying language that was proposed in the 2025 Proposal.

One commenter opposed allowing permittees to proceed if the district engineer does not respond to a PCN within 45 days. One commenter stated that the NWPs are issued based on the finding that they would cause no more than minimal individual and cumulative impacts, therefore it is redundant to require submittal of a PCN

based on thresholds that are lower than the limits to the loss of waters authorized by an NWP. Several commenters stated that allowing permittees to proceed with their activity after 45 days without Corps review does not comply with Section 404(e). One commenter stated that requiring the district engineer to review a PCN causes unnecessary work, delay and cost. One commenter stated that permittees should be allowed to submit reports documenting the completion of an activity rather than a requiring submittal of PCN to allow for the district engineers' review.

Activities that qualify for the default authorization that occurs 45-days after the district engineer receives a complete PCN must comply with all conditions of the NWP, including the general conditions and any applicable regional conditions imposed by the division engineer. The permittee is responsible for reading the NWPs and all of the general conditions and regional conditions to determine whether he or she is required to submit a PCN before proceeding with an authorized activity. The PCN process provides flexibility in the NWP program and ensures that NWP activities have no more than minimal individual and cumulative adverse environmental effects and comply with the Section 404(e) of the CWA. The PCN process also gives the district engineer the opportunity to add activity-specific conditions to the NWP authorization to satisfy the "no more than minimal adverse environmental effects" requirement for the NWPs. There are exceptions to the 45-day review period, such as when district engineers have to complete ESA Section 7 consultation, NHPA Section 106 consultations, or for other specified purposes to satisfy federal law.

One commenter stated that the general condition should state that work can proceed in water crossings outside Corps' jurisdiction where a project proponent has determined that a PCN is not required. One commenter stated that the prospective permittees for activities associated with linear projects should not be required to report activities for which no PCN is required. Several commenters stated that the Corps does not have the resources to ensure activities comply with the NWPs if it does not have the resources to respond to PCNs within 45 days.

The Corps has no authority over activities in waters outside Corps' jurisdiction. In the absence of a jurisdictional determination, when reviewing a PCN, the district engineer will assume that all waters in the project area are jurisdictional. If a project

proponent has determined that no PCN is required, the proponent must comply with the NWP and general conditions to the NWPs if order for the activity to be authorized by an NWP. Paragraph (b)(i) states that prospective permittees submitting a PCN for linear projects must include information on other separate and distant crossings that require DA authorization but do not require a PCN. The requirement to submit information on the non-PCN activities does not change those activities into ones which are subject to a PCN. The district engineer will review the PCN and information about activities which do not require a PCN to determine if the regulated activity will have no more than minimal individual and cumulative adverse effects to the environment. The Corps declines to remove the requirement to provide information about linear crossings for which no PCN is required. District engineers have the discretion to manage district workloads.

One commenter stated that it is not clear how the Corps determines when the 45-day time period has started. Many commenters stated that the Corps should determine if a PCN is complete within 15 days.

The 45-day time period begins upon the district engineer's receipt of a complete PCN. If the prospective permittee does not receive a request for additional information within 30-days of the date of receipt, the permittee can begin the activity 45 days from the district engineer's receipt of the PCN. There are exceptions to the 45-day timeframe, such as for activities conducted by non-federal permittees that require PCNs under paragraph (c) of general conditions 18 and 20 (Endangered Species and Historic Properties, respectively), activities that require PCNs under general conditions 16 and 31, activities proposed for authorization under NWP 49 (Coal Remining Activities), and when the proposed activity requires a written waiver to exceed specified limits of an NWP, or if the district engineer takes action under 33 CFR 330.5(d) to modify, suspend, or revoke the NWP authorization. We believe that 30 days is necessary to make completeness determinations for PCNs.

Many commenters stated that the permittee should not be allowed to proceed with their activity until the district engineer has provided written notification that the activity qualifies for an NWP. Many commenters stated that prospective permittees should receive expedited permit processing if the Corps fails to meet the 45-day timeline in general condition 32. One commenter

stated that the 45-day timeline does not allow for adequate time for tribal review. Many commenters recommended that district engineers adhere to the general rule to request additional information only one time and limit requests to information that is reasonable and avoids unnecessary delay. One commenter recommended that district engineers use their discretionary authority to expedite certain time-sensitive maintenance and inspection projects associated with energy projects.

District engineers have the responsibility to review a PCN. After the Corps district receives a PCN, the prospective permittee cannot begin the activity until either: (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. The Corps declines to add a provision requiring that all project proponents receive written authorization from the Corps prior to commencing the authorized activity. The terms and conditions of the NWPs describe the circumstances (*e.g.*, when Section 7 ESA or Section 106 NHPA consultation is required) when a project proponent must wait for a written response from the Corps prior to commencing the activity. We agree that district engineers, as a general rule should request information necessary to make a PCN complete only one time. District engineers may make additional requests for information when the project proponent has not provided the requested information to the district engineer. District engineers manage their workload, including actions associated with energy projects, consistent with applicable policy.

One commenter recommended that paragraph (b) be revised to clarify that the 45-day time period does not begin until the district engineer receives a delineation report which meets a recommended minimum standard. Many commenters requested that wetland delineations be accepted when they are sufficiently detailed, rather than requiring a field wetland delineation. Many commenters recommended that the Corps clarify that paragraph (b)(5) only applies to jurisdictional waters. One commenter stated that the term "project site" is not clear and should be replaced with the term "proposed limits of construction" because the term "project site" results

in the expense of delineating of waters that are on a property but distant from the area where work is proposed.

General condition 32 paragraph (b)(5) requires a delineation of waters, wetlands, and special aquatic sites prepared in accordance with the current method required by the Corps. In accordance with CWA Section 404(e), the NWPs are intended to authorize activities with little, if any, delay or paperwork. Prospective permittees are not required to submit a delineation report compliant with a recommended standard. The recommended minimum standards for reports that accompany a delineation are not mandatory. These recommended minimum standards have been developed as a tool to assist prospective permittees in providing information in a manner that could expedite reviews of jurisdictional determinations and permit applications. The delineation only needs to identify wetlands, other special aquatic sites, and other waters on the site and their approximate boundaries, so that the district engineer can evaluate the proposed activity's impacts to those wetlands, other special aquatic sites, and other waters.

Field verification of a delineation by the Corps district is not required for a complete PCN. If the district engineer finds errors in the delineation, he or she may make corrections to the delineation or require the applicant to make those corrections, but those corrections should not delay the decision on the NWP verification or the decision to exercise discretionary authority. An approved jurisdictional determination is not required for a complete PCN. If the project proponent did not obtain and/or does not wish to obtain an approved jurisdictional determination for the project site, for the purposes of evaluating the PCN, the district engineer will presume the wetlands, streams, and other waters on the project site are subject to CWA jurisdiction. General condition 23 clarifies that project site means "on site".

One commenter stated that paragraph (b) should be revised to require the prospective permittee's email address, information about essential fish habitat that might be affected by the activity, and to specify information about any required individual water quality certification request.

The Corps declines to modify paragraph (b) Contents of a PCN. Paragraph (c) encourages prospective permittees use the NWP PCN form (ENG 6082) to submit their PCN information or provide the required information in a letter. Prospective permittees may also submit their PCN and all supplemental

information electronically through the Corps' Regulatory Request System³ (RRS). Both ENG Form 6082 and RRS encourage the prospective permittee to provide their email address. Essential fish habitat (EFH) is generally confined to coastal waters and anadromous waters. District engineers in areas where EFH has been identified may require information regarding essential fish habitat to be included in the PCN through the development of regional conditions. General condition 25 (Water Quality) requires the prospective permittee to provide any issued or waived water quality certification for the proposed discharge authorized by a specific NWP activity, to the district engineer when the certifying authority previously denied the certification request for the issuance of the NWPs. Consistent with 33 CFR 330.4(c), an NWP is denied without prejudice until a project proponent provides an individual water quality certification or waiver.

One commenter stated that the NWPs should limit how many times an NWP can be used to prevent piecemealing and causing more than minimal impacts. Many commenters stated that the term "separate and distant" requires clarification and is used inconsistently by the Corps, allowing for piecemealing of projects.

Section 404(e) of the CWA does not require NWPs to have quantified acreage or other limits to ensure that authorized activities result in no more than minimal individual and cumulative adverse effects. General condition 28 (Use of Multiple Nationwide Permits) limits the amount of loss of waters of the United States for each single and complete project and each single and complete linear project. The definition of "single and complete linear project" does not allow piecemealing. Under paragraph (b)(4) of general condition 32, PCNs for linear projects are required to include those crossings of waters of the United States that require NWP PCNs as well as those crossings that will utilize the NWPs and do not require PCNs. When the district engineer reviews the PCN, he or she considers the cumulative effects of both the NWP activities that

³ Regulatory Request System (RRS) is a web-based national online application portal and management platform created to modernize the Corps' Regulatory Program permitting process and meet user expectations by providing a straightforward transparent process for the submittal of permit requests. RRS provides general information on the Regulatory Program and allows the public to submit pre-application meeting requests, jurisdictional determination requests, and individual and general permit applications and other necessary information electronically. RRS can be accessed at the following address: rrs.usace.army.mil/rrs.

require PCNs and the NWP activities that do not require PCNs when deciding if the activity will cause no more than minimal adverse effects.

What constitutes “separate and distant” crossings can vary across the country because of differences in the distribution of waters and wetlands in the landscape, local hydrologic conditions, local geologic conditions, and other factors. Application of the definition of “separate and distant” crossings is more appropriately determined by district engineers on a case-by-case basis. Separate and distant crossings of waters of the United States associated with linear projects can be authorized by separate NWPs consistent with longstanding practice that has been codified in the Corps’ regulations at 33 CFR 330.2(i) since 1991 (see 56 FR 59110).

One commenter stated that paragraph (d) should allow agencies 45 days to respond to agency coordination. With some exceptions (*e.g.*, requirements of general conditions 18 (Endangered Species Act) or 20 (Historic Properties), paragraph (a)(2) allows permittees to begin their activity 45 days after the district engineer receives a PCN. When agency coordination is required, the agencies have a total of 25 days to provide substantive comments on a PCN. This 25-day timeframe is necessary so that the district engineer can fully consider the concerns of the resource agency during review of the PCN with sufficient time to determine if the NWP-specific activity must be modified, suspended, or revoked in order to ensure that the regulated activity will cause no more than minimal adverse environmental effects.

The general condition is adopted as proposed.

H. Responses to Comments on Section D. District Engineer’s Decision

In Section D, “District Engineer’s Decision,” the Corps proposed to add a sentence to paragraph 3 to clarify that compensatory mitigation shall not be required for activities authorized by NWP 27. The addition of this sentence is intended to ensure that a district engineer’s decision is consistent with the terms of NWP 27.

One commenter supported the changes to Section D, “District Engineer’s Decision.” Many commenters recommended adding language to Section D to clarify the scope of the district engineer’s cumulative effects analysis.

During their reviews of PCNs, district engineers use their discretion to determine the appropriate regional scale for evaluating cumulative effects for the

purposes of 33 CFR 330.5(d)(1), 33 U.S.C. 1344(e)(1), 33 CFR 322.2(f)(1), and/or 33 CFR 323.2(h)(1). The appropriate regional scale is dependent, in part, on what types of NWP activities are occurring, where they are occurring, and what types of adverse environmental effects they might be causing.

“District Engineer’s Decision” is adopted as proposed.

I. Responses to Comments on Section E. Further Information

One commenter recommended that item 3 in this section be revised to insert “or extinguish” after “do not grant.” One commenter requested a new item be added to this section to affirm that the Corps will give due regard to the property rights of Americans and consider property rights when making determinations about the public interest.

The language in Section E is taken directly from 33 CFR 330.4(b). It would not be appropriate to deviate from the language in the Corps’ implementing regulations. During the process to reissue the NWPs, the Corps completes a public interest review in accordance with 33 CFR 320.4, as documented in the national decision document for each NWP. The public interest review includes a consideration of property ownership consistent with 33 CFR 320.4(g). The considerations of property ownership addressed in 33 CFR 320.4(g) are applicable to NWPs and are relevant to the comments raised.

J. Responses to Comments on Section F. Definitions

In the 2025 Proposal, the Corps proposed changes to two of the NWP definitions and the Corps proposed to add one definition. As discussed in the proposed rule, the Corps proposed to modify the definitions of “Ecological reference” and “Stream bed.” The Corps proposed to add a definition of “Nature-based solutions.”

Many commenters expressed support for the changes to the definitions. One commenter recommended adding a definition for “soft bank stabilization.” One commenter requested the addition of a definition of “oil or natural gas pipeline” that includes any gaseous or liquid fuel, particularly hydrogen. One commenter recommended adding a definition of “special aquatic sites.” Many commenters stated that the NWPs should not include a definition of “waters of the United States”. Many commenters stated that the Corps should rely on definition of waters of the United States that is in effect at the time of the NWP-specific activity. One

commenter recommended adding a definition for “waters of the United States” to differentiate between waters subject to Section 10 of the RHA and waters subject to Section 404 of the CWA.

The Corps does not believe that “soft bank stabilization” requires a definition because there are number of examples of soft bank stabilization listed in Note 2 in NWP 13. The phrase “oil or natural gas pipeline” is defined in NWP 12 and includes any pipe or pipeline for the transportation of any form of oil or natural gas, including products derived from oil or natural gas, such as gasoline, jet fuel, diesel fuel, heating oil, petrochemical feedstocks, waxes, lubricating oils, and asphalt. The Corps declines to include “any liquid or gaseous fuel” in the definition of oil or natural gas pipeline.

NWP 58 authorizes activities associated with utility lines for substances, excluding oil, natural gas, products derived from oil or natural gas, and electricity. The Department of Energy states that hydrogen can be produced from a variety of sources, including natural gas, renewable power, or nuclear power.⁴ The Corps declines to add “any gaseous or liquid fuel,” or hydrogen to the definition of oil or natural gas pipeline. The Corps relies on the definition of special aquatic sites in 33 CFR 320.2(j). Special aquatic sites include wetlands, mudflats, vegetated shallows, coral reefs, riffle and pool complexes, sanctuaries, and refuges. The Corps does not believe it is necessary to replicate the definition of special aquatic sites in Section F. Definitions. The Corps declines to add a definition of waters of the United States to Section F (Definitions) and will continue to rely on the definition of “waters of the United States” in 33 CFR part 328.

Best management practices (BMPs). The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Compensatory mitigation. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Currently serviceable. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

⁴ <https://www.energy.gov/eere/fuelcells/hydrogen-fuel-basics>.

Direct effects. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Discharge. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Ecological reference. The Corps proposed modifications to this definition to align with proposed changes to the second paragraph of NWP 27, which discusses the requirement for aquatic ecosystem restoration, enhancement, and establishment activities associated with activities that require DA authorization to be planned, designed, and implemented to result in aquatic ecosystems that resemble ecological references. The proposed revisions to this definition discuss three types of ecological references: (1) an aquatic ecosystem type or riparian area type that currently exists in the region (*i.e.*, a contemporary ecological reference); (2) an aquatic ecosystem type or riparian area type that existed in the region in the past (*i.e.*, an historic ecological reference); and (3) indigenous and local ecological knowledge that applies to the aquatic ecosystem type or riparian area type (*i.e.*, an ecological reference based on a cultural ecosystem). The Corps also proposed to change this definition to include cultural ecosystems.

Many commenters supported the proposed modifications to this definition. Several of these commenters stated that such provisions recognize the historical role of human management in ecosystem development and provide realistic restoration targets in highly altered landscapes. One commenter opposed changes to this definition, stating that the change could cause confusion regarding the selection of a suitable ecological reference. Many commenters argued that defining ecological references to include ecosystems developed under human management activities contradicts the premise that references should be based on natural systems or may result in project proponents arguing that maintenance activities constitute restoration.

Many commenters expressed concerns that historical references might not be self-sustaining under current landscape conditions and recommended focusing on functioning systems under comparable present conditions. Many commenters stated that the definition of ecological reference should require that the reference be of the highest quality. Many commenters requested

clarification regarding how an ecological reference would be implemented. One commenter recommended that the Corps take a broad view of what constitutes an ecological reference. One commenter was concerned that a low value stream that was present in the past would be valued the same as an unaltered stream that is currently present.

Ecological references are based on natural ecosystems. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region. Ecological references are based on natural ecosystems which are “developed by natural processes and are self-organizing and self-maintaining” (Society for Ecological Restoration International Science & Policy Working Group 2004). Natural ecosystems are rarely pristine or unimpacted by human influences. Ecological standards are not limited to the highest and best quality of an ecosystem. Most natural ecosystems have been impacted by human influences to varying degrees and may be managed by people to varying degrees.

Understanding that all ecosystems are cultural ecosystems to varying degrees because of pervasive human influences on these ecosystems is important for establishing realistic and achievable goals and objectives for aquatic ecosystem restoration, enhancement, and establishment activities for human influenced ecological references. Realistic objectives for resembling an ecological standard involve establishing a “lift” to the net functions and services, not necessarily an attempt to achieve the highest quality of that aquatic ecosystem. This is consistent with the concepts in the 2008 Compensatory Mitigation Rule’s (33 CFR 332.2) definition of “reference aquatic resources,” which are defined as “a set of aquatic resources that represent the full range of variability exhibited by a regional class of aquatic resources as a result of natural processes and anthropogenic disturbances.”

This definition was revised to align with the changes to NWP 27 (Aquatic Ecosystem, Restoration, Enhancement, and Establishment). The permittee must comply with the terms of NWP 27 and the NWP general conditions. The NWP 27 requires that the proposed restoration, enhancement, or establishment associated with activities that require DA authorization resemble an ecological reference, and must also result in net increases in aquatic ecosystem functions and services.

Many commenters approve of the inclusion of cultural ecosystems or

indigenous and local knowledge in the use of determining ecological reference standard. Many commenters objected to the inclusion of references to “indigenous knowledge” and encouraged the Corps to delete the term and consider indigenous knowledge as captured by local knowledge.

Ecological references may be based on indigenous knowledge or local ecological knowledge. Recognition of indigenous knowledge does not privilege this type of information above other types or sources of information, it recognizes that the people who have inhabited in an area over a long period of time have accumulated knowledge of that area.

The definition is adopted as proposed.

Enhancement. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Establishment (creation). The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

High Tide Line. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Historic property. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Independent utility. The Corps did not propose any changes to this definition. Many commenters recommended modifying this definition to eliminate the distinction between linear and non-linear projects. Many commenters requested the addition of “linear projects” to this definition.

The concept of independent utility does not apply to individual crossings of waters of the United States for linear projects because each separate and distant crossing of waters of the United States is necessary to transport people, goods, or services from the point of origin to the terminal point. There is a rational basis for distinguishing between linear projects and non-linear projects. For linear projects, impacts to jurisdictional waters and wetlands caused by activities authorized by NWPs are scattered throughout a large landscape that encompasses the point of origin and terminal point of the linear projects, and all of the crossings of jurisdictional waters and wetlands in between the origin and terminus. Under most circumstances, those crossings

impact distinctly different waterbodies, although there may be cases where there are multiple crossings of the same waterbody at separate and distant locations. For a long linear project, a large number of different waterbodies may be impacted by crossings that are a substantial distance from each other. In contrast, for a non-linear project, the impacts to jurisdictional waters and wetlands are concentrated within a much smaller landscape unit (usually a single parcel of land) that is defined by the boundaries of the non-linear project (e.g., the boundaries of the residential or commercial development). For a nonlinear project, the impacts of activities authorized by NWP or other DA permits usually occur to a single waterbody and its tributaries and adjacent wetlands.

As a general concept, cumulative impacts accrue to a single waterbody as a result of multiple impacts occurring over time, which include direct impacts to the waterbody and the indirect effects of activities occurring in the watershed of that waterbody. For a linear project, the incremental contribution of a linear project crossing of a waterbody to the cumulative impacts for that particular waterbody is small. For a linear project, the sum of the authorized impacts occurs to the various waterbodies crossed by that linear project. A non-linear project may have a larger incremental contribution to the cumulative impacts for a particular waterbody, because all of the authorized impacts will occur in or near that waterbody.

The definition is adopted as proposed.

Indirect effects. The Corps did not propose any changes to this definition. One commenter recommended the removal of this definition, stating that it is too broad. District engineers will review PCNs consistent with paragraph 2 of Section D (District Engineer's Decision), which requires consideration of the direct and indirect impacts caused by the NWP activity, as well as the cumulative effects in order to determine if the activity would cause no more than minimal adverse environmental effects. The NWP activity is the activity subject to DA jurisdiction—the discharge of dredged or fill material into waters of the United States and work and structures in navigable waters of the United States. The Corps believes that the definition of indirect effects should be retained to inform the district engineer's decision.

The definition is adopted as proposed.

Loss of waters of the United States. The Corps did not propose any changes

to this definition. Many commenters recommended modifying the definition to include temporary impacts as a loss of waters of the United States. Many commenters recommended that language be added to NWPs to clarify that the acreage impact limit applies to activities or discharges that would result in a complete loss of waters of the United States and not to temporary or long-term impacts to the waters. One commenter recommended revising this definition to state that placement of dredged or fill material that results in an increase in the aquatic resource functions and services of the aquatic resource is not a loss of waters.

Loss of waters of the United States does not include waters of the United States temporarily filled, flooded, excavated, or drained. Permittees must comply with general conditions 11 (Equipment) and 13 (Removal of Temporary Structures of Fills) which require areas to be restored to pre-construction elevations and revegetated, as appropriate. Under Section 404 of the CWA, DA authorization is required for discharges of dredged or fill material into waters of the United States unless exempted by CWA Section 404(f). Discharges of dredged or fill material involve the addition of material within or into waters of the United States, regardless of whether the effect of the discharge is beneficial or adverse. The Corps declines to remove discharges that result in beneficial effects from this definition. Consistent with the District Engineer's Decision (Section D), the district engineer can consider the duration of the effects and whether the regulated activity would result in beneficial effects in their determination whether the NWP activity would cause more than minimal adverse effects to the environmental.

The definition is adopted as proposed.

Nature-based solutions. The Corps proposed to add a definition of “nature-based solutions” to Section F. For the reasons discussed in Section II.D, the definition is adopted as proposed.

Navigable waters. The Corps did not propose any changes to this definition. One commenter recommended revising this definition to clarify that variations of the term “navigable waters” such as “navigable water,” “navigable waters of the United States,” or “navigable water of the United States” all refer to waters subject to Section 10 of the RHA (i.e., Section 10 waters) as defined in 33 CFR 329. The Corps agrees that the terms listed here all refer to navigable waters of the United States as defined in 33 CFR 329 but finds it unnecessary to add these terms to this definition.

One commenter requested that Corps districts provide a list of navigable waters of the United States subject to Section 10 of the RHA on district websites. Consistent with 33 CFR 329.16, Corps districts maintain a list of navigable waters and the Corps will evaluate the best way to make these lists available to the public.

One commenter stated that the Corps should clarify if waters under the authority of Section 10 of the RHA are also “traditional navigable waters.” “Traditional navigable waters” include but are not limited to “navigable waters” as defined in this definition.

The definition is adopted as proposed.

Non-tidal wetland. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Open water. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Ordinary high water mark. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Perennial stream. The Corps did not propose any changes to this definition. Many commenters expressed opposition to defining this term and recommended its removal from the definitions. This term is used in NWP 40 (Agricultural Activities) and in NWP 43 (Stormwater Management Facilities) as such, the Corps declines to remove this definition. The definition is adopted as proposed.

Practicable. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Pre-construction notification. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Preservation. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Re-establishment. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Rehabilitation. The Corps did not propose any changes to this definition. The Corps did not receive any

comments on the proposed definition. The definition is adopted as proposed.

Restoration. The Corps did not propose any changes to this definition. One commenter requested that the definition use the phrase “and biological” instead of “or biological.” The use of “or” preserves the option to manipulate some but not all characteristics of an aquatic resource to improve natural functions. The Corps declines to make the recommended change in this definition. The definition is adopted as proposed.

Riffle and pool complex. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Riparian areas. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Shellfish seeding. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Single and complete linear project. The Corps did not propose any changes to this definition. Many commenters expressed support for this definition. Many commenters opposed this definition and stated that it should be removed. Many commenters stated that the ability to use multiple NWP projects should be eliminated because that practice violates numerous laws. Many commenters stated that the definition of “single and complete linear project” is used to piecemeal large projects into NWPs.

The term “single and complete project” is defined in the regulations implementing the NWP program that were promulgated in 1991 and are still in effect (33 CFR 330.2(i)). The definition in regulation addresses what constitutes a “single and complete project” generally as well as in the context of linear projects. The definitions concerning single and complete projects in the NWPs are consistent with the NWP regulations issued in 1991. The basis for treating each crossing involved in a linear project as a separate activity is that the effects of the activities that can be authorized within the limitations of the applicable NWPs and by definition minor and are typically limited to the waterbody being impacted. For linear projects, impacts to jurisdictional waters and wetlands caused by activities authorized by NWPs are scattered throughout a large landscape that encompasses the point of

origin and terminal point of the linear projects, and all of the crossings of jurisdictional waters and wetlands in between the origin and terminus. Under most circumstances, those crossings impact distinctly different waterbodies, although there may be cases where there are multiple crossings of the same waterbody at separate and distant locations. For a long linear project, a large number of different waterbodies may be impacted by crossings that are a substantial distance from each other. This is distinguished from a non-linear project which is more likely to concentrate the effects of multiple activities within a single waterbody or watershed. As an additional backstop against the possibility of impacts compounding across multiple separate crossings, when a PCN is required for an activity associated with a linear project, the PCN must include information on all crossings associated with that linear project which require DA authorization. The district engineer will review the PCN to ensure that the cumulative adverse environmental effects of all crossings associated with linear projects are no more than minimal. As explained in the rulemaking establishing the definition of “single and complete project” in 33 CFR 330.2(i) (see 56 FR 59110, 59113–13), the definition of “single and complete linear project” does not allow piecemealing. Under paragraph (b)(4) of general condition 32, PCNs for linear projects are required to include those crossings of waters of the United States that require NWP PCNs as well as those crossings that will utilize the NWPs and do not require PCNs. When the district engineer reviews the PCN, he or she considers the cumulative effects of both the NWP activities that require PCNs and the NWP activities that do not require PCNs. The Corps declines to make any changes to this definition.

The definition is adopted as proposed.

Single and complete non-linear project. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Stormwater management. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Stormwater management facilities. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Stream bed. The Corps proposed to modify the definition of “stream bed” by adding a sentence that states that the substrate of a stream bed may also be comprised, in part, of large and small wood fragments, leaves, algae, and other organic materials. A few commenters requested clarification whether wetlands within the ordinary high water mark are considered part of the stream bed. Several commenters stated that the definition should be corrected to read “bedrock or inorganic particles.” We have corrected the second sentence in the definition to include the word “or.” Wetlands landward, or outside, the ordinary high water marks are not part of the stream bed. Areas waterward, or between, the ordinary high water marks are part of the stream bed. Some areas waterward of the ordinary high water mark may meet the definition of wetland.

The definition is adopted as proposed.

Stream channelization. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Structure. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Tidal wetland. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Tribal lands. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Tribal rights. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Vegetated shallows. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

Waterbody. The Corps did not propose any changes to this definition. The Corps did not receive any comments on the proposed definition. The definition is adopted as proposed.

III. Compliance With Relevant Statutes

A. National Environmental Policy Act

The Corps has prepared a decision document for each NWP. Each decision document contains an EA to fulfill the

requirements of the NEPA. The EA discusses the anticipated impacts the NWP will have on the human environment. Each decision document also includes a public interest review conducted in accordance with 33 CFR 320.4. If an NWP authorizes discharges of dredged or fill material into waters of the United States, the decision document for that NWP also includes a CWA Section 404(b)(1) Guidelines analysis conducted in accordance with the applicable provisions of 40 CFR part 230, including 40 CFR 230.7 which address the issuance of general permits. These decision documents evaluate the environmental effects of each NWP from a national perspective.

The Corps solicited comments on the draft national decision documents, and any comments received were considered when preparing the final decision documents for the NWPs. The final decision documents for each NWP are available on the internet at: www.regulations.gov (docket ID number COE-2025-0002) as “Supporting and Related Materials” for this final action.

Many commenters stated that the Corps has not met its obligations under NEPA. Many commenters stated the reissuance of the NWPs requires the preparation of Environmental Impact Statement(s). Many commenters stated that the draft decision documents do not support the finding that the NWP Program has not resulted in significant environmental harm. Many commenters stated that the Corps has not taken a hard look at the impacts of the NWP.

The Corps prepared components of the draft and final national decision documents in accordance with NEPA (42 U.S.C. 4321 *et seq.*). The final decision documents prepared by Corps Headquarters for the reissuance of these NWPs provide an analysis of the impacts expected to be caused by the activities authorized by these NWPs during the five-year period they are expected to be in effect, including estimates of the number of times an NWP is anticipated to be used, the anticipated impacts to jurisdictional waters and wetlands, and the compensatory mitigation required to offset losses of jurisdictional waters and wetlands. Those impacts, and the compensatory mitigation, are evaluated against the current environmental setting (*i.e.*, the affected environment).

In the decision document, the Corps evaluated the effects or impacts on the human environment that are reasonably foreseeable and have a reasonably close causal relationship to the activities authorized by these NWPs. The national decision document prepared for each NWP issued by this final action

discusses alternatives, examines the effects and impacts of the proposed action (*i.e.*, the issuance of the NWP by Corps Headquarters), including actions not under the authority of the Department of the Army. The national decision documents include an environmental assessment with a finding of no significant impact and satisfy the requirements of NEPA.

Many commenters stated that the Corps is not in compliance with NEPA because the process to reissue the NWPs or review NWP-specific activities does not include sufficient public participation. One commenter requested clarification on the responsibility of districts in communicating with the public if a project requires a PCN. This commenter was concerned that determining a project is non-notifying is final agency decision subject to judicial review under the Administrative Procedure Act.

The Corps solicited comments on the proposed rule to reissue the NWPs, and on the draft national decision documents, and any comments received were considered when preparing the final action and the final decision documents for the NWPs. The Corps considered comments on thresholds for submittal of a PCN in finalizing this action. The NWPs authorize only those activities that have no more than minimal adverse environmental effects, so it is not necessary to issue public notices to announce the tens of thousands of NWP verification letters Corps districts issue each year.

Many commenters stated that the Corps’ analysis in the decision documents lacks sufficiently detailed data and analysis of impacts. One commenter stated that the lack of information in the draft decision documents limits the public’s ability to provide substantive comments. Many commenters stated that there are unexplained data inconsistencies between the 2021 NWP decision documents and the draft 2026 NWP decision documents. One commenter recommended distinguishing between temporary or permanent impacts in the analysis.

The draft and final decision documents for the NWPs issued in this final action estimate usage, acreage of impacts, and acreage of compensatory mitigation for the 2026 NWPs. The estimated acreage of impacts combines temporary and permanent impacts. The national decision documents assess reasonably foreseeable impacts at a national scale based on reliable data and resources. The impacts are evaluated against the current environmental setting or baseline, in accordance with

typical practices for conducting environmental impact analyses. Differences between the estimates for the projected use of the 2021 NWPs in the 2021 national decision documents and the estimated use of the 2021 NWPs in the 2026 national decision documents are based on reliable data and resources available at the time of the analysis. Reasons for changes in the data include, but are not limited to, changes in an industry or economy, improved avoidance and minimization, the exercise of the district engineer’s discretion under paragraph (d) of general condition 23 (Mitigation), improvements in available compensatory mitigation, or changes in data collection.

A few commenters said the decision documents imply that the district commander completes an activity-specific NEPA analysis. Many commenters stated that the Corps inappropriately tiers the NEPA analysis.

The Corps Headquarters has prepared national decision documents for each NWP to address the environmental effects of the reissuance of each NWP in accordance with NEPA. Since the Corps fulfills the requirements of NEPA when it issues its national decision document for the reissuance of that NWP, no additional NEPA analysis or documentation is completed for case-specific activities authorized by that NWP. The supplemental documentation prepared by the division engineer and the documentation prepared by the district engineer for NWP-specific activities do not contain a NEPA analysis.

Many commenters stated that the Corps’ alternative analysis inappropriately assumes that individual permits would be less protective than the NWP. Many commenters oppose reliance on potential mitigation to offset effects, contrary to NEPA. One commenter stated that the Corps cannot rely on compensatory mitigation to offset impacts without monitoring the completion or success of the compensatory mitigation.

The NWPs incentivize project proponents to design their project to minimize losses of waters to qualify for NWP authorization rather than having to apply for individual permits for authorization that results in larger losses of waters. For example, in FY 2023, 74 percent of the NWP verifications involving discharges of dredged or fill material into waters of the United States had impacts of less than $\frac{1}{10}$ -acre, well below the $\frac{1}{2}$ -acre limit in numerous NWPs. The use of compensatory mitigation and other forms of mitigation to ensure that activities authorized by

an NWP result in no more than minimal adverse environmental effects is codified in the Corps' NWP regulations at 33 CFR 330.1(e)(3). Compensatory mitigation projects required for activities authorized by the NWPs must comply with the Corps' regulations at 33 CFR part 332, which require monitoring and other actions to ensure that the required compensatory mitigation successfully offsets the permitted wetland or stream losses. General condition 30 (Compliance Certification) requires the permittee to certify that the authorized activity and any required compensatory mitigation is complete.

B. Compliance With 404(e) of the Clean Water Act

The NWPs are issued in accordance with Section 404(e) of the CWA and 33 CFR part 330. These NWPs authorize categories of activities that are similar in nature. The similar in nature requirement does not mean that activities authorized by an NWP must be identical to each other. The phrase "categories of activities that are similar in nature", "as determined by the Secretary," is best read to confer broad discretion on the Secretary to facilitate the practical implementation of this general permit program.

Nationwide permits, as well as other general permits, are intended to reduce administrative burdens on the Corps and the regulated public while maintaining environmental protection, by efficiently authorizing activities that have no more than minimal adverse environmental effects, consistent with Congressional intent in the 1977 amendments to the Federal Water Pollution Control Act. The NWPs incentivize project proponents to minimize impacts to jurisdictional waters and wetlands to qualify for NWP authorization instead of having to apply for individual permits. Keeping the number of NWPs manageable is a key component for making the NWPs protective of the environment and streamlining the authorization process for those general categories of activities that have no more than minimal individual and cumulative adverse environmental effects.

These 404(b)(1) Guidelines analyses in the national decision documents were conducted in accordance with 40 CFR part 230.7. The 404(b)(1) Guidelines analyses in the national decision documents also include cumulative effects analyses done in accordance with 40 CFR 230.7(b) and 230.11(g).

Before the 2026 NWPs go into effect, division engineers will issue supplemental documents to evaluate

environmental effects on a regional basis (e.g., a state or Corps district) and to determine whether regional conditions are necessary to ensure that the NWPs will result in no more than minimal individual and cumulative adverse environmental effects on a regional basis. The supplemental documents are prepared by Corps districts but must be approved and issued by the appropriate division engineer, since the NWP regulations at 33 CFR 330.5(c) state that the division engineer has the authority to modify, suspend, or revoke NWP authorizations in a specific geographic area within his or her division. For some Corps districts, their geographic area of responsibility covers an entire state. For other Corps districts, their geographic area of responsibility may be based on watershed boundaries.

For some states, there may be more than one Corps district responsible for implementing the Corps' Regulatory Program, including the NWP program. In states with more than one Corps district, there is a lead Corps district responsible for preparing the supplemental documents for all of the NWPs. The supplemental documents will discuss regional conditions imposed by division engineers to protect the aquatic environment, compliance with other applicable federal laws, and ensure that any adverse environmental effects resulting from NWP activities in that region will be no more than minimal both individually and cumulatively.

For the NWPs, the assessment of cumulative effects under the Corps' public interest review occurs at three levels: National, regional, and the verification stage. Each national NWP decision document includes a national-scale cumulative effects analysis under the Corps' public interest review. Each supplemental document has a cumulative effects analysis conducted for a region, which is typically defined as a state or Corps district. When a district engineer issues a verification letter in response to a PCN or a voluntary request for an NWP verification, the district engineer prepares a brief decision document. That decision document explains whether the proposed NWP activity, after considering permit conditions such as mitigation requirements, will result in no more than minimal individual and cumulative adverse environmental effects.

If the NWP is not suspended or revoked in a state or a Corps district, the supplemental document includes a certification that the use of the NWP in that district, with any applicable

regional conditions, will result in no more than minimal cumulative adverse environmental effects.

After the NWPs are issued or reissued and go into effect, district engineers will monitor the use of these NWPs on a regional basis (e.g., within a watershed, county, state, Corps district or other appropriate geographic area), to ensure that the use of a particular NWP is not resulting in more than minimal cumulative adverse environmental effects. The Corps' staff that evaluate NWP PCNs often work in a particular geographic area and have an understanding of the activities that have been authorized by NWPs, regional general permits, and individual permits over time, as well as the current environmental setting for that geographic area. If the Corps district staff believe that the use of an NWP in that geographic region may be approaching a threshold above which the cumulative adverse environmental effects for that category of activities may be more than minimal, the district engineer may either make a recommendation to the division engineer to modify, suspend, or revoke the NWP authorization in that geographic region in accordance with the procedures in 33 CFR 330.5(c). Alternatively, under the procedures at 33 CFR 330.5(d), the district engineer may also modify, suspend, or revoke NWP authorizations on a case-by-case basis to ensure that the NWP does not authorize activities that result in more than minimal cumulative adverse environmental effects.

The various terms and conditions of these NWPs, including the NWP regulations at 33 CFR 330.1(d) and 330.4(e), allow district engineers to exercise discretionary authority to modify, suspend, or revoke NWP authorizations or to require individual permits, and ensure compliance with Section 404(e) of the CWA. For each NWP that may authorize discharges of dredged or fill material into waters of the United States, the national decision documents prepared by Corps Headquarters include a 404(b)(1) Guidelines analysis. The supplemental documents prepared by division engineers will discuss regional circumstances, to provide the basis for division engineers to add regional conditions to the NWPs to address relevant factors in the 404(b)(1) Guidelines.

One commenter stated that the decision document should include the NEPA analysis, the 404(b)(1) guidelines analysis, the public interest review, and the discussion of reasonably foreseeable effects. Many commenters stated that

the NWP do not comply with the 404(b)(1) guidelines. Many commenters stated that the proposal is not compliant with the regulations that govern NWPs nor with the CWA. Many commenters stated that the Corps has failed to justify that NWPs have no more than minimal adverse effects on the environment individually and cumulatively.

The national decision documents for each NWP include a NEPA analysis and a public interest review, including a discussion of reasonably foreseeable effects. For each NWP that authorizes discharges of dredged or fill material into waters of the United States, the decision document contains a 404(b)(1) Guidelines analysis. Section 230.7(b) of the 404(b)(1) Guidelines requires a “written evaluation of the potential individual and cumulative impacts of the categories of activities to be regulated under the general permit.” When we issue the NWPs, we fully comply with the requirements of the 404(b)(1) Guidelines at 40 CFR 230.7, which govern the issuance of general permits under Section 404 of the CWA. Since the required evaluation must be completed before the NWP is issued, the analysis is predictive in nature. The estimates of potential individual and cumulative impacts, as well as the projected compensatory mitigation that will be required, are based on the data from the Corps district offices, including the past use of NWPs.

In our decision documents, we also used reliable national data on the status of wetlands and other aquatic habitats in the United States, and the foreseeable impacts of the NWPs on those waters. In the national decision document, the Corps addressed the elements required for a CWA Section 404(b)(1) Guidelines analysis for the issuance of a general permit, including a cumulative effects analysis conducted in accordance with 40 CFR 230.7(b)(3) and concluded that the reissuance of the NWPs would not cause or contribute to significant degradation of the aquatic environment. The Corps has determined that the NWPs would cause no more than minimal adverse effects to the environment, both individually and cumulatively.

Many commenters stated that the NWPs have authorized activities that caused cumulative effects to ecosystems and waterways. Many commenters said that the Corps has not completed any meaningful analysis of effects of the NWPs. A few commenters stated that the cumulative effects analysis is appropriate. Many commenters stated that the Corps defers cumulative effects analysis to the activity-specific analysis completed by the district engineer. One

commenter stated that the Corps has not provided a cumulative effects analysis since 2001. Many commenters stated that the Corps cannot complete its cumulative impact analysis in reliance on mitigation that is imposed by the district engineer after case-specific review of each NWP activity. Several commenters stated that the cumulative impacts do not include temporary impacts. One commenter stated that the district engineer should not have the discretion to issue waivers because analysis has not been conducted to determine if the cumulative impacts are minimal.

Section 404(e) of the CWA recognizes that activities authorized by general permits, including NWPs, will result in adverse environmental impacts. One requirement of Section 404(e) of the CWA is that general permits, including NWPs, authorize only those activities that result in no more than minimal adverse environmental effects, individually and cumulatively. The terms and conditions of the NWPs, such as acreage limits and the mitigation measures in some of the NWP general conditions, are imposed to ensure that the NWPs authorize only those activities that result in no more than minimal adverse effects on the aquatic environment and other public interest review factors. The national decision documents consider the reasonably foreseeable impacts compared to the baseline condition, estimating the number of times the NWP is anticipated to be used during the five-year period it will be in effect, the estimated impacts to jurisdictional waters and wetlands, and the compensatory mitigation required to offset losses of jurisdictional waters and wetlands. The national decision documents prepared for this final action provide the analysis to support the Corps’ determination that the NWPs will cause no more than minimal adverse environmental effects, both individually and cumulatively. Division engineers prepare supplemental documentation which provide the cumulative effects analysis for a region, which is usually a state or Corps district. When a district engineer issues a verification letter in response to a PCN or a voluntary request for an NWP verification, the district engineer prepares a brief document that explains the decision that the proposed NWP activity, after considering permit conditions such as mitigation requirements, will result in no more than minimal individual and cumulative adverse environmental effects.

The Corps Regulatory Program’s automated information system (ORM)

tracks NWP verifications issued, regional general permit verifications issued, and individual permits issued, including the types of activities authorized by those general permits and individual permits and the Corps uses this information to inform our cumulative effects analysis. The Corps, including divisions and districts, will use available information, which may include ORM data, to complete the cumulative effects analysis.

For some NWPs, when submitting a PCN, an applicant may request a waiver for a particular limit specified in the NWP’s terms and conditions. If the applicant requests a waiver of an NWP limit and the district engineer determines, after coordinating with the resource agencies under paragraph (d) of NWP general condition 32 (Pre-Construction Notification), that the proposed NWP activity will result in no more than minimal individual and cumulative adverse environmental effects, the district engineer may grant such a waiver. Following the conclusion of the district engineer’s review of a PCN, he or she prepares an official, publicly available document. This document discusses the district engineer’s findings as to whether a proposed NWP activity qualifies for NWP authorization, including compliance with all applicable terms and conditions, and the rationale for any waivers granted, and activity-specific conditions needed to ensure that the activity being authorized by the NWP will have no more than minimal individual and cumulative adverse environmental effects and will not be contrary to the public interest (see 33 CFR 330.6(a)(3)(i)). We have retained the district engineer’s discretion to waive particular limits when he or she determines that the authorized activity will cause no more than minimal adverse environmental effects.

Many commenters suggested that Corps districts publish permit, impact, and mitigation data, and other permit-related information on Corps district websites to provide more detail about cumulative impacts at a regional level. Many commenters stated that the Corps’ cumulative impacts tool should be publicly available. One commenter stated that the Corps should make all project records available without a Freedom of Information Act (FOIA) request.

Data which is relied upon to complete the NEPA analysis, 404(b)(1) Guidelines analysis, and public interest review are published in the national decision documents. This data includes the estimated annual use of NWPs, estimated annual impacts authorized by

NWPs and estimated annual required compensatory mitigation. This data is published in this final action and in the national decision documents. The Corps makes information on other permit types available on our website. Congress established the Freedom of Information Act as the means for the public to access records from federal agencies, unless the information is exempt from release.

Many commenters stated that the NWPs do not authorize categories of activities that are similar in nature. Many commenters stated that the NWPs authorize activities that are similar in nature.

Section 404(e) of the CWA does not specify how broadly or narrowly the Corps has to identify any category of activities for the issuance of a general permit, including the NWPs. Section 404(e) only requires that the activities in that category are similar in nature. Likewise, under the Corps' definition of general permit in its Section 10 regulations at 33 CFR 322.2(f), there are no standards regarding how broad or narrow the category has to be. We believe that the "categories of activities that are similar in nature" requirement in CWA Section 404(e) is to be interpreted broadly, for practical implementation of this general permit program.

Many commenters stated that the NWPs are contrary to the public interest. Many commenters stated that the Corps disregards impacts of activities authorized by the NWPs which occur beyond the aquatic environment or outside the Corps' jurisdiction.

The Corps prepared a national decision document for each NWP which includes a public interest review. If a proposed NWP authorizes discharges of dredged or fill material into waters of the United States, the decision document also includes an analysis conducted pursuant to the CWA Section 404(b)(1), in particular 40 CFR part 230.7. These decision documents evaluate, from a national perspective, the public interest review factors and the environmental effects of each NWP. The final national decision documents conclude that the reissuance of the NWPs is not contrary to the public interest. The Corps evaluates reasonably foreseeable impacts of the actions within DA jurisdiction. The Corps does not have the authority to take actions to control potential impacts that may occur which are far attenuated from the action subject to DA jurisdiction.

C. Compliance With the Endangered Species Act

The Corps has carefully evaluated its Endangered Species Act (ESA) obligations for the issuance of these NWPs. The Corps has determined that finalizing this action issuing these NWPs has no effect on any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) due to the terms and requirements of 33 CFR 330.4(f)(2) and general condition 18. The basis for this determination is outlined in an October 15, 2012, letter from the Corps' Chief Counsel to the FWS and NMFS (the Services), as further described below. The no effect determination is further supported by a biological assessment prepared by the Corps to support this rulemaking action.

Requirements of the ESA

Section 7 of ESA requires each federal agency to insure, through consultation with the Services, that "any action authorized, funded, or carried out" by that agency is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat (16 U.S.C. 1536(a)(2)). Section 7 consultation is a procedural process. This process for satisfying this procedural requirement is set out in regulation at 50 CFR part 402. Those regulations require the action agency to consult with the appropriate Service when the action "may affect" listed species or critical habitat (50 CFR 402.14). The regulations also require an action agency to confer with the appropriate Service if the action is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat (50 CFR 402.10(a)). If the action agency determines that the action would have no effect on listed species or designated critical habitat, then no consultation or conference is necessary (Section 3.5 of Section 7 Consultation Handbook, March 1998).

Requirements and Limitations Imposed by General Condition 18 and 33 CFR 330.4(f)

The issuance or reissuance of the NWPs by the Chief of Engineers imposes express limitations on activities authorized by the NWPs. These limitations are imposed by the NWP terms and conditions, including the general conditions that apply to all NWPs regardless of whether PCN is required. With respect to listed species and critical habitat, general condition 18

expressly prohibits any activity "which 'may affect' a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed." General condition 18 also states that if an activity "might affect" a listed species (or a species proposed for listing) or critical habitat (or critical habitat proposed for such designation) or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, a non-federal applicant must submit a PCN and "shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized."

Similarly, 33 CFR 330.4(f)(2) imposes a PCN requirement for proposed NWP activities by non-federal permittees where listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or are in the vicinity of the proposed NWP activity. Section 330.4(f)(2) also prohibits those permittees from beginning the NWP activity until notified by the district engineer that the requirements of the ESA have been satisfied, and that the activity is authorized. Permit applicants that are federal agencies should follow their own requirements for complying with the ESA (see 33 CFR 330.4(f)(1)), and if their proposed NWP activities require PCNs, then their PCNs must include documentation demonstrating their compliance with the ESA (see paragraph (b)(7) of general condition 32).

General condition 18 and 33 CFR 330.4(f) establish a more stringent threshold than the threshold set forth in the Services' ESA Section 7 regulations for initiation of Section 7 consultation. While Section 7 consultation must be initiated for any activity that "may affect" listed species or critical habitat, for non-federal permittees general condition 18 requires submission of a PCN to the Corps if "any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat" and prohibits work until "notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized." (See paragraph (c) of general condition 18.) The PCN must "include the name(s) of the endangered or threatened species (or species proposed for listing) that might

be affected by the proposed work or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed work.” (See paragraph (b)(7) of general condition 32.)

In other words, those regulations and general condition 18 require non-federal permittees to submit PCNs if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation. The district engineer then evaluates the PCN and makes an effect determination for the proposed NWP activity for the purposes of ESA Section 7. The requirements and limitations imposed by the NWP regulations at 33 CFR 330.4(f) and NWP general condition 18 (Endangered Species) mean that the promulgation of these NWPs by the Chief of Engineers do not have any effect on listed (or proposed) species or designated (or proposed) critical habitat.

The text of paragraph (e) of general condition 18 is clear: an NWP does not authorize the “take” of an endangered or threatened species. Activities authorized by an NWP may not result in “take” of a listed species unless the district engineer or other federal agency completes consultation, receives an incidental take statement from the FWS or NMFS and incorporates reasonable and prudent measures as conditions to the NWP in the NWP verification.

Paragraph (e) of general condition 18 also states that a separate authorization (e.g., an ESA Section 10 permit or a biological opinion with an “incidental take statement”) is required to take a listed species. In addition, paragraph (a) of general condition 18 states that no activity is authorized by NWP which is likely to “directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation” or “which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation.” Such activities would require district engineers to exercise their discretionary authority and subject the proposed activity to the individual permit review process, because an activity that would jeopardize the continued existence of a listed species, or a species proposed for listing, or that would destroy or adversely modify designated critical habitat or critical habitat proposed for such designation would not result in no more than minimal adverse

environmental effects and thus cannot be authorized by an NWP.

The Corps’ NWP regulations at 33 CFR 330.1(c) state that an “activity is authorized under an NWP only if that activity and the permittee satisfy all of the NWP’s terms and conditions.” Thus, if a project proponent moves forward with an activity that “might affect” an ESA listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) without complying with the PCN requirement or other requirements of general condition 18, the activity is not authorized under Section 404 of the CWA or Section 10 RHA. In this case, the project proponent could be subject to enforcement action and penalties under 33 CFR 326. In addition, if the unauthorized activity results in a “take” of listed species as defined by the ESA and its implementing regulations, then the person conducting that activity could be subject to penalties, enforcement actions, and other actions by the FWS or NMFS under Section 11 of the ESA.

In summary, the issuance or reissuance of NWPs has “no effect” on listed species or critical habitat because (1) no NWP can or does authorize an activity that may affect a listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) absent an activity-specific ESA Section 7 consultation, conference, or an applicable regional programmatic ESA Section 7 consultation, and because (2) any activity that may affect listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) must undergo an activity-specific consultation, conference, or be in compliance with a regional programmatic ESA Section 7 consultation before the district engineer can verify that the activity is authorized by an NWP. Accordingly, the action being “authorized” by the Corps (*i.e.*, the issuance or re-issuance of the NWPs themselves) has no effect on listed species or critical habitat.

Chief Counsel’s Letter Explaining the Basis for the No Effect Determination

On October 15, 2012, the Chief Counsel for the Corps sent a letter to the Services clarifying the Corps’ legal position regarding compliance with Section 7 of the ESA for the NWPs. That letter explained that the issuance or reissuance of the NWPs, along with compliance with ESA Section 7 through NWP general condition 18 (which applies to every NWP, and which relates to endangered and threatened species)

and 33 CFR 330.4(f), results in “no effect” to listed species or critical habitat, and therefore the reissuance/issuance action itself does not require ESA Section 7 consultation. Although the reissuance/issuance of the NWPs itself has no effect on listed species or their critical habitat and thus requires no ESA Section 7 consultation, the terms and conditions of the NWPs, including general condition 18 and 33 CFR 330.4(f), ensure that ESA consultation will take place on an activity-specific basis wherever appropriate at the field level of the Corps, and the Services. The principles discussed in the Corps’ October 15, 2012, letter apply to this issuance/reissuance of NWPs.

Although section 7 has not been amended, the Services have amended the regulations implementing Section 7 of ESA (50 CFR part 402) several times since the 2012 Chief Counsel letter was written. Those changes in regulation do not affect the analysis and conclusion reached in the letter.

Revisions made in 2015 (80 FR 26832) defined two types of programmatic ESA Section 7 consultations and discussed the circumstances under which providing an incidental take statement with a biological opinion for a programmatic Section 7 consultation is appropriate. The two types of programmatic Section 7 consultations are: framework programmatic actions and mixed programmatic actions. While programmatic consultations are designed to cover large-scale programmatic actions, they are not required or appropriate for all national programmatic actions. In some cases, it is more appropriate to address consultation at a regional or local level. Indeed, in the preamble to the 2015 final rule, the Services identified the Corps’ NWP program as an example of a framework action at a national scale that can address ESA Section 7 consultation requirements at a later time as appropriate, as specific activities are authorized, funded, or carried out (see 80 FR 26835). In their 2015 final rule, the Services also stated that this regulatory change does not imply that Section 7 consultation is required for a framework programmatic action that has no effect on listed species or critical habitat (see 80 FR 26835).

As discussed in this final action, the NWP program has been structured, through the requirements of NWP general condition 18 and 33 CFR 330.4(f), to focus ESA Section 7 compliance at the activity-specific and regional scales. Each year, Corps districts initiate thousands of formal

and informal ESA Section 7 consultations for specific NWP activities (see below), and many Corps districts have worked with the Services to develop formal and informal regional programmatic consultations.

Additional revision made in 2019 (84 FR 44976) and 2024 (89 FR 24268) modified definitions and elements of the consultation process. These amendments changed how agencies determine the “effects of the action” that must be considered when making an effects determination or reaching a “no effect” conclusion. However, this change does not alter the analysis in the 2012 Chief Counsel letter nor in the operation of NWP general condition 18 and 33 CFR 330.4(f) because general condition 18 covers any direct or indirect effect and explicitly incorporates the current definition of “effects of the action” from 50 CFR 402.02.

Biological Assessment Making a “No Effect” Determination

Although not required by the statute, the Corps has prepared a biological assessment for this rulemaking action. The biological assessment includes the list of active and pending regional programmatic ESA Section 7 consultations that can be used for NWP activities. The biological assessment concludes that the issuance or reissuance of NWPs has “no effect” on listed species and designated critical habitat and does not require ESA Section 7 consultation. This conclusion was reached because no activities authorized by any NWPs “may affect” listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) without first completing an activity-specific ESA Section 7 consultation (or conference) with the Services, as required by general condition 18 and 33 CFR 330.4(f). A copy of the biological assessment is available at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/> (at the link titled “Biological Assessment for the 2026 Nationwide Permits”).

The Corps recognizes that this procedural process is different than the programmatic ESA Section 7 consultations the Corps conducted for the 2007 and 2012 NWPs as voluntary consultations. The voluntary programmatic consultation conducted with the NMFS for the 2012 NWPs resulted in a biological opinion issued on February 15, 2012, which was replaced by a new biological opinion issued on November 24, 2014. A new

biological opinion was issued by NMFS after the proposed action was modified and triggered re-initiation of that programmatic consultation. The programmatic consultation on the 2012 NWPs with the FWS did not result in a biological opinion. Those consultations were not mandated by section 7 of the ESA. Rather, the Corps voluntarily consulted with the Services to further bolster the protectiveness of the NWPs generally. The Services have since confirmed that it can be appropriate to address ESA Section 7 procedural requirements at a later time, rather than at the initial national framework action level (see 80 FR 26835). For the 2017 or 2021 NWPs, Corps Headquarters did not request a national programmatic consultation, nor did the Directors. For the 2021 NWPs, Corps Headquarters prepared a biological assessment concluding that the issuance or reissuance of NWPs through the rulemaking process had no effect on listed species and designated critical habitat. Neither the Director of FWS nor the Director of NMFS has requested the Corps to enter into consultation for this action, as they are authorized to do under 50 CFR 402.12(a) if they identify any action of an agency that may affect listed species or critical habitat and for which there has been no consultation.

Regional and Action-Specific Implementation

During the process for developing regional conditions, Corps districts coordinate or consult with FWS and/or NMFS regional or field offices to identify regional conditions to protect listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) and ensure that an NWP for a specific activity only authorizes no more than minimal individual and cumulative adverse environmental effects. Regional conditions must comply with the Corps’ regulations at 33 CFR 325.4 for adding permit conditions to DA authorizations. Division engineers decide whether suggested regional conditions identified during this coordination are appropriate for the NWPs. Such regional conditions may add PCN requirements to one or more NWPs in areas inhabited by listed species (or species proposed for listing) or where designated critical habitat (or habitat proposed for such designation) occurs. Regional conditions may also establish time-of-year restrictions when no NWP activity can take place to ensure that individuals of listed species are not adversely affected by such activities. Furthermore, after review of a PCN and conclusion of any ESA Section

7 consultation, a district engineer can add activity-specific conditions to an NWP verification to ensure the effects of the activity on listed species, species proposed for listing, critical habitat, or habitat proposed for such designation, are no more than minimal.

Through regional consultations, local initiatives, or other cooperative efforts, district engineers consider additional information and measures to ensure protection of listed species and critical habitat, consistent with the requirements established by general condition 18 (which apply to all uses of all NWPs), and other provisions of the Corps’ regulations. Corps district offices meet with local representatives of the Services to establish or modify existing procedures, where necessary, to ensure that the Corps has the latest information regarding the existence and location of any threatened or endangered species or their critical habitat. Corps districts can also establish, through local procedures or other means such as regional programmatic consultations or standard local operating procedures, additional safeguards that ensure that NWP activities will not jeopardize any threatened and endangered species or result in the destruction or adverse modification of designated critical habitat.

The Corps collects data on all individual permit applications, all NWP PCNs, all voluntary requests for NWP verifications where the NWP or general conditions do not require PCNs, and all verifications of activities authorized by regional general permits. For all written authorizations issued by the Corps, the collected data includes authorized impacts and required compensatory mitigation, as well as information on all consultations conducted under Section 7 of the ESA. Every year, the Corps evaluates approximately 25,000 NWP PCNs and voluntary requests for NWP verifications for activities that do not require PCNs and provides written verifications for those activities when district engineers determine those activities result in no more than minimal adverse environmental effects. During the review of a PCN, district engineers assess potential impacts to listed species and critical habitat and conduct Section 7 consultations whenever they determine proposed NWP activities “may affect” listed species or critical habitat. District engineers will exercise discretionary authority and require individual permits when proposed NWP activities will result in more than minimal adverse environmental effects.

Each year, the Corps conducts thousands of ESA Section 7

consultations with the Services for activities authorized by NWP. In FY 2024 (October 1, 2023 to September 30, 2024), Corps districts conducted 217 formal consultations and 2,647 informal consultations under ESA Section 7 for NWP PCNs and verification requests. During that time period, the Corps also used regional programmatic consultations for 4,667 NWP PCNs and verification requests to comply with ESA Section 7. Therefore, during FY 2024 more than 7,500 ESA Section 7 consultation actions were completed for NWP PCNs or voluntary verification requests where either formal or informal consultations were conducted or existing regional programmatic ESA Section 7 consultations (formal and informal) were utilized to comply with ESA Section 7.

For a linear project authorized by NWPs 12, 14, 57, or 58, where the district engineer determines that one or more crossings of waters of the United States that require Corps authorization “may affect” listed species or designated critical habitat, the district engineer initiates a single Section 7 consultation with the FWS and/or NMFS for all of those crossings that she or he determines “may affect” listed species or designated critical habitat. The number of Section 7 consultations provided above represents the number of NWP PCNs that required some form of ESA Section 7 consultation, not the number of single and complete projects authorized by NWPs that may be included in a single PCN. A single NWP PCN may include more than one single and complete project, especially if it is for a linear project such as a utility line or road with multiple separate and distant crossings of jurisdictional waters and wetlands from its point of origin to its terminal point.

Section 7 consultation is only required when a Corps district makes a “may affect” determination. Regional conditions, standard local operating procedures for endangered species (*i.e.*, SLOPES), and regional programmatic consultations protect listed species and critical habitat and tailor the NWP program to address specific species, their habitats, and the stressors that affect those species.

This layered approach of implementing successively more specific protections for listed species and designated critical habitat facilitates the efficient permitting of those activities that could not possibly affect those protected resources while ensuring that activities that might affect those resources are appropriately evaluated at the activity-specific level.

Response to Comments

The Corps received numerous comments regarding compliance with the Endangered Species Act for both the rulemaking process for issuing, reissuing, and modifying the NWPs by Corps Headquarters, and compliance for specific activities authorized by NWPs. Comments concerning hypothetical specific activities authorized by these NWPs is beyond the scope of this rulemaking.

Many commenters stated that the reissuance of the NWPs violate the ESA because the Corps did not complete programmatic Section 7 consultation. Many commenters stated that programmatic consultation is necessary in order to consider the cumulative effects of all activities authorized by NWPs on protected species. Many commenters stated the reissuance of the NWPs result in adverse effects to listed species.

One commenter opposed the authorization of activities in critical habitat. Many commenters support the Corps’ determination that the reissuance of the NWPs will have “no effect.” One commenter stated that the Corps should request written concurrence from the Services on the determination that no programmatic consultation is required. Many commenters stated that the Corps cannot rely on general condition 18 to satisfy the requirements of the ESA because the Corps has authorized activities using an NWP for case-specific activities without completing consultation.

The NWP issuance or reissuance has no effect on listed species or critical habitat and any proposed NWP activity that “may affect” listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) will undergo an activity-specific ESA Section 7 consultation, conference, or an applicable regional programmatic ESA Section 7 consultation therefore there is no requirement that the Corps undertake programmatic consultation for the NWP program. Regional programmatic consultations may be conducted voluntarily by Corps districts and regional or local offices of the FWS and/or NMFS to tailor regional conditions and procedures to ensure the “might affect” threshold is implemented consistently and effectively.

The only activities that potentially could be immediately authorized by NWPs, assuming they meet all other applicable NWP conditions, are activities that would have “no effect” on listed species or designated critical habitat within the meaning of Section 7

of the ESA and its implementing regulations at 50 CFR part 402. In accordance with general condition 18, (Endangered Species) non-federal prospective permittees may not begin work until the district engineer has completed consultation with the Services for activities that “may affect” listed species or critical habitat. Federal permittees must follow their own regulations for complying with Section 7 of the ESA. Activities which will jeopardize listed species (or species proposed for listing) or cause adverse modification to critical habitat (or habitat proposed for such designation) are not authorized by any NWP.

D. Compliance With Section 106 of the National Historic Preservation Act

The NWP regulations at 33 CFR 330.4(g) and general condition 20 (Historic Properties) ensure that all activities authorized by NWPs comply with Section 106 of the NHPA. General condition 20 requires non-federal permittees to submit PCNs for any activity that might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. The Corps established the “might have the potential to cause effects” criterion under its own regulatory authorities in paragraph (c) general condition 20 to require PCNs for those activities to provide an additional layer of protection for cultural resource values. Upon receipt of the PCN, the district engineer will evaluate the proposed NWP activity and make a threshold determination under 36 CFR 800.3(a)(1) whether the activity has no potential to cause effects to historic properties or whether it has potential to cause effects to historic properties and thus require NHPA Section 106 consultation.

If the project proponent is required to submit a PCN and the proposed activity might have the potential to cause effects to historic properties, the activity is not authorized by an NWP until either (1) the Corps district makes a “no potential to cause effects” determination or (2) completes NHPA Section 106 consultation.

When evaluating a PCN, the Corps will either make a “no potential to cause effects” determination or a “no historic properties affected,” “no adverse effect,” or “adverse effect” determination. If the Corps makes a “no historic properties affected,” “no adverse effect,” or “adverse effect” determination, the district engineer will notify the non-federal applicant and the

activity is not authorized by an NWP until NHPA Section 106 consultation has been completed. If the non-federal project proponent does not comply with general condition 20, and does not submit the required PCN, then the activity is not authorized by an NWP. In such situations, it is an unauthorized activity and the Corps district will determine an appropriate course of action to address the unauthorized activity under its regulations at 33 CFR 326.

The only activities that are immediately authorized by NWPs are “no potential to cause effect” activities under Section 106 of the NHPA, its implementing regulations at 36 CFR part 800, and the Corps’ “Revised Interim Guidance for Implementing Appendix C of 33 CFR part 325 with the Revised Advisory Council on Historic Preservation Regulations at 36 CFR part 800,” dated April 25, 2005, and amended on January 31, 2007. Therefore, the issuance or reissuance of NWPs does not require NHPA Section 106 consultation because no activities that might have the potential to cause effects to historic properties can be authorized by an NWP without first completing activity-specific NHPA Section 106 consultations, as required by general condition 20. Programmatic agreements (see 36 CFR 800.14(b)) may also be used to satisfy the requirements of general condition 20 if a proposed NWP activity is covered by that programmatic agreement.

NHPA Section 106 requires a federal agency that has authority to license or permit any undertaking, to take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register, prior to issuing a license or permit. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Thus, in assessing application of NHPA Section 106 to NWPs issued or reissued by the Corps, the proper focus is on the nature and extent of the specific activities “authorized” by the NWPs and the timing of that authorization.

The issuance or reissuance of the NWPs by the Chief of Engineers imposes express limitations on activities authorized by those NWPs. These limitations are imposed by the NWP terms and conditions, including the general conditions that apply to all NWPs regardless of whether preconstruction notification is required. With respect to historic properties, general condition 20 expressly prohibits reliance on an NWP authorization for

any activity that “may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places,” until the requirements of NHPA Section 106 have been satisfied. General condition 20 also states that if an activity “might have the potential to cause effects” to any historic properties, a non-federal applicant must submit a PCN and “shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that consultation under Section 106 of the NHPA has been completed.” Permit applicants that are federal agencies should follow their own requirements for complying with Section 106 of the NHPA (see 33 CFR 330.4(g)(1) and paragraph (b) of the general condition 20 (Historic Properties)).

Thus, because no NWP can or does authorize an activity that may have the potential to cause effects to historic properties, and because any activity that may have the potential to cause effects to historic properties must undergo an activity-specific NHPA Section 106 consultation (unless that activity is covered under a programmatic agreement) before the district engineer can verify that the activity is authorized by an NWP, the issuance or reissuance of NWPs has “no potential to cause effects” on historic properties. Accordingly, the action being “authorized” by the Corps, which is the issuance or re-issuance of the NWPs by Corps Headquarters, has no potential to cause effects on historic properties.

To help ensure protection of historic properties general condition 20 establishes an additional layer of protection for cultural resource values occurring prior to any later threshold determination set forth in the Advisory Council’s NHPA Section 106 regulations for initiation of Section 106 consultation. Specifically, while NHPA Section 106 consultation must be initiated for any activity that “has the potential to cause effects to historic properties, assuming such historic properties were present,” for non-federal permittees general condition 20 requires submission by the non-Federal permittee of a PCN to the Corps preceding any assessment under Section 106, if “the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties.”

General condition 20 also prohibits the proponent from conducting the activity in reliance upon an NWP “until

notified by the district engineer either that the activity has no potential to cause effects to historic properties or that consultation under Section 106 of the NHPA has been completed.” (See paragraph (d) of general condition 20.) The PCN must “state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property.” (See paragraph (b)(8) of general condition 32, Pre-Construction Notification.)

In emergency situations, consistent with 33 CFR 325.2(e)(4), 33 CFR 325 Appendix C, paragraph 14, and 36 CFR 800.12 if an activity has the potential to cause effects to historic properties, the district engineer will make reasonable efforts to obtain comments from the State Historic Preservation Officer and the Advisory Council on Historic Preservation. The district engineer will comply with the provisions of 33 CFR 325 Appendix C and the Corps’ “Revised Interim Guidance for Implementing Appendix C of 33 CFR part 325 with the Revised Advisory Council on Historic Preservation Regulations at 36 CFR part 800,” dated April 25, 2005, and amended on January 31, 2007, “to the extent that time and the emergency situation allows.”

During the process for developing regional conditions, Corps districts can coordinate or consult with State Historic Preservation Officers, Tribal Historic Preservation Officers, and tribes to identify regional conditions that can provide additional assurance of compliance with general condition 20 and 33 CFR 330.4(g)(2) for NWP activities undertaken by non-federal permittees. Such regional conditions can add PCN requirements to one or more NWPs where historic properties occur. Corps districts will continue to consider through regional consultations, local initiatives, or other cooperative efforts and additional information and measures to ensure protection of historic properties, the requirements established by general condition 20 (which apply to all uses of all NWPs), and other provisions of the Corps’ regulations and guidance ensure full compliance with NHPA Section 106.

Based on the fact that NWP issuance or reissuance has no potential to cause effects on historic properties and that any activity that “has the potential to cause effects” to historic properties will undergo activity-specific NHPA Section 106 consultation, there is no requirement that the Corps undertake programmatic consultation for the NWP program. Regional programmatic agreements can be established by Corps districts and State Historic Preservation

Officers and/or Tribal Historic Preservation Officers to comply with the requirements of Section 106 of the NHPA.

One commenter opposes the reissuance of the NWP's citing the lack of consultation with SHPOs, THPOs, Tribes, and other consulting parties. Many commenters support the development of a programmatic agreement for all general permits.

During the process for developing regional conditions, Corps districts can coordinate or consult with State Historic Preservation Officers, Tribal Historic Preservation Officers, and tribes to identify regional conditions that can provide additional assurance of compliance with general condition 20 and 33 CFR 330.4(g)(2) for NWP activities undertaken by non-federal permittees. Such regional conditions can add PCN requirements to one or more NWP's where historic properties occur. Corps districts will continue to consider through regional consultations, local initiatives, or other cooperative efforts and additional information and measures to ensure protection of historic properties, the requirements established by general condition 20 (which apply to all uses of all NWP's), and other provisions of the Corps' regulations and guidance ensure full compliance with NHPA Section 106.

Many commenters stated that the Corps cannot use Appendix C to comply with Section 106 of the NHPA. A few commenters supported the Corps' reliance on Appendix C. One commenter stated that the Corps does not have the authority to promulgate Section 106 procedures codified in general condition 20 and at 33 CFR 330.4(g).

Section 110(a)(2)(E)(i) of the NHPA and 36 CFR 14(a) states that federal agencies can develop their own procedures for complying with section 106 as long as those procedures are consistent with the regulations issued by the Advisory Council on Historic Preservation. Neither of those provisions require ACHP to approve program alternatives. The Corps' regulations for complying with Section 106 of the NHPA are found at Appendix C to 33 CFR part 325. Appendix C remains in effect as a counterpart regulation to 36 CFR part 800, and no federal court has invalidated Appendix C. The Corps continues to use Appendix C and the 2005 and 2007 interim guidance, in addition to 36 CFR 800, to comply with Section 106 of the NHPA.

Section 404(e) of the CWA gives the Corps the authority to develop NWP's. The Corps has issued or reissued the NWP's, including general condition 20

and the regulations at 33 CFR 330.4 in accordance with the Administrative Procedures Act in accordance with the authority delegated to the Chief of Engineers through Section 404 of the CWA and Section 10 of the RHA. General condition 20 and/or 33 CFR 330.4 were not developed as alternative procedures to 36 CFR 800, rather they set the requirements for the NWP program to comply with Section 106 of the NHPA.

Many commenters stated that most NWP's should require a PCN in order for the district engineer to review the activity for potential to effect historic properties.

Non-federal permittees must submit a PCN if the NWP activity "might have the potential to cause effects on any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties." The threshold that triggers submittal of a PCN under paragraph (c) of general condition 20 is that the activity "might have the potential to cause effects." The actions by the non-federal permittee to submit a PCN occur before the Section 106 process begins. Upon receipt of a PCN, the district engineer will determine if there is potential to cause effects, and whether he or she has further obligations under Section 106 of NHPA.

E. Compliance With the Essential Fish Habitat Provisions of the Magnuson-Stevens Fishery Conservation and Management Act

The NWP Program's compliance with the essential fish habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act is achieved through EFH consultations between Corps districts and NMFS regional offices. This approach continues the EFH Conservation Recommendations provided by NMFS Headquarters to Corps Headquarters in 1999 for the NWP Program. Corps districts that have EFH designated within their geographic areas of responsibility will coordinate with NMFS regional offices, to the extent necessary, to develop NWP regional conditions that conserve EFH, are consistent with NMFS regional EFH Conservation Recommendations, and are approved by division engineers under the procedures at 33 CFR 330.5(c). District engineers may also add conditions to NWP authorizations to address EFH Conservation Recommendations made by NMFS during activity-specific EFH

consultations. Corps districts will conduct consultations in accordance with the EFH consultation regulations at 50 CFR 600.920.

One commenter said that there will be cumulative impacts to EFH as a result of impacts authorized by NWP's. In those Corps districts where EFH has been designated, district engineers review PCNs for proposed NWP activities to determine whether those proposed activities may adversely affect EFH. If the district engineer determines a proposed NWP activity may adversely affect EFH, she or he initiates EFH consultation with the NMFS. Division engineers can add PCN requirements via regional conditions to those NWP's that do not require PCNs for all activities to ensure that EFH consultation is conducted for proposed activities that may adversely affect EFH.

F. Section 401 of the Clean Water Act

A water quality certification granted by a state, authorized tribe, or EPA (certifying authority), or a waiver thereof, is required by Section 401 of the CWA, for an activity authorized by NWP which may result in a discharge from a point source into waters of the United States. Water quality certifications (WQC) may be granted without conditions, granted with conditions, denied, or waived for specific NWP's.

Nationwide permits 15, 16, 17, 18, 21, 25, 29, 30, 34, 39, 40, 41, 42, 43, 46, 49, 50, and 59 authorize activities that may result in discharges and therefore 401 WQC or waiver is required for those NWP's. Nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 19, 20, 22, 23, 27, 31, 32, 33, 36, 37, 38, 44, 45, 48, 51, 52, 53, 54, 57, 58, and 60 authorize various activities, some of which may result in a discharge and require 401 WQC or waiver, and others which may not. Nationwide permits 1, 2, 9, 10, 11, 24, 28, 35, and 55 authorize work or structures which, in the opinion of the Corps, could not reasonably be expected to result in a discharge into waters of the United States and therefore do not require 401 WQC or waiver. However, the final decision of whether WQC is needed for any of the activities authorized by these nine NWP's (NWP's 1, 2, 9, 10, 11, 24, 28, 35, and 55) rests with the certifying authority. In the case of NWP 8, it only authorizes activities seaward of the territorial seas where the CWA does not apply and therefore does not require WQC.

Prior to the issuance of this final action, certifying authorities made their decisions on whether to grant, grant with conditions, deny, or waive WQC for the issuance of the NWP's. If a certifying authority granted WQC or

granted WQC with conditions for the issuance of these NWP, district engineers reviewed the WQCs in accordance with 40 CFR 121.8. If the district engineer determined that any WQC for the issuance of the NWP did not comply with the requirements of 33 U.S.C. 1341 and/or 33 CFR 330.4(c)(2), district engineers declined to rely on the WQC and considered the WQC to be denied. In such cases, the district engineer notified the certifying authority. The conditions in the WQC for the issuance of the NWP became become conditions of the NWP authorization in accordance with Section 401(d) of the CWA and 33 CFR 330.4(c)(2). The 401(a)(2) process occurred per current requirements at 40 CFR 121.12 and 121.13.

If a certifying agency denied WQC for the issuance of an NWP, then the proposed discharges are not authorized by that NWP unless and until a project proponent obtains WQC for the specific discharge from the certifying authority, or a waiver of WQC occurs.

Many commenters supported the reasonable period of time of six months. A few commenters objected to requests to make decisions to grant, waive, or deny water quality based on the 2025 Proposal rather than the final action. One commenter expressed concern that granted water quality certifications may be made invalid by changes to the NWP from the 2025 Proposal to this final action. One commenter requested that district engineers include all conditions from granted water quality certifications in the same manner as regional and general conditions. Some commenters stated that conditions to granted water quality certifications are unlawful and burdensome.

Section 401 of the CWA states that no permit shall be issued until water quality certification has been obtained or waived. Therefore, the water quality certification process must be completed before the final NWP is issued. That process is consistent with the Corps' NWP regulations at 33 CFR 330.4(c)(1), which says that "water quality certification pursuant to Section 401 of the CWA, or waiver thereof, is required prior to the issuance or reissuance of NWP authorizing activities which may result in a discharge into waters of the United States." As discussed above, certifying authorities must act on certification requests before the Corps can issue the final NWP.

The process to request water quality certification for the NWP in this action is consistent with Section 401 of the CWA and EPA's final certification regulation at 40 CFR part 121. Corps districts sent certification requests to

certifying authorities soon after the 2025 Proposal was published in the **Federal Register** (90 FR 26100), in June 2025. As stated in general condition 25 (Water Quality) and reiterated in the Note to Section C. (Nationwide Permit General Conditions) permittees must comply with the conditions of granted water quality certifications. The Corps has limited authority to review conditions to water quality certifications that were granted in accordance with EPA's certification regulation.

After the final NWP is issued and division engineers have approved the final regional conditions for the NWP, Corps districts will issue public notices announcing the final regional conditions for the NWP and the disposition of WQC for the final NWP. The Corps will post copies of these district public notices in the www.regulations.gov docket for this rulemaking action (docket number COE-2025-0002). It is the certifying authorities' responsibility to develop conditions for their WQCs for the issuance of the NWP.

G. Section 307 of the Coastal Zone Management Act (CZMA)

Any state with a federally-approved CZMA program must concur with the Corps' determination that activities authorized by NWP which are within or will have reasonably foreseeable effects on any land or water uses or natural resources of the state's coastal zone, are consistent with the CZMA program to the maximum extent practicable. CZMA consistency concurrences may be issued without conditions, issued with conditions, or denied for specific NWP.

Prior to the issuance of this final action, states made their decisions on whether to concur with or object to the Corps' CZMA consistency determination for the issuance of the NWP. If a state issued a concurrence with conditions for the issuance of these NWP, district engineers reviewed the conditions in those consistency concurrences to determine whether they comply with the Corps' regulations for permit conditions at 33 CFR 330.4(d)(2). If a state objected to the Corps' CZMA consistency determination for the issuance of an NWP, then the activity is not authorized by that NWP unless and until a project proponent obtains a consistency concurrence from the state or a presumption of concurrence occurs.

The Corps' CZMA consistency determination only applied to NWP authorizations for activities that are within, or affect, any land, water uses or natural resources of a State's coastal zone. A state's coastal zone management

plan may identify geographic areas in federal waters on the outer continental shelf, where activities that require federal permits conducted in those areas require consistency certification from the state because they affect any coastal use or resource. In its coastal zone management plan, the state may include an outer continental shelf plan. An outer continental shelf plan is a plan for "the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act" and regulations issued under that Act (see 15 CFR 930.73).

Activities requiring federal permits that are not identified in the state's outer continental shelf plan are considered unlisted activities. If the state wants to review an unlisted activity under the CZMA, then it must notify the applicant and the federal permitting agency that it intends to review the proposed activity. Nationwide permit authorizations for activities that are not within or would not affect a state's coastal zone do not require the Corps' CZMA consistency determinations and thus are not contingent on a State's concurrence with the Corps' consistency determinations.

If a state objects to the Corps' CZMA consistency determination for an NWP, then the affected activities are not authorized by an NWP within that state until a project proponent obtains an individual CZMA consistency concurrence, or sufficient time (*i.e.*, six months) passes after requesting a CZMA consistency concurrence for the applicant to make a presumption of consistency, as provided in 33 CFR 330.4(d)(6). However, when applicants request NWP verifications for activities that require individual consistency concurrences, and the Corps determines that those activities meet the terms and conditions of the NWP, in accordance with 33 CFR 330.6(a)(3)(iii) the Corps will issue provisional NWP notification letters.

A provisional notification letter will contain general and regional conditions as well as any activity-specific conditions the Corps determines are necessary for the NWP authorization. The Corps will notify the applicant that he or she must obtain an activity-specific CZMA consistency concurrence or a presumption of concurrence before he or she is authorized to start work in waters of the United States. That is, NWP authorization will be contingent upon obtaining the necessary CZMA consistency concurrence from the state, or a presumption of concurrence. Anyone wanting to perform such activities where PCN to the Corps is not

required has an affirmative responsibility to present a CZMA consistency determination to the appropriate state agency for concurrence. Upon concurrence with such CZMA consistency determinations by the state, the activity would be authorized by the NWP. This requirement is provided at 33 CFR 330.4(d).

After the final NWPs are issued and division engineers have approved the final regional conditions for the NWPs, Corps districts will issue public notices announcing the final regional conditions for the NWPs and the disposition of CZMA concurrences for the final NWPs. The Corps will post copies of these district public notices in the www.regulations.gov docket for this rulemaking action (docket number COE–2025–0002). It is the states’ responsibility to develop conditions for their WQCs for the issuance of the NWPs.

After the final NWPs are issued and division engineers have approved the final regional conditions for the NWPs, Corps districts will issue public notices announcing the final regional conditions for the NWPs and the disposition of CZMA concurrences for the final NWPs. The Corps will post copies of these district public notices in the www.regulations.gov docket for this rulemaking action (docket number COE–2025–0002). It is the states’ responsibility to develop conditions for their WQCs for the issuance of the NWPs.

IV. Economic Impact

The NWPs are expected to increase the number of regulated activities eligible for NWP authorization and reduce the number of regulated activities that require individual permits. The Corps estimates that these NWPs will authorize an additional 123 individual activities each year. Subsequently, 123 fewer activities each year would require individual permits. By authorizing more activities by NWP, this final action will reduce burden for the regulated public primarily in the form of compliance costs. The changes will increase the number of categories of activities authorized by NWP and subsequently reduce the number of activities that require individual permits. By increasing the number of activities that can be authorized by NWPs, the changes will decrease compliance costs for permit applicants since, as discussed below, the compliance costs for obtaining NWP authorization are less than the compliance costs for obtaining individual permits.

In addition, the NWPs incentivizes project proponents to minimize impacts to jurisdictional waters and wetlands in exchange for receiving the required Department of the Army authorization in less time compared to the amount of time required to obtain individual permits. In fiscal year 2024, the average time to receive an NWP verification was 55 days from the date the Corps district received a complete PCN, compared to 253 days to receive a standard individual permit after receipt of a

complete permit application (see table 1.2 of the regulatory impact analysis for this final action, which is available in the www.regulations.gov docket (docket number COE–2025–0002)).

As discussed in the Regulatory Impact Analysis for this final action, the Corps estimates that a permit applicant’s compliance cost for obtaining NWP authorization in 2024\$ (2024 dollars) ranges from \$5,289 to \$17,631 (The 2001 compliance cost estimates were originally made using 1999\$, which the Corps adjusted to 2024\$ to account for inflation using the GDP deflator approach).⁵ The Corps estimates that a permit applicant’s compliance costs for obtaining an individual permit for a proposed activity impacting up to 3 acres of wetland ranges from \$21,157 to \$42,314 in 2024\$. Considering how these NWPs will increase the number of activities authorized by an NWP each year, the Corps estimates that the NWPs authorized by this final action, when compared with the 2021 NWPs, will decrease compliance costs for the regulated public by approximately \$3.5 million per year. The Corps invited comment on the assumptions and methodology used to calculate the compliance costs and burden in general associated with the NWP.

One commenter stated that the Corps should conduct research to update the data on the average costs of NWPs compared to standard permits, as well as costs of compliance. The Corps uses reliable data and resources to prepare the Regulatory Impact Analysis.

Nationwide permit(s)	Changes	Anticipated impacts
• NWP 12	Revised Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting. Added Note recommending permittee contact USCG about project.	No change in number of NWP authorizations.
• NWP 13	Added new paragraph clarifying that this NWP authorizes nature-based solutions to provide habitat and other ecosystem functions and services with bank stabilization activities. Added a new Note to reference the Corps’ regulations about selecting bank stabilization approaches, and examples of the factors to be considered.	May increase number of activities authorized by NWP and decrease number of activities requiring individual permits. (Prior versions of NWP 13 could have authorized bank stabilization activities incorporating nature-based solutions.)
• NWP 15	Added General Bridge Act of 1946 as an applicable statutory authority for bridges authorized by the U.S. Coast Guard.	No change in number of NWP authorizations.
• NWP 23	Modify paragraph (a) to reference sections 106, 109, and 111(1) of NEPA. Modified text to state that any changes to approved categorical exclusions applicable to this NWP will be announced in the Federal Register .	No change in number of NWP authorizations.
• NWP 24	Removed Florida from list of states that have assumed the Clean Water Act Section 404 permit program.	No change in number of NWP authorizations.

⁵ Institute for Water Resources (IWR). 2001. Cost analysis for the 2000 issuance and modification of

nationwide permits. Institute for Water Resources (Alexandria, VA). 29 pp. plus appendices.

Nationwide permit(s)	Changes	Anticipated impacts
• NWP 27	Changed title of NWP. Revised ecological reference requirement to include historic ecosystems, cultural ecosystems, and indigenous and local ecological knowledge. Removed list of examples. Required reports for all activities and modify report requirements. Removed PCN thresholds. Excluded dam removal activities. Added new Note to address delineation requirement when NWP 27 activities require PCNs because of general conditions or regional conditions imposed by division engineers.	Increased number of activities authorized by NWP; decreased number of activities requiring individual permits. Decreased number of PCNs.
• NWP 39	Added “data centers (to include for example, artificial intelligence and machine learning facilities), pharmaceutical manufacturing facilities,” and “storage facilities” to list of examples of commercial facilities authorized by this NWP.	No change in number of NWP authorizations.
• NWP 43	Replaced “green infrastructure” and “low impact development integrated management features” with “nature-based solutions” and provided additional examples of nature-based solutions related to stormwater management.	No change in number of NWP authorizations.
• NWP 45	Modified “Notification” paragraph to extend timeframe within which the permittee must submit a PCN to the district engineer from 12 to 18 months of the date of the damage.	No change in number of NWP authorizations.
• NWP 48	Excluded marine and estuarine waters within Washington State. Revised Note recommending permittee contact USCG about project. Added Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting.	No change in number of NWP authorizations because commercial shellfish mariculture activities in Washington State are currently being authorized by individual permits.
• NWP 52	Revised Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting. Added Note recommending permittee contact USCG about project.	No change in number of NWP authorizations.
• NWP 54	Added gravel and cobble to types of substrate used for living shorelines. Clarify that small pocket beaches can be authorized. Add text to NWP to specify that also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the living shoreline activity.	No change in number of NWP authorizations because using cobble and gravel for living shorelines was not prohibited and small portions of a living shoreline could be without living components.
• NWP 55	Revised Note recommending permittee contact USCG about project. Add Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting.	No change in number of NWP authorizations.
• NWP 57	Revised Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting. Added Note recommending permittee contact USCG about project.	No change in number of NWP authorizations.
• NWP 58	Revised Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting. Added Note recommending permittee contact USCG about project. Added clarifying language to correct inconsistency in language about activities which require authorization under Section 10 of RHA.	No change in number of NWP authorizations.
• NWP 60	Issued new NWP to authorize activities to improve passage of fish and other aquatic organisms.	Increased number of activities authorized by NWP; decreased number of activities requiring individual permits.
• General condition 9, Management of Water Flows. • General condition 11, Equipment.	Added “including tidal flows” to clarify that tidal flows should be considered as “expected high flows”. Added a sentence requiring affected areas to be returned to pre-construction elevations, and revegetated as appropriate to rectify soil compaction that may occur from using mats.	No change in number of NWP authorizations.
• General condition 18, Endangered Species.	Removed the reference to 50 CFR 402.17 because that section was removed by a final rule issued by the Services in 2024.	No change in number of NWP authorizations.
• General condition 25, Water Quality.	Added “into waters of the United States” after “discharge” to make it clear that the discharge must be into waters of the United States.	No change in number of NWP authorizations.

Nationwide permit(s)	Changes	Anticipated impacts
- General condition 28, Use of Multiple NWP's. - General condition 30, Compliance certifications.	Modified general condition to clarify application to NWP's with different numeric limits. Modified general conditions to change "successful" to "successful completion" to clarify that any required permittee-responsible mitigation has to be successfully completed by the permittee.	No change in number of NWP authorizations. No change in number of NWP authorizations.
General condition 32, Pre-Construction Notification.	Modified paragraph (a)(2) to include species proposed for listing and critical habitat proposed for designation. Modify paragraph (b)(5) to refer to Note 2 of NWP 27 when an NWP 27 activity requires a PCN.	No change in number of NWP authorizations.

V. Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, (63 FR 31885, June 10, 1998) regarding plain language, this preamble is written using plain language. For this final action, the Corps has used short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

The paperwork burden associated with the NWP relates exclusively to the

preparation of the PCN. While different NWP's require that different information be included in a PCN, the Corps estimates that a PCN requires, on average, 11 hours to complete. The NWP's would slightly increase the total paperwork burden associated with this program because the Corps estimates that under this final action 44 more PCNs would be required each year. This increase is primarily due to the modification to NWP 13 to incorporate nature-based solutions into bank stabilization activities and the issuance

of NWP 60 to authorize activities to improve the passage of fish and other aquatic organisms. Both of these changes are expected to result in a reduction in the number of activities requiring individual permits. The paperwork burden associated with these NWP's is expected to increase by approximately 1,034 hours per year from 237,193 hours to 238,227 hours.

The following table summarizes the projected changes in paperwork burden from the 2021 NWP's to the NWP's issued in this final action.

	Number of NWP PCNs per year	Number of NWP activities not requiring PCNs per year	Estimated changes in NWP PCNs per year	Estimated changes in number of authorized NWP activities	Estimated changes in number of standard individual permits per year	Estimated hours to prepare NWP PCNs per year	Estimated cost to prepare NWP PCNs per year (2024\$ millions)
2021 NWP's	21,563	31,690				237,193	\$379
2026 NWP's	21,657	31,719	+44	+123	- 123	238,227	381

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. For the Corps' Regulatory Program under Section 10 of the RHA, Section 404 of the CWA, and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information collection requirements is maintained by the Corps of Engineers (OMB approval number 0710-0003).

Executive Order 12866

This action is a significant regulatory action under Executive Order 12866 (58 FR 51735, October 4, 1993) that was submitted to the Office of Management and Budget (OMB) for review.

Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the Corps to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of

regulatory policies that have federalism implications." The issuance and modification of NWP's does not have federalism implications. The Corps does not believe that the final NWP's will have substantial direct effects on the States, on the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. These NWP's will not impose any additional substantive obligations on state or local governments. Therefore, Executive Order 13132 does not apply to this final action.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the final action will not have a

significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the issuance and modification of NWP's on small entities, a small entity is defined as: (1) a small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The statutes under which the Corps issues, reissues, or modifies NWP's are Section 404(e) of the CWA (33 U.S.C. 1344(e)) and Section 10 of the RHA (33 U.S.C. 403). Under Section 404, Department of the Army (DA) permits are required for discharges of dredged or fill material into waters of the United States. Under Section 10, DA permits are required for any structures or other

work that affect the course, location, or condition of navigable waters of the United States. Small entities proposing to discharge dredged or fill material into waters of the United States and/or install structures or conduct work in navigable waters of the United States must obtain DA permits to conduct those activities, unless a particular activity is exempt from those permit requirements. Individual permits and general permits can be issued by the Corps to satisfy the permit requirements of these two statutes. NWP are a form of general permit issued by the Chief of Engineers.

NWPs automatically expire and become null and void if they are not modified or reissued within five years of their effective date (see 33 CFR 330.6(b)). Furthermore, Section 404(e) of the CWA states that general permits, including NWPs, can be issued for no more than five years. If the current NWPs are not modified or reissued, they will expire on March 14, 2026, and small entities and other project proponents would be required to obtain alternative forms of DA permits (*i.e.*, standard permits, letters of permission, or regional general permits) for activities involving discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States. Regional general permits that authorize similar activities as the NWPs may be available in some geographic areas, but small entities conducting regulated activities outside those geographic areas would have to obtain individual permits for activities that require DA permits.

The issuance of NWPs to authorize activities under Section 404 of the CWA and Section 10 of the RHA reduces the burden of regulation because if the NWPs are not issued, project proponents would be required to obtain individual permits for those activities unless Corps districts issue regional general permits or programmatic general permits to authorize those activities. Each year, the NWPs authorize approximately 55,000 activities that result in no more than minimal individual and cumulative adverse environmental effects. In FY 2024, the average time for the Corps to process an application for a standard individual permit from date of receipt of a complete application to date of issuance was 253 days. During FY 2024, the average time for the Corps to process an NWP verification request was 55 days from date of receipt of a complete pre-construction notification to the issuance date. The shorter review period for NWP activities versus activities requiring standard individual permits reduces

regulatory burdens on members of the public that need to obtain Department of the Army authorization for their activities.

When compared with the compliance costs for individual permits, most of the terms and conditions of the NWPs are expected to result in decreases in the costs of complying with the permit requirements of Sections 10 and 404. For this final action, the Corps has prepared a Regulatory Impact Analysis in accordance with OMB Circular A-4 (2003). The Regulatory Impact Analysis is available in the www.regulations.gov docket for this rulemaking action (docket number COE-2025-0002, under "Supporting and Related Materials"). In the Regulatory Impact Analysis, the Corps estimates that under the 2026 NWPs, the estimated annual direct compliance costs (in 2024\$) would be between \$382,000,000 and \$652,000,000 per year, \$3.5 million to \$10.2 million per year less than the baseline direct compliance costs (*i.e.*, the estimated annual direct compliance costs under the 2021 NWPs). The direct compliance costs of the 2026 NWPs represent the cost savings achieved by the final NWPs compared to the baseline of the 2021 NWPs. The anticipated decrease in compliance cost results from the lower cost of obtaining NWP authorization instead of standard permits. Unlike standard permits, NWPs authorize activities without the requirement for public notice and comment on each proposed activity.

Another requirement of Section 404(e) of the CWA is that general permits, including NWPs, authorize only those activities that result in no more than minimal adverse environmental effects, individually and cumulatively. The terms and conditions of the NWPs, such as acreage limits and mitigation measures, are imposed to ensure that the NWPs authorize only those activities that result in no more than minimal adverse effects on the aquatic environment and other public interest review factors.

After considering the economic impacts of the issuance of these NWPs on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. Small entities may obtain required DA authorizations through the NWPs, in cases where there are applicable NWPs authorizing those activities and the proposed work will result in only minimal adverse effects on the aquatic environment and other public interest review factors. The terms and conditions of the NWPs finalized in this action will not impose substantially higher costs on small entities than those

of the existing NWPs. If an NWP is not available to authorize a particular activity, then another form of DA authorization, such as an individual permit or a regional general permit authorization, must be secured. However, as noted above, the Corps expects a slight to moderate increase in the number of activities that can be authorized through NWPs, because the Corps made some modifications to the NWPs to authorize additional activities. Because those activities required authorization through other forms of DA authorization (*e.g.*, individual permits or regional general permits) the Corps expects a concurrent decrease in the numbers of individual permit authorizations required for these activities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under Section 202 of the UMRA, agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA generally requires agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows an agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Before an agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising

small governments on compliance with the regulatory requirements.

The Corps has determined that these NWP do not contain a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The NWPs are generally consistent with current agency practice, do not impose new substantive requirements and therefore do not contain a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this final action is not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, the Corps has determined that the NWPs contain no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the issuance and modification of the NWPs is not subject to the requirements of Section 203 of UMRA.

Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, federal agencies must evaluate the environmental health or safety effects of the final rule on children and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

The NWPs are not subject to this Executive Order because they are not economically significant as defined in Executive Order 12866. In addition, the NWPs do not concern an environmental health or safety risk that the Corps has reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The phrase "policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Tribes, on the relationship

between the federal government and the Tribes, or on the distribution of power and responsibilities between the federal government and Tribes."

The issuance of these NWPs does not have tribal implications. It is generally consistent with current agency practice and will not have substantial direct effects on tribal governments, on the relationship between the federal government and the tribes, or on the distribution of power and responsibilities between the federal government and tribes. Therefore, Executive Order 13175 does not apply to this final action. However, in the spirit of Executive Order 13175, the Corps specifically requested comment from tribal officials on the proposed rule. Corps districts conducted government-to-government consultation with tribes who requested such consultation, to identify regional conditions or other local NWP modifications that may be necessary to protect aquatic resources of interest to tribes, as part of the Corps' responsibility to protect trust resources. The Corps' Regulatory Program follows a number of existing Department of Defense, Army, and Corps' tribal consultation policies. Information on these tribal consultation policies are available at: <https://www.usace.army.mil/Missions/Civil-Works/Tribal-Nations/>.

Many commenters objected to the reissuance of the NWPs. One commenter stated that the Corps has not demonstrated how NWP reissuance would affect tribal treaty rights. Many commenters stated that there is insufficient time for tribes to consult with the Corps on the 2025 Proposal. Several commenters said that the Corps is required to consult and coordinate with the tribes on the proposed rule. One commenter stated that the Corps should extend its comment period 60 days or should withdraw its proposal to allow early tribal engagement.

While the NWPs are issued through rulemaking, we believe the final NWPs will not have substantial direct effects on tribal governments, on the relationship between the federal government and the tribes, or on the distribution of power

and responsibilities between the federal government and tribes.

General condition 17 (Tribal Rights) states that no NWP activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights. Tribes use NWPs for activities they conduct that require DA authorization under Section 404 of the CWA and/or Section 10 of the RHA. For example, tribes that conduct commercial shellfish aquaculture activities have used NWP 48, and tribes that conduct aquatic habitat restoration activities have used NWP 27.

For the 2026 NWPs, the Corps provided a 30-day comment period on the 2025 Proposal, which we believe is appropriate when considering the minor changes proposed to the NWPs. The Corps has considered comments received from tribes on the 2025 proposal, including letters from 18 tribes or tribal organizations. Corps districts conducted consultations with tribes to identify regional conditions to ensure activities comply with general conditions 17 and 20 (Historic Properties). The Corps has consulted and will continue to consult with tribes consistent with our tribal consultation policies. Division engineers can modify, suspend, or revoke one or more NWPs in a region to protect tribal rights.

During the consultation on regional conditions to the NWPs, district engineers can develop coordination procedures with tribes to provide tribes with opportunities to review proposed NWP activities and provide their views on whether those activities will cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands. When a Corps district receives a PCN that triggers a need to consult with one or more tribes, that consultation will be completed before the district engineer makes his or her decision on whether to issue the NWP verification. If, after considering mitigation, the district engineer determines the proposed NWP activity will have more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands, he or she will exercise discretionary authority and require an individual permit. A district engineer can modify, suspend, or revoke an NWP to protect tribal rights, protected tribal resources, and tribal lands.

One commenter requested that the Corps develop cooperative agreements with tribes. One commenter stated that the Corps is shifting the responsibility of monitoring and oversight to tribes as a result in changes to jurisdiction. A few

commenters stated that the Corps should engage in co-management with tribes on enforcement and impacts analysis using tribal ecological knowledge. One commenter requested that the Corps provide additional training to staff on tribal trust resources.

Corps districts are encouraged by regulations at 33 CFR 320.4(j)(6) to consult with tribes to establish procedures for establishing official communications with tribes within their districts. The Corps cannot require permits or monitoring of activities in aquatic resources that are not waters of the United States. Corps districts are responsible for enforcing compliance with NWP conditions unless the state or eligible tribe has assumed the responsibility of the Section 404 permit program in certain waters of the United States in accordance with Section 404(g) of the CWA. Consistent with general conditions 17 and 20, Corps districts will consult with tribes when evaluating use of an NWP for resolution of enforcement actions that might impact tribal rights or historic properties. The Corps provides regular training to staff on the responsibilities of the federal government to uphold the tribal trust responsibility.

Environmental Documentation

A decision document has been prepared for each NWP being issued. Each decision document includes an environmental assessment and public interest review determination. If an NWP authorizes discharges of dredged or fill material into waters of the United States, the decision document includes a 404(b)(1) Guidelines analysis. The decision documents are available at: www.regulations.gov (docket ID number COE-2025-0002). They are also available by contacting Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street NW, Washington, DC 20314-1000.

Congressional Review Act

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. The Corps will submit a report containing the final NWPs and other required information to the U.S. Senate, the U.S. House of Representatives, and the Government Accountability Office. A major rule cannot take effect until 60 days after it

is published in the **Federal Register**. The NWPs are not a “major rule” as defined by 5 U.S.C. 804(2), because they are not likely to result in: (1) An annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Executive Order 13211

This action is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. References

A complete list of all references cited in this document is available on the internet at <http://www.regulations.gov> in docket number COE-2025-0002 or upon request from the U.S. Army Corps of Engineers (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The Corps is reissuing 56 existing NWPs and issuing one new NWP under the authority of Section 404(e) of the Clean Water Act (33 U.S.C. 1344) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*).

Jason E. Kelly,

Major General, U.S. Army, Deputy Commanding General for Civil and Emergency Operations.

Nationwide Permits, Conditions, Further Information, and Definitions

A. Index of Nationwide Permits, Conditions, District Engineer's Decision, Further Information, and Definitions

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 Independent utility
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 Nature-based solutions
 Navigable waters
 Non-tidal wetland
 Open water
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 Practicable
 Pre-construction notification
 Preservation
 Re-establishment
 Rehabilitation
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 Riffle and pool complex
 Riparian areas
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 Single and complete linear project
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 Waterbody

B. Nationwide Permits

1. *Aids to Navigation.* The placement of aids to navigation and regulatory markers that are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66). (Authority: Section 10 of the Rivers and Harbors Act of 1899 (Section 10))

2. *Structures in Artificial Canals.* Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.5(g)). (Authority: Section 10)

3. *Maintenance.* (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of

existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (Sections 10 and 404))

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, and clam and oyster digging, fish aggregating devices, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Authorities: Sections 10 and 404)

5. *Scientific Measurement Devices.* Devices, whose purpose is to measure and record scientific data, such as staff gages, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge of dredged or fill material is limited to 25 cubic yards. Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations. (Authorities: Sections 10 and 404)

6. *Survey Activities.* Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. For the purposes of this NWP, the term “exploratory trenching” means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge of dredged or fill material does not exceed $\frac{1}{10}$ -acre in

waters of the U.S. Discharges of dredged or fill material and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Authorities: Sections 10 and 404)

7. *Outfall Structures and Associated Intake Structures.* Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP unless they are directly associated with an authorized outfall structure.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

8. *Oil and Gas Structures on the Outer Continental Shelf.* Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Bureau of Ocean Energy Management. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). The district engineer will review such proposals to ensure compliance with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this NWP will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f), as well as 33 CFR 322.5(l) and 33 CFR part 334. Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, nor will such structures be permitted in EPA or Corps-designated dredged material disposal areas.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to

commencing the activity. (See general condition 32.) (Authority: Section 10)

9. *Structures in Fleeting and Anchorage Areas.* Structures, buoys, floats, and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose. (Authority: Section 10)

10. *Mooring Buoys.* Non-commercial, single-boat, mooring buoys. (Authority: Section 10)

11. *Temporary Recreational Structures.* Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir managers must approve each buoy or marker individually. (Authority: Section 10)

12. *Oil or Natural Gas Pipeline Activities.* Activities required for the construction, maintenance, repair, and removal of oil and natural gas pipelines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than $\frac{1}{2}$ -acre of waters of the United States for each single and complete project.

Oil or natural gas pipelines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of oil and natural gas pipelines. There must be no change in pre-construction contours of waters of the United States. An “oil or natural gas pipeline” is defined as any pipe or pipeline for the transportation of any form of oil or natural gas, including products derived from oil or natural gas, such as gasoline, jet fuel, diesel fuel, heating oil, petrochemical feedstocks, waxes, lubricating oils, and asphalt.

Material resulting from trench excavation may be temporarily sidcast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect). Any exposed slopes and stream banks must

be stabilized immediately upon completion of the utility line crossing of each waterbody.

Oil or natural gas pipeline substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities (e.g., oil or natural gas or gaseous fuel custody transfer stations, boosting stations, compression stations, metering stations, pressure regulating stations) associated with an oil or natural gas pipeline in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than $\frac{1}{2}$ -acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for above-ground oil or natural gas pipelines: This NWP authorizes the construction or maintenance of foundations for above-ground oil or natural gas pipelines in all waters of the United States, provided the foundations are the minimum size necessary.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of oil or natural gas pipelines, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than $\frac{1}{2}$ -acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize oil or natural gas pipelines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Oil or natural gas pipelines routed in, over, or under section 10 waters without a discharge of dredged or fill material may require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the oil or natural gas pipeline activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) a section 10 permit is required; (2) the discharge will result in the loss of greater than $\frac{1}{10}$ -acre of waters of the United States; or (3) the proposed oil or natural gas pipeline activity is associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline (vs. conduct repair or maintenance activities) along the majority of the distance of the overall project length. If the proposed oil or gas pipeline is greater than 250 miles in length, the pre-construction notification must include the locations and proposed impacts (in acres or other appropriate unit of measure) for all crossings of waters of the United States that require DA authorization, including those crossings authorized by an NWP would not otherwise require pre-construction notification. (See general

condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the 'as-built drawings' and the geographic coordinate system used in the 'as-built drawings' to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

Note 2: For oil or natural gas pipeline activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Oil or natural gas pipeline activities must comply with 33 CFR 330.6(d).

Note 3: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the oil or natural gas pipeline must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such oil or natural gas pipelines will require a section 404 permit (see NWP 15).

Note 5: This NWP authorizes oil or natural gas pipeline maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For NWP 12 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Note 7: Where structures or work are proposed in navigable waters of the United

States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

13. Bank Stabilization. Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects (an exception is for bulkheads—the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);

(c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;

(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);

(g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;

(h) The activity is not a stream channelization activity; and

(i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

In addition, this NWP authorizes discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States to incorporate nature-based solutions into new and existing bank stabilization activities to provide habitat and other ecosystem functions and services and to reduce adverse effects of bank stabilization activities on the aquatic environment. Examples of nature-based solutions for bank stabilization activities include the use of construction materials for seawalls and bulkheads that have textured surfaces, crevices, shelves, benches, and pits that support attachment and growth of benthic organisms; vegetative stabilization; bioengineering; the construction of rock pools next to the bank stabilization activity; the construction of small pocket beaches next to the bank stabilization activity; the use of various sizes of rock for revetments to provide different sizes of spaces between rocks for habitat for various species of organisms; the placement of rock clusters next to a seawall or bulkhead; the placement of large wood next to seawalls, bulkheads, and revetments; and the placement of bags of molluscs or the placement of small reef structures to provide habitat for molluscs and other sessile aquatic organisms next to a seawall, bulkhead, or revetment. Nature-based solutions should be appropriate for the physical and biological characteristics of the site.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary

fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges of dredged or fill material into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of dredged or fill material of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: In coastal waters and the Great Lakes, living shorelines may be an appropriate option for bank stabilization, and may be authorized by NWP 54.

Note 2: Under 33 CFR 320.4(g)(2), a landowner has the general right to protect his or her property from erosion, and the district engineer can provide general guidance to the landowner regarding possible alternative methods of protecting his or her property. Permittees are encouraged to use soft bank stabilization approaches (e.g., bioengineering, vegetative stabilization) at sites where those methods are likely to be effective in managing erosion, such as sites where shorelines and banks are subject to moderate to low erosive forces. However, hard bank stabilization activities (e.g., seawalls, bulkheads, revetments, riprap) may be necessary at sites where shorelines and banks are subject to strong erosive forces. An appropriate and effective approach to managing shoreline or bank erosion at a specific site requires consideration of a variety of factors, including but not limited to: bank height; bank condition; the energy of tides, waves, currents, or other water flows that the bank is exposed to; fetch; nearshore water depths; the potential for storm surges; sediment or substrate type; tidal range in waters subject to the ebb and flow of tides; shoreline configuration and orientation; the width of the waterway; and whether there is infrastructure in the vicinity of the proposed bank stabilization activity that needs to be protected and the degree of protection needed.

14. Linear Transportation Projects. Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, driveways, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge of dredged or fill material cannot cause the loss of greater than 1/2-acre of waters of the United

States. For linear transportation projects in tidal waters, the discharge of dredged or fill material cannot cause the loss of greater than $\frac{1}{3}$ -acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds $\frac{1}{10}$ -acre; or (2) there is a discharge of dredged or fill material in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404).

Note 1: For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects must comply with 33 CFR 330.6(d).

Note 2: Some discharges of dredged or fill material for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant

crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

15. U.S. Coast Guard Approved Bridges. Discharges of dredged or fill material incidental to the construction of a bridge across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided the construction of the bridge structure has been authorized by the U.S. Coast Guard under the General Bridge Act of 1946, Section 9 of the Rivers and Harbors Act of 1899, or other applicable laws. Causeways and approach fills are not included in this NWP and will require a separate Clean Water Act Section 404 permit. (Authority: Section 404 of the Clean Water Act (Section 404))

16. Return Water From Upland Contained Disposal Areas. Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs in an area that has no waters of the United States and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the Clean Water Act Section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. (Authority: Section 404)

17. Hydropower Projects. Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 10,000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

18. Minor Discharges. Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

(a) The quantity of discharged dredged or fill material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;

(b) The discharge of dredged or fill material will not cause the loss of more than $\frac{1}{10}$ -acre of waters of the United States; and

(c) The discharge of dredged or fill material is not placed for the purpose of a stream diversion.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the discharge of dredged or fill material or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge of dredged or fill material is in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404)

19. Minor Dredging. Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (*i.e.*, section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)). All dredged material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. (Authorities: Sections 10 and 404)

20. Response Operations for Oil or Hazardous Substances. Activities conducted in response to a discharge or release of oil or hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) including containment, cleanup, and mitigation efforts, provided that the activities are done under either: (1) the Spill Control and Countermeasure Plan required by 40 CFR 112.3; (2) the direction or oversight of the federal on-scene coordinator designated by 40 CFR part 300; or (3) any approved existing

state, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761. This NWP also authorizes the use of temporary structures and fills in waters of the U.S. for spill response training exercises. (Authorities: Sections 10 and 404)

21. Surface Coal Mining Activities. Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations, provided the following criteria are met:

(a) The activities are already authorized, or are currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement;

(b) The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into tidal waters or non-tidal wetlands adjacent to tidal waters; and

(c) The discharge is not associated with the construction of valley fills. A "valley fill" is a fill structure that is typically constructed within valleys associated with steep, mountainous terrain, associated with surface coal mining activities.

Notification: The permittee must submit a pre-construction notification to the district engineer. (See general condition 32.) (Authorities: Sections 10 and 404)

22. Removal of Vessels. Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 32.) If the vessel is listed or eligible for listing in the National Register of Historic Places, the permittee

cannot commence the activity until informed by the district engineer that compliance with the "Historic Properties" general condition is completed. (Authorities: Sections 10 and 404)

Note 1: Intentional ocean disposal of vessels at sea requires a permit from the U.S. EPA under the Marine Protection, Research and Sanctuaries Act, which specifies that ocean disposal should only be pursued when land-based alternatives are not available. If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.

Note 2: Compliance with general condition 18, Endangered Species, and general condition 20, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the possibility that shipwrecks may be historic properties.

23. Approved Categorical Exclusions. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to Section 106, 109, and 111(1) of the National Environmental Policy Act, that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letter(s) (Authorities: Sections 10 and 404)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this

NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are: the Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07. Any changes to approved categorical exclusions applicable to this NWP will be announced in the **Federal Register** and posted on this same website.

24. Indian Tribe or State Administered Section 404 Programs. Any activity permitted by a state or Indian Tribe administering its own section 404 permit program pursuant to 33 U.S.C. 1344(g)-(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. (Authority: Section 10)

Note 1: As of the date of the promulgation of this NWP, only New Jersey and Michigan administer their own Clean Water Act Section 404 permit programs.

Note 2: Those activities that do not involve an Indian Tribe or State Clean Water Act Section 404 permit are not included in this NWP, but certain structures will be exempted by Section 154 of Public Law 94-587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.4(b)).

25. Structural Discharges. Discharges of dredged or fill material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways, or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a separate section 10 permit if located in navigable waters of the United States. (Authority: Section 404)

27. Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities. Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal rivers and streams and their riparian areas, the restoration and enhancement of other non-tidal open waters, and the restoration and enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic ecosystem functions and services.

To be authorized by this NWP, the aquatic ecosystem restoration, enhancement, or establishment activity must be planned, designed, and implemented so that it results in an aquatic ecosystem that resembles an ecological reference (*i.e.*, a natural ecosystem). An ecological reference may be based on the characteristics of aquatic ecosystems or riparian areas that currently exist in the region, or the characteristics of aquatic ecosystems or riparian area that existed in the region in the past. Ecological references include cultural ecosystems, which are ecosystems that have developed under the joint influence of natural processes and human management activities (*e.g.*, fire stewardship for vegetation management). An ecological reference may also be based on regional ecological knowledge, including indigenous and local ecological knowledge, of the target aquatic ecosystem type or riparian area.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic ecosystem functions and services.

This NWP does not authorize: (1) dam removal activities; (2) stream channelization activities; and (3) the conversion of tidal wetlands to open water impoundments and other aquatic uses unless the conversion is solely for the purpose of enhancing the functions of tidal wetlands.

Only native plant species should be planted at the site. Compensatory mitigation is not required for activities authorized by this NWP because these activities must result in net increases in aquatic ecosystem functions and services.

Reversion. For aquatic ecosystem restoration, enhancement, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), Bureau of Land Management (BLM), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a

Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (*i.e.*, prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge of dredged or fill material occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, BLM, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity, the permittee or the appropriate federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory Program requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic ecosystem functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting. The permittee must submit a report containing information on the proposed aquatic ecosystem restoration, enhancement, and establishment activity to the district engineer at least

30 days prior to commencing activities in waters of the United States authorized by this NWP. The report must include the following information:

- (1) Name, address, and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Information on baseline ecological conditions at the project site, including a general description and map of aquatic and terrestrial habitat types on that site. The map of existing aquatic and terrestrial habitat types and their approximate boundaries on the project site should be based on recent aerial imagery or similar information, and verified with photo points or other field-based data points for each mapped habitat type;

- (4) A sketch of the proposed project elements of the NWP 27 activity drawn over a copy of the map of existing aquatic and terrestrial habitat types on the project site;

- (5) The objectives of the proposed aquatic ecosystem restoration, enhancement, or establishment activity and a description of the techniques or mechanisms that are proposed to be used to increase aquatic ecosystem functions and services on the project site to meet the objectives;

- (6) And if applicable, a copy of: (a) the binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement with the FWS, NRCS, FSA, NMFS, NOS, USFS, BLM, or their designated state cooperating agencies; (b) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or (c) the SMCRA permit issued by OSMRE or the applicable state agency. (Authorities: Sections 10 and 404)

Note 1: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

Note 2: If an activity authorized by this NWP requires a PCN because of an NWP general condition (*e.g.*, NWP general condition 18, endangered species) or a regional condition imposed by a division engineer, the information required by paragraph (3) of the Reporting requirement substitutes for the delineation of waters, wetlands, and other special aquatic sites required by paragraph (b)(5) of general condition 32.

28. Modifications of Existing Marinas. Reconfiguration of existing docking

facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP. (Authority: Section 10)

29. Residential Developments.

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed 1/2-acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

30. Moist Soil Management for Wildlife. Discharges of dredged or fill material into non-tidal waters of the United States and maintenance activities that are associated with moist soil management for wildlife for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to, plowing or discing to impede succession, preparing seed beds, or establishing fire breaks. Sufficient riparian areas must be maintained adjacent to all open water bodies, including streams, to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic

resource functions and services. This NWP does not authorize the conversion of wetlands to uplands, impoundments, or other open water bodies. (Authority: Section 404)

Note: The repair, maintenance, or replacement of existing water control structures or the repair or maintenance of dikes may be authorized by NWP 3. Some such activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

31. Maintenance of Existing Flood Control Facilities. Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) were previously authorized by the Corps by individual permit, general permit, or 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the "maintenance baseline," as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. To the extent that a Corps permit is required, this NWP authorizes the removal of vegetation from levees associated with the flood control project. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged and excavated material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed

channels but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the adverse environmental impacts caused by the maintenance activities are no more than minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner. A flood control facility will not be considered abandoned if the prospective permittee is in the process of obtaining other authorizations or approvals required for maintenance activities and is experiencing delays in obtaining those authorizations or approvals.

Mitigation: The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental effects are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required

mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline (see Note, below). In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require mitigation and/or best management practices as appropriate.

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see general condition 32). The pre-construction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan. The pre-construction notification must include a description of the maintenance baseline and the disposal site for dredged or excavated material. (Authorities: Sections 10 and 404)

Note: If the maintenance baseline was approved by the district engineer under a prior version of NWP 31, and the district engineer imposed the one-time compensatory mitigation requirement on maintenance for a specific reach of a flood control project authorized by that prior version of NWP 31, during the period this version of NWP 31 is in effect, the district engineer will not require additional compensatory mitigation for maintenance activities authorized by this NWP in that specific reach of the flood control project.

32. Completed Enforcement Actions. Any structure, work, or discharge of dredged or fill material remaining in place or undertaken for mitigation,

restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the Clean Water Act, provided that:

(a) The activities authorized by this NWP cannot adversely affect more than 5 acres of non-tidal waters or 1 acre of tidal waters;

(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, Section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 1911, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself; non-compliance of the terms and conditions of an NWP 32 authorization may result in an additional enforcement action (e.g., a Class I civil administrative penalty). Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure

compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Authorities: Sections 10 and 404)

33. Temporary Construction, Access, and Dewatering. Temporary structures, work, and discharges of dredged or fill material, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges of dredged or fill material, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse environmental effects. Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the activity is conducted in navigable waters of the United States (i.e., section 10 waters) (see general condition 32). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Authorities: Sections 10 and 404)

34. Cranberry Production Activities. Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing,

must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.

Notification: The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or fill material at an existing operation for the permit term, provided the 10-acre limit is not exceeded. (See general condition 32.) (Authority: Section 404)

35. Maintenance Dredging of Existing Basins. The removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less. All dredged material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used for the disposal site. (Authority: Section 10)

36. Boat Ramps. Activities required for the construction, repair, or replacement of boat ramps, provided the activity meets all of the following criteria:

(a) The discharge of dredged or fill material into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the district engineer waives the 50 cubic yard limit by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(b) The boat ramp does not exceed 20 feet in width, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(c) The base material is crushed stone, gravel or other suitable material;

(d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to an area that has no waters of the United States; and,

(e) No material is placed in special aquatic sites, including wetlands.

The use of unsuitable material that is structurally unstable is not authorized. If dredging in navigable waters of the United States is necessary to provide access to the boat ramp, the dredging must be authorized by another NWP, a regional general permit, or an individual permit.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge of dredged or fill material into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 32.) (Authorities: Sections 10 and 404)

37. Emergency Watershed Protection and Rehabilitation. Work done by or funded by:

(a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);

(b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13);

(c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);

(d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR subchapter R), where the activity does not involve coal extraction; or

(e) The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).

In general, the permittee should wait until the district engineer issues an NWP verification or 45 calendar days have passed before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification and any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

Notification: Except in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the

permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). (Authorities: Sections 10 and 404)

38. Cleanup of Hazardous and Toxic Waste. Specific activities required to affect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

39. Commercial and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, storage facilities, restaurants, business parks, data centers (to include for example, artificial intelligence and machine learning facilities), pharmaceutical manufacturing facilities, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses and new ski areas is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of

dredged or fill material into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Note: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

40. Agricultural Activities. Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.

This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds.

This NWP also authorizes discharges of dredged or fill material into non-tidal jurisdictional waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams.

The discharge must not cause the loss of greater than $\frac{1}{2}$ -acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

Note: Some discharges of dredged or fill material into waters of the United States for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This NWP authorizes the construction of farm ponds that do not qualify for the Clean Water Act section 404(f)(1)(C) exemption because of the recapture provision at section 404(f)(2).

41. Reshaping Existing Drainage and Irrigation Ditches. Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage and

irrigation ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage or irrigation ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the drainage ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the drainage ditch as originally constructed (*i.e.*, the capacity of the drainage ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.

This NWP does not authorize the relocation of drainage or irrigation ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage or irrigation ditch must be approximately the same as the location of the centerline of the original drainage or irrigation ditch. This NWP does not authorize stream channelization or stream relocation projects. (Authority: Section 404)

42. Recreational Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this NWP include playing fields (*e.g.*, football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.

The discharge must not cause the loss of greater than $\frac{1}{2}$ -acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

43. Stormwater Management Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction of stormwater management facilities,

including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; the construction of nature-based solutions for managing stormwater and reducing inputs of sediments, nutrients, and other pollutants into waters. Examples of such nature-based solutions include, but are not limited to, stream biofilters, bioretention ponds or swales, rain gardens, vegetated filter strips, vegetated swales (bioswales), constructed wetlands, infiltration trenches, and regenerative stormwater conveyances, as well as other nature-based solutions and other features that are conducted to meet reduction targets established under Total Maximum Daily Loads set under the Clean Water Act.

This NWP authorizes, to the extent that a section 404 permit is required, discharges of dredged or fill material into non-tidal waters of the United States for the maintenance of stormwater management facilities, and nature-based solutions for managing stormwater and reducing inputs of sediments, nutrients, and other pollutants into waters. The maintenance of stormwater management facilities and nature-based solutions that do not contain waters of the United States does not require a section 404 permit.

The discharge must not cause the loss of greater than $\frac{1}{2}$ -acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For discharges of dredged or fill material into non-tidal waters of the United States for the construction of new stormwater management facilities or nature-based solutions, or the expansion of existing stormwater management facilities or nature-based solutions, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility or nature-based solution. (Authority: Section 404)

44. Mining Activities. Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining

activities, provided the activity meets all of the following criteria:

(a) For mining activities involving discharges of dredged or fill material into non-tidal jurisdictional wetlands, the discharge must not cause the loss of greater than $\frac{1}{2}$ -acre of non-tidal jurisdictional wetlands;

(b) For mining activities involving discharges of dredged or fill material in non-tidal jurisdictional open waters (e.g., rivers, streams, lakes, and ponds) or work in non-tidal navigable waters of the United States (i.e., section 10 waters), the mined area, including permanent and temporary impacts due to discharges of dredged or fill material into jurisdictional waters, must not exceed $\frac{1}{2}$ -acre; and

(c) The acreage loss under paragraph (a) plus the acreage impact under paragraph (b) does not exceed $\frac{1}{2}$ -acre.

This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) If reclamation is required by other statutes, then a copy of the final reclamation plan must be submitted with the pre-construction notification. (Authorities: Sections 10 and 404)

45. Repair of Uplands Damaged by Discrete Events. This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

This NWP does not authorize beach restoration or nourishment.

Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 32) within 18-months of the date of the damage; for major storms, floods, or other discrete events, the district engineer may waive the 18-month limit for submitting a pre-construction notification if the permittee can demonstrate funding, contract, or other similar delays. The pre-construction notification must include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Authorities: Sections 10 and 404)

Note: The uplands themselves that are lost as a result of a storm, flood, or other discrete event can be replaced without a Clean Water Act Section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5.) This NWP authorizes discharges of dredged or fill material into waters of the United States associated with the restoration of uplands.

46. Discharges in Ditches. Discharges of dredged or fill material into non-tidal ditches that are (1) constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) determined to be waters of the United States. The discharge of dredged or fill material must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize discharges of dredged or fill material into ditches constructed in streams or other waters of the United States, or in streams that have been relocated in uplands. This NWP does not authorize discharges of dredged or fill material that increase the capacity of the ditch and drain those areas determined to be waters of the United States prior to construction of the ditch.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

48. Commercial Shellfish Mariculture Activities. Structures or work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States necessary for new and continuing commercial shellfish mariculture operations (i.e., the cultivation of bivalve molluscs such as oysters, mussels, clams, and scallops) in authorized project areas. For the

purposes of this NWP, the project area is the area in which the operator is authorized to conduct commercial shellfish mariculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any easement, lease, deed, contract, or other legally binding agreement that establishes an enforceable property interest for the operator. This NWP does not authorize structures or work in navigable waters of the United States or discharges of dredged or fill material into waters of the United States within Washington State.

This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures into navigable waters of the United States. This NWP also authorizes discharges of dredged or fill material into waters of the United States necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize:

(a) The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;

(b) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990; or

(c) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into waters of the United States as waste.

Notification: The permittee must submit a pre-construction notification to the district engineer if the activity directly affects more than $\frac{1}{2}$ -acre of submerged aquatic vegetation. If the operator will be conducting commercial shellfish mariculture activities in multiple contiguous project areas, he or she can either submit one PCN for those contiguous project areas or submit a separate PCN for each project area. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management

Staff responsible for the area of the proposed work, contact USCG at CGWWW@uscg.mil.

Note 2: To prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.

Note 3: The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines “aquatic nuisance species” as “a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.”

Note 4: Where structures or work are authorized in navigable waters of the United States (*i.e.*, section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the ‘as-built drawings’ and the geographic coordinate system used in the ‘as-built drawings’ to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

49. Coal Remining Activities. Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal. The activities must already be authorized, or they must currently be in process by the Department of the Interior Office of Surface Mining Reclamation and Enforcement, or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts.

As part of the project, the permittee may conduct new coal mining activities in conjunction with the remining activities when he or she clearly demonstrates to the district engineer that the overall mining plan will result in a net increase in aquatic resource functions. The Corps will consider the SMCRA agency’s decision regarding the amount of currently undisturbed adjacent lands needed to facilitate the remining and reclamation of the previously mined area. The total area disturbed by new mining must not exceed 40 percent of the total acreage covered by both the remined area and the additional area necessary to carry out the reclamation of the previously mined area.

Notification: The permittee must submit a pre-construction notification and a document describing how the overall mining plan will result in a net increase in aquatic resource functions to the district engineer and receive written authorization prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

50. Underground Coal Mining Activities. Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized, or are currently being processed by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize coal preparation and processing activities outside of the mine site.

Notification: The permittee must submit a pre-construction notification to the district engineer. (See general condition 32.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Authorities: Sections 10 and 404)

51. Land-Based Renewable Energy Generation Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, or modification of land-based renewable energy production facilities, including attendant features. Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind, biomass, or geothermal energy. Attendant features may include, but are not limited to roads, parking lots, and stormwater management facilities within the land-based renewable energy generation facility.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the discharge results in the loss of greater than ¼-acre of waters of the United States. (See

general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Electric utility lines constructed to transfer the energy from the land-based renewable energy generation facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those electric utility lines may be authorized by NWP 57 or another Department of the Army authorization.

Note 2: If the only activities associated with the construction, expansion, or modification of a land-based renewable energy generation facility that require Department of the Army authorization are discharges of dredged or fill material into waters of the United States to construct, maintain, repair, and/or remove electric utility lines and/or road crossings, then NWP 57 and/or NWP 14 shall be used if those activities meet the terms and conditions of NWPs 57 and 14, including any applicable regional conditions and any case-specific conditions imposed by the district engineer.

Note 3: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

52. Water-Based Renewable Energy Generation Pilot Projects. Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction, expansion, modification, or removal of water-based wind, water-based solar, wave energy, or hydrokinetic renewable energy generation pilot projects and their attendant features. Attendant features may include, but are not limited to, land-based collection and distribution facilities, control facilities, roads, parking lots, and stormwater management facilities.

For the purposes of this NWP, the term “pilot project” means an experimental project where the water-based renewable energy generation units will be monitored to collect information on their performance and environmental effects at the project site.

The discharge must not cause the loss of greater than ½-acre of waters of the United States. The placement of a transmission line on the bed of a navigable water of the United States from the renewable energy generation unit(s) to a land-based collection and distribution facility is considered a structure under Section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR 322.2(b)), and the placement of the transmission line on the bed of a

navigable water of the United States is not a loss of waters of the United States for the purposes of applying the 1/2-acre limit.

For each single and complete project, no more than 10 generation units (*e.g.*, wind turbines, wave energy devices, or hydrokinetic devices) are authorized. For floating solar panels in navigable waters of the United States, each single and complete project cannot exceed 1/2-acre in water surface area covered by the floating solar panels.

This NWP does not authorize activities in coral reefs. Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

Upon completion of the pilot project, the generation units, transmission lines, and other structures or fills associated with the pilot project must be removed to the maximum extent practicable unless they are authorized by a separate Department of the Army authorization, such as another NWP, an individual permit, or a regional general permit. Completion of the pilot project will be identified as the date of expiration of the Federal Energy Regulatory Commission (FERC) license, or the expiration date of the NWP authorization if no FERC license is required.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Electric utility lines constructed to transfer the energy from the land-based collection facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those electric utility lines may be authorized by NWP 57 or another Department of the Army authorization.

Note 2: An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate review and/or approval from the Corps under 33 U.S.C. 408.

Note 3: Where structures or work are authorized in navigable waters of the United States (*i.e.*, section 10 waters) within the coastal United States, the Great Lakes, and

United States territories, the permittee should provide a copy of the 'as-built drawings' and the geographic coordinate system used in the 'as-built drawings' to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

Note 4: Hydrokinetic renewable energy generation projects that require authorization by the Federal Energy Regulatory Commission under the Federal Power Act of 1920 do not require separate authorization from the Corps under section 10 of the Rivers and Harbors Act of 1899.

Note 5: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 6: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

53. Removal of Low-Head Dams. Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States associated with the removal of low-head dams.

For the purposes of this NWP, the term "low-head dam" is generally defined as a dam or weir built across a stream to pass flows from upstream over all, or nearly all, of the width of the dam crest and does not have a separate spillway or spillway gates, but it may have an uncontrolled spillway. The dam crest is the top of the dam from left abutment to right abutment. A low-head dam may have been built for a range of purposes (*e.g.*, check dam, mill dam, irrigation, water supply, recreation, hydroelectric, or cooling pond), but in all cases, it provides little or no storage function.

The removed low-head dam structure must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

Because the removal of the low-head dam will result in a net increase in ecological functions and services provided by the stream, as a general rule compensatory mitigation is not required for activities authorized by this NWP. However, the district engineer may determine for a particular low-head dam removal activity that compensatory mitigation is necessary to ensure that the authorized activity results in no more than minimal adverse environmental effects.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Note: This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to restore the stream in the vicinity of the low-head dam, including the former impoundment area. Nationwide permit 27 or other Department of the Army permits may authorize such activities. This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to stabilize stream banks. Bank stabilization activities may be authorized by NWP 13 or other Department of the Army permits.

54. Living Shorelines. Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction and maintenance of living shorelines to stabilize banks and shores in coastal waters, which includes the Great Lakes, along shores with small fetch and gentle slopes that are subject to low- to mid-energy waves. A living shoreline has a footprint that is made up mostly of native material. It incorporates vegetation or other living, natural "soft" elements alone or in combination with some type of harder shoreline structure (*e.g.*, oyster or mussel reefs or rock sills) for added protection and stability. Living shorelines should maintain the natural continuity of the land-water interface, and retain or enhance shoreline ecological processes. Living shorelines must have a substantial biological component, either tidal or lacustrine fringe wetlands or oyster or mussel reef structures, but a portion of a living shoreline may consist of an unvegetated cobble, gravel, and/or sand beach, (*i.e.*, a pocket beach). The following conditions must be met:

(a) The structures and fill area, including cobble, gravel, and/or sand fills, sills, breakwaters, or reefs, cannot extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water

mark in the Great Lakes, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

(c) Coir logs, coir mats, stone, native oyster shell, native wood debris, and other structural materials must be adequately anchored, of sufficient weight, or installed in a manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms;

(d) For living shorelines consisting of tidal or lacustrine fringe wetlands, native plants appropriate for current site conditions, including salinity and elevation, must be used if the site is planted by the permittee;

(e) Discharges of dredged or fill material into waters of the United States, and oyster or mussel reef structures in navigable waters, must be the minimum necessary for the establishment and maintenance of the living shoreline;

(f) If sills, breakwaters, or other structures must be constructed to protect fringe wetlands for the living shoreline, those structures must be the minimum size necessary to protect those fringe wetlands;

(g) The activity must be designed, constructed, and maintained so that it has no more than minimal adverse effects on water movement between the waterbody and the shore and the movement of aquatic organisms between the waterbody and the shore; and

(h) The living shoreline must be properly maintained, which may require periodic repair of sills, breakwaters, or reefs, or replacing cobble, gravel, and/or sand fills after severe storms or erosion events. Vegetation may be replanted to maintain the living shoreline. This NWP authorizes those maintenance and repair activities, including any minor deviations necessary to address changing environmental conditions.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the living shoreline activity. Appropriate measures must be taken to maintain high flows, tidal flows or seiches, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of

construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows, tidal flows or seiches. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP does not authorize beach nourishment or land reclamation activities.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the construction of the living shoreline. (See general condition 32.) The pre-construction notification must include a delineation of special aquatic sites (see paragraph (b)(4) of general condition 32). Pre-construction notification is not required for maintenance and repair activities for living shorelines unless required by applicable NWP general conditions or regional conditions. (Authorities: Sections 10 and 404)

Note: In waters outside of coastal waters, nature-based bank stabilization techniques, such as bioengineering and vegetative stabilization, may be authorized by NWP 13.

55. Seaweed Mariculture Activities. Structures in marine and estuarine waters, including structures anchored to the seabed in waters overlying the outer continental shelf, for seaweed mariculture activities. This NWP also authorizes structures for bivalve shellfish mariculture if shellfish production is a component of an integrated multi-trophic mariculture system (e.g., the production of seaweed and bivalve shellfish on the same structure or a nearby mariculture structure that is part of the single and complete project).

This NWP authorizes the installation of buoys, long-lines, floats, anchors, rafts, racks, and other similar structures into navigable waters of the United States. Rafts, racks and other floating structures must be securely anchored and clearly marked. To the maximum extent practicable, the permittee must remove these structures from navigable waters of the United States if they will no longer be used for seaweed mariculture activities or multi-trophic mariculture activities.

Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic

separation schemes established by the U.S. Coast Guard (see 33 CFR 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

This NWP does not authorize:

(a) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 or the cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody; or

(b) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas.

Notification: The permittee must submit a pre-construction notification to the district engineer. (See general condition 32.)

In addition to the information required by paragraph (b) of general condition 32, the preconstruction notification must also include the following information: (1) a map showing the locations and dimensions of the structure(s); (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; and (3) general water depths in the project area(s) (a detailed survey is not required). No more than one pre-construction notification per structure or group of structures should be submitted for the seaweed mariculture operation during the effective period of this NWP. The pre-construction notification should describe all species and culture activities the operator expects to undertake during the effective period of this NWP. (Authority: Section 10)

Note 1: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

Note 2: To prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.

Note 3: The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990

defines “aquatic nuisance species” as “a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.”

Note 4: Where structures or work are authorized in navigable waters of the United States (*i.e.*, section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the ‘as-built drawings’ and the geographic coordinate system used in the ‘as-built drawings’ to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

57. *Electric Utility Line and Telecommunications Activities.*

Activities required for the construction, maintenance, repair, and removal of electric utility lines, telecommunication lines, and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than $\frac{1}{2}$ -acre of waters of the United States for each single and complete project.

Electric utility lines and telecommunication lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of electric utility lines and telecommunication lines. There must be no change in pre-construction contours of waters of the United States. An “electric utility line and telecommunication line” is defined as any cable, line, fiber optic line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (*e.g.*, backfilling with extensive gravel layers, creating a French drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the electric utility line or

telecommunication line crossing of each waterbody.

Electric utility line and telecommunication substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with an electric utility line or telecommunication line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than $\frac{1}{2}$ -acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead electric utility line or telecommunication line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead electric utility line or telecommunication line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of electric utility lines or telecommunication lines, including overhead lines and substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than $\frac{1}{2}$ -acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (*e.g.*, at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize electric utility lines or telecommunication lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Electric utility lines or telecommunication lines constructed over section 10 waters and

electric utility lines or telecommunication lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the electric utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) a section 10 permit is required; or (2) the discharge will result in the loss of greater than $\frac{1}{10}$ -acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where structures or work are authorized in navigable waters of the United States (*i.e.*, section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the ‘as-built drawings’ and the geographic coordinate system used in the ‘as-built drawings’ to the National Oceanic and Atmospheric

Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

Note 2: For electric utility line or telecommunications activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Electric utility line and telecommunications activities must comply with 33 CFR 330.6(d).

Note 3: Electric utility lines or telecommunication lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

Note 4: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the electric utility line or telecommunication line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 5: This NWP authorizes electric utility line and telecommunication line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For overhead electric utility lines and telecommunication lines authorized by this NWP, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 7: For activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Note 8: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to

beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

58. Utility Line Activities for Water and Other Substances. Activities required for the construction, maintenance, repair, and removal of utility lines for water and other substances, excluding oil, natural gas, products derived from oil or natural gas, and electricity. Oil or natural gas pipeline activities or electric utility line and telecommunications activities may be authorized by NWPs 12 or 57, respectively. This NWP also authorizes associated utility line facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of utility lines for water and other substances, including outfall and intake structures. There must be no change in pre-construction contours of waters of the United States. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose that is not oil, natural gas, or petrochemicals. Examples of activities authorized by this NWP include utility lines that convey water, sewage, stormwater, wastewater, brine, irrigation water, and industrial products that are not petrochemicals. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or French drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain

waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for above-ground utility lines: This NWP authorizes the construction or maintenance of foundations for above-ground utility lines in all waters of the United States, provided the foundations are the minimum size necessary.

Access roads: This NWP authorizes the construction and maintenance of utility lines, including utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material may require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army

authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) a section 10 permit is required; or (2) the discharge will result in the loss of greater than $\frac{1}{10}$ -acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where structures or work are authorized in navigable waters of the United States (*i.e.*, section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the 'as-built drawings' and the geographic coordinate system used in the 'as-built drawings' to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

Note 2: For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations,

each crossing is considered a single and complete project for purposes of NWP authorization. Utility line activities must comply with 33 CFR 330.6(d).

Note 3: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Note 5: This NWP authorizes utility line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Note 7: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

59. Water Reclamation and Reuse Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, and maintenance of water reclamation and reuse facilities,

including vegetated areas enhanced to improve water infiltration and constructed wetlands to improve water quality.

The discharge of dredged or fill material must not cause the loss of greater than $\frac{1}{2}$ -acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

This NWP also authorizes temporary fills, including the use of temporary mats, necessary to construct the water reuse project and attendant features. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

60. Activities to Improve Passage of Fish and Other Aquatic Organisms. Discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States for activities that restore or enhance the ability of fish and other aquatic organisms to move through aquatic ecosystems. Examples of activities that may be authorized by this NWP include, but are not limited to: the construction, maintenance, modification, or expansion of conventional/technical and nature-like fishways; the construction, maintenance, modification, or expansion of fish bypass channels around existing in-stream structures; the replacement of existing structures (*e.g.*, culverts, low-water crossings) with structures planned, designed, and constructed to restore or enhance passage of fish and other aquatic organisms; the installation of fish screens and other devices to minimize entrainment and entrapment of fish and other aquatic organisms in irrigation ditches and other features; devices to guide fish and other aquatic organisms through passage features; fish lifts and

fish by-pass pipes; the modification of existing in-stream structures, such as dams or weirs, to improve the ability of fish and other aquatic organisms to move past those structures.

The activity must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize dam removal activities. This NWP also does not authorize the construction or installation of new culverts at crossings of waterbodies where there are not existing culverts.

Notification: For activities resulting in the loss of greater than 1/10-acre of waters of the United States, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

C. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. *Navigation.* (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required,

upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. *Spawning Areas.* Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. *Migratory Bird Breeding Areas.* Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. *Shellfish Beds.* No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. *Suitable Material.* No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. *Water Supply Intakes.* No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. *Adverse Effects From Impoundments.* If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. *Management of Water Flows.* To the maximum extent practicable, the pre-construction course, condition,

capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows, including tidal flows. The activity must not restrict or impede the passage of normal or high flows, including tidal flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. *Fills Within 100-Year Floodplains.* The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. *Equipment.* Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. If mats are used to minimize soil disturbance, the affected areas must be returned to pre-construction elevations, and revegetated as appropriate. In circumstances where the use of mats has caused significant soil compaction, efforts using techniques (e.g., soil re-aeration techniques) to break up the compaction should be employed to return the soil to a pre-construction state prior to returning to pre-construction elevations.

12. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. *Removal of Temporary Structures and Fills.* Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. *Proper Maintenance.* Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP

general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. *Single and Complete Project.* The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. *Wild and Scenic Rivers.* (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. *Endangered Species.* (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for

such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or

critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal permittee should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district

engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. *Migratory Birds and Bald and Golden Eagles.* The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. *Historic Properties.* (a) No activity is authorized under any NWP which may have the potential to cause effects on properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects on any historic properties listed on,

determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects on historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective

permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. *Discovery of Previously Unknown Remains and Artifacts.* Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activities authorized by NWPs, must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the federal, tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. *Designated Critical Resource Waters.* Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National

Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (*i.e.*, on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed $\frac{1}{10}$ -acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of $\frac{1}{10}$ -acre or less that require pre-construction notification, the district engineer may determine on a case-by-

case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed $\frac{3}{100}$ -acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of $\frac{3}{100}$ -acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, because streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (*e.g.*, conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (*e.g.*, riparian areas and/or wetlands compensation) based on what is best for the aquatic

environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will

coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (*e.g.*, resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of $\frac{1}{2}$ -acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than $\frac{1}{2}$ -acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently

maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. *Safety of Impoundment Structures.* To ensure that all impoundment structures are safely designed, the district engineer may require non-federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. *Water Quality.* (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed activity which may result in any discharge from a point source into waters of the United States must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by the certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed activity which may result in any discharge from a point source into waters of the United States in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed activity which may result in any discharge from a point source into waters of the United States is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge into waters of the United States, the permittee must submit a copy of the certification to the district engineer. The discharge into waters of the United States is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied (*i.e.*, by the issuance of a water quality certification or a waiver and completion of the Section 401(a)(2) process).

(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not

result in more than minimal degradation of water quality.

26. *Coastal Zone Management.* In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the division engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. *Use of Multiple Nationwide Permits.* The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) The total acreage loss of waters of the United States for a single and complete project cannot exceed the acreage limit of the NWP with the highest specified acreage limit when multiple NWPs are used to authorize an activity.

(b) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States for that single and complete project cannot exceed that specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14 (which has an acreage limit of $\frac{1}{3}$ acre in tidal waters), with associated bank stabilization authorized by NWP 13 (which does not have a specified acreage limit), the maximum acreage loss of waters of the United States for the total project cannot exceed $\frac{1}{3}$ -acre.

(c) If two or more of the NWPs used to authorize the single and complete project have specified acreage limits, the acreage loss of waters of the United States authorized by each of those NWPs cannot exceed the specified

acreage limits of each of those NWP. For example, if a commercial development is constructed under NWP 39 (which has a 1/2-acre limit), and the single and complete project includes the filling of a ditch authorized by NWP 46 (which has a 1-acre limit), the maximum acreage loss of waters of the United States for the construction of the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States caused by the combination of the NWP 39 and NWP 46 activities cannot exceed 1 acre.

29. *Transfer of Nationwide Permit Verifications.* If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. *Compliance Certification.* Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The successful completion of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required

compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. *Activities Affecting Structures or Works Built by the United States.* If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. *Pre-Construction Notification.* (a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district

engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee’s right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification.* The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity’s purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a

description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of waters, wetlands, and other special aquatic sites on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate. For NWP 27 activities that require PCNs because of other general conditions or regional

conditions imposed by division engineers, see Note 2 of that NWP;

(6) If the proposed activity will result in the loss of greater than $\frac{1}{10}$ -acre of wetlands or $\frac{3}{100}$ -acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the compensatory mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or

permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction

Notification: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) Agency Coordination: (1) The district engineer will consider any comments from federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than $\frac{1}{2}$ -acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency

comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWP, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases where the prospective permittee is not a federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and

conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add activity-specific conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed NWP activity requires a PCN and will result in a loss of greater than $\frac{1}{10}$ -acre of wetlands or $\frac{3}{100}$ -acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. However, compensatory mitigation shall not be required for activities authorized by NWP 27 because those activities must result in net increases in aquatic resource functions and services (see the text of NWP 27). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal when

determining whether the net adverse environmental effects of the proposed NWP activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the proposed activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed NWP activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the

NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN review period (unless additional time is required to comply with general conditions 16, 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

E. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

F. Nationwide Permit Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic ecosystem restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on: (1) the structure, functions, and dynamics of an aquatic ecosystem type or a riparian area type that currently exists in the region; (2) the structure, functions, and dynamics of an aquatic ecosystem type or riparian area type that existed in the region in the past; and/or (3) indigenous and local ecological knowledge that apply to the aquatic ecosystem type or riparian area type (*i.e.*, a cultural ecosystem). Cultural ecosystems are ecosystems that have developed under the joint influence of natural processes and human management activities (*e.g.*, fire stewardship). An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered

when calculating the loss of waters of the United States.

Nature-based solutions: Actions to protect, sustainably manage, and restore natural or modified ecosystems, that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (*i.e.*, spring high tide line).

Open water: For purposes of the NWP, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants

confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (*i.e.*, spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (*i.e.*, a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (*i.e.*, by reducing the concentration of nutrients,

sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. The substrate may also be comprised, in part, of organic matter, such as large or small wood fragments, leaves, algae, and other organic materials. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat

ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: (1) held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP, a waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

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Part III

The President

Proclamation 10999—To Implement the United States-Israel Agreement on Trade in Agricultural Products and for Other Purposes
Order of January 2, 2026—Regarding the Acquisition of Certain Assets of EMCORE Corporation by HieFo Corporation

Presidential Documents

Title 3—

Proclamation 10999 of December 29, 2025

The President

To Implement the United States-Israel Agreement on Trade in Agricultural Products and for Other Purposes

By the President of the United States of America

A Proclamation

1. On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (the “USIFTA”), which the Congress approved in section 3 of the United States–Israel Free Trade Area Implementation Act of 1985 (the “USIFTA Implementation Act”) (Public Law 99–47, 99 Stat. 82 (19 U.S.C. 2112 note)). Section 4(b) of the USIFTA Implementation Act provides that, when the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties, as the President determines to be required or appropriate to carry out the USIFTA. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on July 27, 2004, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products during the period January 1, 2004, through December 31, 2008 (United States-Israel Agreement Concerning Certain Aspects of Trade in Agricultural Products (the “2004 Agreement”)).

2. In Proclamation 7826 of October 4, 2004, the President determined, pursuant to section 4(b) of the USIFTA Implementation Act and consistent with the 2004 Agreement, that, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, it was necessary to provide duty-free access into the United States through December 31, 2008, for specified quantities of certain agricultural products of Israel. Each year from 2008 through 2024, the United States and Israel entered into agreements to extend the period that the 2004 Agreement was in force for 1-year periods to allow additional time for the two governments to conclude an agreement to replace the 2004 Agreement. To carry out the extension agreements, in Proclamations 8334 of December 31, 2008; 8467 of December 23, 2009; 8618 of December 21, 2010; 8770 of December 29, 2011; 8921 of December 20, 2012; 9072 of December 23, 2013; 9223 of December 23, 2014; 9383 of December 21, 2015; 9555 of December 15, 2016; 9687 of December 22, 2017; 9834 of December 21, 2018; 9974 of December 26, 2019; 10128 of December 22, 2020; 10326 of December 23, 2021; 10509 of December 23, 2022; 10692 of December 29, 2023; and 10875 of December 20, 2024, Presidents Bush, Obama, Biden and I modified the Harmonized Tariff Schedule of the United States (HTSUS) to provide duty-free access into the United States for specified quantities of certain agricultural products of Israel, each time for an additional 1-year period.

3. On December 1, 2025, the United States entered into an agreement with Israel to make permanent modifications to the 2004 Agreement. On December 4, 2025, the United States entered into an additional agreement with Israel to extend the period that the 2004 Agreement is in force, in order to provide time for the permanent modifications to the 2004 Agreement to

enter into force. Pursuant to section 4(b) of the USIFTA Implementation Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through the close of December 31, 2026, for specified quantities of certain agricultural products of Israel, as provided in Annex I of this proclamation.

4. On May 6, 2003, the United States and the Republic of Singapore entered into the United States-Singapore Free Trade Agreement (the “USSFTA”), which the Congress approved in section 101 of the United States-Singapore Free Trade Agreement Implementation Act (the “USSFTA Implementation Act”) (Public Law 108–78, 117 Stat. 948, 949 (19 U.S.C. 3805 note)). Section 201 of the USSFTA Implementation Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply articles 2.2, 2.5, 2.6, and 2.12 of the USSFTA and the schedule of reductions set forth in Annex 2B of the USSFTA. Section 202 of the USSFTA Implementation Act provides certain rules for determining whether a good is an originating good for the purposes of implementing tariff treatment under the USSFTA and authorizes the President to proclaim the provisions set out in Annexes 3A, 3B, and 3C of the USSFTA and any additional subordinate category necessary to carry out Title II consistent with the USSFTA. In Proclamation 7747 of December 30, 2003, the President determined that it was necessary to add general note 25 to the HTSUS to implement the tariff modifications and rules of origin necessary to carry out the USSFTA.

5. Proclamation 7747 contained two technical errors with respect to the rules of origin for HTSUS subheadings in chapter 90 in general note 25. I have determined that additional modifications to the HTSUS are necessary or appropriate to correct these errors.

6. On June 30, 2007, the United States and the Republic of Korea entered into the United States-Korea Free Trade Agreement (the “USKFTA”), which the Congress approved in section 101 of the United States-Korea Free Trade Agreement Implementation Act (the “USKFTA Implementation Act”) (Public Law 112–41, 125 Stat. 428, 430 (19 U.S.C. 3805 note)). Proclamation 8783 of March 6, 2012, implemented the USKFTA with respect to the United States and, pursuant to the USKFTA Implementation Act, incorporated into the HTSUS the schedule of duty reductions and rules of origin necessary or appropriate to carry out the USKFTA.

7. Proclamation 8771 of December 29, 2011, pursuant to section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418, 102 Stat. 1107, 1151 (19 U.S.C. 3006(a))), modified the HTSUS to reflect amendments to the International Convention on the Harmonized Commodity Description and Coding System (the “Convention”). Section 201 of the USKFTA Implementation Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, and 2.6, and Annex 2–B, Annex 4–B, and Annex 22–A, of the USKFTA. Section 202(o) of the USKFTA Implementation Act authorizes the President to proclaim, as part of the HTSUS, the rules of origin set out in the USKFTA and to proclaim any modifications to such previously proclaimed rules of origin, subject to the exceptions stated in section 202(o)(2)(A) of the USKFTA Implementation Act. In Proclamation 9072 of December 23, 2013, the President determined that it was necessary to modify general note 33 to the HTSUS to implement agreed modifications to the rules of origin in the USKFTA and ensure the continuation of such staged reductions in rates of duty for originating goods under tariff categories that had been modified to reflect amendments to the Convention.

8. Proclamation 9072 contained a technical error in tariff classification rule 1 to chapter 88 in general note 33. I have determined that additional modifications to the HTSUS are necessary or appropriate to correct this error.

9. In Proclamation 8114 of March 19, 2007, the President established HTSUS subheading 9819.15.10 and a new U.S. Note 5 to subchapter XIX of chapter 98 of the HTSUS in order to implement certain aspects of the tariff treatment provided for in section 112(b)(8) and section 112(c) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Public Law 106–200, 114 Stat. 251, 262), as amended by section 6002(b) of the Africa Investment Incentive Act of 2006 (Division D, Title VI of the Tax Relief and Health Care Act of 2006, Public Law 109–432, 120 Stat. 2922, 3193 (19 U.S.C. 3721(b)(8) and (c))). In Proclamation 8240 of April 17, 2008, the President made modifications to U.S. Notes 2(a), 2(b), and 2(e) to subchapter XIX of chapter 98 of the HTSUS to include references to the various HTSUS subheadings established by Proclamation 8114, including references to subheading 9819.15.10. In Proclamation 8323 of November 25, 2008, the President further modified the HTSUS by deleting U.S. Note 5 to subchapter XIX of chapter 98 of the HTSUS, and its associated subheadings, including subheading 9819.15.10. However, Proclamation 8323 inadvertently omitted conforming changes to U.S. Notes 2(a), 2(b), and 2(e) to subchapter XIX of chapter 98 of the HTSUS.

10. In Proclamation 10326 of December 23, 2021, the President made certain necessary conforming changes to U.S. Notes 2(a), 2(b), and 2(e) to subchapter XIX of chapter 98 of the HTSUS, including removing references to subheading 9819.15.10 from U.S. Notes 2(a) and 2(e), but inadvertently failed to remove the reference to subheading 9819.15.10 in the first line of U.S. Note 2(b). I have determined that additional modifications to the HTSUS are necessary or appropriate to reflect the deletion of U.S. Note 5 to subchapter XIX of chapter 98 of the HTSUS, and its associated subheadings.

11. Executive Order 14346 of September 5, 2025 (Modifying the Scope of Reciprocal Tariffs and Establishing Procedures for Implementing Trade and Security Agreements), authorized the Secretary of Commerce and the United States Trade Representative to take the necessary and appropriate steps to implement any current or forthcoming trade and security framework agreements between a foreign trading partner and the United States, including modifications to the HTSUS. The Secretary of Commerce and the United States Trade Representative, in a *Federal Register* notice of September 25, 2025 (90 FR 46136), modified the HTSUS to provide for the preferential treatment of certain goods of the European Union with respect to the additional *ad valorem* duty imposed under Executive Order 14257 of April 2, 2025 (Regulating Imports With a Reciprocal Tariff To Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits), as amended, including by adding headings 9903.02.74, 9903.02.75, 9903.02.76, and 9903.02.77 to the HTSUS. These four headings each cross-referenced explanatory notes in subdivisions (v)(xvi), (xvii), (xviii), and (xix) of U.S. Note 2 to subchapter III of chapter 99 of the HTSUS, respectively.

12. Subsequently, Proclamation 10976 of September 29, 2025 (Adjusting Imports of Timber, Lumber, and Their Derivative Products Into the United States), inserted a new subdivision (v)(xiii), effective October 14, 2025, and Proclamation 10984 of October 17, 2025 (Adjusting Imports of Medium- and Heavy-Duty Vehicles, Medium- and Heavy-Duty Vehicle Parts, and Buses Into the United States), inserted new subdivisions (v)(xiv) and (v)(xv), effective November 1, 2025, into U.S. Note 2 to subchapter III of chapter 99 of the HTSUS. Although both proclamations adjusted the numbering of subsequent provisions in subdivision (v), they omitted conforming changes to the cross-references in headings 9903.02.74–9903.02.77. I have determined that additional modifications to the HTSUS are necessary or appropriate to reflect these conforming changes.

13. Section 604 of the Trade Act of 1974, as amended (the “Trade Act”) (Public Law 93–618, 88 Stat. 1978, 2073 (19 U.S.C. 2483)), authorizes the President to embody in the HTSUS the substance of the relevant provisions of the Trade Act, and of other acts affecting import treatment, and actions taken thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 4(b) of the USIFTA Implementation Act, sections 201 and 202 of the USSFTA Implementation Act, sections 201 and 202 of the USKFTA Implementation Act, and section 604 of the Trade Act, do proclaim that:

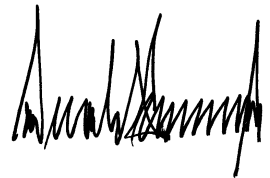
(1) In order to implement tariff commitments under the 2004 Agreement through December 31, 2026, the HTSUS is modified as set forth in Annex I of this proclamation.

(2) The modifications and technical rectifications to the HTSUS made by Annex I of this proclamation shall enter into effect on the applicable dates set forth in Annex I of this proclamation.

(3) In order to make the modifications and technical rectifications to the HTSUS described in paragraphs 4 through 12 of this proclamation, the HTSUS is modified as set forth in Annex II of this proclamation. These modifications and technical rectifications shall enter into effect on the applicable dates set forth in Annex II of this proclamation.

(4) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of December, in the year of our Lord two thousand twenty-five, and of the Independence of the United States of America the two hundred and fiftieth.



ANNEX I**TEMPORARY EXTENSION OF CERTAIN PROVISIONS
OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES**

Effective with respect to eligible agricultural products of Israel which are entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 am eastern time on January 1, 2026, and before 11:59 pm eastern time on December 31, 2026, subchapter VIII of chapter 99 of the Harmonized Tariff Schedule of the United States is hereby modified as follows:

1. U.S. note 1 to such subchapter is modified by striking “December 31, 2025” and by inserting in lieu thereof “December 31, 2026”.
2. U.S. note 3 to such subchapter is modified by adding at the end of the “Applicable time period” column in the table “Calendar year 2026” and by adding at the end of the “Quantity (kg)” column opposite such year the quantity “466,000”.
3. U.S. note 4 to such subchapter is modified by adding at the end of the “Applicable time period” column in the table “Calendar year 2026” and by adding at the end of the “Quantity (kg)” column opposite such year the quantity “1,304,000”.
4. U.S. note 5 to such subchapter is modified by adding at the end of the “Applicable time period” column in the table “Calendar year 2026” and by adding at the end of the “Quantity (kg)” column opposite such year the quantity “1,534,000”.
5. U.S. note 6 to such subchapter is modified by adding at the end of the “Applicable time period” column in the table “Calendar year 2026” and by adding at the end of the “Quantity (kg)” column opposite such year the quantity “131,000”.
6. U.S. note 7 to such subchapter is modified by adding at the end of the “Applicable time period” column in the table “Calendar year 2026” and by adding at the end of the “Quantity (kg)” column opposite such year the quantity “707,000”.

ANNEX II

**TECHNICAL MODIFICATIONS AND RECTIFICATIONS TO
THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES**

A. Tariff classification rule (TCR) 2 to chapter 90 in general note 25 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by deleting “9901.90” and by inserting “9001.90” in lieu thereof.

B. TCR 4(B) to chapter 90 in general note 25 of the HTSUS is modified by deleting “900.19” and by inserting “9003.19” in lieu thereof.

C. TCR 1(A) to chapter 88 in general note 33 of the HTSUS is deleted and TCRs 1(B) and 1(C) to chapter 88 in general note 33 of the HTSUS are re-lettered as 1(A) and 1(B), respectively.

D. U.S. note 2(b) to subchapter XIX of chapter 98 of the HTSUS is modified by deleting “and 9819.15.10”.

E. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 am eastern time on October 14, 2025, subchapter III of chapter 99 of the HTSUS is modified as follows:

1. The article description of heading 9903.02.74 is modified by deleting “(xvi)” and by inserting “(xvii)” in lieu thereof;

2. The article description of heading 9903.02.75 is modified by deleting “(xvii)” and by inserting “(xviii)” in lieu thereof;

3. The article description of heading 9903.02.76 is modified by deleting “(xviii)” and by inserting “(xix)” in lieu thereof; and

4. The article description of heading 9903.02.77 is modified by deleting “(xix)” and by inserting “(xx)” in lieu thereof.

F. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 am eastern time on November 1, 2025, subchapter III of chapter 99 of the HTSUS is modified as follows:

1. The article description of heading 9903.02.74 is modified by deleting “(xvii)” and by inserting “(xix)” in lieu thereof;

2. The article description of heading 9903.02.75 is modified by deleting “(xviii)” and by inserting “(xx)” in lieu thereof;

3. The article description of heading 9903.02.76 is modified by deleting “(xix)” and by inserting “(xxi)” in lieu thereof; and

4. The article description of heading 9903.02.77 is modified by deleting “(xx)” and by inserting “(xxii)” in lieu thereof.

Presidential Documents

Order of January 2, 2026

Regarding the Acquisition of Certain Assets of EMCORE Corporation by HieFo Corporation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 721 of the Defense Production Act of 1950, as amended (section 721), 50 U.S.C. 4565, it is hereby ordered:

Section 1. Findings. (a) There is credible evidence that leads me to believe that HieFo Corporation, a company organized under the laws of Delaware (HieFo) and controlled by a citizen of the People's Republic of China, through the acquisition of the assets comprising the digital chips and related wafer design, fabrication, and processing businesses of EMCORE Corporation, a New Jersey corporation (Emcore Assets), which acquisition completed on April 30, 2024 (such acquisition, the Transaction), might take action that threatens to impair the national security of the United States; and

(b) Provisions of law, other than section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), do not, in my judgment, provide adequate and appropriate authority for me to protect the national security in this matter.

Sec. 2. Actions Ordered and Authorized. On the basis of the findings set forth in section 1 of this order, considering the factors described in subsection (f) of section 721, as appropriate, and pursuant to my authority under applicable law, including section 721, I hereby order that:

(a) The Transaction is hereby prohibited, and ownership by HieFo of any interest or rights in any of the Emcore Assets, whether effected directly or indirectly through HieFo, or through HieFo's partners, subsidiaries, affiliates, or foreign person shareholders (collectively, Affiliates), is also prohibited. For the purposes of sections 2(a), 2(b), and 2(c) of this order, the United States nationals on HieFo's Board of Directors as of November 26, 2025, are not considered Affiliates of HieFo.

(b) To effectuate this order, not later than 180 calendar days after the date of this order, unless such date is extended by the Committee on Foreign Investment in the United States (CFIUS), HieFo shall, and shall ensure that its Affiliates, divest all interests and rights in the Emcore Assets, wherever located, including contracts, inventory, tangible property, parts, fixed assets, accounts receivable, permits, real property leased or owned by EMCORE Corporation, and intellectual property. All actions by CFIUS referenced in this order may be conducted by the agencies designated by its Staff Chairperson and all obligations on HieFo or EMCORE Corporation are subject to any extensions of time, conditions, or exceptions as such CFIUS agencies determine are appropriate and will not impair the national security of the United States.

(c) Immediately from the date of this order until such time as the divestment set forth in subsection (b) of this section (the Divestment) has been completed and verified to the satisfaction of CFIUS and CFIUS has communicated in writing to HieFo that the Divestment is complete, HieFo shall not, and shall ensure that its personnel does not, grant any access to the Emcore Assets or any non-public technical information, information technology systems, products, parts and components, books and records, or facilities in the United States of the Emcore Assets to any persons who are not personnel of HieFo, unless otherwise approved in writing by CFIUS.

Not later than 7 calendar days after the date of this order, or after notification from CFIUS, as applicable, HieFo shall put in place and maintain any measures or controls deemed necessary by CFIUS to ensure that the access prohibited under this subsection does not occur.

(d) Until the Divestment has been completed and verified to the satisfaction of CFIUS and CFIUS has communicated in writing to HieFo that the Divestment is complete, unless otherwise approved in writing by CFIUS, HieFo shall not, and shall ensure that its Affiliates do not, dissolve, reorganize, or transfer any interest or rights in any of the Emcore Assets, or otherwise change its or their legal structure or relocate, transfer, or sell any physical, intangible, or financial assets in a manner that would materially impede or prevent HieFo or its Affiliates from complying with this order as determined by CFIUS.

(e) At any time prior to or upon CFIUS communicating in writing to HieFo that the Divestment is complete, CFIUS is authorized to require auditing of HieFo, at no expense to CFIUS, on terms it deems appropriate in order to ensure compliance with this order and any conditions imposed by CFIUS.

(f) Immediately upon Divestment:

(i) HieFo shall certify in writing to CFIUS that all steps necessary to fully and permanently effectuate the requirements of subsections (a) and (b) of this section, including any conditions imposed by CFIUS pursuant to subsections (b) and (l) of this section, have been completed in accordance with this order; and

(ii) HieFo shall certify in writing to CFIUS that, as part of the Divestment, HieFo and its Affiliates have destroyed or transferred all intellectual property associated with the Emcore Assets in their possession or control, including copies thereof, that HieFo and its Affiliates are required to divest pursuant to subsection (b) of this section. CFIUS is authorized to require auditing of HieFo and its Affiliates, at no expense to CFIUS, on terms CFIUS deems appropriate in order to ensure that such destruction or transfer of intellectual property is complete.

(g) HieFo shall not, and shall ensure that its Affiliates do not, complete a sale or transfer under this order to any third party:

(i) until HieFo notifies CFIUS in writing of the intended buyer or transferee; and

(ii) unless 30 calendar days have passed from the notification in subsection (g)(i) of this section and CFIUS has not issued an objection to HieFo. Among the factors CFIUS may consider in reviewing the proposed sale or transfer are whether the buyer or transferee is a United States citizen or is owned by United States citizens; has or has had a direct or indirect contractual, financial, familial, employment, or other close and continuous relationship with HieFo or its Affiliates, or officers or employees of HieFo or its Affiliates; and can demonstrate a willingness and ability to support compliance with this order and any conditions imposed by CFIUS. In addition, CFIUS may consider whether the proposed sale or transfer would threaten to impair the national security of the United States or undermine the purpose of this order, and whether the sale effectuates, to CFIUS's satisfaction and in its discretion, the Divestment.

(h) From the date of this order until HieFo provides a certification of the Divestment to CFIUS pursuant to subsection (f) of this section, HieFo shall certify to CFIUS on a weekly basis that it and its Affiliates are in compliance with this order and any conditions imposed by CFIUS and shall include a description of efforts to effectuate the Divestment and a timeline for projected completion of remaining actions.

(i) Any transaction or other instrument entered into or method employed for the purpose of, or with the effect of, evading or circumventing this order is prohibited.

(j) Without limitation on the exercise of authority by any agency under other provisions of law, CFIUS is authorized to implement measures it deems necessary and appropriate to verify and enforce compliance with this order and any conditions imposed by CFIUS. For purposes of verifying and enforcing compliance with this order and any conditions imposed by CFIUS, HieFo shall permit employees of the United States Government as designated by CFIUS access, on reasonable notice to HieFo, to all premises and facilities of HieFo and its Affiliates located in the United States, including those of the Emcore Assets:

(i) to inspect and copy any books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of HieFo or its Affiliates that concern any matter relating to this order;

(ii) to inspect or audit any information systems, networks, hardware, software, data, records, communications, or property in the possession or under the control of HieFo or its Affiliates that concern any matter relating to this order; and

(iii) to interview officers, employees, or agents of HieFo, or its Affiliates, concerning any matter relating to this order.

(k) CFIUS shall conclude its verification procedures pursuant to subsection (j) of this section within 90 calendar days after the certification of the Divestment is provided to CFIUS pursuant to subsection (f) of this section and shall communicate in writing to HieFo when it has found that the Divestment is complete.

(l) Without limitation on the exercise of authority by any agency under other provisions of law, and until such time as the Divestment is completed and verified to the satisfaction of CFIUS, CFIUS is further authorized to impose conditions or implement measures in connection with this order, the Divestment, and the Transaction as it deems necessary and appropriate to mitigate risk to the national security of the United States arising from the Transaction, including measures available to it under section 721 and its implementing regulations, which include the remedies available for violations of any order, agreement, or condition entered into or imposed under section 721.

(m) If any provision of this order, or the application of any provision to any person or circumstances, is held by a court of competent jurisdiction to be invalid, the remainder of this order and the application of its other provisions to any persons or circumstances shall not be affected thereby. If any provision of this order, or the application of any provision to any person or circumstances, is held by a court of competent jurisdiction to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements.

(n) The Attorney General is authorized to take any steps pursuant to section 721(d)(3) necessary to enforce this order.

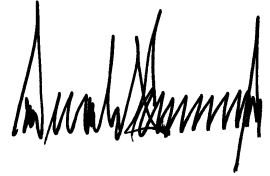
(o) Any deadline or time limitation under this order imposed on CFIUS shall be tolled during a lapse in appropriations.

Sec. 3. Reservation. I hereby reserve my authority to issue further orders with respect to the Transaction as shall in my judgment be necessary to protect the national security of the United States.

Sec. 4. *Publication and Transmittal.* (a) This order shall be published in the *Federal Register*.

(b) I hereby direct the Secretary of the Treasury to transmit a copy of this order to the appropriate parties named in section 1 of this order.

(c) The costs for publication of this order shall be borne by the Department of the Treasury.



THE WHITE HOUSE,
January 2, 2026.

Reader Aids

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